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Yaskow, Wayne Raymond
Young, David Michael



IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011 c. 19

AND

IN THE MATTER CONCERNING

PENELOPE DAWN ABGRALL



CONSENT RESOLUTION AGREEMENT

BETWEEN:

THE COMMISSIONER, APPOINTED UNDER THE *TEACHERS ACT*
(the “Commissioner”)

AND:

PENELOPE DAWN ABGRALL
(“Abgrall”)

BACKGROUND and FACTS

1. Abgrall holds a Professional Certificate, [REDACTED] issued by the B.C. College of Teachers (the “College”) under the *Teaching Profession Act* on September 5, 1995, valid from September 1, 1995, and continuing under the *Teachers Act* as of January 9, 2012. She currently maintains practising status with the Teacher Regulation Branch (the “Branch”).
2. At all material times, Abgrall was employed as a middle school teacher by School District No. 79 (Cowichan Valley) (the “District”) at L’Ecole Mount Prevost Middle School (the “School”).
3. On July 18, 2013, the District made a report to the Branch regarding Abgrall, under section 16(3) of the *School Act*.
4. On January 7, 2013, while Abgrall was teaching a grade 8 math class at the School and in the lunch break that immediately followed:

- a. She told a female student (“Student A”) that she was doing the math wrong, criticized Student A for not doing her school work during the Christmas break and that Student A would have to stay behind at lunch to do the work. Two other students also remained behind in the classroom to work on math.
 - b. Student A said she did not understand how to do the math. Abgrall told her words to the effect that she was doing the math wrong and was going to fail unless she worked harder.
 - c. Abgrall walked away from her desk and started yelling about working harder and that the work was easy if Student A worked at it. During this time, Abgrall was pushing and kicking desks and chairs in an inappropriate manner; she says she was doing so to put them into order. One of the students left the classroom because he was scared by Abgrall’s conduct.
 - d. Then Abgrall threw a math book across the classroom. Abgrall says that she was putting the book away. Student A and the other student in the classroom perceived the book to have been thrown at Student A.
 - e. Student A got up to leave because she was scared. Abgrall yelled at her words to the effect of “where do you think you are going”.
 - f. Student A sat back down and worked on her math until Abgrall told her she could go.
5. On July 17, 2013, the District disciplined Abgrall by suspending her without pay for five days in September 2013. The District had previously issued letters of expectation to Abgrall on June 27, 2008 and June 5, 2009 regarding her obligation to treat students in a professional and respectful manner.
 6. On September 17, 2013 the Commissioner considered this matter and determined to propose a consent resolution agreement to Abgrall, in accordance with section 53(1)(a) of the *Teachers Act*.

DISPOSITION

7. This Agreement is made under section 53 of the *Teachers Act*.
8. Abgrall understands and acknowledges that this Agreement is not effective until executed by the Commissioner, and that the date of execution by the Commissioner will be the effective date of this Agreement (the “Effective Date”).
9. Abgrall admits that the facts set out in paragraphs 1 to 5 of this Agreement are true.
10. Abgrall admits that the conduct described in paragraph 4 of this Agreement constitutes professional misconduct and is contrary to Standard #1 of the *Standards for the Education*,

Competence and Professional Conduct of Educators in British Columbia, Fourth Edition, January 2012.

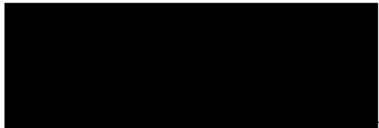
11. Abgrall agrees to a suspension of her certificate of qualification for three school days under sections 53 and 64(b) of the *Teachers Act*. The suspension will start on Wednesday, January 22, 2014 and end on Friday, January 24, 2014.
12. Abgrall further agrees that by August 30, 2014 (the “Condition Date”):
 - a. She will successfully complete the course “Dealing with Anger” through the Justice Institute, as well as one of the following pre-requisites to that course: “Foundations of Collaborative Conflict Resolution” or “Managing the Conflict Within” (together, the “Courses”);
 - b. if Abgrall does not successfully complete the Courses by the Condition Date, she will immediately advise the Commissioner in writing of the reason(s) she has not successfully completed them and set out the date by which she proposes to do so; and
 - c. if Abgrall fails to provide satisfactory proof of completion of the Courses by the Condition Date, the Commissioner may require the Director of Certification (“the Director”) to suspend Abgrall’s certificate of qualification under section 64(f) of the *Teachers Act*, until such time as she successfully completes the Courses.
13. Abgrall agrees not to make any statement orally or in writing which contradicts, disputes or calls into question the terms of this Agreement or the admissions made in it.

CONSEQUENCES OF THE AGREEMENT

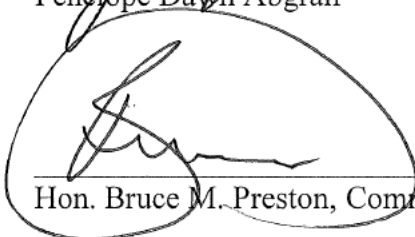
14. The Director of Certification will record the terms of this Agreement on the Branch’s online registry under section 79(d) of the *Teachers Act*.
15. Abgrall acknowledges that this Agreement will be published in accordance with section 54 of the *Teachers Act*, which includes posting of the Agreement, in full, on the following website: www.bcteacherregulation.ca.
16. Notification of this Agreement will be made in accordance with section 55 of the *Teachers Act*.
17. A breach by Abgrall of any term in this Agreement may constitute professional misconduct which may be the subject of separate discipline proceedings.

18. Abgrall acknowledges and understands that if the Branch has reason to believe that she has breached any term of this Agreement:
- a. the Commissioner may initiate an investigation under section 47(1)(b) of the *Teachers Act* into her conduct; and
 - b. the conduct and matters described in the “Background and Facts” to this Agreement are admissible in that inquiry as proof that Abgrall has admitted to the conduct and matters set out in this Agreement.
19. Abgrall acknowledges that she has voluntarily entered into this Agreement with the benefit of independent legal advice, and that she fully understands the terms and conditions set out in this Agreement.

Signed in Duncan, B.C.
this 14 day of December, 2013.


Penelope Dawn Abgrall

Signed in Vancouver, B.C.
this 31 day of December, 2013


Hon. Bruce M. Preston, Commissioner



2016 TAHP 07
Decision issued: October 27, 2016
Citation issued: July 7, 2015
Citation amended: February 9, 2016
File No.: [REDACTED]

IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011, c. 19
AND
A HEARING CONCERNING
ROBERT DARWIN AMMON
(An Authorized Person under the *Teachers Act*)

NOTICE OF REASONS FOR DECISION ON FINDINGS AND DETERMINATION

Date(s) and location(s): April 19-22 and May 4, 2016 at the Teacher Regulation Branch
Panel: Sarah Levine, Chair, Rebecca Blair, Teresa Rezansoff
Counsel for the Commissioner: Maureen Boyd, Ministry of Justice
Counsel for the Respondent: Claire Hatcher, Bolton Hatcher Dance

INTRODUCTION

- [1] A Panel was appointed by the Commissioner of the Teacher Regulation Branch of the Ministry of Education of British Columbia (the “Commissioner”) to conduct a hearing into allegations contained in a citation issued under section 56(1) of the *Teachers Act*, S.B.C. 2011, c. 19 (the “Act”) on July 7, 2015 as amended on February 9, 2016 under section 56(4) of the Act (the “Amended Citation”).
- [2] The allegations concern Robert Ammon (the “Respondent”) who taught mathematics and physical education at the [REDACTED] in School District No. 61 (Greater Victoria).
- [3] The Respondent holds Professional Certificate No. [REDACTED], issued by the B.C. College of Teachers (the “College”) on May 13, 2005 and continuing under the *Teachers Act* as of January 9, 2012.

[4] The Respondent admits that on July 22, 2015, he was served through his counsel with the citation and waived the requirements of section 56(3) of the Act. He was served through counsel with the Amended Citation on February 9, 2016.

[5] The Amended Citation alleges as follows:

1. In 2013, Robert Darwin Ammon (“Ammon”), an authorized person under the *Teachers Act* (Professional Certificate No. [REDACTED]), while employed as a teacher by School District No. 61 (“Greater Victoria”) at [REDACTED] (the “School”) engaged in an unprofessional and inappropriately personal relationship with a student [...] (the “Student”) when:
 - a. Ammon provided coaching regarding fitness to the Student outside of school hours. Ammon picked the Student up very early in the morning and drove him to the School for the purpose of exercising.
 - b. Ammon lent the Student a bicycle.
 - c. Ammon gave the Student a number of gifts, including some or all of a pair of running shoes, a pair of basketball shoes, a gift certificate, a cross with a chain, a self-help book and one or more books with religious content.
 - d. Ammon spent time alone with the Student listening to music and talking to the Student about the Student’s personal matters. On a couple of occasions, Ammon drove the Student in his car.
 - e. Ammon communicated by email with the Student at night and on weekends regarding personal topics, including the Student’s exercise program, schoolwork, and home and social life. Ammon also sent the Student motivational emails, which included religious content.
 - f. Ammon did not advise the Student’s parents of the nature and extent of his relationship with the Student, or of other matters material to the Student’s emotional and physical health and safety.

[6] The Amended Citation alleges that this conduct is contrary to one or more of Standards #1, 2 and 4 of the Standards for the Education, Competence and Professional Conduct of Educators in British Columbia, 4th Edition, January 2012 (the “Standards”) and that Ammon is guilty of professional misconduct or, alternatively, conduct unbecoming a teacher under section 63(1) of the *Teachers Act*.

ISSUES

[7] The issues before the Panel at this stage of the hearing are:

- (a) whether the Respondent engaged in the conduct alleged in para. 1(a) to (f) of the Amended Citation; and

- (b) if so, whether that conduct constitutes professional misconduct or, in the alternative, conduct unbecoming.

EVIDENCE

AGREED STATEMENT OF FACTS

[8] **The parties filed an Agreed Statement of Facts which provides as follows:**

The Agreed Statement of Facts provided agreement as to the authenticity and admissibility of five documents, one of which is a large collection of e-mails. The parties also provided a list of specific agreed facts. The list of specific agreed facts is the following:

1. Robert Ammon (the “Respondent”) holds a Professional Certificate, No. [REDACTED], issued by the B.C. College of Teachers (the “College”) under the Teaching Profession Act on May 13, 2005, valid from May 5, 2005 and continuing under the *Teachers Act* as of January 9, 2012.
2. At all material times, the Respondent was employed as a high school teacher by School District No. 61 (“Greater Victoria”) at [REDACTED] (the “School”) where he taught mathematics and physical education.
3. The citation in this matter was issued on July 7, 2015. It was amended on February 9, 2016.
4. The Respondent admits that on July 22, 2015 he was served through his counsel with the citation and waived the requirements of section 56(3)(a) of the *Teachers Act*. He was served through counsel with the amended citation on February 9, 2016.
5. The documents attached to the Agreed Statement of Facts were agreed to be authentic, created on the date and for the purpose that they purported to be, and were accepted as admissible into the evidentiary record for the truth of the matters recorded therein.
6. The School is a high school located in Victoria and enrolls approximately 800 students in grades 9 to 12. The School operates on a semester system, so students take four courses in the first half of the school year and then four different courses in the last half of the school year.
7. The Respondent was issued a professional certificate of qualification by the British Columbia College of Teachers on May 13, 2005.
8. The Respondent started teaching at the School in 2006. The Respondent primarily taught mathematics and from time to time also taught physical education.

9. In September, 2012, the Student started grade 9 at the School. The Respondent taught the Student Mathematics 9 Honours in the first semester. The Student received a final grade of C-.
10. In the 2012-2013 school year, the Student was in grade 10. The Respondent taught the Student Foundations of Math and Pre-Calculus 10 in the first semester. The Student received a final grade of C-.
11. The Student was 15 [years old] in the 2012-2013 school year and turned 16 on [REDACTED].
12. The Student lived with his parents [...]. He was placed with [his mother] in a foster placement in or about April 2006, when the Student was eight [years old]. When he was 13, [his parents] started the process to adopt the Student. The adoption was completed in June 2013.
13. In or about May 2013, the Respondent decided to mentor the Student. This mentoring was not part of any School-sponsored program, including any sports team. It involved the Student coming to the School early in the morning to complete a workout set by the Respondent, which consisted of running for thirty minutes to one hour, basketball drills and skill development, and fitness activities (sit-ups and push-ups). The Student would sometimes come into the Respondent's classroom in the morning to finish the sit-ups and push-ups that were part of the workout. In May and June 2013, the Respondent met the Student at the School, usually between 6:00 and 6:30 a.m.
14. Starting about May 3, 2013, the Respondent and the Student began to exchange emails using the Respondent's District email account. The last email exchange occurred on October 6, 2013 (collectively, the "Emails").
15. In late June, the Student decided to complete Social Studies 11 over the summer through "LINK", a distributed learning centre operated by the District. In mid-June 2013, the Student and the Respondent met with Emily Kirzinger, a teacher at LINK. After this meeting, Ms. Kirzinger sent an email to the Respondent on June 21, 2013, to which the Respondent replied on June 26, 2013. [This email exchange is part of the Emails.]
16. In the period between May and August 2013, the Respondent gave the Student the following gifts:
 - a. A pair of basketball shoes worth approximately \$120.00,
 - b. A pair of running shoes worth approximately \$120.00
 - c. A gift certificate worth \$50.00,
 - d. A gold-coloured cross and chain worth approximately \$20.00, as a present for the Student's birthday, and

- e. Two books – Conversations with God and The Four Agreements – worth a total of approximately \$30.00
17. The Respondent bought the Student the running shoes and the basketball shoes after the Student told the Respondent that his parents would not buy new shoes for him. The Respondent attempted to access funds through a program to purchase shoes for student[s] in need, but the Student did not qualify. The Respondent believed that the Student needed the shoes to continue his training.
 18. In May and June 2016, the Respondent also lent the Student a bicycle and a watch.
 19. The Student's mother called the Respondent and spoke with him by phone after he loaned the bicycle to the Student.
 20. The Student returned the bicycle in June 2013 at the direction of his parents.
 21. In or about late June 2013, the Respondent drove the Student to S.J. Willis Education Centre so the Student could enrol in Social Studies 11 through distance education.
 22. The Student continued to work out during the summer at the School. On July 3, 2013, the Respondent offered by email to pick the Student up in the morning. From time to time in July and August 2013, the Respondent picked the Student up outside his home at approximately 5:50 to 6:00 a.m. and drove him to the School, where the Student completed the workout.
 23. On July 16, 2013, the Respondent picked up the Student at his home and after his workout, drove the Student to the ICBC driver's licencing office to take a test to obtain a learner's motor vehicle licence. The Student met his father at ICBC.
 24. In the 2013-2014 school year, the Student was initially enrolled in the Respondent's Mathematics and Pre-Calculus 11 class, but he withdrew in early October 2013.
 25. It was also arranged that the Student would be the teaching assistant for one of the Respondent's Physical Education classes in the 2013-2014 school year. Student teaching assistants receive four credits (the equivalent of one course).
 26. The Student did not regularly attend school in the 2013-2014 school year.
 27. In or about late September or early October, the Respondent spoke with the Student about his absence from class and lack of commitment as a teaching assistant.

Shortly after, the Student ceased to be the teaching assistant for the Respondent.

- [9] The following documents were appended to the Agreed Statement of Facts: (a) The Citation issued July 7, 2015 and amended February 9, 2016; (b) Final Grade 9 Report Card for Student; (c) final Grade 10 Report Card for Student; (d) emails between Respondent and Student; and (e) email exchange between Emily Kirzinger and Respondent.

VIVA VOCE EVIDENCE

- [10] The Commissioner called a number of witnesses, including the Student, the Student's mother, Randi Falls who was the School Principal at the material time, Dr. Sheila Marshall, an associate professor in the School of Social Work, Division of Adolescent Health and Medicine at University of British Columbia, Lisa Roy, a family and youth counsellor at [REDACTED] at the material time, and Joann Long, an academic counsellor who was assigned to the Student for the years 2012 – 2014.
- [11] The Respondent gave evidence and called John Gaipman, the Superintendent in the Greater Victoria School District from 2002 to early 2014, and Dr. Carolyn Crippen, an associate professor emerita in the Department of Educational Psychology and Leadership Students at University of Victoria.
- [12] The factual evidence in this case is largely not in dispute. The evidence of the Student's mother provides a useful starting point as she described her son's early childhood and family history. She testified that the Student's birth parents struggled with addiction issues throughout his early childhood. The Student had been placed into several different foster homes before his birth mother died when he was eight years of age. The Student lost contact with his birth father at that time and began living as a foster child with his (now) adoptive mother. He has two biological siblings who were initially fostered with him, but they later moved to other living arrangements. When the Student first lived with his (now) adoptive mother, she recalls that he struggled emotionally and academically, despite being a very intelligent child. The Student performed adequately at school through his early high school years, but continued to struggle emotionally. At the time that he began his relationship with the Respondent, his adoptive family was completing his adoption process. He was almost sixteen years old at the time of the alleged conduct, and was experiencing emotional turmoil.

Paragraph 1(a) of the Amended Citation alleges that the Respondent engaged in an unprofessional and inappropriately personal relationship by providing coaching fitness to the student outside of school hours, and picking the Student up very early in the morning and driving him to the School for the purpose of exercising.

- [13] The Agreed Statement of Facts states that the Student was starting grade 9 in September 2012. The Respondent taught him Mathematics 9 Honours and Pre-Calculus 10 in the first semester of that school year, for which the Student received a final grade of C-. The Student was 15 years old. He turned 16 [REDACTED].
- [14] In or about May 2013, the Respondent decided to mentor the Student. The mentoring was not part of a School-sponsored program, or sports team. It involved the Student attending the School early in the morning to complete a workout set by the Respondent,

which consisted of running for 30 minutes to one hour, basketball drills and skill development, and other fitness activities (sit-ups and push-ups). The Student would sometimes finish his workout in the Respondent's classroom. Between May and June 2013, the Respondent met the Student at the School usually between 6:00 – 6:30 a.m.

- [15] The Student continued to work out during the summer. By email dated July 3, 2013, the Respondent offered to pick the Student up in the morning. From time to time in July and August 2013, the Respondent picked up the Student from outside his home at approximately 5:50 to 6:00 a.m. and drove him to the School to complete his workout.
- [16] The Student testified that the fitness coaching commenced in approximately May 2013. Although he knew the Respondent from his math classes, the Student indicated that the subject of fitness coaching did not come up until after February 2013, when both of the math classes had ended and he was no longer a student in the Respondent's class.
- [17] The Student recalled that the discussion of fitness coaching came up in conversations that he had had with the Respondent in his classroom after school. The Student had been spending time with other students in the Respondent's classroom after school several days a week.
- [18] The Student explained that one of the original goals of the workouts was to prepare him to run a ten-kilometre race and/or to get him ready for the school basketball team in the fall. He confirmed that the fitness training took place at 6:00 or 6:30 a.m. prior to the commencement of the school day.
- [19] The Student explained that the fitness training sessions consisted of two parts. First, he would run around on the school track while the Respondent remained in his classroom. After his run, the Student would go to the Respondent's classroom to complete his workouts there. While the Student completed his workout in the classroom, the Respondent would work and play quiet music. The Student recalled that the Respondent initially played music of the Student's choice that the Respondent reported he was okay with. During later workouts, the Student testified that the Respondent would play Christian music.
- [20] The Student recalled that he and the Respondent did not talk very much while he was completing his workouts in the classroom. He indicated that when he expressed a desire to stop exercising, the Respondent would encourage him to continue.
- [21] The Student testified that on one occasion, he was lying on the floor during his workout when the song "Courageous" began to play on the Respondent's radio. The song was about God and fathers; he began to cry. The Student found the incident emotionally overwhelming although he did not discuss it very much with the Respondent.
- [22] The Student testified that the early morning workouts continued after the school year ended. He would either meet the Respondent at school, or the Respondent would pick the Student up and drive him to the School.

- [23] The Student said that he missed many workouts during the summer. When he did so, he felt disappointed in himself and felt that he had let the Respondent down and wasted his [the Respondent's] time. The Student recalled that the Respondent was calm when he missed his workouts, but he told the Student that he was disappointed and hurt that he had wasted his time because his time was precious and he had put things on hold in his life so that he could meet the Student.
- [24] The Respondent also gave evidence about the workouts. His testimony was consistent with the Student's testimony about the nature and timing of the workouts. The Respondent also referred to the many other communications (including the extensive emails) and activities with the Student as providing "support" for the Student to be able to maintain his workout schedule.
- [25] During his evidence, the Respondent did not refer to the fitness training as "coaching" except in response to questions that used that term. The Respondent referred to the sessions as a "fitness regime" or "training" or "conditioning"; he sometimes referred to his relationship with the Student as "mentoring". The Respondent repeatedly described the fitness sessions as part of an overall program for the Student that involved commitment, for which the Respondent provided considerable support.
- [26] The Respondent stated that his intention in offering the "fitness regime" was to challenge the Student to continue to attend the training sessions according to the schedule that they agreed to in advance. The Respondent believed that the fitness regime could contribute to the Student's self-discipline and success in areas other than fitness. The Respondent described the fitness training sessions collectively as a "mentorship" of the Student although he confirmed that the nature of the relationship had not been formally defined, nor did it have formal terms between himself and the Student or the school. The Respondent testified that he was holding himself out as a model for the Student, by demonstrating a disciplined approach to the Respondent's own commitments which all seemed to relate to the fitness workouts.
- [27] The Respondent testified that he supported the Student's workouts in several ways: (a) he picked up the Student at his house in the early mornings and drove him to the School; (b) he bought the Student two pairs of athletic shoes; (c) he gave the Student two books with motivational content; (d) he lent the Student a bicycle and a watch; (e) he emailed the Student frequently with messages regarding arrangements for the time and place of workouts; and (f) he emailed messages with motivational messages of encouragement that he described as providing emotional support for the Student's participation in the fitness regime.
- [28] The Respondent testified that he had never offered a similar fitness regime or fitness training to any other student. Although he described mentoring a former student, there was no fitness regime involved in that mentorship.
- [29] Some of the communications between the Student and Respondent concerning the fitness coaching are also documented in emails, which began on May 3, 2013. Those emails are appended to the Agreed Statement of Facts and a few examples are reproduced below. As indicated above, the Respondent stated that many of the emails

were sent to support the Student in his fitness regime, even in cases where this intention is not apparent from the face of the emails themselves.

[30] The following are examples of excerpts from the emails between the Respondent and the Student on the subject of the workouts between May and August 2013:

- (1) On May 3, 2013, the Respondent sent an email to the Student that stated that he was “really proud” of the Student and his commitment to working on himself.
- (2) On June 1, 2013, the Respondent wrote, “With regards to running tomorrow, if you can do 60 minutes total, that would be excellent. ...Have a good comfortable run and use the time to reflect on anything that is on your mind at present.”
- (3) On June 10, 2013, the Respondent wrote, “Well done young man. I am extremely proud of you and your commitment to working on yourself.”
- (4) On June 17, 2013, the Respondent wrote, “Well done! You continue to demonstrate to yourself that you are fully committed to your success and it is amazing to be a part of it. I thank you for allowing me to have influence in your life and in the choices that your [sic] making. I will continue to let you know that I am extremely proud of you.”
- (5) On June 24, 2013, the Student emailed the Respondent that, “I would first like to apologize for my absence this morning... I do feel extremely terrible for wasting your time as I have... Being able to come in the mornings, not only to work out, but also to spend the time with you is something very important to me...”
- (6) On June 26, 2013, the Respondent emailed the Student, “Hopefully you have already completed your run. ... Again, [...] let me tell you that overall you have made some major progress and I am extremely proud of you. Remember that every journey begins with just a single step... Today’s words to ponder: “The credit belong to the man who is actually in the arena...” ... Remember that the Lord does not give you more than you can handle.”
- (7) On June 26, 2013, the Student emailed the Respondent, “...I do know that I am subconsciously sabotaging myself, there are things that I know I do such as thinking.” “At some point I will stop this anyway, I mind [sic] as well just stay in bed so I am finished now.”
- (8) On June 29, 2013, the Respondent wrote to the Student, “Remember what I have talked to you about with regards to keeping yourself balanced and your enthusiasm and emotions neutral. There will always be hills and valleys in this journey of yours and it requires patience and perseverance, two qualities you possess; however, you must be prepared for the many obstacles that will be place on your path to deter you. [sic]”
- (9) On July 1, 2013, the Student emailed the Respondent, “I do apologize for this morning. This will not be a re-occurring event. I feel terrible for once again taking your time this morning. I hope to see you tomorrow morning.”

(10) On July 3, 2013, the Respondent offered to pick up the Student in the mornings to cut down on his travel time to the school.

(11) On July 4, 2013, the Respondent wrote to the Student that he was thankful to “continue to have an opportunity to impact [the Student’s] continued success throughout the summer.”

[31] The Respondent and the Student exchanged more emails further into the summer that contained encouragement from the Respondent to the Student. Some are considered below in relation to Citation 1(e).

Paragraph 1(b) of the Amended Citation alleges that the Respondent engaged in an unprofessional and inappropriately personal relationship with the Student by lending him a bicycle.

[32] This allegation is addressed in paragraphs 18 - 20 of the Agreed Statement of Facts. These paragraphs confirm the Respondent lent the Student a bicycle and a watch in May and June 2016, that the Student’s mother spoke to the Respondent about loaning her son the bicycle, and that the Student subsequently returned it at the direction of his parents in June 2013. The Student’s mother gave evidence about the bicycle. She testified that in May or June 2013, the Student’s own bicycle had become damaged. His father had brought some parts home to repair the bike; however, the Student decided to repair the bike on his own without waiting for help from his father and ruined it beyond repair. The Student’s parents talked to him about earning money to purchase a new bike by doing chores or working at his father’s automotive shop. They were upset when their son subsequently arrived home with a bicycle and claimed that the Respondent had given or lent it to him.

[33] The Student’s father told him that he had to call the Respondent to tell him to stop giving him gifts. The Student’s mother explained that they felt the Respondent had destroyed a lesson that they were trying to teach their son; she felt that their role as parents was being usurped by the Respondent. They felt that the Respondent had crossed a boundary.

[34] The Student’s mother telephoned the Respondent to express her concern regarding the gifts that he was giving to her son. She described the situation with the Student’s own bike. She testified that the Respondent apologized, indicating that he was unaware of the situation with the Student’s own bike and did not intend to overstep any boundaries. She told the Respondent that the gifts could be construed as “grooming” the Student. While the parents did not believe that the Respondent was grooming their son, she asked the Respondent not to give any further gifts without their prior permission. The Respondent and the Student’s mother testified that they understood that the term grooming to mean a pattern of behaviour where an adult creates a relationship with a younger person that makes it easier for the adult to enter into a sexual relationship with the younger person.

[35] The Respondent testified that he loaned a bicycle to the Student in order to make it easier for him to get to school early in the morning. The Respondent explained that he

was trying “to help the Student eliminate for himself any opportunities to not follow through”. The Respondent acknowledged sending the Student an email in which he stated that he could use the bike “until your parents said otherwise”. He did not check with the Student’s parents before lending the Student the bike.

- [36] The Respondent testified that the Student’s mother contacted him several weeks after he loaned the bicycle to the student. He understood that the mother’s call was precipitated by an incident in which the Student took the bike out with his friends, which she did not approve of.
- [37] The Respondent denied that his conduct was ever designed to “groom” the Student for a sexual relationship.

Paragraph 1(c) of the Amended Citation alleges that the Respondent gave the Student a number of gifts, including some or all of a pair of running shoes, a pair of basketball shoes, a gift certificate, a cross with a chain, a self-help book and one or more books with religious content.

- [38] Paragraph 1(c) of the Amended Petition alleges that the Respondent engaged in an unprofessional and inappropriately personal relationship with the Student by giving him a number of gifts, including a pair of running shoes, a pair of basketball shoes, a gift certificate, a cross with a chain, a self-help book and one or more books with religious content.
- [39] This allegation is addressed in paragraphs 16 - 17 of the Agreed Statement of Facts which state:

16. In the period between May and August 2013, the Respondent gave the Student the following gifts:

- (a) A pair of basketball shoes worth approximately \$120.00,
- (b) A pair of running shoes worth approximately \$120.00,
- (c) A gift certificate worth \$50.00,
- (d) A gold-coloured cross and chain worth approximately \$20.00, as a present for the Student’s birthday, and
- (e) Two books – Conversations with God and The Four Agreements – worth a total of approximately \$30.00

17. The Respondent bought the Student the running shoes and the basketball shoes after the Student told the Respondent that his parents would not buy new shoes for him. The Respondent attempted to access funds through a program to purchase shoes for student[s] in need, but the Student did not qualify. The Respondent believed that the Student needed the shoes to continue his training.

- [40] The Student testified that he needed new running shoes and basketball shoes shortly after he started the fitness training with the Respondent. His parents were not able to purchase the shoes that he wanted. He recalled that the Respondent told him that there might be a school fund for new shoes. The Respondent subsequently drove him to a shopping mall near the School to purchase two pairs of shoes for him.
- [41] The Student testified that he told his parents that the Respondent had purchased the shoes for him. He recalled that his parents were pleased that he was committed to the fitness program but they were “wary” about the fact that he was getting things purchased for him.
- [42] The Student testified that the Respondent subsequently gave him a gift card, a necklace with a cross on it, two self-help books, and a Bible.
- [43] The Student’s mother also gave evidence about the shoes. Her son had told her that he needed new shoes. She told him that he would have to wait until the middle of the month. It was shortly after that that her son came home with new shoes. He told her that the Respondent had got them through a fund at the school. Sometime after that, she recalled that her son came home with a watch that he told her he was using for training, and around the same time, the bicycle.
- [44] After the bicycle incident, the Student’s mother telephoned the Respondent to advise him that all future gifts must go through either the Student’s father or herself. She recalled that the Respondent apologized, said that he had not intended to overstep any boundaries, and stated that he was just trying to help the Student.
- [45] After the school year ended, the Student’s mother recalled that her son came home with birthday gifts from the Respondent, including a cross necklace and a Bible. She said that she and her husband decided to let it go because it was their son’s birthday.
- [46] The Respondent acknowledges purchasing the shoes for the Student. He testified that he tried to access a program through the school that would provide shoes for needy students but was told that the Student’s family did not qualify. He then decided to purchase the shoes for the Student himself although he did not tell the Student that he had paid for the shoes himself.
- [47] The Respondent acknowledges that he gave the Student a \$50 gift card on his birthday. He told the Student to use the gift for whatever purpose he wanted, but challenged him to use it to help someone else instead of spending it on himself.
- [48] The Respondent testified that he also gave the Student a cross on his birthday, because the cross that he had received as a gift from his sister was broken.
- [49] The Respondent testified that he gave the Student two books with Christian themes but that he had not read either of them. He said that the first book, entitled “The Four Agreements”, had been given to him by another teacher, and he simply passed it on to the Student. He said that Student had been in the Respondent’s classroom when the other teacher walked in and offered the book; the Respondent simply passed it from the other teacher to the Student. The Respondent denied giving the Student a Bible.

- [50] The only documentary reference to the gifts is an email exchange between the Student and the Respondent on July 5, 2013. The Student stated, “I am also now ready to finish “The Four Agreements”. The Respondent replied, “Excellent, with regards to your readiness to complete “The Four Agreements”. Ironically, I also have another book for you, which I will give you on Monday”.
- [51] The Respondent called Mr. Gaipman as a witness because he investigated the allegations against the Respondent in the context of the Respondent’s employment by the Greater Victoria District. The Respondent submitted that Mr. Gaipman’s evidence was relevant to the question of whether the gifts that the Respondent gave to the Student were indications of an inappropriately personal relationship. The gist of Mr. Gaipman’s evidence was that he did not believe that the gifts that the Respondent provided to the Student evidenced an inappropriate relationship. The Panel concluded that the outcome of Mr. Gaipman’s investigation, and his opinions, were not determinative for the purposes of this hearing.

Allegation 1(d) of the Amended Citation alleges that the Respondent spent time alone with the Student listening to music and talking to the Student about the Student’s personal matters. On a couple of occasions, Ammon drove the Student in his car.

- [52] Paragraphs 21 to 23 of the Agreed Statement of Facts provides:
21. In or about late June 2013, the Respondent drove the Student to S.J. Willis Education Centre so the Student could enrol in Social Studies 11 through distance education.
 22. The Student continued to work out during the summer at the School. On July 3, 2013, the Respondent offered by email to pick the Student up in the morning. From time to time in July and August 2013, the Respondent picked the Student up outside his home at approximately 5:50 to 6:00 a.m. and drove him to the School, where the Student completed the workout.
 23. On July 16, 2013, the Respondent picked up the Student at his home and after his workout, drove the Student to the ICBC driver’s licencing office to take a test to obtain a learner’s motor vehicle licence. The Student met his father at ICBC.
- [53] As outlined above, the Student gave evidence that he would complete his early morning workouts in the Respondent’s classroom and that the Respondent would play music. He also testified that the Respondent would sometimes pick him up in his car from home and drive him to school.
- [54] The Respondent testified that he had conversations with the Student and generally when other students were not present. He said that the door to his classroom would have been open, so other students may have come in to check on things during his conversations with the Student. He stated that a student would sometimes come in to get specific help and would stay; other times, the Respondent would tell the other student, “I’m going to chat with the Student now; I’ll see you later,” and the other student would then leave the room.

- [55] The Respondent testified that his own routine included playing Christian music at a low volume in his classroom in the mornings when he was working at his desk before class. He said that when someone entered the room, he would turn the music off. During the first few early morning workouts, the Respondent turned the music off when the Student entered the classroom. After a few workouts, the Respondent said that he was about to turn the music off when the Student indicated to him that he also listened to Christian music and the Respondent did not need to turn it off.
- [56] The Respondent testified that the Christian music prompted a discussion about Christianity. He said that he made a conscious decision to engage with the Student in conversation about Christianity, despite the fact that he usually refrains from discussing his religious beliefs with students.
- [57] The Respondent testified that he generally does not share any details about his personal life with his students because he understands his role as a teacher, and he takes it very seriously. He stated that his students comment about not knowing very much about him; however, he believes that it must be this way in order to interact with them.
- [58] The Respondent testified that at least until the summer of 2013, his email exchanges with the Student were providing support for the Student's workouts. He testified that he was talking to the Student during the school week (Monday to Friday), and that they would be "chatting about a number of different things; again continuing the theme of how things were going with his personal life, that sort of thing." He explained that the emails, at least before the summer, were picking up on in-person discussions that they had previously had.
- [59] The Respondent testified that the Student spoke to him about his eating habits, his fitness level, and his goals for the future. The Student also talked to him about his personal issues and shared his frustrations about how his life was going; he talked about different areas of his life, and his family life. The Respondent confirmed that he gave the Student advice about dealing with his parents. The Respondent testified that he also consulted Ms. Roy so that she would be informed about the personal nature of the Student's conversations with him.
- [60] Ms. Roy testified that the Respondent spoke to her about his mentoring relationship with the Student several times. She recalled that he expressed frustration with the Student's inability to fully participate in his fitness-training program. She testified that the Respondent also told her that he was speaking to the Principal on a regular basis and keeping the Principal up to date on the situation. Ms. Roy said that she was not aware that the Respondent was emailing the Student.

Allegation 1(e) of the Amended Citation alleges that the Respondent engaged in an unprofessional and inappropriately personal relationship with the Student by communicating by email with the Student at night and on weekends regarding personal topics, including the Student's exercise program, school work, and home and social life, and that he also sent motivational emails which included religious content.

[61] Paragraph 14 of the Agreed Statement of Facts states:

14. Starting about May 3, 2013, the Respondent and the Student began to exchange emails using the Respondent's District email account. The last email exchange occurred on October 6, 2013 (collectively, the "Emails").

[62] The Agreed Statement of Facts also provides that the emails are true representations of what they purport to be, in that the stated author of the emails is the true author; the emails were sent by the author of the email to the recipient on the date that appears on the face of the email, and the recipient is assumed to have received the email on the date it purports to have been received.

[63] The following excerpts are reproduced from the extensive email exchange that occurred between the Respondent and the Student in 2013:

1. On Monday, June 24, at 7:55 am, the Student emailed the Respondent and apologized for his absence in the morning. The Student said, "Being able to come in the mornings, not only to work out, but also to spend the time with you is something very important to me."
2. The Respondent replied at 8:40 am the same day, stating: "You can call me at the school to discuss as needed."
3. The Student responded the same day at 10:27 am, "... I heard my mom on the phone discussing the possibility of me not coming anymore throughout the summer. I also HAVE to now return the bike, which I found out yesterday I was just going to tell you this morning. ... I know how big of an opportunity this is for me, I can not lose this..."
4. On Thursday, June 27, at 9:59 pm, the Student wrote:

Well before we ever started talking about the power of the Lord, I had not known truly what I believed and I had numerous times asked, well at the time I didn't know what I was doing. ... I wanted something incredible to happen. The day you told me the story of the man trapped in the middle of the ocean and asking god to help me, that night was the first time I really reflected. Everything for me began to come together. I realized that my prayers WERE answered, I was ensured that the reason you opened up to me about "the universe" was because of my prayers. You were the answer for me, you were my connection with God, he was speaking to me through you.

I am grateful for everything you do for me, no matter how many mistakes I make you continue to support me and sacrifice parts of your own life to facilitate my success.

5. The Respondent replied the same day with an email that included the quote: "Trust in the Lord, lean not on your own understanding, and he will make your path straight."

6. On Friday, June 28, at 9:35 pm, the Student referred in an email to having said in the past that he had no friends.
7. In the evening of Friday, June 28, at 11:26 pm, the email refers to a face-to-face interaction between the Respondent and the Student, which the Respondent characterized as, “without question, being in the presence of the Lord”; the Respondent continues, “I thank you for allowing me to be a part of your life, it has been my privilege and a great gift to me”.
8. On Tuesday, July 2, at 2:05 pm, the Student wrote, “Having people who enjoy my company is something very new for me, and balancing it is posing to be difficult [sic]”.
9. On Wednesday, July 3, at 8:54 am, the Student wrote, “Thank you for still being here, and working through”. The Respondent replied: “As always, I am only an email away” and offered to pick the Student up in the mornings to cut down on his travel time.
10. On Thursday, July 4, at 10:38 am, the Respondent wrote to the Student that he was thankful to “...continue to have an opportunity to impact [the Student’s] continued success throughout the summer”.
11. On Monday, July 8, at 8:25 am, the Respondent wrote to the Student, “No, that I will never stop being a support to you, you do know that right! There is absolutely nothing you can do to change this fact.” [sic]
12. On Thursday, July 11, at 8:15 pm, the Student emailed the Respondent that, “I have just been thinking of a few things lately that I would like to talk to you about tomorrow, if you could remind me so I do not forget...” and then listed the following as things to be reminded of - “talking to you about “Feels So Close” and his routine to the song, “Turbulence””.
13. On Monday, July 15, at 10:11 am, the Respondent wrote, “I will pick you up tomorrow. I will also drop you off at ICBC for 9:30 a.m., absolutely. Keep reading [Conversations With God] and reflecting. I am very proud of you young man. “
14. And later the same day, the Respondent wrote, “If you need to chat, just email me.”
15. On [REDACTED] at 11:55 am, the Respondent wrote: [REDACTED]
[REDACTED] I cannot tell you enough how very proud of you I am. Thank you for the privilege of witnessing and being part of your accepting Jesus Christ as your Lord and Saviour. This is a profound decision and you will see for yourself how significant an impact it will have in your life. Of course, I am always here for any questions or support you may need in this area.”

16. On Wednesday, July 17 at 9:05 pm, the Student emailed the Respondent: “After praying with you yesterday, I have not felt a dramatic change. Although, I have felt an enormous ‘weight off my shoulders’. And have had an overwhelming sense of self-control. For example, yesterday ... I was able to take full control of myself, ... I stayed calm ... and just kept thanking God for being in my life and laying his hand upon me.”
17. The Respondent replied at 11:24 pm: “With regards to your prayer, you do not have to feel anything; however, you will see a difference in your outlook and the way you conduct yourself. I am proud of you for making such a decision. This single act is without a doubt the most significant decision you will ever make in your life. I look forward to catching up tomorrow.”
18. On Thursday, July 18, at 10:18 pm, the Respondent wrote, “Try to get to bed earlier tonight young man. See you tomorrow.”
19. On Friday, July 19, at 6:26 pm, the Respondent wrote “... I am, as always, in your corner young man and that will never change, know that!”
20. On Sunday, July 21, at 12:11 pm, and Monday, July 30, at 9:14 pm, the Respondent offered to pick up the Student.
21. On Monday, July 22, at 7:31 am, the Respondent wrote to the Student,

... you have had a lifetime of broken promises and unsustained commitment. As a result, you have learned this behaviour in your interactions with others.

Over these last weeks, I have tried to model an example of kept promises and sustained commitment to you. However, to change your learned behaviour will take time and most of all, it will take a desire and commitment on your part to realize the changes you seek.

As I will continue to say, how you treat others is a reflection of how you want to be treated. You have treated your commitment to yourself and to me, with regards to your exercise, basketball, and schoolwork, very poorly as of late. Please reflect on why.

As I have told you many times, I am fully committed to you and your success, please know that. [sic]
22. On Tuesday, July 23, at 6:12 am, 3:42 pm and 4:03 pm, the Respondent sent the Student three emails, to which the Student did not respond. These emails included, “You know how I feel about you. There is absolutely nothing that you can do to change this fact. Remember that!”
23. After no response from the Student, the Respondent followed with another email to the Student on Wednesday, July 24, at 12:30 am. The Respondent

wrote, "Please let me know what's going on in your world, if you chose to, and if you want me to no longer send you these emails." [sic]

24. The Student responded in a brief email Wednesday, July 24 at 9:15 pm. The Respondent sent additional emails to the Student on Wednesday, July 24, at 11:05 pm, two on Friday, July 26, at 2:41 pm and 8:08 pm, and one on Saturday, July 27 at 12:44 pm with no reply from the Student.

25. On Tuesday, July 30, at 8:35 pm, the Student wrote to the Respondent:

I have been thinking for days of what to say. ... I am going to say I immensely apologize. ... I am fairly nervous because I am getting easily over frustrated with things and some days ... I feel like I am ready to tear into someone. I am able to control it although I still do not like the feeling. ... If you are willing, I would like to come in tomorrow morning.

26. In the email on Tuesday, July 30, at 9:14 pm, the Respondent wrote:

I want you to know directly, I love you young man. I prayed about you today and as you may not be surprised, I expected to hear from you today. I will definitely see you tomorrow, if you'd like. Stay calm and pray the following prayer until tomorrow and before bed tonight.

I plead the blood of Jesus Christ over every aspect of my life and I know that he will cover a multitude of sins.

27. On Friday, August 2, at 8:37 pm, the Student wrote:

...I am on a roller coaster and the drops on this roller coaster feel like they are getting steeper every time.

I continue to thank the Lord and believe that he will never give me more than I can handle. Although I am falling back into old habits, I am being very critical again, I am sleeping late into the days, being late for things, being rude and disrespectful...

I believe my current environment is not benefitting me in anyway either.

....

Thank you for everything and continuing to stay with me through all of my adventures. I also apologize for not getting in contact with you sooner.[sic]

28. The Respondent replied at 9:39 pm in a very long email the same day:

I will say again to begin, God loves you and so do I. I really do mean this. I am 100% connected to you and will not leave your side, unless this is your wish.

What you are going through these last few weeks is a battle for your very soul. When you made your declaration to accept Jesus as your Lord and saviour, all the angels in Heaven were rejoicing and the enemy and his demons were angered.

You are so very special young man and the Lord has great plans for you...

This is spiritual warfare and you will triumph, but it will take a strong will and a desire in your heart to “trust in the Lord”. As you know, I have been charged with being by your side throughout this entire process... All you have to do is ask and you know I will be there with and for you.

I really want you to pray this prayer over the next few days ...

Dear Lord Jesus, please come and heal my wounded and troubled heart. I beg you to heal the torments that are causing anxiety in my life. I beg you, in a particular way, to heal the underlying source of my sinfulness. I beg you to come into my life and heal the psychological harms that struck me in my childhood and from the injuries they have caused throughout my life.

[additional prayer]

Also, there is absolutely no need to apologize, but know that I understand and accept your apology. **YOU ARE NOT TO BLAME FOR WHAT IS GOING ON IN YOUR WORLD RIGHT NOW!** Others are failing you, you are not failing yourself. We will talk about all your concerns and perhaps some alternatives to your current situation when we meet next week.

PLEASE PLEASE TRY WITH ALL THE WILL POWER YOU POSSESS TO GET UP TO MEET ON MONDAY.

Please email me everyday this weekend and I will do the same. **DO NOT EVER FEEL THAT YOU CANNOT CONTACT ME NO MATTER HOW MUCH TIME AS GONE BY AND I WILL PROVIDE OTHER WAYS TO CONTACT ME IF NEEDED. I AM ALWAYS AVAILABLE FOR YOU.”** [sic; all caps in original]

29. The Respondent told the Student that he loved him again in emails dated Friday, August 2, at 9:39 pm, Tuesday, August 6, at 11:47 pm, Saturday, August 17, at 11:24 pm and Tuesday, August 20, at 4:15 pm.
30. On Monday, August 5, at 9:11 pm, the Respondent wrote, “**YOU HAVE NOT AND WILL NOT EVER DISAPPOINT ME”**.”
31. On Tuesday, August 6, the Student emailed the Respondent at 11:16 pm:

I have finally broken down. I am in tears right now. There is just so much going on right now and I just feel like I can't handle it all. Like I can't fight through and stay together. I don't know what to do. I continue to ask God for answers ... I have never had this feeling before of utter uselessness and a feeling like I can't control anything. I don't know what to do. I don't know what to say. ... Everything seems to be falling apart...

32. The Respondent responded that night at 11:47 pm:

I will meet you tomorrow morning if you'd like. Everything will be OK. God loves you and so do I. He will not leave your side, nor will I.

33. On Friday, August 9, at 5:00 pm, the Student wrote:

Instead of getting up and going to work for 11 this morning, I stayed in bed and slept all day. ... My mom came home just after 4 and woke me up ... I haven't said a word since she woke me up. She thinks I am mad at myself because I did not get up, I can not tell her the true reason I am upset. I am upset because I know why I have been unable to get up in the mornings. Not being able to control what effects me right now is increasingly painful... I honestly, do not know what to do right now. I feel helpless. I feel like I have no control over what's going on in my life right now. Most people may think that no one is there for them, although I feel more like I can not be here for myself. I have a sense that I am lost, a feeling I have never experienced before. [sic]

34. On Friday, August 9, at 8:29 pm, the Respondent wrote:

If only we could meet face to face so that I tell you what it is I have to say. ... I feel that my words must be inspired by the Lord at this point.

...

In the mean while, just keep talking about how you feel with me. Say what every comes to mind no matter what it is and keep trying to reflect on why you feel the way you do. Of course, if you need anything, please let me know, as always I am here for you.

35. On Sunday, August 11, at 3:47 pm, the Respondent wrote to the Student, "Please confirm that you have received this message and email me each day to let me know how you are doing, if you wish."
36. On Saturday, August 17, at 11:24 pm, the Respondent wrote a very lengthy email to the Student including: "I will remind you that God loves you and so do I and neither he nor I will give up on you" and "I will continue to reassure you that I am here for you young man".

37. On Saturday, August 17, at 11:41 pm, the Student wrote that he was “overwhelmed” and felt “even at the highest of times useless and helpless” adding:

I need help and I know that bell will come from you. I more ways then one. I would like to meet. After over a month on Monday. [sic]

Thank you for ... EVERYTHING! [sic]

38. In a further email later the same night (Sunday, August 18, at 12:01 am), the Student wrote:

... what does he want from me? I have been trying to figure it out... I have been trying to communicate with God, although I have had a hard time deciphering what is an answer, what is an “event on earth” and what is interference from the enemy.

... I would love to meet tomorrow, although to my parents the weekends are “not a day we meet” so I do not think it would be a wise choice on my part to try to meet tomorrow. My apologies!

39. The Respondent replied Sunday, August 18, at 8:03 am:

No worries, you have to keep everything on the home front quiet, so I will see you on Monday. Am I picking you up at the normal time, 5:50 a.m.?

...

The Lord wants for you, what you want for yourself. You have to determine that, and then he will offer guidance on the path that YOU chose. That is the hardest thing to understand. ...

40. The Respondent emailed the Student on Monday, August 19th at 8:43 am and 20th. On Tuesday, August 20th, at 4:15 pm, he wrote:

I am so very proud of you for all that you have endured throughout your short life and how you have still managed to maintain such an even keel and a positive outlook in life. ... You honour me by choosing to sign of with the words “Your son” and I am humbled by this action. I do truly love you young man and I am always here for you in any and all circumstances.

41. On Monday, August 26, at 10:22 pm, the Respondent sent the Student two emails, one very lengthy. He wrote in part:

I look forward to playing my part on your journey and I thankful to have the opportunity to do so. [sic].

42. On Tuesday, August 27, at 1:19 pm, the Respondent offered to pick the Student up at 5:50 am to discuss his grade 11 schedule. On Wednesday, August 28, the Respondent emailed the Student at 5:05 am:

I will be at school this morning, you come in you can see me in my room.
Please do so before talking to Ms. Long.

- [64] Although there are some short emails exchanged after that, there are no more lengthy emails discussing personal matters.
- [65] The Student testified that the emails from the Respondent made him feel very loved, very hopeful and very cared for. He felt that there was somebody who was putting him ahead of himself and that he had not had anyone do that for him before in his life. He felt that the Respondent had committed to be there for him, and to care about him in an unconditional way, regardless of whether he was in the Respondent's class or not. The Student testified that the Respondent was the most important person in his life during this period of time.
- [66] The Student also testified that, during this period, he thought about running away from home. He believed that the Respondent had implied that he would always be there to help the Student and that the Student would never be homeless because the Respondent would "be there" for him. The Student understood that to mean at the time and for years to come after that time. He indicated that part of his understanding that the Respondent would be there for him came from the sentiments expressed by the Respondent in the emails.
- [67] The Respondent testified that the emails were designed to support the Student and that he consciously used his School District email account for this purpose. He testified that he had been talking to the Student on a Monday-to-Friday basis during the school year about how things were going in the Student's personal life, and that the emails were a way to continue to provide support for the Student after the school year ended.
- [68] The Respondent testified that he and the Student both understood that their email exchange would be confidential. He said that the Student had initially been using an email address that was open to his father's business, and he intentionally gave the Respondent a different email address so that he could have privacy; the Respondent acknowledged that he (the Respondent) facilitated that.
- [69] The Respondent said that it was important to him that he establish and reinforce that his support was there for the Student because "he did not want to be another person in the script of [the Student's] life that had let him down".
- [70] The Respondent acknowledged during his testimony that he told the Student that he supported him unconditionally in many of the emails. He agreed that it was possible for the Student to feel that he was making promises that in reality, he would not be able to deliver on. The Respondent denied that he intended to offer unconditional support, but agreed that it was possible for the Student to have understood his emails that way. The Respondent testified that when he said, "...you are not to blame for what is going on in

your world right now; others are failing you, you are not failing yourself”, he was referring to the Student’s parents.

[71] In relation to the emails, the Respondent explained that:

... I acted in a number of roles that were outside of the scope of my role as a teacher, and clearly that was not going to be something that would continue once the setting had changed because now we were back in school.

Paragraph 1(f) of the Amended Citation alleges that the Respondent did not advise the Student’s parents of then nature and extent of his relationship with the Student, or of other matters material to the Student’s emotional and physical health and safety

[72] Paragraph 1(f) of the Amended Citation alleges that the Respondent engaged in an unprofessional and inappropriately personal relationship with the Student when he did not advise the Student’s parents of the nature and extent of his relationship with the Student, or of other matters material to the Student’s emotional and physical health and safety. This matter is not addressed in the Agreed Statement of Facts.

[73] The Respondent stated that he did not have any contact with the Student’s father. His only contact with the Student’s parents was through the mother.

[74] The Respondent conceded in his evidence that he did not check with the Student’s mother before purchasing athletic shoes for the Student or lending him the bicycle. He acknowledged that he also did not advise the Student’s mother that he was buying the Student birthday gifts despite the fact that the Student’s mother advised him by telephone in June 2013 that it was not acceptable for him to give her son any gifts without their permission. The Respondent testified that it was his understanding after that telephone call that the Student’s mother expected that he would not give the Student any more gifts or loan him things without first confirming that it was acceptable to her.

[75] The Respondent testified that he picked the Student up at his house in the summer but did not ask the Student’s parents for permission to do that.

[76] The Respondent testified that he did not advise the Student’s mother that he exchanged emails with the Student in the summer. He also did not advise the Student’s parents of any of the content of the emails, nor did he advise the Student’s parents of the emotional pain that the Student indicated that he was in over the summer.

[77] The Respondent testified that the Student had several absences beginning in the first week of school in 2013 while enrolled in his math class. The Respondent acknowledged that he did not notify the Student’s mother of those absences from his class in the first weeks of school. The Respondent acknowledged that another teacher did bring the Student’s absences to his mother’s attention.

[78] The Respondent testified that he spoke to the school principal, the school academic counsellor, and the school’s youth and family counsellor about the Student’s emotional health.

- [79] The Respondent testified that he discussed the Student's situation with the Principal in September 2013. He brought the Student's absences from class to her attention, and indicated that the Student did not speak to him and avoided looking at him when they were in proximity to one another. He did not inform the Principal that he exchanged emails with the Student in the spring or summer of 2013 nor did he inform her of the content of the emails.
- [80] The Respondent testified that he spoke to Ms. Roy regarding the Student in the spring of 2013, but did not tell her that he had exchanged emails with the Student, nor did he tell her about the content of the emails.
- [81] The Respondent spoke to Ms. Long in September 2013, but he did not tell her that he exchanged emails with the Student, nor did he tell her about the content of the emails.
- [82] The evidence of Ms. Falls, Ms. Roy and Ms. Long was consistent with the Respondent's testimony on this point.
- [83] The Student's mother testified that at the end of September, the Student went to bed and refused to get up. He refused to talk to anyone, and she said that the Student claimed "[the Respondent] was an asshole". The Student fell far behind in schoolwork. When his physics teacher contacted her, she tried to arrange a meeting for the Student, but he refused to go. By October, her son had stopped attending his academic courses and only attended the afternoon classes. By the spring of 2014, the Student began using drugs and alcohol and dropped out of school.
- [84] The Student's mother stated that he has since completed substance abuse treatment, graduated from high school, and is currently employed. His mother testified that he seems to be stable.
- [85] The Student confirmed in his evidence that he stopped attending his academic classes shortly into the school year in September, 2013.

Evidence on other matters

- [86] The Commissioner referred to additional evidence of alleged professional misconduct which does not relate specifically to any of the particulars in paragraphs 1(a) to (f) of the Amended Citation. The Commissioner maintains that the evidence relates in general to the allegation that the Respondent engaged in an inappropriately personal relationship with the Student.
- [87] Ms. Falls, the School principal testified that the Respondent had told her that he and the Student were working together, both on fitness training and on math, in the spring of 2013. Ms. Falls testified that she spoke to the Respondent about the Student in the fall of 2013, when he expressed concern to her about the Student not performing adequately as a teaching assistant for his physical education class. The Respondent told her that he believed that perhaps his family schedule was making it difficult for the Student to get up in the morning. Ms. Falls was not aware of the emails exchanged between the Respondent and the Student until the Student's parents made a complaint in November 2013.

- [88] Ms. Long testified that she was aware that the Respondent had helped the Student choose some of his classes in the late summer of 2013. She observed that the Respondent and the Student spent quite a bit of time together. In the fall of 2013, the Student's physics teacher approached her because he was concerned about the Student's poor attendance and poor academic performance. The Respondent had not spoken to Ms. Long about the Student's attendance at that time. Ms. Long testified that she had attempted to have conversations with the Respondent about his time spent with the Student. She was surprised to learn that that the Respondent and Student had been exchanging emails. She said that she spoke to Ms. Falls about her concern about the Respondent and the Student but Ms. Falls reassured her that she was not concerned.
- [89] Ms. Roy testified that the Respondent spoke to her about his mentoring relationship with the Student several times. He expressed his frustration with the Student's inability to fully participate in his fitness-training program. She testified that the Respondent told her that the Student was talking to him about his personal matters. He also told her that he was speaking to the Principal on a regular basis and keeping her up to date on the situation. Ms. Roy said that she was not aware that the Respondent was emailing the Student.
- [90] Dr. Crippen testified that the Respondent spoke to her about his relationship with the Student in June or July 2013. She said that the Respondent described his relationship with the Student as a "mentoring" relationship and expressed concern for the Student. Dr. Crippen said she was unaware of emails exchanged between the Respondent and the Student.

End of the Respondent's relationship with the Student

- [91] The evidence concerning the termination of the Respondent's relationship with the Student is not entirely clear and conflicts in certain minor respects but nothing turns on that conflict.
- [92] The Respondent and the Student both testified that the relationship ended sometime in September or October 2013. Both of them recalled an incident in the school gym during class time when the Student was acting as a teacher assistant and was picking up a number of balls above the school gym. All of the balls fell, and the Respondent spoke to the Student in a critical manner. Although the Student recalled that as the last contact between them and the Respondent recalled a later discussion, nothing turns on the date of the final conversation. Their testimony was consistent that the incident with the balls in the gym was at or very close to the last contact that they had, and that the intensity of the relationship through the emails and the fitness coaching had come to an end several weeks earlier. The evidence is clear that since the incident at the gym or one subsequent conversation, the Respondent never contacted the Student again.
- [93] The Respondent testified that he knew toward the end of August that the email relationship would have to change. He testified that he knew that he "...would have two different hats that [he] would have to wear." One of the "hats" would be the classroom teacher, and the other being in the supportive relationship that had grown throughout the summer. The Respondent testified that he knew that he would not be

sending the Student emails in the school year that were not school-related. He testified that he also knew that the tenor of his emails would change. He would not tell the Student "...anything to do with I love him or any of these sorts of things". He indicated that he did not think that it would hurt the Student to transition from their close supportive relationship during the summer to a different type of relationship at the start of the school year. As the Respondent explained during the hearing, "Quite frankly, if we were still going down that road of support, then now we're back in school, so we're kicking back into the resources of the school, the school counsellor, etc."

- [94] The Student testified that he was angry and felt betrayed by the Respondent in the fall of 2013. He felt let down because the Respondent had promised to always be there and support him. The Student testified that he began drinking alcohol during the school day in September or October 2013 and began smoking marijuana later that fall. He dropped out of school by the end of the term, began a period of substance abuse and ultimately became homeless. Sometime between 2014 and the date of the hearing, he had accessed rehabilitation for substance abuse, completed high school, and obtained employment. While the Student testified that he did not believe that the relationship with the Respondent was responsible for all of the things that went wrong in his life, he believed that the end of that relationship had been a contributing factor. He testified that his sense of betrayal and disappointment was particularly strong in the months following the end of their relationship.

THE EXPERT REPORT

- [95] The Commissioner tendered an expert report from Dr. Marshall to address: (a) the risk of negative outcomes resulting from the Respondent's conduct; and (b) the vulnerability of the Student arising from his status as an adolescent and his personal experience. The Respondent did not challenge the expert's qualifications to give evidence on either of these questions.
- [96] The expert report provided information on mentoring and on adolescent emotional development. Dr. Marshall provided information on effective mentoring relationships, and also on adolescent vulnerabilities and typical adolescent sensitivity and emotional responses.

SUMMARY OF FINDINGS

- [97] The Commissioner bears the onus of proving that the conduct alleged in the Citation occurred. The standard of proof is the balance of probabilities: the Commissioner must prove that the evidence establishes that it is more likely than not that the conduct occurred. The Supreme Court of Canada has said that the evidence as a whole "must always be sufficiently clear, convincing and cogent" in order to establish "whether it is more likely than not that an alleged event occurred." (*F.H. v. McDougall*¹ at 46)

¹ 2008 SCC 53

[98] The evidence for the most part is not in dispute. The Panel makes the following findings of fact:

- the Respondent provided the Student with one-on-one fitness coaching early in the mornings before school hours commencing in May 2013 and throughout the summer after the school year ended;
- the Respondent spent time alone with the Student in his classroom during the early morning workouts while working and listening to music and speaking with the Student about personal matters;
- the Respondent offered to pick up, and did pick up, the Student on at least five occasions and drove him to school for his early morning work-outs;
- The Respondent drove the Student to a shopping mall on one occasion to purchase running shoes for the Student; the Respondent lent the Student a bicycle in May or June 2013, which the Student returned at the direction of his parents;
- the Respondent gave the Student a number of gifts which included a pair of new basketball shoes worth approximately \$120.00, a new pair of running shoes worth approximately \$120.00, a gift certificate worth \$50.00, a gold-coloured cross and chain worth approximately \$20.00, and two books with religious themes worth approximately \$30.00;
- the Respondent engaged in email communications with the Student during evenings and on weekends regarding personal topics, including the Student's exercise program, school work, home and social life;
- the Respondent's emails to the Student encouraged the development of an intimate emotional relationship that was important to the Student (who was emotionally vulnerable because of his family history) and at a time when the Student was experiencing emotional distress;
- the Respondent repeatedly encouraged the Student to continue to communicate with him;
- the Respondent told the Student that he "loved" him in five emails;
- the Respondent repeatedly assured the Student that he would always be there for him or words to that effect;
- The Respondent sent the Student motivational emails and emails containing significant religious content; and
- the Respondent did not advise the Student's parents of the nature and extent of his relationship with the Student or of other matters pertaining to the Student's health and safety.

[99] The Panel did not rely on the expert evidence of Dr. Marshall. It concluded that the question of whether the Respondent was in an effective mentoring relationship with the Student was not the question before it. The focus of the Panel's decision is on whether the Respondent engaged in professional misconduct by departing from proper standards of practice and the professional conduct required of a teacher. That issue is not dependent on establishing that a student suffered a negative outcome. The Panel also concluded that the opinion evidence concerning the emotional vulnerability of adolescents did not meet the necessity threshold for admission of expert evidence.

ANALYSIS AND DECISION

Statutory Framework

[100] Section 63(1)(b) of the Act provides:

A Panel, after a hearing, may make any of the following findings:

determine that an authorized person has been or is guilty of professional misconduct or conduct unbecoming a teacher; ...

[101] The Commissioner submitted that the conduct in issue was not conduct unbecoming a teacher in that the allegation arose out of a relationship that took place arising out of the Respondent's role as a teacher. The Panel agrees and will consider whether the conduct in question constitutes professional misconduct.

Professional Misconduct

[102] The Act does not define "professional misconduct"; however, there is a large body of jurisprudence arising in the teaching context and other professional regulatory contexts, which guide the application of that test. Other cases considered under the *Teachers Act* have adopted the test for professional misconduct set out in the Law Society of British Columbia's decision in *Re Martin*² ("Martin"), namely whether the conduct at issue represents a "marked departure" from the norms expected of the professional. See, for example, *In the Matter of the Teacher Act and Hankey*,³ ("Hankey"). In that case, the Panel observed:

The Act does not define professional misconduct and, as noted by the Commissioner in his submissions, a breach of the Standards does not necessarily result in a finding of professional misconduct. The panel finds that the test for whether a breach of the Standards amounts to professional misconduct under the Act is whether the Respondent's conduct was a "marked departure" from the norms expected of a teacher in this province. This test was adopted by the Law Society of British Columbia in disciplinary proceedings in *Martin* ...

The Standards

[103] The norms expected of a teacher in this province must be considered in reference to the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, 4th edition, January, 2012 (the "Standards"). All certificate holders in British Columbia are required to adhere to the Standards. The Standards are described at 2-3 as:

² *Re Martin*, 2005 LSBC 16

³ 2016 TAHP 03

... the knowledge, skills and attitudes that educators shall possess as well as the responsibilities that accrue to them as certified educators who hold the public trust.

and

... a way of communicating to certificate holders and the public the description of the work of educators – what they know, what they are able to do, and how they comport themselves as they serve the public. [page 3]

[104] The Commissioner submits that the Respondent has breached Standards 1, 2 and/or 4. These are reproduced for convenient reference:

#1. Educators value and care for all students and act in their best interests.

Educators are responsible for fostering the emotional, esthetic, intellectual, physical, social and vocational development of students. They are responsible for the emotional and physical safety of students. Educators treat students with respect and dignity. Educators respect the diversity in their classrooms, schools and communities. Educators have a privileged position of power and trust. They respect confidentiality unless disclosure is required by law. Educators do not abuse or exploit students or minors for personal, sexual, ideological, material or other advantage.

#2. Educators are role models who act ethically and honestly.

Educators act with integrity, maintaining the dignity and credibility of the profession. They understand that their individual conduct contributes to the perception of the profession as a whole. Educators are accountable for their conduct while on duty, as well as off duty, where that conduct has an effect on the education system. Educators have an understanding of the education system in BC and the law as it relates to their duties.

#4. Educators value the involvement and support of parents, guardians, families and communities in schools.

Educators understand, respect and support the role of parents and the community in the education of students. Educators communicate effectively and in a timely manner with parents and consider their advice on matters pertaining to their children.

[105] Professional misconduct arising out of a relationship with a student must be considered in the context of Standard #1, and with the recognition that educators are responsible for the emotional and physical safety of students; that educators have a privileged position of power and trust, and that educators do not abuse or exploit students or minors for personal, sexual, ideological, material or other advantage. There have been several court and tribunal decisions that have considered the question of professional misconduct in the context of a teacher's relationship with a student.

[106] The responsibilities articulated in Standard #1 encompass the obligation on a teacher to maintain appropriate professional boundaries in order to protect students from harm,

whether physical, emotional or sexual. The case law underscores that teachers are in a direct position of “trust and authority” over their students (*R. v. Audet*⁴, “*Audet*”). The cases in this area clearly establish that the failure to maintain appropriate and professional boundaries by entering into personal relationships with students constitutes professional misconduct. (See *Re: In the Matter of the Teachers Act – and – McGeough*⁵ (“*McGeough*”), *Ontario College of Teachers v. McCuaig*⁶ (“*McCuaig*”), *Ontario College of Teachers v. De Marchi*⁷ (“*De Marchi*”), *Ontario College of Teachers v. Karrow*⁸ (“*Karrow*”).

- [107] While a sexual relationship between a teacher and a student is a clearly breach of the obligation to maintain appropriate boundaries and professional misconduct (*Audet*), it is not always as straightforward to identify the appropriate boundary in a teacher-student relationship where there is no element of sexual misconduct.
- [108] The challenge in identifying the appropriate boundaries stem from the recognition that the teacher-student relationship can be an extremely positive influence in a student’s life. Many dedicated teachers will connect meaningfully with some individual students and form close but proper relationships with them. These close relationships cannot be expected to be the same for all students; as in all relationships, sometimes there is a special bond that forms between a teacher and a student. Many adults describe close relationships with a teacher as having positively altered the course of their lives. The public interest is not served by overly rigid standards for educators that pre-empt the possibility of these kinds of positive relationships between teacher and student.
- [109] However, it is also clear that when a teacher exceeds the boundaries of a professional teacher-student relationship by intruding into the personal affairs of the student, even in a non-sexual context, that is professional misconduct.
- [110] The Commissioner cited the following cases that have addressed the issue of inappropriate non-sexual relationship with a student.
- [111] In *McGeough*, the tribunal found that the teacher had an improper relationship with the student when the teacher, through his email exchanges with a student, placed emotional pressure on her, shared personal information with her, sent unsolicited emails to her, and encouraged her to keep their relationship a secret. The tribunal found that the teacher’s relationship with the student was designed to satisfy his own emotional needs and improper behaviour.
- [112] In *De Marchi*, the panel found that a teacher had an inappropriate relationship with two students constituting professional misconduct when he made personal comments to them such as, “If there is anything you need, I’m here” and “you will always be

⁴ [1996] 2 S.C.R. 171)

⁵ October 12, 2012

⁶ 2008 LNONCTD 44

⁷ 2011 LNONCTD 5

⁸ 2012 LNONCTD 33

special”. He gave them each small gifts, and became over-protective of them. The panel described the relationship as a “close friendship” and found that “...[he] took on a role that should have been the responsibility of the parents.”

[113] In *Karrow* and in *Ontario College of Teachers v. Kelley*⁹, the panel accepted admissions of professional misconduct from teachers who had engaged in inappropriate, but non-sexual, relationships with students. In *Karrow*, the teacher loaned the student a computer, he sent her personal emails calling her “sweetie” and telling her that she was “special, safe at school, and very much cared for”. He gave her gifts, took her for dinner with permission of her mother, spent time alone with her in his car and his office, and invited the student and her mother to stay overnight at his home. The respondent had been offering assistance to the student in relation to bullying that she had been experiencing. The panel found that his actions were transgressions of a serious nature. In *Kelley*, the teacher had given the student his home phone number and permitted her to call him, during which time they discussed her personal and family-related issues and he gave her advice. She also visited him at his apartment.

[114] In *McCuaig*, a teacher had an unprofessional relationship with a student who suffered from an eating disorder. The relationship included encouraging the student to confide in him and depend on him prior to encouraging her to seek other help, meeting her at a mall and after the end of school to discuss her illness, inviting her to go to Toronto with him and his wife (with full knowledge of her parents), and kissing her on the head and hugging her in the presence of other adults and in public places. The panel commented at paragraph 6 that:

Through these inappropriate contacts, the Member encouraged the student to confide in him and to depend on him. This resulted in the Member attempting to counsel the student beyond the scope of his responsibilities as a teacher.

[115] The following principles can be distilled from the cases that have addressed the boundaries of professional relationships between teachers and students:

- (1) A teacher-student relationship may be professional misconduct even where there is no sexual element to the relationship.
- (2) Various types of activity may provide indicia of an overly personal relationship such as:
 - (i) Sharing personal information with a student (*McGeough*)
 - (ii) Using a relationship with a student to fulfill the teacher’s own emotional needs (*McGeough*);
 - (iii) Sending unsolicited communications to a student on matters not related to school (*McGeough*);

⁹ 2015 LNONCTD 71

(iv) Encouraging a student to keep communication with the teacher a secret from others; or encouraging a student to confide in the teacher and depend on the teacher (*McCuaig, Kelley*);

(v) Assuming an important role in the student's life including, for example, protector or counsellor (*McCuaig, Karrow, De Marchi*);

These indicia are intended to be illustrative rather than providing a comprehensive list. They illustrate the kind of behaviour that may “cross the line” from an appropriate, professional teacher-student relationship to an inappropriate and overly personal relationship.

Application to the present case

[116] The parties disagree on the approach to be taken to the allegations contained in the Amended Citation. The Commissioner submits that the Panel should consider the allegation of whether the Respondent engaged in an “unprofessional and inappropriately personal relationship” with the Student having regard to the totality of the evidence concerning that relationship, and that the particular allegations contained in paragraphs 1(a) to (f) of the Amended Citation reflect behaviour that demonstrates an overly personal relationship. The Commissioner submits that the conduct, taken as a whole and in the context surrounding the conduct, establishes that the Respondent entered into an inappropriately personal relationship with the Student.

[117] In contrast, the Respondent submits that the Panel should take a more compartmentalized approach by considering each of the allegations described in paragraph 1(a) to (f) separately and decide whether each of those enumerated types of conduct, viewed independently of one another, establish a breach of the Standards.

[118] The Panel accepts the approach outlined by the Commissioner. The Amended Citation alleges that the Respondent engaged in an unprofessional and inappropriately personal relationship with the Student. The manner in which the Respondent did so is particularized in the specific allegations contained in paragraphs 1(a) to (f) of the Amended Citation. However, the totality of the evidence concerning the interactions between the Respondent and Student must be considered in assessing whether he engaged in professional misconduct.

[119] Considering the totality of the evidence, the Panel concludes that the Respondent did engage in an unprofessional and inappropriately personal relationship with the Student in contravention of Standard #1. Coaching the Student for a fitness program in a one-on-one basis in the early mornings before school started was not, in itself, sufficient to establish a breach of the Standards. However, the Respondent's conduct went much farther than that. The Respondent talked to the Student about the Student's personal life during those sessions. He talked to the Student about Christianity, he continued to meet with the Student for coaching sessions during the summer months while school was not in session, he drove him to school on occasion, and did so all the while engaging in extensive confidential email communications that concerned deeply personal, emotional and religious topics. He encouraged the Student, whom he knew was vulnerable and emotionally distressed, to talk about the Student's personal issues and emotions. In

response to this encouragement, the Student revealed deep fears, emotional insights, and his desire to leave his parents' home.

- [120] In addition, the Respondent expressed his affection for the Student. He wrote, "I love you" to the Student in multiple emails. He repeatedly told the Student that he was proud of him and that he would always be there for him unconditionally. He expressed his own desire or wish to hear from the Student on a regular basis, outside of school hours, on weekends and late at night. Through these communications, the Respondent allowed and encouraged the Student to believe that he would be there for the Student, and would provide care for him during this period and into the future.
- [121] The Respondent also lent a bicycle to the student and gave him gifts of new shoes, and a gift card. The Student would otherwise have had to wait for the new athletic shoes and his parents had wanted him to earn the money to replace his bicycle. He also provided gifts of a more meaningful and personal nature such as the cross necklace and the books with religious content. His offers of assistance and demonstration of concern and caring for the Student were apart from and, at times, in preference to the need of other students in his classes.
- [122] The Respondent was aware of the Student's vulnerability due to his early childhood background of instability and a family history of serious addiction problems; yet, the Respondent failed to take steps to ensure that he was not exploiting the Student's emotional vulnerability by his unconditional promises of care and affection to meet his own emotional needs.
- [123] The Respondent provided religious guidance to the Student, and he assumed the role of a spiritual leader or mentor for the Student's religious experiences.
- [124] The Respondent allowed himself to become the most important person in the Student's life, and allowed the Student to come to depend on him for guidance through an emotionally difficult time in his personal life.
- [125] The Respondent did not advise the Student's parents about the nature and extent of his relationship with the Student. He did not advise his parents about the Student's emotional state at a time that the Student expressed great pain. He gave the Student gifts in contravention of the parent's direct and explicit instruction not to give the Student gifts without obtaining the parents' permission in advance.
- [126] He did not advise the Student's parents about the Student's poor attendance record in his class in September 2013.
- [127] The Respondent concealed important information about his relationship with the Student from members of the School Administration who would have had a responsibility and/or an opportunity to intervene and provide assistance to the Student when he needed it.

- [128] The Respondent positively reassured members of the school administration of the Student's well-being, at a time when the Student's emotional condition and school performance would have warranted intervention by those individuals or by others.
- [129] The Student's physics teacher contacted the Student's parents when the Student's attendance was very poor in the first two weeks of classes. On the evidence, it is reasonable to infer that the Respondent declined to contact the Student's parents about his absenteeism because he did not wish to interact with them and to possibly raise questions about his relationship with the Student. This illustrates the importance of maintaining proper professional boundaries – the Respondent failed to fulfil his responsibility as a teacher of keeping the Student's parents informed because of the inappropriate relationship he had developed with the Student.
- [130] The failure of the Respondent to inform the school administration and the Student's parents about these matters is a serious breach of his duty and may have contributed to the Student's subsequent difficulties.
- [131] Having regard to the totality of the evidence, the Panel finds that the Respondent's conduct constitutes a marked departure from the Standards. Specifically, the Respondent's conduct failed to meet his obligations under Standards #1. He failed to act in the best interest of the Student in regard to his emotional well-being and safety.
- [132] The Panel finds that the Respondent failed to respect the role of the Student's parents, and to communicate with them effectively in contravention of Standard #4. The Respondent's breaches of Standard #4 extend to his failure to communicate with the Student's parents, as well as to his provision of inappropriate reassurance to the school administration about the Student's emotional condition, which, it is reasonable to infer, also hindered the administration's ability to keep the Student's parents accurately informed. In choosing to maintain secrecy over the nature of his relationship with the Student, rather than seeking support from school and family resources for the Student, he advanced his own interests over the Student's best interests.
- [133] The Commissioner submits that the Respondent breached Standard #2 by introducing religious content into his relationship with the Student. The Respondent's conduct with respect to religious content consisted of private discussions with the Student about religious themes, invoking religious sources for inspiration for the Student, encouraging the Student to pray with him, and at times asserting that he was providing spiritual leadership or acting as a spiritual conduit for the Student.
- [134] The Panel accepts that these religious activities heightened the Student's dependence on the Respondent and his devotion to the Respondent. These religious-themed messages and exhortations were a critical component of the inappropriate closeness of the relationship between the Respondent and the Student. The Respondent magnified the power imbalance between himself and the Student by casting himself as a religious authoritative figure.
- [135] The Panel accepts that the Respondent breached Standard #2 by failing to act ethically and failing to recognize the secular nature of public education while he was discussing

religious matters with the Student in-person and in emails and providing him with religious themed books to read.

- [136] Collectively and individually, these violations of the Standards constitute professional misconduct.

Summary and Conclusion

- [137] The Panel has found that the Respondent's conduct constituted marked departures from Standards #1, 2 and 4 and constituted professional misconduct.

CONSEQUENCES & COSTS

- [138] Having found that the Respondent's conduct resulted in professional misconduct under section 63(1)(b) of the Act, this panel is empowered to impose a penalty on the Respondent. The panel asks that counsel for the Commissioner and the Respondent advise the Hearing Coordinator of the Teacher Regulation Branch whether submissions on appropriate penalty should be submitted in writing or through an oral hearing. The panel directs that any submissions on costs be submitted in writing. The Hearing Coordinator of the Teacher Regulation Branch shall set the deadlines for submissions.

PUBLICATION

- [139] This panel questions whether section 66(4) of the *Teachers Act* would cause significant hardship to a person who was harmed, abused or exploited by the certificate holder. In light of this concern, the panel invites counsel to make submissions on whether these reasons ought to be published in full on the Branch website, or whether this panel ought to make an order under section 66(4) for non-publication or publication of a summary. Counsel should provide this panel with their submissions by November 17, 2016.

This Notice is published by the Acting Director of Certification pursuant to section 66(3) of the *Teachers Act*.

Angus, Tiffany Dawn - Consent Resolution Agreement

admitted to professional misconduct and conduct unbecoming a member of the College. In July 2007, the College was notified by the Ontario College of Teachers that Ms. Angus had been found guilty of professional misconduct and that her teaching certificate had been revoked as a result of her having engaged in an inappropriate sexual relationship with a student. In or about 2006, while employed in Ontario as a probationary teacher, Ms. Angus engaged in a sexual relationship with her 16-year-old male student. Notwithstanding the direction that Ms. Angus received from the district school board following a suspension, she continued her sexual involvement with the student. On October 28, 2008, the Preliminary Investigation Sub-Committee approved the Consensual Resolution Agreement in which Ms. Angus agreed to a cancellation of her College Certificate of Qualification.

Summary of the Consent Resolution Agreement executed: October 30, 2012

In the matter concerning:

Kenneth Angus

Kenneth Angus admitted to professional misconduct and agreed that his conduct was contrary to Standard 2. Mr. Angus was employed as a high school teacher when, in July 2010, the district made a report to the BC College of Teachers regarding Mr. Angus, pursuant to section 16(3)(b) of the *School Act*. The district investigation indicated that Mr. Angus had received a letter of reprimand following allegations that he used his counseling relationship with two former female students at his school (Student A and Student B) to continue to counsel and to engage in personal relationships with each of them after they graduated. The Teacher Regulation Branch investigation determined that, when both were still students, Mr. Angus hugged each of them on at least one occasion in a non-sexual manner. In addition, while she was a student, Mr. Angus spoke to Student B about her personal life and, in particular, her relationship with a boy and her sexual reputation at the school. On one occasion in 2008, Mr. Angus used school premises for an unauthorized purpose, which was to meet with Student B in the evening. Student B had graduated four years before this meeting, had lived and worked abroad, and attended university. As a result there was no longer a student-teacher relationship between them. The investigation also indicated that although Mr. Angus met with Student A four years after her graduation, there was no student-teacher relationship and he did not meet with her on school premises. On October 30, 2012, the Commissioner executed the consent resolution agreement in which Mr. Angus agreed to receive a reprimand, pursuant to section 64(a) of the *Teachers Act*.



DISCIPLINE CASE SUMMARY

a. William Edward Stamps (Certificate Issued: 1991.06.03)

b. Conduct unbecoming a member of the College

c. The hearing was held on March 28, 2006, at the College's offices in Vancouver, B.C. This matter originated as a Registrar's Report under section 28(4) of the *Teaching Profession Act*.

d. The respondent downloaded and accessed child pornography through both the internet and his computer hard drive. He repeatedly accessed child pornography by actively searching for sites and through peer to peer sharing of pornographic images of children.

e. The Hearing Sub-Committee (the "Committee") was unanimous in its decision that Mr. Stamps exhibited behaviour which constituted conduct unbecoming a member of the College.

The Committee determined that the facts in this case clearly indicated that Mr. Stamps did knowingly have in his possession, stored and accessed child pornography through both the internet and his computer hard drive. After reviewing the report from the computer forensic expert, the Panel was convinced by the sheer volume of pornographic material that Mr. Stamps' activity was purposeful and voluntary.

The Committee noted that the public must have confidence that the College is protecting its students. Permitting an individual who repeatedly seeks out and views sexually degrading images of children to continue to operate in the school system would be entirely unacceptable to the community at large. The Panel does not view accessing child pornography as a victimless crime. The demand for this type of image requires a supply of young people that are abused in horrendous ways to create this type of inventory. Teachers are rightfully expected to be on the front line of the offensive to protect children from this type of abuse.

d. The Committee considered the submissions presented by counsel on penalty, publication and costs. It was unanimously decided that the appropriate penalty be a cancellation of Mr. Stamps' teaching certificate. With respect to costs, Counsel for the College did not seek costs for this proceeding from the respondent. In the matter of publication, the Committee decided that Mr. Stamps' name be released in accordance with College bylaws.



IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011 c. 19

AND

IN THE MATTER CONCERNING

TAYLOR ARTHUR ATTRILL



CONSENT RESOLUTION SUMMARY

This summary is published under section 54(3) of the Teachers Act to protect the identity of a student who was harmed, abused or exploited by the teacher.

1. Attrill held a valid Professional Certificate of Qualification, No. [REDACTED]. It was issued by the Director of certification under the *Teachers Act* on December 6, 2016 and was valid from December 6, 2016. Attrill's certificate of qualification was cancelled for non-payment of fees on November 1, 2019.
2. On June 19, 2018, Attrill signed an undertaking not to teach in any role or position requiring a Ministry of Education Certificate of Qualification, Independent School Teaching Certificate or Letter of Permission under the *Teachers Act*.
3. At all material times, Attrill was employed as a teacher by School District No. 41 (Burnaby) (the "District").
4. On June 13, 2018, the District made a report to the Commissioner regarding Attrill under section 16 of the *School Act*. This has been designated Matter 1.
5. On June 7, 2018, the Commissioner received a complaint about Attrill. This has been designated Matter 2.
6. On May 31, 2019, the Commissioner combined Matter 1 and Matter 2.
7. Between June 2017 and May 2018, Attrill
 - a. invited students to follow him on social media where he posted pictures of himself drinking shots in bars; and



- b. sent private, inappropriate, sexualized messages to 5 students in Grades 7 and 8.
8. On May 25, 2018, the District suspended Attrill with pay.
9. On July 3, 2018, Attrill resigned from the District, effective August 31, 2018.
10. On June 4, 2017, a school principal had told Attrill that he should not exchange text messages, or speak with students outside of school hours or off school grounds.
11. On February 21, 2020, Attrill entered into a consent resolution agreement with the Commissioner in which he admitted that his conduct described in paragraph 7 above constitutes professional misconduct and is contrary to Standard #1 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, Fourth Edition, January 2012.
12. Attrill agreed that he would never again apply for, and that the Director of Certification would be required under section 64(g) of the *Teachers Act* never to issue to him, a certificate of qualification, an independent school teaching certificate or a letter of permission.
13. In determining that a lifetime ban on reapplication is an appropriate consequence the Commissioner considered the following factors:
 - a. Attrill engaged in serious boundary violations with students of a young age; and
 - b. Attrill communicated inappropriately through private messaging with students.



DISCIPLINE CASE SUMMARY

- a. Steven Russell Mills (DOB: 1952.06.16, Certificate Issued: 1991.06.03; cancelled in 2004 for non-payment of fees)

- b. Professional misconduct
- c. The hearing was held on August 23 and August 24, 2007, at the College's offices in Vancouver, B.C. The report and recommendations of the Hearing Sub-Committee were presented to Council on June 12, 2008, in accordance with section 22 of the *Teaching Profession Act*. This matter originated as a report under section 16(2) of the *School Act*.
- d. Mr. Mills was an art teacher at a school when the incidents took place in 1989 to 1991. He was found to have had a personal, sexual relationship with a female student in his grade 11 and grade 12 classes.
- e. The Hearing Sub-Committee (the "Committee") was unanimous in its decision that Mr. Mills, while employed as an art teacher between September 1989 and June 1991, did engage in an intimate relationship with a female student. The Committee unanimously found that Mr. Mills' relationship with the student included kissing, fondling and sexual intercourse. The Committee determined that the facts in this case indicated that the conduct occurred while the victim was still a student under Mr. Mills' direct supervision and authority. The Committee found that this conduct is contrary to the standards of behaviour expected of a teacher and found him guilty of professional misconduct.
- f. The Committee considered the submissions presented by counsel on penalty, publication and costs. The Committee unanimously agreed to a penalty of at least a five-year bar from re-issuance of a College certificate. With respect to costs, the Committee acknowledged that Mr. Mills was no longer a member of the College and that there was no compulsion on his part to participate in College proceedings. They concluded that his absence did not hinder the College in exercising its mandate. In the matter of publication, the Committee unanimously agreed that Mr. Mills' name be published as he took no position on this issue and there was no evidence supporting anonymous publication.
- g. Council considered the report and recommendations of the Committee and agreed to accept the recommendations and reasons as to penalty, costs and publication.

Summary of the Consent Resolution Agreement executed: January 18, 2013

In the matter concerning:

Ronald Norman Ball

Ronald Norman Ball admitted to professional misconduct and agreed that his conduct was contrary to Standard 2. In May 2010, the BC College of Teachers received a district report. A citation was issued against Mr. Ball on October 10, 2010. Mr. Ball admits that on two occasions he did sexually harass a female teacher by placing his hands on her buttocks against her wishes. On January 18, 2013, the Commissioner executed the consent resolution agreement in which Mr. Ball agreed that he will never again apply for a certificate with the Teacher Regulation Branch and that he will never again apply for or accept any position of employment anywhere, inside or outside of British Columbia, that would involve teaching in any capacity people under the age of 18 years. As a result, the citation was rescinded. Mr. Ball's certificate of qualification was cancelled on November 1, 2011 due to non-payment of fees.

Belec, Gordon Frederick Joseph - Conduct Review Decision

was employed as a secondary school teacher when he became involved with a grade eleven female student in the 2005/2006 school year. Mr. Belec and the student began a friendship in secret by communicating with each other by email and text message. When the student informed Mr. Belec that she had stronger feelings for him, he took no steps to dissuade her from acting on her feelings, but rather intensified the relationship. As a consequence, Mr. Belec was arrested in 2007 and charged with sexual exploitation contrary to section 153(1)(a.) of the Criminal Code of Canada. He pled guilty to the charge of sexual exploitation on April 2007, and was sentenced to 14 days in jail and 18 months of probation with conditions. Additionally, Mr. Belec was ordered to be registered on the Sex Offender Information Registry. On October 5, 2009, the Conduct Review Sub-Committee accepted the Statement of Agreed Facts and Disposition and Mr. Belec's acknowledgment that his conduct constituted conduct unbecoming a member of the College. It was agreed that Mr. Belec not be issued Certificate of Qualification for an indefinite period of time. Mr. Belec's College teaching certificate was cancelled on November 1, 2008 for non-payment of fees.

Bensmiller, David Oscar - Consent Resolution Agreement

admitted to professional misconduct. While employed as a food services instructor with a school district, he engaged in conduct with female employees which resulted in a harassment investigation. It was found that Mr. Bensmiller harassed three female employees. His conduct included sexual harassment in the form of comments, leering and unwelcome physical contact. On October 7, 2009, the Preliminary Investigation Sub-Committee approved the Consensual Resolution Agreement in which the Mr. Bensmiller accepted a reprimand.



Summary:

Re: Careen, Martin Gerard Philip (“Careen”)

This summary is published under section 54(3)(a) of the Teachers Act to protect the identity of a student who was harmed, abused or exploited by Careen and in accordance with an order made by a judge of the British Columbia Supreme Court under section 486.4 of the Criminal Code of Canada that prohibits the publication, broadcast or transmission of any information that could identify the student.

Careen was a secondary school teacher. On July 9, 2009, the B.C. College of Teachers (the “College”) received a report from the school that employed Careen. The report notified the College that Careen had been charged with one count of sexual exploitation and one count of luring in relation to a student he taught.

- On one evening and into the early morning the following day, Careen exchanged a number of text messages with the student.
- These text messages consisted of explicit invitations to sexual conduct.

On July 6, 2009, Careen was charged with sexual exploitation and luring, contrary to sections 153(1)(b) and 172.1(1) of the *Criminal Code*. On July 13, 2011, Careen was convicted of sexual exploitation, contrary to s. 153(1)(b) of the *Criminal Code* (the “Conviction”). The count of luring, contrary to s. 172.1(1)(a) of the *Criminal Code* was stayed. Careen’s employment was terminated. Careen’s certificate of qualification was cancelled under section 91(1)(b) of the *Teachers Act* on January 7, 2012. Careen appealed the Conviction; however, the appeal was dismissed on December 12, 2013.

On March 27, 2014, Careen entered into a consent resolution agreement in which:

- Careen admitted that his conduct was contrary to Standards # 1 and # 2 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia, Fourth Edition, and January 2012*.
- He admitted that his conduct constitutes professional misconduct, and
- He agreed that he will not apply for, and the Director of Certification will be required not to issue him a certificate of qualification, an independent school teaching certificate or a letter of permission at any time in the future.

Cheung, Weldon - Consent Resolution Agreement

admitted to professional misconduct and agreed that his conduct was contrary to College Standards 1 and 2. In January 2011, Mr. Cheung was employed as a physical education teacher at a secondary school when, according to a district investigation, he left his PE 11/12 class unsupervised while he had a 40-45 minute conversation with a female student in the hallway outside his class. During this conversation, Mr. Cheung tried to encourage the student not to drop out of his class and, in so doing, he referred to unrelated and inappropriate hypothetical situations, used inappropriate language about the student's personal relationship with her boyfriend and referred to his own personal life and sexual relationships. On July 28, 2011, the Preliminary Investigation Sub-Committee approved the Consent Resolution Agreement in which Mr. Cheung agreed that the College would issue him a reprimand and that he would successfully complete the College's professional boundaries workshop.

Coon, Christopher Anthony - Conduct Review Decision

admitted to and was found guilty of professional misconduct. Criminal charges were laid against the respondent for Sexual Assault. Mr. Coon plead guilty to a lesser offence of touching the body of a young person for sexual purposes contrary to the Criminal Code. The respondent admitted to the College that he initiated intimate physical contact with a Grade 11 female student. The incidents of his physical touching occurred outside school hours on 6 or 7 occasions. On August 30, 2005, the Conduct Review Sub-Committee approved the Statement of Agreed Facts and Disposition and accepted that the appropriate penalty was cancellation of his certificate of qualification.

Davidson, John Lindsay

admitted to professional misconduct and agreed that his conduct was contrary to College Standards 1 and 2. In March 2011, while Mr. Davidson was using a projector to show his middle school class instructional material, a female student saw a shortcut to “school girl porn” on his laptop. The student’s parent reported it to the school. A school district investigation found that Mr. Davidson’s laptop contained 14 web links to pornography videos. The titles of some of the links included references such as “schoolgirl,” “teacher” and “coach.” The history of sites visited on the computer included further references to pornographic materials. An RCMP review of Mr. Davidson’s laptop concluded that the pornography websites that were visited portrayed adults in pornographic roles and not of child pornography. Mr. Davidson relinquished his College certificate of qualification in April 2011. On December 21, 2011, the Preliminary Investigation Sub-Committee approved the Consent Resolution Agreement in which Mr. Davidson undertook that he would not re-apply for, nor would he be re-issued, a certificate of qualification for a period of no less than 15 years.

DeRaad, Willem - Consent Resolution Agreement

admitted to professional misconduct. During the 2006-2007 school year, Mr. DeRaad developed a flirtatious relationship with a female student in his grade 12 class. His communications with her sometimes included sexual innuendo, and he encouraged her to read books and see movies that involved sexual relations between characters with a significant age difference. Over the course of the school year, the relationship became physical, and Mr. DeRaad kissed and inappropriately touched the student on top of her clothing. In February 2008, Mr. DeRaad retired from teaching. In March 2008, Mr. DeRaad was criminally convicted of sexual touching of a young person, contrary to section 153(1)(a) of the Criminal Code of Canada. He was sentenced to 14 days in jail, one year of probation and a victim surcharge fine of \$50.00. On December 3, 2009, the Preliminary Investigation Sub-Committee approved the Consent Resolution Agreement in which Mr. DeRaad agreed to an indefinite suspension of his College certificate of qualification.

Dyck, Mark Edward - Consent Resolution Agreement

admitted to professional misconduct. Mr. Dyck developed an inappropriate relationship with a female student through e-mail and engaged in a telephone conversation of a sexual nature with her. The communications included comments about having sexual intercourse with her as well as sexual fantasies he had that involved her. On July 18, 2007, the Preliminary Investigation Sub-Committee approved the Consensual Resolution Agreement and Mr. Dyck's undertaking to allow his certificate to lapse and not to apply for reinstatement for a College teaching certificate for a period of two years commencing July 1, 2007.

Ellison, Thomas Leslie

admitted that his conduct leading to a criminal conviction on December 15, 2006, under the Criminal Code for two counts of indecent assault, two counts of gross indecency and one count of common assault, constitute professional misconduct and conduct unbecoming a member of the College. The convictions relate to Mr. Ellison's conduct with students while he was a high school teacher at Vancouver's Prince of Wales Secondary School in the Quest Program, an outdoor education program for grade ten and eleven students. Mr. Ellison's sexual contact with students included kissing, fondling and digital penetration and cunnilingus. On March 1, 2007, the Preliminary Investigation Sub-Committee approved the Consensual Resolution Agreement which stipulates that the College will not issue him a College teaching certificate for an indeterminate period.

5. The following events occurred when Enns was teaching a Grade 8 class at the School in the 2018/2019 school year:
 - a. Enns often hit a metre stick on desks or tables in order to get his students' attention.
 - b. Enns showed the class two videos which were age-inappropriate. The first was a clip from the show, "Last Week with John Oliver", in which security passwords were discussed. John Oliver suggested that "admiralalonzoghostpenis420YOLO" and "margarethatcheris100%SEXY" would be strong passwords. The second was a clip from South Park where an animated character was so engrossed in playing video games that he had his mother bring him a pot in which to defecate so that he would not have to interrupt his game.
 - c. On January 14, 2019, Enns asked Student A in front of the entire class whether Student A had attention deficit disorder. Student A was embarrassed and upset by the question and left the classroom. After class, Enns found Student A and apologized for his conduct. Later that day, Enns approached Student A and said that he had done his part by apologizing, but that Student A needed to apologize for leaving the classroom.
 - d. On January 16, 2019, Student A's father (Parent A) emailed Enns with concerns about the two videos which had been shown as well as the incident of January 14, 2019.
 - e. On January 16, 2019, Enns responded to the Parent A's email. In that email, Enns embedded a link to the South Park video clip he had shown the class. Enns then forwarded his email to Parent A to the School principal, but altered the message by removing the link to the South Park video clip, a fact he did not bring to the principal's attention. Enns removed the South Park clip from the email he sent to the School principal as he did not want the principal to see it.
6. On February 21, 2019, the District issued Enns a letter of discipline and suspended him for five days without pay. Enns served the suspension on March 5-8 and March 11, 2019. The School principal subsequently wrote Enns on March 14, 2019 to clarify what the District's expectations are going forward. The District's expectations are as follows:
 - a. Enns is to speak and act towards students with respect and dignity;
 - b. Enns is to refrain from singling students out publicly regarding confidential, medical, or sensitive information;

- c. Enns is to find ways to redirect students other than hitting a rule against a desk or table;
 - d. Enns is to seek assistance from school administrators any time he feels the conditions in the classroom have deteriorated;
 - e. Enns is to vet all communication with parents and guardians through school administrators; and
 - f. Enns is to use respectful and developmentally appropriate teaching resources and instructional methods.
7. The District had previously raised concerns it had with Enns as follows:
- a. On January 31, 2017, the District issued Enns a letter of direction following allegations that he had interacted inappropriately with students and parents. The District directed Enns to:
 - Demonstrate care for the emotional well-being of his students and to promote an atmosphere of mutual respect and safety at all times
 - Speak and act towards students with respect and dignity
 - Solicit the assistance of the administrative team if he required support in resolving a conflict
 - Maintain his professionalism when dealing with parents and students
 - Attend a boundaries workshop on March 2, 2017
 - b. On November 25, 2016, the District issued Enns a letter of expectation in which he was reminded to “exercise judgment and sensitivity in monitoring the appropriateness of all subject matter to ensure [his] classroom is a racism-free and discrimination-free environment.”
 - c. The District had spoken with Enns informally on more than one occasion about his lack of judgment in comments made to his colleagues, and in selecting photographs for inclusion in the yearbook.
8. On January 14, 2020, the Commissioner considered this matter and determined to propose a consent resolution agreement to Enns, in accordance with section 53(1)(a) of the *Teachers Act*.

CONSEQUENCES

9. This Agreement is made under section 53 of the *Teachers Act*.
10. Enns understands and acknowledges that this Agreement is not effective until executed by the Commissioner, and that the date of execution by the Commissioner will be the effective date of this Agreement (the “Effective Date”).
11. Enns admits that the facts set out in paragraphs 1 to 7 of this Agreement are true.
12. Enns admits that the conduct described in paragraph 5 of this Agreement constitutes professional misconduct and is contrary to Standard #1 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, Fourth Edition, January 2012.
13. Enns agrees to a 3-day suspension of his certificate of qualification under sections 53 and 64(b) of the *Teachers Act*, from June 4, 2020 to June 8, 2020, inclusive.
14. In determining that a suspension is an appropriate consequence, the Commissioner considered the following factors:
 - a. Enns failed to create a positive learning environment for his students; and
 - b. Enns failed to use effective communication and classroom management strategies.
15. Enns agrees not to make any statement orally or in writing which contradicts, disputes or calls into question the terms of this Agreement or the admissions made in it.

EFFECT OF THE AGREEMENT

16. The Director of Certification will record the terms of this Agreement on the Ministry of Education’s online registry under section 79(d) of the *Teachers Act*.
17. Enns acknowledges that this Agreement will be published in accordance with section 54 of the *Teachers Act*, which includes posting the Agreement, in full, on the following website: www.teacherregulation.gov.bc.ca.
18. Notification of this Agreement will be made in accordance with section 55 of the *Teachers Act*.
19. Enns acknowledges and understands that if the Commissioner has reason to believe that he has breached any term of this Agreement:
 - a. the Commissioner may initiate an investigation under section 47(1)(b) of the *Teachers Act* into his conduct; and

b. the conduct and matters described in the "Background and Facts" to this Agreement are admissible in that inquiry as proof that Enns has admitted to the conduct and matters set out in this Agreement.


20. Enns acknowledges that he has voluntarily entered into this Agreement with the benefit of independent legal advice, and that he fully understands the terms and conditions set out in this Agreement.

Signed in Kelowna, B.C.
this 20 day of May, 2020.



Justin Daniel Moses Enns

Signed in Vancouver, B.C.
this 22 day of May, 2020.


Howard L. Kushner, Commissioner





DISCIPLINE CASE SUMMARY

- a. Gregory McKeand Gies
-
- b. Conduct unbecoming a member of the College.
- c. The first phase of the hearing was held on October 20-22, 2008, and the final phase of the hearing was held on November 10, 2008, at the College's offices in Vancouver. This matter originated as a Registrar's Report under section 28(4) of the *Teaching Profession Act*.
- d. Between 2002 and 2006, when the incidents took place, Mr. Gies was employed as a secondary and elementary school teacher. In 2006, Mr. Gies was charged criminally with possession of child pornography, contrary to section 163.1(4) of the Criminal Code of Canada. At the conclusion of the criminal trial which commenced in October 2007, the member was acquitted. In 2008, Mr. Gies admitted to the College by way of a Statement of Agreed Facts, to possession of child pornography and to having engaged in conduct unbecoming a member of the College. Mr. Gies has expressly acknowledged that his actions breached the College's Standards of Competency and Conduct.
- e. The Hearing Sub-Committee (the "Committee") unanimously accepted the facts and admissions made by Mr. Gies in the Agreed Statement of Facts. The Committee found that while employed as a teacher, Mr. Gies repeatedly downloaded child pornography to his personal computer. The Member collected, sorted and categorized hundreds of thousands of still images and video files of children under the age of 18 years engaged in, or depicted to be engaged in sexual activity. The Committee found that Mr. Gies breached Standard #2 the College's Standards of Competency and Conduct, which states, "Educators act with integrity, maintaining the dignity and credibility of the profession. They understand that their individual conduct contributes to the perception of the profession as a whole. Educators are accountable for their conduct while on duty, as well as off duty, where that conduct has an effect on the education system." In addition, the Committee found that engaging in criminal behaviour itself (even if there is no conviction) brings the profession into disrepute. That the behaviour involves child pornography clearly fails to maintain the dignity and credibility of the profession.
- f. The Committee considered the submissions presented by counsel on penalty, publication and costs. The Committee unanimously agreed that the Member's teaching certificate be cancelled and his membership in the British Columbia College of Teachers be terminated. With respect to costs, the Committee agreed that no costs be assessed to Mr. Gies. In the matter of publication, the Committee unanimously agreed that his name be published in accordance with sections 27.2 and 27.3 of the *Teaching Profession Act*.



DISCIPLINE CASE SUMMARY

a. A Respondent (A-02-05)

b. Professional misconduct

c. The hearing was held on November 23, 2004, at the College's offices in Vancouver, B.C. The report and recommendations of the Hearing Sub-Committee (the "Committee") were presented to Council on February 11, 2005. This matter originated as a report under section 16(1) of the *School Act*.

d. The Respondent, who was a coach of a swim team, admitted that he engaged in unnecessary and inappropriate touching of female students but denies that any of the touching had a sexual intent or context. The Respondent further admitted that on a number of occasions he drove students in his car to swimming practice without a parent or other adult present.

The Respondent acknowledged that these actions constitute professional misconduct and expressed regret for his actions and their impact on the victims and the teaching profession.

e. The Committee accepted the Respondent's admission of guilt and found him guilty of professional misconduct. The Committee found that the Respondent abused his position of authority. The Committee noted that a teacher is in a privileged position of authority and is expected to treat all students with respect and dignity at all times. The member's physical contact with students violated appropriate boundaries and standards of conduct.

f. The Committee considered the submissions presented by counsel on penalty, publication and costs. The Committee agreed that the Respondent receive a three-month suspension of his Certificate of Qualification. The College did not seek an order of costs against the Respondent as he cooperated throughout the process. In the matter of publication, the Committee concluded that the name of the Respondent be withheld from publication. The Committee made this determination as the College Bylaws make the matter of publication discretionary. The Committee concluded that there is no legal presumption in favour of publication of a member's name. Notification pursuant to Section 36 of the *Teaching Profession Act* satisfies the concerns of the College to protect the public interest. The Committee believed that publication is separate from penalty and concluded that, given the particulars of the offending conduct, publication of the member's name would serve a purely punitive purpose. In this case, publication might satisfy a public curiosity, but is not needed for a public interest.

Council considered the report and recommendations of the Committee as well as counsel submissions. Council unanimously determined that the appropriate penalty be a three-month suspension of the Respondent's Certificate of Qualification. Council also agreed that no costs be assessed to the Respondent. With respect to publication, five Council members dissented with the majority and issued separate dissenting reasons relating to this matter. These members felt that, while there was no presumption operating in favour of publication, the College has a responsibility to protect public interest and ensure public confidence in the College and in the transparency of its processes.

Fortin, Claude Joel

admitted to conduct unbecoming a member of the College. Mr. Fortin was employed as a teacher in a private school in Istanbul, Turkey from August 2002 until October 2006. In 2006, Mr. Fortin was arrested in Turkey on charges of possession of marijuana, possession of child pornography and sexual exploitation of children. After a trial on December 11, 2006, the Court found Mr. Fortin guilty on the charge of possession of marijuana and the possession of child pornography. He was acquitted on the charge of sexually exploiting children. On July 4, 2008, the Preliminary Investigation Sub-Committee approved the Consensual Resolution Agreement which stipulates that the College will not issue him a College teaching certificate for an indeterminate period.

Gardiner, Michael Raymond - Conduct Review Decision

admitted to conduct unbecoming a member of the College. In October 2007, as a result of an undercover investigation, the Toronto Police Service Sex Crimes Unit identified Mr. Gardiner through his Internet Protocol (IP) address as having downloaded child pornographic images. The Toronto Police notified the RCMP in British Columbia and after further investigation Mr. Gardiner was arrested and charged with distribution of child pornography, possession of child pornography and accessing child pornography. The police found that of the 1300 video files located on Mr. Gardiner's computer hard drive, external hard drive, laptop and external case, approximately 20% contained child pornography with the balance being adult pornography. Police also found CDs containing child pornography in Mr. Gardiner's residential storage locker. In November 2009, Mr. Gardiner pleaded guilty and was convicted of importing, distributing, selling or possessing for the purpose of distribution or sale of child pornography contrary to section 163.1(3) of the Criminal Code of Canada. Mr. Gardiner also pleaded guilty to and was convicted of possessing child pornography contrary to section 163.1(4) of the Criminal Code of Canada. As a result of the criminal convictions, Mr. Gardiner was sentenced to a total of 13 months detention and six years probation with conditions. Mr. Gardiner was also ordered by the BC Provincial Court to provide a DNA sample for registration in the National DNA Databank and to pay a victim surcharge. On February 15, 2011 the Conduct Review Sub-Committee approved the Statement of Agreed Facts and Disposition and agreed that Mr. Gardiner not be reissued a certificate of qualification for a period of at least 20 years. Mr. Gardiner's certificate of qualification was cancelled in November 2008 for non-payment of fees.

Geisler, Gerald Douglas - Conduct Review Decision

admitted to and was found guilty of professional misconduct. The respondent repeatedly showed videos to his students during class that contained inappropriate, including some sexual, images. On December 2, 2004, the Conduct Review Sub-Committee approved the Statement of Agreed Facts and Disposition. The Sub-Committee accepted that the appropriate penalty was a three-month suspension of his certificate of qualification. Publication was delayed due to certain extenuating circumstances in this case.

Gill, Tajinder Ricky Singh - Consent Resolution Agreement

admitted to conduct unbecoming a member of the College. On December 30, 2009, Mr. Gill reported to the College that he had been charged with willingly committing an indecent act contrary to section 173(1)(b) of the Criminal Code of Canada. On September 17, 2010, Mr. Gill was tried and convicted of the charge in BC Provincial Court. The Court found and Mr. Gill admitted that on or about September 9, 2009 he masturbated in the driver's seat of his car while stopped at a traffic light on a busy Surrey street and while he was deliberately making eye contact with the female driver of another car. He also admitted that on prior occasions he had masturbated in his car when he was visible to females in other cars. On November 22, 2010, the Court imposed a probation of 15 months and conditions including that Mr. Gill undergo counselling or other programs for sexual offenders as directed by the probation officer, including the sex offender program offered by the Forensic Services Commission. On November 8, 2011, a citation was issued. On December 21, 2011, the Preliminary Investigation Sub-Committee approved the Consent Resolution Agreement in which Mr. Gill agreed that his College certificate of qualification would be cancelled and that he would not apply for, nor would the College grant, a certificate of qualification prior to June 22, 2016. As a result, the citation was rescinded.



Decision issued: May 28, 2015
Citation issued: April 29, 2013
Amended: September 23, 2014
File No.: [REDACTED]
Court reporter: Coast Reporting

IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011, c. 19
AND
A HEARING CONCERNING
CHERYL ANN GOSSE
(an Authorized Person under the *Teachers Act*)

REASONS FOR DECISION ON FINDINGS AND DETERMINATION

Date(s) and location(s): November 17-21, 27 & 28, 2014 at the Teacher Regulation Branch
Panel: Meg Gaily (Chair), John Hall, Teresa Rezansoff
Counsel for the Commissioner: John G. Mendes & Alex Chang
Counsel for the Respondent: Steven Rogers & Shamon Beckett

INTRODUCTION

[1] A panel was appointed by the Commissioner to conduct a hearing into a citation, issued on April 29, 2013 and amended on September 23, 2014, under section 56(4) of the *Teachers Act*, S.B.C. 2011, c. 19 (the “Act”) (the “Citation”).

[2] School District No. 36 (Surrey) employed Cheryl Ann Gosse (the “Respondent”) as a Kindergarten teacher at Hjorth Road Elementary School (the “School”) for the 2011-2012 school year.

[3] The Respondent holds a certificate of qualification issued under the *Teaching Profession Act* on March 6, 1989, valid from January 1, 1989, and continuing under the Act as of January 9, 2012.

[4] The Respondent admits that the Citation was delivered to her through her counsel and she waives the requirements of section 56(3) of the Act.

[5] The Citation provides as follows:

At various times during the 2011-2012 school year, while employed as a teacher by School District No. 36 (Surrey) (the “District”), at the Hjorth Road Elementary School (the “School”), Cheryl Ann Gosse did engage in professional misconduct and/or conduct unbecoming a teacher when she committed acts and omissions in which she:

1. Yelled at students in her classroom on a frequent basis, at a volume that was often disruptive to other classrooms;
2. Criticized the work of students in an inappropriate manner, including
 - (a) Crumpling students’ work and discarding it into the garbage,
 - (b) Telling students “you are doing it wrong!” at a volume that could be heard by other students;
3. Reprimanded a student for urinating in the playground in an inappropriate manner, at a volume that could be heard by other students;
4. Told students to go away and leave her alone;
5. Made belittling and disrespectful comments to her students such as “where’s your brain?” and “what’s the matter with you?”;
6. Threatened to call a student’s parents during class in a manner that was belittling and disrespectful, and made frequent, angry telephone calls to the parents, sometimes in the presence of the student, to complain of the student’s behaviour;
7. Put her hand over a student’s mouth when he would not stop talking;
8. Displayed anger in her classroom by throwing chairs and other objects;
9. Pushed students out of her way or into their seats; and
10. Pulled students by their arms to get them to line up or get their attention

and thereby:

1. failed to treat students with respect and dignity, and failed to be responsible for their emotional safety, contrary to Standard 1 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, 4th edition, January 2012;
2. failed to recognize individual learning differences and special needs, and failed to implement proper instruction, assessment and classroom maintenance techniques,

contrary to Standard 3 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, 4th edition, January 2012; and

3. failed to facilitate learning for all of the students in her class and failed to implement proper classroom management, instruction, assessment and evaluation practices, contrary to Standard 5 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, 4th edition, January 2012.

[6] At the commencement of the hearing, the Commissioner said he was not pursuing the allegation in paragraph 7, and also that the allegations in the Citation were confined to professional misconduct, not conduct unbecoming a teacher. Therefore, pursuant to section 63(1)(e) of the Act, the panel directs the Commissioner to further amend the Citation by deleting paragraph 7 and the words “and/or conduct unbecoming a teacher.”

ISSUES

[7] In a conduct hearing, the panel must make the following three determinations:

- (a) Has the Commissioner proved on a balance of probabilities the conduct set out in the Citation?
- (b) If so, does the proven conduct breach any of the Standards?
- (c) If so, does the conduct amount to professional misconduct such that the Respondent is guilty of professional misconduct under s. 63(1)(b) of the Act?

The panel’s findings with respect to the conduct proved by the Commissioner are set out in its findings of fact. The issues of whether that conduct breaches the Standards and amounts to professional misconduct are addressed in its analysis and decision.

EVIDENCE AND FINDINGS OF FACT

Witnesses and Background Information

[8] The panel heard from thirteen witnesses, including the Respondent. The Commissioner’s witnesses were:

Joe Frank, the School Principal from January 2009 through June 2013, who started teaching in 1984 and has been with the District for 19 years, working as a principal or vice principal since 2004;

Megann Swartz, the Education Assistant (“EA”) who was assigned to the Respondent’s class from January 16-April 5, 2012 to replace during that period the regular EA, John Myung, and who had been an on-call EA since 2008;

Zelda Komurcu, a District Aboriginal Education Assistant (“AEA”) whose 2011-2012 assignment included the Aboriginal students in the Respondent’s class who has been with the District for 10 years and who has worked as an AEA with other districts;

Randel Soares, an EA at the School assigned to spend time in the Respondent's class from November 2011 through June 2012 who started as an on-call EA with the District when she completed her training in 2010;

Mary Hammond, a learning support teacher ("LST") who has taught at the School for 34 years, both as a primary teacher and as an LST;

Laura Hodak, an LST at the School who has been with the District for five years after teaching in another province for ten years;

Student A's mother;¹

Student A's father; and

Student A's grandmother.

[9] The Respondent testified on her own behalf and called the following witnesses:

John Myung, who qualified as an EA in 2011 and whose first assignment was to the Respondent's class (he was on leave from January 16-April 5, 2012);

Helen Kelsey, a teacher since 1985 and a District Integrated Support Teacher ("IST") since 1999, who was assigned to the designated special needs children in the Respondent's class; and

Gail Hall, the School's core music teacher who has been with the District for 26 years and was at the School for five years.

[10] The Respondent had spent over 15 years teaching at First Nations Band schools in Kingcome Inlet, Alert Bay, Klemtu, and Agassiz before the District hired her as an Aboriginal enhancement teacher in 2005, a position she held for 3 years. In June 2009, the Respondent obtained a position as kindergarten teacher at the School, teaching a kindergarten class designated for English language learners ("ELL") for 2009-2010, and regular kindergarten classes in 2010-2011 and 2011-2012. The Respondent was assigned to another school in the District starting in the fall of 2012.

[11] The School was described as one of the top three neediest schools in the District and in the province. Its demographic includes a high proportion of transient families, families living in poverty, and recent immigrants who speak little or no English.

[12] In 2011-2012, the Respondent's kindergarten class had 18-20 students (two of the students moved away during the school year). The Respondent testified that of these students, 11 were designated ELL, 3 were identified as Aboriginal students, 2 were designated as students

¹ The student in the Respondent's class who is the subject of the allegations in paragraphs 3 and 6 of the Citation is, by agreement of the parties, referred to as "Student A" to protect his anonymity; the other children in the class are also referred to anonymously.

with special needs, and at least one or two other students in the class displayed special needs, but had not been formally designated by the District.

[13] In addition to the Respondent, a number of others also worked with these students in the 2011-12 school year as follows:

Mr. Myung² (or Ms. Swartz from January 16-April 5 2012) was assigned exclusively to assist one special needs student in the class, but also assisted other students in the class;

Ms. Soares spent approximately 1-3 hours in the class daily from November 2011 through June 2012 helping students generally;

Ms. Komurcu spent approximately 4 hours per week in the Respondent's class working with the Aboriginal students to whom she was assigned;

Ms. Kelsey spent approximately one hour per week on Wednesday mornings working with the designated special needs students in the Respondent's class and on Monday mornings she would pull these students out of the classroom and work with them in another room;

Ms. Hodak³ provided in-class support in three 30-45 minute blocks each week during October 2011, which increased to four 45-minute blocks each week from November 7, 2011 through early January 2012, and she also provided pull out support to students, taking them to her LST classroom near the Respondent's classroom;

Ms. Hammond picked up students from the Respondent's class for pull out LST support a few times per week, spending no more than a few minutes in the classroom each time; and

Ms. Hall saw the Respondent's students in her music classroom twice a week (to which they were escorted by the Respondent) and also spent some time toward the end of the school day in the Respondent's classroom two to three times a week for most of the school year.

[14] Student A attended the School until late May 2012 when the family moved. Student A's grandmother said that she regularly picked up her grandson at the end of the school day, arriving 10-15 minutes early and waiting inside the classroom or near the classroom door. Student A's father spent one day in the class with his son shortly before Christmas 2011, and Student A's mother occasionally picked up her son after school.

[15] Student A was a challenging student and had physical altercations with other students in the class. In October 2013 at the beginning of his grade 2 year, Student A was diagnosed with attention deficit hyperactivity disorder combined type impulsivity and inattention, as well as complex neural behaviour and sensory processing problems, and language disorder close to autism spectrum. He was designated special needs and has been assigned an EA at his current

² In addition to Mr. Myung, another EA was assigned to the Respondent's 2011-2012 kindergarten class part-time, working 5 hours per day in the class, but this EA was not called as a witness.

³ Ms. Hodak created a document for the District's investigation setting out the support provided by the LSTs to the Respondent's class for 2011-2012, tendered as an exhibit at the hearing (Exhibit #3, Joint Book of Documents, Tab 19, Classroom Support).

school. The Respondent said that she suspected Student A had special needs, but admitted that she did not refer Student A to the school-based team during the 2011-2012 school year.

Standard of Proof

[16] The Commissioner bears the onus of proving that the conduct alleged in the Citation occurred. The Supreme Court of Canada has established that the standard of proof is the balance of probabilities⁴ - the Commissioner must prove that the evidence establishes that it is more probable than not that the alleged conduct occurred. The Supreme Court said that the evidence as a whole “must always be sufficiently clear, convincing and cogent” in order to establish “whether it is more likely than not that an alleged event occurred.”⁵ The Respondent argues that the panel should afford less weight to evidence that is “merely a general description of events with no contextual details such as frequency, time, date and specific individual affected [because it] does not, at law, meet the standard of clear, convincing and cogent.”⁶ However, the Supreme Court is clear that the standard is the balance of probabilities. Evidence that is “sufficiently clear, convincing and cogent” will meet that standard.

Findings of Fact regarding the Allegations

Allegation 1

[17] The Commissioner alleges that the Respondent “yelled at students in her classroom on a frequent basis at a volume that was often disruptive to other classrooms”. This allegation does not refer to a specific incident, but to a pattern of conduct. The Respondent argues that the Commissioner’s evidence on this allegation consisted of “generalized and impressionistic statements without any evidence supporting specific facts” and should be given little weight⁷. The persuasiveness of evidence depends on many factors, one of which is detail. However, proof of a pattern of conduct does not necessarily require detailed evidence of specific incidents. Rather, the evidence must be assessed in its totality.

[18] The witnesses who spent the most time in the Respondent’s classroom were the EAs Mr. Myung, Ms. Swartz, and Ms. Soares. All testified that the Respondent yelled at her students. Ms. Swartz testified that, from January to April 2012, when she was working as an EA in the class, the Respondent yelled at the students regularly. She said that there was a lot of yelling throughout the day. Ms. Soares testified that the Respondent yelled at her students two to three times per week. She expressly described it as yelling, as distinguished from raising her voice, and said that the conduct was troubling to her because it was very loud and she felt that a teacher should not yell at her students. She said that after the Christmas break, the Respondent yelled in class daily. Mr. Myung, who was called by the Respondent also said the Respondent raised her voice to get the attention of the students or to get them to quiet down, and that sometimes this happened a couple of times per day but sometimes not at all. He specifically agreed that the Respondent yelled at students on occasion, but said that it was not a problem and was not out of

⁴ *F.H. v. McDougall*, 2008 SCC 53 at para. 40

⁵ *F. H. v. McDougall*, supra at para. 46.

⁶ Respondent’s closing submissions, para. 5

⁷ Respondent’s closing submissions para. 56.

control. He also agreed that the Respondent might have used a loud, angry voice when dealing with some of the students who were more difficult to control, including special needs students.

[19] Ms. Komurcu said that when she was in the class, the Respondent raised her voice in a loud angry tone most of the time. Ms. Komurcu described the Respondent's class as a tough class and agreed that sometimes the Respondent raised her voice to get the students' attention or to get them to calm down. Ms. Hodak said that in the fall of 2011, the Respondent raised her voice at the students in an angry, aggressive manner on an almost daily basis.

[20] By contrast, Ms. Kelsey said that the Respondent sometimes needed to raise her voice to get the students' attention and that this is typical when teaching kindergarten students. While Ms. Kelsey testified that one of the special needs students in the class was sensitive to noises, counsel did not ask her whether the Respondent's voice upset this particular student. Ms. Hall testified that she never heard the Respondent raise her voice at her students. However, Ms. Hall was in the Respondent's classroom for much less time than the other witnesses.

[21] Ms. Hodak, Ms. Hammond, Ms. Soares and Mr. Frank all testified that the Respondent's voice could be heard outside her classroom. The Respondent testified that the kindergarten classroom was separated from other classrooms at the School, located near the main office and Ms. Hodak's LST classroom. Ms. Hodak said she could often hear the Respondent yelling at her students from her LST classroom, which was separated from the Respondent's classroom by two washrooms, and said that she had to shut her classroom door in September 2011 during testing sessions because the Respondent's voice was disruptive. Ms. Hammond testified that she could hear yelling coming from the Respondent's classroom when she was in the hallway and found this disconcerting. She said that the Respondent sounded impatient and exasperated with her students. Ms. Soares said the Respondent's voice was loud enough to be heard in the School's office, but could not recall a specific incident of this. Mr. Frank said that he could regularly hear the Respondent yelling in her classroom, both when he was in the hallway and when he was in his office, which he described as about 40 feet away. He had provided the Respondent with a letter of expectation in the previous school year directing her not to yell at students.⁸

[22] There was also evidence of specific occasions on which the Respondent yelled at students. Ms. Hodak described one incident where the Respondent yelled across the classroom at Student B who was touching a stuffed lion rocker in the classroom. Student A's father said that on the day he spent with his son in the classroom, he witnessed the Respondent yell across the classroom in an angry tone at Student C for drawing with magic markers on a piece of furniture. Student A's grandmother testified she heard the Respondent using a loud and overpowering voice at a student who was trying to put a chair on one of the tables. Mr. Frank described an occasion in January 2012 where he came into the Respondent's classroom and observed her yelling across the room at a group of students. Mr. Frank provided the Respondent with a second letter of direction dated January 17, 2012, in which he stated that the Respondent is to "refrain from yelling at students."⁹

⁸ Exhibit #3, Joint Book of Documents, Tab 2, letter of expectation, March 7, 2011

⁹ Exhibit #3, Joint Book of Documents, Tab 4, letter of expectation, January 17, 2012

[23] Ms. Soares, Ms. Hodak and Ms Hammond also reported concerns about the Respondent's yelling to Mr. Frank. The Respondent said that the testimony of her colleagues on this issue was a surprise to her, and that if they were truly upset about her voice, they should have raised the issue with her. She says if they had done so, she would have altered her behaviour. On this point, Ms. Hodak said that she could not find an appropriate time to talk to the Respondent about this. Ms. Soares felt that as an EA she could not approach the Respondent directly. Whether or not her colleagues spoke to the Respondent about her voice, it is clear that Mr. Frank had done so in two letters of direction. Although the Respondent explained that she disregarded Mr. Frank's letters because she believed they were motivated by ill-will, she was aware her voice was an issue. In any event, this allegation concerns whether the alleged conduct occurred, not whether the Respondent persisted in it after colleagues had raised it with her

[24] The Respondent herself acknowledged that she has a loud voice. She described herself as able to call bingo numbers in a hall without a microphone, and demonstrated to the panel how loud her voice was when she raised it at the students (recounting the incident when she saw Student C drawing on the furniture). She estimated she raised her voice about once per week in her classroom, but that it could vary depending on the situation. The Respondent testified that although she might have raised her voice out of frustration, she would not yell out of anger at kindergarten students as that would be humiliating. She said her class had a high noise level and that there was no soundproofing between her classroom, the adjacent washrooms, and Ms. Hodak's LST classroom.

[25] The Respondent said that she would raise her voice at a child if that child was hurting another child, damaging school property, or intentionally doing something that the child had been told not to do. She admitted she yelled at Student C to stop colouring with markers on the furniture and that she raised her voice across the classroom at Student B because the stuffed lion rocker was old and falling apart. She said that she had to raise her voice when talking to her ELL students to get them to pay attention to her. She testified that she raised her voice at Student A when she was frustrated with him and that he would respond positively to her when she raised her voice at him. She said that she stopped using a loud frustrated voice when Student A left the School in May 2012.

[26] The panel finds that the preponderance of the evidence establishes that the Respondent yelled at students in her classroom on a frequent basis at a volume that was overheard outside the classroom. The evidence establishes that the Respondent's yelling was disruptive to Ms. Hodak's classroom on more than one occasion, and could also be heard in the hallway and School office. The allegation refers to disruption of other "classrooms" and there is no evidence that any classroom other than Ms. Hodak's was affected. However, in the panel's view, "classrooms" is a sufficiently general term that, in context, it can reasonably include one classroom on multiple occasions, as well as multiple classrooms. This allegation is made out.

Allegation 2

[27] The Commissioner alleges that the Respondent criticized the work of students in an inappropriate manner. The allegation gives two examples of inappropriate criticism: crumpling students' work and discarding it in the garbage and telling students "you are doing it wrong!" at a volume that could be heard by other students.

[28] Ms. Soares testified that the students would regularly line up to show the Respondent their work at her desk and if the student had not performed the work correctly, the Respondent would crumple the work and throw it out. Ms. Swartz described an incident around Valentine's Day where the Respondent ripped up and threw in the garbage a student's art project because the student had not done it correctly. She also recalled a couple of other occasions when the Respondent was critical of student work, crumpling it and putting it in the garbage, but she could not remember details. Ms. Swartz said she was troubled by the Respondent's conduct because of the students' young age and because most of the work was art projects.

[29] Ms. Hodak recalled a colouring exercise where the Respondent removed several students' work because they were doing the exercise incorrectly and threw it in the garbage in front of other students. Ms. Hodak specifically recalled Student C having tears in his eyes or crying during this incident. Ms. Hodak also recalled that the Respondent yelled at a student "that's wrong" because the student had made a mistake, and other students heard this. Ms. Komurcu testified that she recalled a colouring exercise during which the Respondent held up a student's work in front of the class, said words to the effect that the work was unacceptable, and put it in the garbage. Ms. Swartz and Ms. Soares reported to Mr. Frank that the Respondent was inappropriately criticizing her kindergarten students by crumpling and throwing out their work, because they felt it was particularly inappropriate with kindergarten students.

[30] Mr. Myung testified that he never saw the Respondent crumple and throw out students' work. He said that the Respondent might have replaced a student's work paper if the student was not following directions, giving the example of a student incorrectly using two colours instead of three in a colouring exercise. Mr. Myung said that he didn't think the Respondent's conduct was inappropriate as the kindergarten students were capable of following directions. Ms. Kelsey also testified that she never saw the Respondent crumple or throw away student work.

[31] The Respondent admitted she was a strict teacher with high expectations of her students. The Respondent expressed adamantly that she would never crumple and throw students' work in the garbage. The Respondent said she would replace the student's paper, fold the previous work and put it in the classroom recycling. Nothing turns on whether the work was put in recycling as opposed to the garbage. She had no recollection of the Valentine's Day incident described by Ms. Swartz, or of the colouring exercise referred to by Ms. Hodak and Ms. Soares. The Respondent denied criticizing a student's work in front of the class, as described by Ms. Komurcu, but said that she might have taken away a student's work and suggested that the student could do a better job.

[32] The panel prefers the evidence of Ms. Soares, Ms. Swartz, Ms. Hodak and Ms. Komurcu to that of Mr. Myung and Ms. Kelsey. The recollections of Ms. Soares, Ms Swartz, Ms Hodak and Ms. Komurcu were detailed and specific. The Respondent could not recall any of the incidents and although she denied that she would put students' work in the garbage, she said she'd put it in the classroom recycling, without acknowledging that this may have been an inappropriate way to deal with kindergarten students. Ms. Soares and Ms. Swartz also reported their concerns to Mr. Frank. Ms. Kelsey's time in the Respondent's classroom was limited to an hour per week and it is likely she was either not present during the incidents or her attention was focused on her assigned special needs students. Mr. Myung's first assignment as an EA was in the Respondent's classroom. He had little experience with other teachers by which to gauge the

Respondent's behaviour, unlike Ms. Hodak, Ms. Komurcu and Ms. Swartz. As well, Mr. Myung's attention was focused on his assigned special needs student.

[33] The crux of this allegation is that the Respondent criticized students' work inappropriately. Crumpling and discarding student work and making the specific comment "you are doing it wrong" are provided only as examples of inappropriate behaviour.

[34] The panel finds that the Respondent criticized her students' work inappropriately, for example by crumpling it up and discarding it, and by telling students in a loud voice that their work was incorrect or unacceptable. There is no evidence that the Respondent used the specific phrase, "you are doing it wrong!" This allegation is substantiated.

Allegation 3

[35] The Commissioner alleges that the Respondent inappropriately reprimanded a student for urinating in the playground, speaking so loudly that she could be heard by other students. This allegation concerns Student A and there is no dispute that he urinated on the playground during recess on at least one occasion. As noted earlier in these reasons, Student A was a challenging student and the Respondent testified that at the time, she suspected he had special needs, but she did not bring this to the attention of the school based team.

[36] Ms. Swartz, Ms. Soares and Ms. Komurcu testified about this incident. Ms. Swartz said that when the students returned to the classroom from recess the Respondent was very upset with Student A and she spoke harshly to him in a loud, angry voice across the classroom. Ms. Soares said that the Respondent reprimanded Student A when he returned from recess, saying across the classroom words to the effect of, "what's this I hear about you peeing on the playground?" Ms. Soares testified that she took Student A out of the classroom to the School office after this incident because Student A was upset and crying. Ms. Komurcu testified that she witnessed the Respondent speaking harshly to Student A in class about urinating on the playground and that the Respondent seemed angry with Student A about it. Ms. Komurcu agreed that it is appropriate for a teacher to reprimand a student for urinating on the playground. However, this allegation is not about whether a reprimand was appropriate, it is about whether the manner in which it was delivered was appropriate.

[37] The Respondent testified she observed Student A urinating on the playground near a restaurant adjacent to the School during recess on one occasion. The Respondent said that she yelled across the playground at Student A to stop what he was doing and later explained to Student A in class that what he was doing was wrong and inappropriate. She could not recall if others overheard her speaking with Student A about the incident and denied that Student A cried.

[38] Ms. Swartz, Ms. Komurcu and Ms. Soares all testified that the Respondent used a harsh and/or raised voice to reprimand Student A, and did so in a way that could be heard by other students in the classroom. The panel prefers the evidence of Ms. Swartz, Ms. Komurcu and Ms. Soares who all recalled similar details of the incident, Student A's reaction and the demeanour and comments of the Respondent. The panel finds that this allegation is substantiated.

Allegation 4

[39] The Commissioner alleges that the Respondent told students to go away and leave her alone.

[40] The Respondent testified that she had surgery and missed 4 weeks of work in December 2011 and early January 2012. She said that when she returned to work, she told the students that they weren't allowed to hug her because she'd had surgery and it could hurt her. The Respondent agreed that she may have backed away from students approaching to hug her, but denied that she ever told any student to go away and leave her alone.

[41] Ms. Hammond testified that the Respondent could be abrupt with her students and if a student interrupted her, she would say words to the effect of, "can't you see I'm talking?" Neither Ms. Hammond nor any other witness testified that the Respondent told students to go away and leave her alone.

[42] The panel finds that this allegation is not substantiated.

Allegation 5

[43] The Commissioner alleges that the Respondent made belittling and disrespectful comments to her students such as "where's your brain?" and "what's the matter with you?"

[44] Ms. Soares testified that the Respondent used expressions such as, "what's the matter with you?" and "are you crazy?" when speaking to her students. Ms. Soares recalled being concerned about this but could not remember details about the context in which the Respondent used these expressions. No other witness testified that the Respondent used these specific phrases. However, several recalled the Respondent speaking to students angrily and/or disrespectfully. Ms. Hodak recalled the Respondent angrily asking students "what are you doing?" but did not provide further context for the comment. Ms. Swartz testified that the Respondent belittled Student A when she raised her voice and reprimanded him in front of other students for urinating on the playground (as described above). Ms. Komurcu testified that the Respondent told students that their work was unacceptable in front of others.

[45] Student A's mother testified that she overheard the Respondent criticizing her son in front of the other students because he was not able to tell the class his correct birth date. Student A's mother also testified that she found some of the Respondent's comments in the communication book¹⁰ demeaning and disrespectful. However, these comments were made to parents, not to a student. Student A's grandmother said that she often overheard the Respondent speaking to the class and described the Respondent's demeanour as harsh or disrespectful, particularly towards those students Student A's grandmother described as lower income. Student A's grandmother said that one time when she was present in the class during final circle time, Student A knocked a brochure or paper to the floor and the Respondent said loudly to him, "see what you've done."

¹⁰ The evidence included excerpts from a notebook ("communication book") in which the Respondent and the parents of Student A would communicate with each other on a daily basis in lieu of telephone calls.

[46] Mr. Myung, Ms. Hall and the Respondent herself testified that the Respondent did not make belittling and disrespectful comments to her students. Given the Respondent's testimony that she experienced frustration with some of the students in her class, and that she raised her voice at them, the panel finds the Respondent's denial that she ever made belittling or disrespectful comments to the students lacks plausibility. The panel places less weight on Ms. Hall's evidence because she spent very little time in the Respondent's classroom – only 10-15 minutes at the end of the day a few times a week. As noted earlier, Mr. Myung had no prior experience as an EA, unlike Ms. Hodak, Ms. Komurcu, and Ms. Swartz. Mr. Myung's denial that the Respondent made belittling or disrespectful comments to her students must be assessed in light of his statement that he did not consider that the Respondent's raising her voice at her students was a problem. He also said that during his time in her class, he focused on his assigned student. For these reasons, the panel also places less weight on his evidence.

[47] The substance of this allegation is that the Respondent made belittling and disrespectful comments to her students; the particular expressions "where's your brain?" and "what's the matter with you" are only examples of such comments. There was no evidence that the Respondent used these specific expressions.

[48] Ms. Swartz, Ms. Hodak and Ms. Komurcu, as well as Student A's mother and grandmother gave evidence that the Respondent made various disrespectful and belittling comments to her students. The Respondent's conduct in yelling at students, criticizing their work in front of others and discarding it, and her reprimand of Student A are also evidence of belittling and disrespectful comments. The panel finds this allegation substantiated.

Allegation 6

[49] The Commissioner alleges that the Respondent threatened to call a student's parents during class in a manner that was belittling and disrespectful, and made frequent, angry telephone calls to the parents, sometimes in the presence of the student, to complain of the student's behaviour. Student A was the subject of this allegation.

[50] At the beginning of the school year, Student A's mother said that if Student A was having difficulties at school, the Respondent was to call his parents or grandmother. Student A's mother testified that the Respondent made several calls to her about her son, at least one a day, and she felt some of the calls were unnecessary or tedious. She complained to Mr. Frank in January 2012.¹¹ Student A's mother recalled only one telephone call in which the Respondent was abrupt or short with her on the telephone and did not describe the Respondent as angry. Student A's mother and father said that, as a result of the Respondent's telephone calls to them, they would discipline Student A (for example, taking away his toys). Student A's mother said that she could hear her son crying in the background when the Respondent called her from the classroom and wrote in her letter to Mr. Frank that "it got to the point that when she would call, [Student A] would not want to get on the phone to talk to me."¹² Ms. Hodak recalled an incident in which Student A was misbehaving and the Respondent called one of his parents from the classroom.

¹¹ Exhibit #3, Joint Book of Documents, Tab 3, letter dated January 11, 2012.

¹² Exhibit #3, Joint Book of Documents, Tab 3.

[51] Student A's mother testified the issue of the Respondent's frequent telephone calls came to a head around Christmas 2011, after which the Respondent agreed to stop calling Student A's parents and a communication book was created, excerpts of which were put before the panel.¹³

[52] Ms. Hodak described Student A as being very upset, clinging to the Respondent's leg, and begging or crying to the Respondent not to call his parents, and she said that the other students could overhear the call and see Student A's distress. Mr. Myung confirmed that the Respondent would call the parents of students in the class to discuss the students' classroom behaviour, including the parents of Student A, and she would make these calls from the classroom during the school day. The Respondent admitted she made several telephone calls to Student A's parents because Student A was defiant. She said that she knew that Student A's parents would discipline him for his classroom misbehaviour and that doing so was "like a switch" because it would positively affect Student A's classroom behaviour. The Respondent denied that Student A was so upset by the phone calls to his parents that he clung to her leg and cried. However, she also agreed that he might have cried and said, "don't call" on a few occasions.

[53] The panel finds that the Respondent made frequent calls to Student A's parents in the presence of Student A and that the Respondent used the threat of phone calls to his parents to manage Student A's classroom behaviour. The Respondent effectively admitted this was the case. However, the evidence does not establish that the telephone calls were angry, or that the Respondent threatened to call Student A's parents "in a manner that was belittling or disrespectful." The allegation is not that the Respondent used phone calls to Student A's parents as a behaviour management technique and that this was inappropriate or harmful to Student A; it alleges that the calls were angry and that the threats were belittling and disrespectful. The evidence does not establish these aspects of the allegation. Therefore, the panel finds that this allegation is not substantiated.

Allegation 8

[54] The Commissioner alleges that the Respondent displayed anger in her classroom by throwing chairs and other objects.

[55] Ms. Swartz recalled one occasion where the Respondent picked up chairs that were out of place and threw them under the tables in an angry manner. She also thought the Respondent once threw a pencil in the classroom, but could not recall any other details about the incident. Ms. Swartz did not say that these incidents upset any students.

[56] Mr. Myung testified that he never saw the Respondent push or throw chairs under the tables. Ms. Kelsey testified that to her recollection, the Respondent's classroom was too crowded for the Respondent to throw chairs. The Respondent was adamant that she would never throw a chair in her classroom and denied that the incident described by Ms. Swartz ever happened.

[57] The evidence of Ms. Swartz and the Respondent with respect to this allegation cannot be reconciled. The panel cannot prefer that of Ms. Swartz over that of the Respondent because Ms.

¹³ Exhibit #3, Joint Book of Documents, Tab 9.

Swartz's recollection lacks sufficient detail to make it more probable than not that the incident occurred. The panel finds that this allegation is not substantiated.

Allegations 9 & 10

[58] The Commissioner alleges that the Respondent pushed students out of her way or into their seats (paragraph 9 of the Citation) and that the Respondent pulled students by their arms to get them to line up or get their attention (paragraph 10). Because the evidence led to support these allegations is similar and overlaps, the panel has considered these allegations together.

[59] Ms. Hodak testified that she saw the Respondent push Student A into his seat to make him sit down by putting her hands on Student A's shoulders. Ms. Hodak felt that it was not an appropriate way for the Respondent to deal with Student A, but did not provide details about the incident or say how often this occurred. Student A's parents and grandmother did not testify that they knew or witnessed the Respondent push Student A into his seat.

[60] Ms. Swartz said that the Respondent would push students out of the way so that she could get past them, but could not recall any details about these occurrences. Ms. Swartz believed that teachers and EAs are not supposed to touch their students and it was in this context she thought it was inappropriate. The Respondent's evidence was that she would never have pushed students out of her way.

[61] Student A's mother testified that she witnessed one incident after school where the Respondent grabbed an older female student by the arm as the student was running past to stop her because the student's mother was calling to her. Student A's mother did not provide further details about the incident or whether the student was upset when stopped by the Respondent. The Respondent admitted that she likely put out her arm or grabbed the older student by the arm to slow her down so she would stop and listen to her mother, but could not recall the specific incident.

[62] Ms. Komurcu said the Respondent would move children into lines by touching them on their shoulders. Like Ms. Swartz, Ms. Komurcu also believed that teachers and EAs are not supposed to touch their students and it was in this context that she considered the Respondent's conduct inappropriate.

[63] In contrast, Ms. Hall and Ms. Kelsey both said that students, particularly kindergarten students, need physical direction to get them to line up or move to certain areas and it is entirely appropriate for a teacher to assist students to move by physically taking them by the arm or by the shoulder. The Respondent agreed she would touch students on occasions, for example, when she helped them put on their coats or when teaching them how to line up in single file.

[64] The panel finds that the Commissioner has not established on a balance of probabilities that the Respondent committed the conduct alleged in paragraphs 9 and 10 of the Citation. The panel accepts the evidence of Ms. Hall and Ms. Kelsey that kindergarten teachers need to physically touch their students for the purposes of teaching them how to line up or to assist them with dressing themselves.

Summary of Findings

[65] In summary, the panel finds that the Commissioner has established that it is more likely than not that the following conduct occurred:

- The Respondent yelled at students in her class on a frequent basis at a volume that could be overheard by others outside her classroom and was disruptive of other classrooms (Allegation 1);
- The Respondent criticized the work of students in an inappropriate manner, including crumpling their work and discarding it in the garbage or recycling (Allegation 2);
- The Respondent reprimanded Student A for urinating in the playground in an inappropriate manner (Allegation 3); and
- The Respondent made belittling and disrespectful comments to students (Allegation 5).

ANALYSIS AND DECISION

Preliminary Issue

[66] The Respondent argued that there was so little evidence supporting the allegations in paragraphs 4, 8, 9 and 10 of the Citation (which the panel has found were not substantiated) that the Commissioner should not have included them in the Citation and should not have pursued them at the hearing. She argues that doing so was improper.

[67] The function of a citation in proceedings before the teacher discipline panel is to set out the allegations that the Commissioner intends to prove based on preliminary investigations. A finding that allegations have not been proved does not mean that the Citation is defective or that the Commissioner has acted improperly.

Breach of the Standards

[68] The Commissioner argues that through her conduct, the Respondent failed to meet one or more of Standards #1, #3 and #5, which provide as follows:

1. Educators value and care for all students and act in their best interests.

Educators are responsible for fostering the emotional, aesthetic, intellectual, physical, social and vocational development of students. They are responsible for the emotional and physical safety of students. Educators treat students with respect and dignity. Educators respect the diversity in their classrooms, schools and communities. Educators have a privileged position of power and trust. They respect confidentiality unless disclosure is required by law. Educators do not abuse or exploit students or minors for personal, sexual, ideological, material or other advantage.

3. Educators understand and apply knowledge of student growth and development

Educators are knowledgeable about how children develop as learners and as social beings, and demonstrate an understanding of individual learning differences and special needs.

This knowledge is used to assist educators in making decisions about curriculum, instruction, assessment and classroom management.

5. Educators implement effective practices in areas of classroom management, planning, instruction, assessment, evaluation and reporting.

Educators have the knowledge and skills to facilitate learning for all students and know when to seek additional support for their practice. Educators thoughtfully consider all aspects of teaching, from planning through reporting, and understand the relationships among them. Educators employ a variety of instructional and assessment strategies.

[69] The Respondent said that she regrets some of her conduct during the 2011-2012 school year, in particular, raising her voice at her kindergarten students. She argues that in assessing whether her conduct breached the Standards, the panel should take into account the very challenging composition of her class that year, relying on the finding of the British Columbia Supreme Court that “class size and composition have a ‘direct and fundamental impact on the ability of teachers to do their jobs well’ and greatly [affect] workload and stress of a teacher.”¹⁴

[70] The Respondent argues that her classroom management and instruction was extremely difficult because her class had a large number of ELL students (11 of 18-20, or more than half the class), 2 designated special needs students, and at least a 1 or 2 other students she suspected of having special needs. She argues that she had insufficient support to meet the educational needs of these students.¹⁵ Effectively, the Respondent argues that but for the make-up of her 2011-2012 kindergarten class – its size and composition – she would not have engaged in conduct that fell below the Standards and for this reason, the panel should find that her conduct did not breach the Standards.

[71] The Respondent argues that the panel should take into account the circumstances of the 2011-2012 school year that were beyond her control. The Respondent argues that “a teacher struggling to contain frustration in a classroom in an inner city school in an under-supported class with students with severe learning and/or behavioural disabilities is significantly less blameworthy than the same behaviour of a teacher in a 10 student kindergarten class on the Westside of Vancouver with no students with special needs and adequate support.”¹⁶ The Respondent asks the panel to consider her background, her personal circumstances in the 2011-2012 school year and “especially the extremely challenging nature of her unsupported class in the neediest school in the District.”¹⁷

[72] The Commissioner responds that if this panel were to accept that the Respondent’s conduct is excused by the challenging circumstances she faced in the 2011-2012 school year, it would be “to accept that children in classes that are challenging to their teacher (because of class

¹⁴ Respondent’s closing submissions, para. 49, citing *BCTF v. BC*, 2011 BCSC 469 at para. 283-291 (rev’d 2015 BCCA 184).

¹⁵ Respondent’s closing submissions, para. 36.

¹⁶ Respondent’s closing submissions, para. 16

¹⁷ Respondent’s closing submissions, para. 21.

composition, the personal circumstances of the teacher, or some combination of the two) are not entitled to the protection of the Standards. Many of these children reside in inner cities and poorer areas of the Province, and are in the greatest need of protection. Such a ruling would seriously undermine the intent of the Standards and the regulation of teachers.”¹⁸

[73] The conditions under which public school teachers engage in their profession can vary dramatically as a result of a whole host of factors. In addition to class size and composition, the students’ age, the teacher’s experience, and the additional learning resources available to the teacher (e.g. EAs and AEAs) all affect the classroom environment. No two classes are alike. The Standards are drafted with that diversity in mind and those contextual factors are taken into account when applying them in particular classes. Here, the composition of the Respondent’s class was challenging, but she was an experienced teacher who had a number of resources available to her. The class she taught was kindergarten, in which the students typically range in age from 4 to 6. The panel takes these circumstances into account in addressing each of the Standards.

[74] Standard 1 provides that educators treat their students with respect and dignity. It also provides that educators are responsible for the emotional safety of their students.

[75] The panel finds that the Respondent breached Standard 1 because she did not treat her kindergarten students with respect and dignity when she yelled at them out of frustration and anger, or when she criticized their work and put it in the classroom recycling or garbage in front of them. By 2011-2012, the Respondent had been teaching for several years. Her students were the youngest in the system, experiencing their first year of elementary school, and included many students who were ELL and/or vulnerable in other respects. The panel also finds that the Respondent did not treat Student A with respect and dignity, a student she suspected had special needs, in the way in which she reprimanded him for urinating on the playground.

[76] Standard 3 provides that educators are knowledgeable about how children develop as learners and as social beings, and demonstrate an understanding of individual learning differences and special needs. The Commissioner argues, with respect to Student A, that the fact that the Respondent suspected that he had an undiagnosed learning disability should have led her to treat him with special care, and she failed to do so. The Respondent is an experienced educator who had previously worked as an Aboriginal Enhancement teacher and as an ELL kindergarten teacher. The Respondent admitted Student A’s behaviour was particularly challenging for her. She also admitted that she regularly raised her voice at those students who were ELL so that they paid attention to her.

[77] The panel finds that the Respondent breached Standard 3 when she yelled at her students in anger or frustration, criticized their work and disposed of it in the classroom recycling or garbage. This conduct is antithetical to the development of learning and appropriate socialization. The panel finds that the Respondent’s raising her voice at her ELL students to get their attention breaches Standard 3 as it displays a lack of understanding of their needs. With respect to the conduct in allegation #3 of the Citation, urinating in the playground is not acceptable behaviour and a reprimand is appropriate; however, in delivering it, a teacher must be

¹⁸ Commissioner’s reply submissions, para. 16.

sensitive to the age, experience, and personal needs of the student. The panel finds that the Respondent's conduct towards Student A when she reprimanded him for urinating on the playground in front of others does not demonstrate an understanding of and sensitivity to Student A's individual needs and therefore breaches Standard 3.

[78] Standard 5 addresses classroom management, instruction and assessment. The Respondent admitted that she used a raised voice (or yelled) as a classroom management technique for kindergarten students. The students in the Respondent's classroom were young, in their first elementary school experience, and at least half of them were English language learners. The panel finds that the Respondent's frequent raising of her voice and yelling at her students as a means to control their classroom conduct breaches Standard 5. The panel also finds that the Respondent breached Standard 5 when she publicly criticized the work of her kindergarten students and disposed of it in the classroom recycling or garbage, and that this is not an appropriate way of instructing kindergarten students as it is humiliating to them.

[79] Standard 5 also provides that an educator knows when to seek additional support for her practice. The Respondent testified she suspected Student A had special needs and she found him a challenging student, but did not seek additional support from her colleagues for him by bringing her concerns about him to the attention of the school based team. The panel finds that this aspect of the Respondent's conduct also breached Standard 5.

Professional misconduct

[80] A breach of the Standards does not necessarily result in a finding of professional misconduct. The Act does not define professional misconduct; however, discipline panels of the Branch have adopted the test set out in the Law Society of British Columbia's decision in *Martin*¹⁹ to determine whether a breach of the Standards amounts to professional misconduct under the Act.

[81] Both parties made submissions about the test for professional misconduct. The Commissioner urged this panel to consider whether the Respondent's conduct "may reasonably be regarded by her peers as being improper based on the standards set for teachers."²⁰ The Commissioner says that if this panel finds that the Respondent's peers considered her conduct improper based on the Standards, then the panel must find the Respondent guilty of professional misconduct under the Act. The panel does not accept this submission. A determination of professional misconduct is made by the disciplinary body applying the test in *Martin*; it is not determined by the opinions of peers.

[82] The Respondent argues that the *Martin* test stipulates that a finding of professional misconduct cannot be made unless the panel finds both that a respondent's conduct constitutes a 'marked departure' from the standards expected of teachers and that there was a 'fundamental degree of fault that displays 'gross culpable neglect' of a teacher's duties."²¹

¹⁹ *Re Martin*, 2005 LSBC 16 ("*Martin*")

²⁰ Commissioner's closing submissions para. 29.

²¹ Respondent's closing submissions para. 13.

[83] This is not an accurate statement of the *Martin* test or its interpretation by the Branch. *Martin* concerned a lawyer's accountability for public monies he received for the defence of his client. The Law Society panel framed the test as, "whether the facts as made out disclose a marked departure from that conduct the [profession] expects of its members; if so, it is professional misconduct."²² It explained that "in the circumstances, the Respondent's non-review of the accounts amounted to acting in a manner that was a marked departure from the standard expected of a competent solicitor; it is professional misconduct, because it was conduct which constituted gross culpable neglect in his duties as a lawyer, in particular, his duty to the public funder in this extraordinary case."²³

[84] Applied to teachers, the test requires a "marked departure" from the Standards. Another way of expressing the test is that the conduct displays "gross culpable neglect" of one's duties as a teacher.²⁴ That is, gross culpable neglect *is* the marked departure. They are not separate requirements. The *Martin* test does not mandate that to find professional misconduct, a panel must find both that the Respondent's conduct amounts to a marked departure from the conduct expected of teachers in this province and that it also constitutes gross culpable neglect of the Respondent's duties as a teacher.

[85] As discussed above, the Respondent argues that the panel should take into account the circumstances of the 2011-2012 school year that were beyond her control. As the panel noted previously, the Standards must be read contextually, taking into account factors such as those raised by the Respondent. So interpreted, the Standards establish minimum standards of conduct for teachers in British Columbia. The same analytical approach applies to the assessment of professional misconduct. In considering whether the Respondent's conduct is a marked departure from the expected conduct of teachers in this province such that it amounts to professional misconduct under the Act, the panel considers the whole of the proven conduct.

[86] The Respondent's conduct which this panel has found breaches the Standards for teachers in this province is not a single incident, but a pattern of conduct. This pattern of conduct occurred in the context of a kindergarten classroom of young children in their first experience in the school system, and includes frequently yelling at kindergarten students, as well as inappropriately criticizing their work in earshot of other students and disposing of it. A teacher who regularly raises his/her voice in anger or frustration at young children, including students with special vulnerabilities, whether linguistic or otherwise, displays a marked departure from the behaviours expected of teachers in this province. Such conduct displays a significant disregard for the age and individual needs of these young, often vulnerable students. Her conduct constitutes professional misconduct.

[87] The Respondent saw Student A as a major source of the problems in her 2011-2012 kindergarten class and said that after he moved from the School, the dynamic of the class changed. Accepting that Student A's behaviour posed challenges, the Respondent's treatment of him was unacceptable. She engaged in a pattern of conduct that included yelling at him and

²² *Martin*, para. 171.

²³ *Martin*, para. 172.

²⁴ *Punshon* at para. 43 & 44.

reprimanding him for his behaviour in an insensitive manner. This displays a marked departure from the conduct expected of teachers in this province and constitutes professional misconduct.

[88] In conclusion, the panel finds that the Respondent's conduct amounts to a marked departure from the conduct expected of teachers in this province and constitutes professional misconduct under section 63(1)(b) of the Act.

PENALTY & COSTS

[89] Having found the Respondent guilty of professional misconduct under s. 63(1)(b) of the Act, this panel is empowered to impose a penalty on the Respondent. The panel asks that counsel for the Commissioner and the Respondent advise the Hearing Coordinator of the Teacher Regulation Branch whether submissions on appropriate penalty should be submitted in writing or through an oral hearing. The panel directs that any submissions on costs be submitted in writing. The Hearing Coordinator of the Teacher Regulation Branch shall set the deadlines for submissions.

For the Panel

Date: May 28, 2015



Meg Gaily, Panel Chair



John Hall, Panel Member



Teresa Rezansoff, Panel Member

Green, Kenton Russell - Consent Resolution Agreement

admitted to conduct unbecoming a member of the College. On December 31, 2008, Mr. Green attended a New Year's Eve social function at a friend's home. During the course of the evening, Mr. Green consumed large quantities of alcohol, much of which he brought himself, and became intoxicated. At approximately 3:00 a.m. on January 1, 2009, Mr. Green, without invitation, entered the bedroom of his friend's 15-year-old daughter. The two conversed for a while. When the girl indicated that she was tired and wanted to go to sleep, Mr. Green kissed her on the neck in a sexual manner. The girl pulled away. As Mr. Green left the room, he blew a kiss towards her. Once he had gone, the girl closed and locked the door. Subsequently, Mr. Green tried to re-enter the room for 40 minutes. He finally passed out from his intoxication in the hallway outside the girl's bedroom. On July 15, 2010, the Preliminary Investigation Sub-Committee approved the Consent Resolution Agreement in which Mr. Green accepted a two-month suspension of his College certificate of qualification and an undertaking to complete the College Boundary Violations workshop and other conditions.

Harrison, Roy William - Consent Resolution Agreement

admitted to conduct unbecoming a member of the College. In November 2006, the RCMP seized from the Member's residence several CD's and DVD's that included hundreds of photographs of pubescent and pre-pubescent children. The Member intentionally accumulated, possessed and viewed images on his home computer of naked and partially naked children. In January 2007, the Member was charged criminally with possessing child pornography contrary to Section 163.1(4) of the Criminal Code. In January 2008, the Member was convicted of possession of child pornography and sentenced to 30 days incarceration. On December 16, 2008, the Preliminary Investigation Sub-Committee approved the Consensual Resolution Agreement in which the Member agreed to a cancellation of his College Certificate of Qualification.

Hebditch,Daryl James

admitted to conduct unbecoming a member of the College. Mr. Hebditch was employed as a secondary school teacher when, in June 2003, two allegations of misconduct arose. The school where Mr. Hebditch taught received a report that he was involved in sexual relationships with two male students. The investigation into the allegations was inconclusive. In October 2006, a new investigation was launched. At this time, one of the students stated during his interview that Mr. Hebditch had frequently initiated unwanted physical contact. The student also stated that Mr. Hebditch had frequently made comments to him regarding his physical appearance, which made him feel uncomfortable. On March 11, 2011, the Preliminary Investigation Sub-Committee approved the Consent Resolution Agreement in which Mr. Hebditch agreed not to reapply for a College certificate of qualification for a period of no less than 15 years. Mr. Hebditch's College certificate of qualification was cancelled on November 1, 2008 for non-payment of fees.

Henley, Michael David - Conduct Review Decision

admitted that his conduct in committing sexual assaults and indecent assault for which he was convicted constituted conduct unbecoming a member of the College. On June 16, 2004, the Conduct Review Sub-Committee approved the Statement of Agreed Facts and Disposition. Council determined that the respondent be barred from membership for an indeterminate period of time.

Hernandez, Michael Richards - Consent Resolution Agreement

admitted to conduct unbecoming a member. He developed an inappropriate relationship with a female child participating in a theatrical program in which Mr. Hernandez was her instructor. During this time, Mr. Hernandez referred to the female child as his "special friend" and shared private time with her in discreet locations within the facility. Mr. Hernandez purchased and placed candies on parts of her face and removed them by using his mouth. He initiated greeting rituals which included rubbing noses, rubbing chins and hugging one another. Mr. Hernandez admitted that his physical contact with the female child was inappropriate and sexual in nature. Subsequently, Mr. Hernandez was criminally charged with one count of assault contrary to section 266 of the Criminal Code. He pled guilty and was convicted on August 3, 2006. Mr. Hernandez was granted a conditional discharge following eighteen months of probation. On July 18, 2007, the Preliminary Investigation Sub-Committee approved the Consensual Resolution Agreement and Mr. Hernandez's acceptance of a reprimand and his undertaking not to seek readmission to the College at anytime in the future.

Hoyme, Grant Ralph - Consent Resolution Agreement

admitted to conduct unbecoming a member of the College and agreed that his conduct was contrary to College Standard 2. Mr. Hoyme attended an educational program in Oregon, USA in the summer of 2009. One night, at approximately 1:30 a.m., Mr. Hoyme entered the room of a female resident at the motel where he was staying, by climbing through her window. With a plastic bag over his head, he sexually assaulted her. The victim of the assault complained to police. In April 2010, Mr. Hoyme pled guilty to the charge of sexual abuse in the second degree. Among the terms of his sentence, Mr. Hoyme had to complete 30 days in supervisory custody, 60 months of probation and successfully complete programs for sex offender training and alcohol abuse. On June 21, 2011, the Preliminary Investigation Sub-Committee approved the Consent Resolution Agreement in which Mr. Hoyme agreed to the cancellation of his College certificate of qualification.

Hull, Dean Garth

admitted to professional misconduct and conduct unbecoming a member of the College. While he was a high school teacher at Vancouver's Prince of Wales Secondary School in the Quest Program, an outdoor education program for grade ten and eleven students, he engaged in a sexual relationship with a grade 11 student. The relationship progressed to sexual intercourse and a common-law relationship that lasted for 10 years. On June 12, 2008, the Preliminary Investigation Sub-Committee approved the Consensual Resolution Agreement which stipulates that the College will not issue him a College teaching certificate for an indeterminate period and his undertaking not to seek readmission to the College at anytime in the future.

Johnson, John Albert

admitted to conduct unbecoming a member. He was charged with one count of sexual interference of a person under 14 (Section 151), one count of invitation to sexual touching (Section 152) and one count of sexual assault (Section 271) pursuant to the Criminal Code of Canada. On November 7, 2006, Mr. Johnson pled guilty to the charge of sexual assault, was convicted and sentenced to 10 months in jail and two years probation. On November 15, 2007, the Preliminary Investigation Sub-Committee approved the Consensual Resolution Agreement in which Mr. Johnson agreed to not be issued a Certificate of Qualification for an indeterminate period of time.



DISCIPLINE CASE SUMMARY

- a. Samuel James Van leperen
-
- b. Conduct unbecoming a member of the British Columbia College of Teachers.
- c. The hearing was held December 15, 2009, at the College's offices in Vancouver, British Columbia. The report and recommendations of the Hearing Sub-Committee (the "Committee") were presented to Council on June 4, 2010, in accordance with section 22 of the *Teaching Profession Act*. This matter originated as a Registrar's Report under section 28(4) of the *Teaching Profession Act*.
- d. Mr. Van leperen was employed as a secondary school teacher in September 2005 when the incidents took place. On September 27, 2005, he was arrested and charged with one count of possession of child pornography, contrary to section 163.1(4) of the *Criminal Code of Canada*. On March 13, 2009, the Supreme Court of British Columbia found that there was a Charter violation of Mr. Van leperen's rights under sections 8 and 10 of the *Canadian Charter of Rights and Freedoms*. As a result, the evidence discovered by police on Mr. Van leperen's computer was excluded as inadmissible. Consequently, Mr. Van leperen was acquitted of the criminal charge against him. In December 2009, he entered into a Statement of Agreed Facts and Disposition (the "Agreement") with the College. In the Agreement, Mr. Van leperen did not expressly admit to having possessed child pornography or to conduct unbecoming a member of the College. However, he did not contest the facts as outlined in the Agreement and was not opposed to a finding of conduct unbecoming a member for the purpose of the College proceedings.
- e. The Committee unanimously accepted the facts agreed to by Mr. Van leperen as set out in the Agreement. Although Mr. Van leperen did not expressly admit to the possession of child pornography, the Committee concluded from the facts that he was in possession of child pornography on his home computer and that such conduct constituted conduct unbecoming a member of the College. The Committee found that the possession of child pornography was clearly a breach of Standards 1 and 2 of the College's *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*.
- Standard 1: Educators value and care for all students and act in their best interests.** Even though Mr. Van leperen's behaviour was unrelated to his students, the Committee found that he violated the basic moral and ethical requirement of teachers, namely that they not engage in conduct that is harmful to children in their off-duty conduct as well as in their professional duties.
- Standard 2: Educators are role models who act ethically and honestly.** Educators understand that their individual conduct contributes to the perception of the profession as a whole. In addition, educators are accountable for their conduct while on duty, as well as off duty, where that conduct has an effect on the education system. Further, the Committee found that the possession of child pornography by a teacher seriously undermines the integrity, dignity and credibility of the teaching profession. It is a long-held tenant in the teaching profession that the possession of child pornography, even outside of the member's teaching role and in his



DISCIPLINE CASE SUMMARY

or her private life, violates the trust that the public expects of the “out-of-classroom” behaviour of its teachers and that this conduct amounts to a breach of trust of a most serious nature.

- f.** The Committee considered and accepted the jointly proposed penalty. In a finding of guilt, the Committee agreed that Mr. Van leperen not be issued a certificate of qualification for an indeterminate period and for a minimum of 10 years. Mr. Van leperen’s certificate of qualification was cancelled in November 2009 for non-payment of fees. The Committee stated that even if Mr. Van leperen were to re-apply for a certificate of qualification after the 10-year minimum, there would be no guarantee that he would be a successful candidate. Mr. Van leperen would have to prove that he was fit and proper to be a teacher in British Columbia upon re-application with the College. With respect to publication, the Committee recommended that publication of a case summary with the member’s name be made. In the matter of costs, the Committee recommended that the College not assess costs for the disciplinary proceedings against Mr. Van leperen.
- g.** The College Council considered the report and recommendations of the Committee and determined to accept the recommendation and reasons as to penalty, costs and publication.



Decision Issued: June 9, 2014
Citation Issued: September 19, 2013
Amended February 25, 2014
File No.: [REDACTED]
Court reporter: Coast Reporting

IN THE MATTER OF
THE TEACHER REGULATION BRANCH OF THE MINISTRY OF EDUCATION
AND A CITATION ISSUED PURSUANT TO SECTION 56(1)
THE *TEACHERS ACT*, SBC 2011, c. 19
AND A HEARING CONCERNING
GEORGE WILLIAM KITELEY
(a Former Authorized Person under the *Teachers Act*)

REASONS FOR DECISION ON FINDINGS AND DETERMINATION

Date and location: February 25, 26 & 27, 2014 at the Teacher Regulation Branch
Panel: Meg Gaily (Chair), Daniel Blais, John Hall
Counsel for the Commissioner: Maureen E. Baird, Q.C.
Counsel for the Respondent: Peter Busch

INTRODUCTION

[1] A panel was appointed by the Commissioner to conduct a hearing into a citation issued by the Commissioner under section 56(1) of the *Teachers Act*, S.B.C. 2011, c. 19 (the “Act”) on September 19, 2013 (the “Citation”).¹

[2] School District No. 43 (Coquitlam) employed George William Kiteley (the “Respondent”) as a grade 6-7 teacher at Moody Middle School for the 2011-2012 school year.

¹ Exhibit #1, Citation dated September 19, 2013 and Exhibit #4, Amended Citation dated February 25, 2014.

He held a certificate of qualification, which he relinquished on or about June 27, 2012 and he resigned effective June 30, 2012.² The Citation sets out the following allegations:

1. On or about September 6 to October 18, 2011, [the Respondent], a former authorized person under the Act (Professional Certificate No. [REDACTED]), while employed as a teacher by School District No. 43 (Coquitlam) at Moody Middle School (the “School”) engaged in inappropriate behaviour directed toward students including:
 - a. Use of the term “homosexual” in connection with a male student’s choice to wear a pink shirt;
 - b. Use of the term “retarded” in a derogatory way when speaking to students;
 - c. Asking students “are you on crack?” and making reference to “crack-heads”;
 - d. Reference to a student as an “illegal alien” and/or an “illegal immigrant”;
 - e. Repeated reference to a student as “Persian Prince”;
 - f. Use of profanity in the classroom, such as “I’m not your bitch”;
 - g. Use of public humiliation as a form of classroom management;
 - h. Physical intimidation of students through the use of physical contact (poking and/or shaking and/or pushing) and verbal and gestural threats of violence, such as mimicking the loading and shooting of a gun and punching one fist into the other;
 - i. Reference to the class as “perverted” in response to a question about sex education; and
 - j. Reference to a student who was squinting to see the board as having “Asian eyes”.

The Commissioner asserts in the Citation that the Respondent engaged in conduct which is contrary to one or more of Standards #1 and #5 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, 4th edition, January 2012 (the “Standards”). The Commissioner further alleges that the Respondent is guilty of professional misconduct under section 63(1) of the Act. Although the Citation alleges that the Respondent is alternatively guilty of conduct unbecoming a teacher, the Commissioner did not pursue this allegation at the hearing and the panel has not considered it. The Respondent did not attend the hearing, but was represented by legal counsel.

² The Citation was amended on February 25, 2014 to reflect that the Respondent is a former authorized person under the Act.

ISSUES

[3] In any conduct hearing before a discipline panel constituted under s. 57(1) of the Act, the panel must make the following three determinations:

1. Has the Commissioner proved on a balance of probabilities that the conduct set out in the Citation occurred?
2. If so, does the proven conduct breach any of the Standards (in particular in this case, Standards #1 and #5)?
3. If so, does the conduct amount to professional misconduct such that the Respondent is guilty of professional misconduct under s. 63(1)(b) of the Act?

REVIEW OF EVIDENCE AND PANEL'S FINDINGS OF FACT

[4] The Respondent did not testify at the hearing and his counsel did not lead any evidence. The only evidence before the panel was that led by the Commissioner through Nancy Bennett, the principal of the School in 2011-2012 and six students of the Respondent in that year. At the time of the alleged incidents, the students were approximately 12 years old; at the time of the hearing, they were 14 years old. As requested by counsel for the Commissioner and agreed to by the Respondent's counsel, the students' anonymity is protected by referring to them in the order in which they testified. Although counsel for the Respondent cross-examined each witness, none of them made any admissions against interest or changed their testimony. The panel therefore accepts the evidence to the extent that there is no inconsistency between the accounts provided by the witnesses. Where there are inconsistencies, the panel resolves them as identified below.

Background

[5] For the 2011-2012 school year, the Respondent taught grade 6 and 7 math and science to two groups of students, those assigned to his home-room class, and those in a partner "switch" class across the hallway assigned to Ms. E. To his home-room class, he also taught Health and Career Education or "HACE." The students would switch teachers halfway through the school day and Ms. E. taught the students grade 6 and 7 English and social studies. The classes were held in a "pod" of portables and the Respondent's class had two doors – one to the covered hallway where the students' lockers and washrooms were located, the other to a partially covered rear porch.

[6] According to Ms. Bennett, the 2011-2012 school year was the Respondent's first experience teaching middle school. There were 27-28 students in the classes taught by the Respondent and Ms. E., with an even mix of grade 6 and grade 7 students. One class had two and the other class had three students designated with learning disabilities. One class had three and the other had five gifted students. Six of the students who testified were Grade 7s in the Respondent's home-room class; Student A was the only witness in the switch class.

[7] Ms. Bennett first became aware of issues involving the Respondent's conduct in mid-October 2011 when she was approached by a teacher who had previously taught several of the Respondent's current grade 7 students. The teacher told Ms. Bennett that Students D, E, and G had approached her at a School social function and expressed concern about the Respondent's treatment of students in his class. Ms. Bennett conducted brief interviews with each of the three students. Following protocol, she then delivered a letter to the Respondent dated October 14, 2011. The letter stated that Ms. Bennett was commencing an investigation as a result of complaints from three students in his class that he had made comments in the classroom to individuals and groups that were humiliating and embarrassing.³

[8] Ms. Bennett and the Vice Principal interviewed 24 students, 12 from the Respondent's home-room class and 12 from the switch class on October 17 and 18, 2011. They asked the students not to discuss the interviews with other students or with the Respondent, and Ms. Bennett also told the students that if they had further concerns, they should come back and speak with her.

[9] Ms. Bennett delivered a second letter to the Respondent dated October 18, 2011⁴ that was worded exactly as the October 14 letter. She explained that she wrote the second letter to encompass complaints from two students that involved conduct that occurred after the October 14, 2011 letter was delivered.

[10] The Respondent met with Ms. Bennett, the Vice Principal, and a representative of the Teachers' Association on October 18, 2011, after which he gathered his personal belongings and left the School. The Respondent did not return to the School to teach after this date.

Allegation (a) - use of the term "homosexual" in connection with a male student's choice to wear a pink shirt

[11] Ms. Bennett said that in her initial interview with Students D, E and G, they told her that the Respondent had referred to a male grade 6 student wearing a pink shirt as a "homosexual." Ms. Bennett said that the student in the pink shirt had a learning disability and was an Aboriginal student.

[12] Students C, D, E, F, and G testified that the Respondent made a comment during class that associated a male grade 6 student wearing a pink shirt with being homosexual or gay. Students C, D, E and F testified that they thought the student in the pink shirt was upset and embarrassed during the incident. Students D and E testified that they were upset by the Respondent's comment. Although there were slight differences in the various individual accounts, the evidence was consistent that the Respondent made a derogatory comment – whether through the use of the word "homosexual" or "gay" – to a male student who was wearing a pink shirt.

³ Exhibit #2, letter from Ms. Bennett to the Respondent dated October 14, 2011.

⁴ Exhibit #3, letter from Ms. Bennett to the Respondent dated October 18, 2011.

[13] Accordingly, the panel finds that the Commissioner has proven on a balance of probabilities that the Respondent engaged in the conduct set out in paragraph 1(a) of the Citation.

Allegation (b) – use of the term “retarded” in a derogatory way when speaking to students

[14] Six of the seven students described the Respondent using the word “retarded” in a derogatory way on more than one occasion when speaking to students in his classes, whether directed at an individual or group of students. None of the students agreed with the Respondent’s counsel’s suggestion that the Respondent used the word “retarded” in the context of teaching a lesson about engine mechanics. Student C testified that she was upset by the Respondent’s use of the word “retarded” and confronted the Respondent about it. Student E thought it was a “mean thing to say to kids” and Student D said being called “slow” by the Respondent made him feel bad about himself. The panel finds that the Commissioner has proven on a balance of probabilities that the conduct alleged in paragraph 1(b) of the Citation occurred.

Allegation (c) – asking students “are you on crack?” and making reference to “crack-heads”

[15] Student G was the only student witness who testified that the Respondent used the word “crack” in class and his recollection was vague. During his testimony, Student G had to be prompted by counsel for the Commissioner to recall the Respondent making reference to “illegal drugs.” The panel finds that a single student’s vague recollection is not sufficient to prove that the alleged conduct occurred.

Allegation (d) – Reference to a student as an “illegal alien” and/or an “illegal immigrant”

[16] Student F testified that he was new to the School in the 2011-2012 school year and when the students were introducing themselves in class, he said that he was born in New Mexico. Student F said the Respondent then asked him in front of the class if he was an “illegal immigrant.” Student F said that he was a little insulted by the comment, but that the Respondent did not refer to him again as an “illegal immigrant.” Student B testified that the Respondent referred to Student F as an “illegal immigrant.” The panel finds the testimony of Students F and B to be credible and finds that the Commissioner has established that it is more probable than not that the Respondent referred to Student F as an “illegal immigrant” in the class in front of other students, as alleged in paragraph 1(d) of the Citation.

Allegation (e) – repeated reference to a student as “Persian Prince”

[17] Student A testified that one of the students in his class of Iranian origin referred to himself as “Persian Prince” and that the Respondent called this student “Persian Prince” in front of the class at least 5 times. Student A agreed that the student did not seem to mind at first, but that the student became upset that the Respondent continued to refer to him as “Persian Prince.”

[18] Ms. Bennett testified that at the investigation meeting held on November 2, 2011, the Respondent admitted that he called one of the students in his class “Persian Prince” and said he did this because the student was from “Persia land.” Ms. Bennett said that when the Coquitlam Teachers’ Association representative advised the Respondent that there was no “Persia land” the Respondent replied that he did not know that.

[19] The panel finds that the Respondent repeatedly referred to one of his students as “Persian Prince” as alleged.

Allegation (f) – Use of profanity in the classroom, such as “I’m not your bitch”

[20] Student A testified that he overheard the Respondent refer to a student with red hair in his class as a “ginger bitch” once. Students A and F testified that the Respondent often swore under his breath when he was frustrated or forgot something, but loud enough that students could hear him. The panel finds that it is more probable than not that the Respondent used profanity in the classroom. Both witnesses were credible, and their evidence is consistent with other evidence of the Respondent’s frustration and his responses to classroom conduct.

Allegation (g) – Use of public humiliation as a form of classroom management

[21] Student D said that the Respondent would make students stand in the corner of the classroom “if he was fed up” but did not provide any details of when this took place or the number of students involved and his testimony was not corroborated by the other students. The panel finds that a single student’s general and uncorroborated recollection is not sufficient to establish that it was more likely than not that the Respondent made students stand in a corner, as this would be very unusual in a middle school class.

[22] Student A testified that if a student could not spell a word correctly when asked to do so out loud, the Respondent would make the student sing and/or dance in front of the class and that he remembered two students singing and/or dancing in front of the class. Student E testified that he remembered the Respondent made one student in his class sing “O Canada” at the front of the class because the student had been talking. None of the student witnesses had themselves been disciplined in this way. None of the students testified that they found this conduct humiliating or that they thought the students who sang or danced were embarrassed.

[23] Ms. Bennett and all of the students except Student C testified that the Respondent had a practice of sending disruptive students out of the classroom to the hallway or to the porch. The students said the Respondent sent them out when they were acting up in class, talking too much, or not doing their work. Students A and E said that the Respondent would come out to the hall and speak to them about their behaviour before he allowed them back in to the class. Both testified that he treated them with respect when talking to them saying that he didn’t shout at them or raise his voice at the time.

[24] The panel finds that this allegation has not been proved. Although the panel is satisfied that the conduct occurred, there is no evidence to establish that the students experienced it as humiliating.

Allegation (h) – Physical intimidation of students through the use of physical contact (poking and/or shaking and/or pushing) and verbal and gestural threats of violence, such as mimicking the loading and shooting of a gun and punching one fist into the other

[25] Students B and F testified that the Respondent poked them in the chest and/or stomach area while pointing and /or waving his finger at them when he talked to them in the hallway about the conduct that had led to them being sent out of class. They each said they were alone in

the hallway when he did this. Student F testified that the Respondent grabbed him on the shoulder to escort him out of the classroom when he was sent to the hallway, and that on one occasion the Respondent pushed or shoved him back into the classroom causing him to stumble. Both Students B and F admitted that they talked a lot in the class – more than other students. While, as noted above, students A and E testified that the Respondent spoke to them with respect when they had been sent into the hall, the panel does not regard this as inconsistent with the accounts of Students B and F. Their admissions that they were more disruptive than other students support an inference that the Respondent was more frustrated with them.

[26] Student C testified that she recalled one time the Respondent said, “don’t make me hit you” to Student F, but Student F did not describe this incident in his testimony. Students D and E testified that the Respondent referred to one of the students in their class as a “memory from hell” while miming loading a shotgun, aiming it at the student and making a bang noise. Student E testified that he found this action by a teacher “a bit weird or scary.” Student G testified that the Respondent would punch one of his fists into his other palm and say “better get it done” when the students were slow to perform their work.

[27] In summary, six of the seven students described the Respondent’s behaviour as physically intimidating on occasion: he used physical contact (Students B and F) and made verbal and gestural threats of violence, such as mimicking the loading and shooting of a gun (Students C, D and E) and punching one fist into the other (Student G). Although their examples differed, the students’ evidence of physical intimidation was consistent and the panel finds that the conduct described in this allegation occurred.

Allegation (i) – Reference to the class as “perverted” in response to a question about sex education

[28] Ms. Bennett testified that on October 17, 2011, Student G told her that the Respondent had referred to the students as “perverts” in their class. Student G testified that when one student in the class asked if the Respondent was going to teach them “sex ed.” in their HACE class, the Respondent called the students “perverts,” saying words to the effect that “you guys are all perverts.” Student G’s evidence was corroborated by Ms. Bennett whose response to the reported behaviour (together with the conduct alleged in paragraph (j) discussed below) was to issue the October 18, 2011 letter to the Respondent. The panel accepts the evidence of Student G and Ms. Bennett and finds that the Commissioner has proven that it is more likely than not that the Respondent referred to the class as “perverted” as alleged in paragraph 1(i) of the Citation.

Allegation (j) – Reference to a student who was squinting to see the board as having “Asian eyes”

[29] Student F testified that the Respondent asked an Asian student who had poor eyesight if he was squinting at the board because “he had slanty eyes.” Ms. Bennett testified that on October 18, 2011, one of the Respondent’s students told her that the Respondent had sent him out into the hallway when he was squinting at the chalkboard, saying, “I know you are Asian, but you can’t squint your eyes like that.” Ms. Bennett said that the student is an Asian student. That student did not testify. The panel finds that the direct evidence of Student F about this incident combined with Ms. Bennett’s evidence of what the affected student told her is sufficiently detailed and consistent to establish that the conduct occurred.

ANALYSIS AND DECISION

[30] There is no dispute that the applicable standard of proof is the balance of probabilities. As noted above, that panel finds that the Commissioner has proven that it is more likely than not that the conduct alleged in paragraphs 1(a), (b), (d), (e), (f), (h), (i) and (j) of the Citation occurred. The evidence does not substantiate the allegations set out in paragraphs 1(c) and (g) of the Citation.

Does the proven conduct breach the Standards?

[31] The relevant Standards provide as follows:

1. Educators value and care for all students and act in their best interests.

Educators are responsible for fostering the emotional, aesthetic, intellectual, physical, social and vocational development of students. They are responsible for the emotional and physical safety of students. Educators treat students with respect and dignity. Educators respect the diversity in their classrooms, schools and communities. Educators have a privileged position of power and trust. They respect confidentiality unless disclosure is required by law. Educators do not abuse or exploit students or minors for personal, sexual, ideological, material or other advantage.

5. Educators implement effective practices in areas of classroom management, planning, instruction, assessment, evaluation and reporting.

Educators have the knowledge and skills to facilitate learning for all students and know when to seek additional support for their practice. Educators thoughtfully consider all aspects of teaching, from planning through reporting, and understand the relationships among them. Educators employ a variety of instructional and assessment strategies.

[32] The Commissioner submits that the Respondent's conduct breaches both Standards. With respect to Standard #1, the Commissioner says that the Respondent did not treat his students with respect and dignity; in particular, when he made a homophobic remark to a male student wearing a pink shirt, referred to students as "retarded," called individual students "illegal immigrant" and "Persian prince," referred to an Asian student as having "slanty" or "slanted" eyes and called the class "perverts." The Commissioner also says that the Respondent displayed a lack of responsibility for the emotional and physical safety of his students contrary to Standard #1 by poking two students in the chest and/or stomach while discussing discipline with them, and miming the loading and firing of a shotgun at a student in his class. The Commissioner submits that the Respondent breached Standard #5 because he lacked the classroom management skills to facilitate effective learning and points to the Respondent's practice of sending students to the hall as a disciplinary measure (such that these students were not participating in the classroom activities and lessons) and his use of demeaning and derogatory comments as examples.

[33] Counsel for the Respondent submitted that the Respondent's conduct did not breach either Standard. Counsel for the Respondent made submissions based on evidence that was not before the panel; for example, he suggested that the Respondent had a hearing impairment that caused him to shout to be heard; that the students were trouble-makers who fabricated evidence

and colluded against the Respondent. The panel can have no regard to submissions that are not supported by evidence. The Respondent chose not to tender any evidence and cannot counter the evidence that was presented only through submissions (see the rule in *Browne v. Dunn*⁵).

[34] Counsel for the Respondent also argued with respect to the allegation in paragraph 1(e) of the Citation that it was not inappropriate for the Respondent to refer to a student as “Persian Prince” because the student had used that name to refer to himself. The panel rejects this argument. Such a term when used by a child self-referentially (whether it is appropriate) has a wholly different connotation than when used by a teacher to refer to his student. When used by a teacher to refer to a student, it demonstrates disrespect and disparagement contrary to Standard #1.

[35] We agree with the Commissioner’s submission and find that the Respondent contravened Standard #1 in that he failed to treat his students with respect and dignity and demonstrated a lack of respect for diversity by engaging in the conduct to which the Commissioner has referred as contravening this Standard.

[36] With respect to Standard #5, we find that the Respondent failed to demonstrate effective classroom management skills by referring to students in grades 6 and 7 as “perverted” when he was asked about learning “sex ed.”, by referring to his students as “retards” when they were disruptive, and by miming the loading and firing of a shotgun at a student to whom he referred as a “memory from hell.” However, we find that the Respondent’s practice of sending disruptive students to the hallway does not breach Standard #5 because the students who testified about being sent to the hallway admitted that they were disrupting the class at the time and none of them said that they felt that the Respondent’s treatment of them was humiliating.

Does the Breach of the Standards amount to Professional Misconduct under the Act?

[37] The Act does not define professional misconduct and, as noted by the Commissioner in his submissions, a breach of the Standards does not necessarily result in a finding of professional misconduct. The panel finds that the test for whether a breach of the Standards amounts to professional misconduct under the Act is whether the Respondent’s conduct was a “marked departure” from the norms expected of a teacher in this province. This test was adopted by the Law Society of British Columbia in disciplinary proceedings in *Martin*⁶ and was used by another panel of the Branch in a decision released earlier this year.⁷

[38] The Commissioner submits that the “public humiliation, physical intimidation, verbal and gestural threats of violence, and racist and derogatory epithets have no place in a public school” and says that the Respondent’s conduct “fell well below the standard of conduct expected of a British Columbia teacher.” Accordingly, the Commissioner submits that this panel should have little difficulty concluding that the Respondent committed professional misconduct.

⁵ *Browne v. Dunn* (1894) 6 R. [H.L.] at page 79 per Lord Morris.

⁶ *Law Society of British Columbia v. Martin*, 2005 LSBC 16 at par. 171.

⁷ *Re Freeman* (February 6, 2014) at para. 23-27.

[39] Counsel for the Respondent did not expressly address this issue. He submitted only that the students fabricated and/or embellished their evidence because they did not like the Respondent and found his “old school sense of humour” boring.

[40] In considering whether the Respondent’s conduct is a marked departure from the expected conduct of teachers in this province such that it amounts to professional misconduct under the Act, the panel considers the whole of the proven conduct.

[41] The Respondent’s question to a student about whether he was an “illegal immigrant” and his reference to students as “perverted” or “perverts” for asking about “sex ed.” in their HACE class are instances of breaches of the Standards that do not amount to professional misconduct. Although clearly inappropriate, each remark was made on a single occasion and there was no evidence that the students experienced them as humiliating.

[42] The panel reaches a different conclusion with respect to the Respondent’s pejorative remarks about sexual orientation, race and disability. Teachers must be cognizant of social values and respect the dignity and diversity of their students. It is not acceptable for a teacher to make homophobic remarks to students in his classroom, particularly in the context of a male student wearing a pink shirt, the trigger for a popular national anti-bullying campaign in schools. It is similarly unacceptable for a teacher to refer to students as “retarded” when they misbehave and for a teacher to make an overtly racist remark by referring to an Asian student as having “slanted eyes” or suggesting he or she “can’t squint your eyes like that” and to refer to a student of Iranian origin as a “Persian Prince.”

[43] The Respondent’s intimidation of his students by poking those he was admonishing for misbehaving, and by miming the loading and firing of a shotgun at a student in the classroom was also an egregious departure from the standards of conduct expected of teachers, particularly in light of the students’ age.

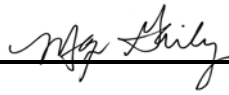
[44] Viewed as a whole, the panel finds that the Respondent’s conduct in breach of the Standards is egregious, amounts to a marked departure from the standards of conduct expected of teachers, and constitutes professional misconduct under s. 63(1)(b) of the Act.

PENALTY & COSTS


[45] Having found the Respondent guilty of professional misconduct under section 63(1)(b) of the Act, this panel is empowered to impose a penalty on the Respondent. The Commissioner has requested that the submissions on appropriate penalty be submitted in writing and counsel for the Respondent agreed. The panel directs that submissions on penalty be made in writing and that any submissions on costs be submitted in writing. The deadlines for these submissions shall be set by the Hearing Coordinator of the Teacher Regulation Branch.

For the Panel


Date: June 9, 2014



Meg Gaily, Chair



John Hall



Daniel Blais



Decision Issued: December 1, 2014
Citation Issued: September 19, 2013
Amended Citation Issued: February 25, 2014
File No.: [REDACTED]

IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011, c. 19
AND
A HEARING CONCERNING
GEORGE WILLIAM KITELEY
(A former Authorized Person under the *Teachers Act*)

REASONS FOR DECISION ON PENALTY, COSTS AND PUBLICATION

Written submissions on penalty filed July 8, August 11 & 25, October 10, 24 & 30, 2014
Panel: Meg Gaily (Chair), John Hall, Daniel Blais
Counsel for the Commissioner: Maureen E. Baird, Q.C.
Counsel for the Respondent: Peter T. Busch

INTRODUCTION

[1] On June 9, 2014, the panel issued its decision finding the Respondent guilty of professional misconduct under section 63(1)(b) of the *Teachers Act* (the “Act”). The panel directed that submissions on appropriate penalty and costs be submitted in writing. The Commissioner filed written submissions on July 8, 2014, the Respondent’s submissions were filed on August 11, 2014 and the Commissioner filed reply submissions on August 25, 2014. At the panel’s request, the Commissioner filed further submissions on October 10, 2014, the Respondent filed his further submissions on October 24, 2014 and the Commissioner filed reply submissions on October 30, 2014.

[2] The Respondent relinquished his certificate of qualification on or about June 27, 2012 and resigned from his employment with School District No. 43 effective June 30, 2012. The Respondent is no longer an authorized person under the Act.

PENALTY

[3] This panel found the Respondent guilty of professional misconduct for making pejorative remarks about sexual orientation, race and disability, and for intimidating his students by poking those he was admonishing for misbehaving and by miming the loading and firing of a shotgun at a student in the classroom.¹

[4] The conduct occurred over a period of approximately 6 weeks in the fall of 2011 while the Respondent taught grade 6 and 7 students math and science. The principal of the school advised the Respondent that he was under investigation for the conduct in two letters issued on October 14 and 18, 2011. The Respondent did not return to teach at the school after he received the second letter on October 18, 2011. There was no evidence before the panel that the principal or the District imposed any discipline on the Respondent for the conduct.

[5] The Commissioner seeks the following penalties in this case:

- (a) A reprimand under section 64(a) of the Act; and
- (b) A direction to the Director of Certification to not issue a certification of qualification to the Respondent for a period of three months under section 64(g) of the Act.

[6] The Respondent attached two medical documents to his submission of August 11, 2014 which he asserted demonstrate mitigating circumstances in his case (hearing loss) and show that he took responsibility for his conduct by seeking medical treatment for stress. An audiologist, Susan Thacker M.A., confirms in a letter dated July 2, 2014 that the Respondent had a hearing evaluation at her offices that day which indicated a “high frequency [sensory] neural hearing loss in both ears” and she attached 2 pages of test results to her letter. In a letter dated July 2, 2014, Dr. Christian Toma wrote that the Respondent had been in his care for a number of years and that “in the period 2010-2012 he was diagnosed with chronic stress related to his teaching job.”

[7] The Panel agrees with the Commissioner’s submission that little weight should be given to this information. The documents were not attached to affidavits from the doctors. Ms. Thacker’s letter indicates the Respondent has a hearing loss as of July 2, 2014, which is well after the conduct in issue. Dr. Toma does not indicate when in 2010-2012 the Respondent was

¹ See panel’s reasons on finding and determination, June 9, 2014, at para. 42 & 43.

being treated for “chronic stress” or describe how this condition affected his conduct in the classroom.

[8] The Respondent does not take a position whether a reprimand should be issued. The Respondent agrees that the imposition of a penalty should follow a finding of professional misconduct and agrees that a direction to the Director of Certification to not issue a certificate of qualification to the Respondent for a period of three months is an appropriate penalty in this case.

[9] The panel agrees that such a direction is appropriate. The conduct is of a nature that, had the Respondent continued to be an authorized person, it would have warranted imposition of a suspension.² Since the Respondent is no longer an authorized person, the direction proposed by the Commissioner, with which the Respondent agrees, is the reasonable alternative. The remaining question is whether a reprimand should be issued.

[10] As the Commissioner submitted, the purposes of penalties include deterrence, both of the particular respondent and other members of the teaching profession, denunciation of the conduct, and the need to maintain the public’s confidence in the ability of the Teacher Regulation Branch to properly supervise the conduct of teachers.³ Factors a panel should consider in imposing a penalty are:

- (a) The nature and gravity of the allegations;
- (b) The impact of the conduct on the student(s);
- (c) The presence or absence of prior misconduct;
- (d) The extent to which the teacher has already suffered consequences;
- (e) The role of the teacher in acknowledging the gravity of the conduct;
- (f) The need to promote specific and general deterrence; and
- (g) The need to maintain public confidence in the teaching profession as a whole.⁴

[11] Applying these factors in the present case, the allegations were serious as they included racial and other discriminatory remarks, as well as physical and verbal intimidation. There was evidence that they had some negative impact on students. There is no evidence before the panel of prior misconduct by the Respondent, nor of any discipline imposed on him for the conduct in issue. In the panel’s view, the medical information submitted by the Respondent does not excuse or mitigate his misconduct. Unlike the situation in a number of consent resolution

² See, for example, Ryan, November 8, 2002; Miller, September 5, 2003.

³ See Panghali, January 20, 2014, at para. 6.

⁴ See McGeough, January 17, 2013, at para. 7.

agreements to which the Commissioner directed us, the Respondent has not acknowledged any wrongdoing. Bearing in mind the purpose of penalties with respect to deterrence and the public interest, the panel concludes that a reprimand is appropriate in this case.

[12] The panel finds that, given the nature of the Respondent's conduct for which this panel found him guilty under the Act, the appropriate penalty in this case is both a reprimand under s. 64(a) and a sanction regarding the reissuance of the Respondent's teaching certificate under s. 64(g). As both parties agree that the appropriate length of time before which the Director of Certification should reissue the Respondent's teaching certificate is three months, this panel orders that the Director of Certification not issue a teaching certificate to the Respondent for a period of three months from the date of this decision.

COSTS

[13] Section 65 of the Act permits costs to be awarded where a respondent's conduct during the hearing has been improper, vexatious, frivolous or abusive. The Commissioner does not seek costs in this case. Accordingly, no costs are awarded.

PUBLICATION

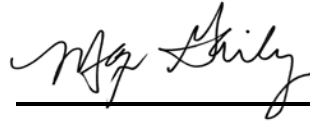
[14] Section 66 of the Act expressly requires that the panel's reasons for making an order under section 64 be published, subject to limited exceptions, none of which apply here. Accordingly, the panel directs publication of these reasons.

ORDER

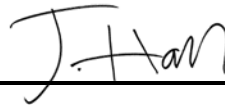
[15] Having found the Respondent guilty of professional misconduct under section 63(1)(b) of the Act, the panel orders that the Respondent be reprimanded under section 64(a) of the Act. This panel further directs that the Director of Certification not issue a certificate to the Respondent for a period of three months from the date of this decision. The Respondent is not required to pay any costs of the hearing under section 65 of the Act. The panel directs publication of these reasons under section 66(2) of the Act.

For the Panel

Date: December 1, 2014



Meg Gaily, Panel Chair



John Hall, Panel Member



Daniel Blais, Panel Member

Kraus, George Heinz

admitted that his conduct leading to the criminal conviction and the criminal conviction itself regarding possession of child pornography constitute conduct unbecoming a member of the College. On October 25, 2005, the Preliminary Investigation Sub-Committee approved the Consensual Resolution Agreement under which the respondent relinquished his teaching certificate.

Kritikos, Anastasio - Consent Resolution Agreement

admitted to professional misconduct and agreed that his conduct was contrary to College Standard 2. The district investigation determined that, in or around the spring of 2010, Mr. Kritikos sexually harassed a female special education assistant (SEA) who worked in his classroom. Specifically, his conduct included making inappropriate comments of a sexual nature to the SEA, engaging in inappropriate physical contact with the SEA, overstepping the boundaries of the professional relationship between a teacher and an SEA and failing to recognize that the behaviours were unwelcome. On June 17, 2011, the Preliminary Investigation Sub-Committee approved the Consent Resolution Agreement in which Mr. Kritikos agreed that the College would issue him a reprimand.

Layman, Keith Alexander

admitted to and was found guilty of conduct unbecoming a member of the College. The respondent, who worked as a high-school counsellor, engaged in a personal and sexual relationship with a 17 year old student for a period of approximately ten months. The respondent believed that the student was 19 years old at the time they met at a nightclub. The respondent admitted that after the student moved into his residence he became aware that the student was 17 years old and attending high school. On February 22, 2006, the Preliminary Investigation Sub-Committee approved the Consensual Resolution Agreement and the respondent's certificate of qualification was cancelled.

Leadbetter, Douglas Ross - Consent Resolution Agreement

admitted to professional misconduct. While employed as a principal of a secondary school, Mr. Leadbetter chaperoned and supervised a school district-endorsed trip to China. The group included eight grade 12 students and another teacher. During the trip, Mr. Leadbetter failed to properly supervise the students and ensure their health and safety by permitting students to consume alcohol in his presence and allowing a female student to accompany an extremely intoxicated male student to his hotel room where, in his intoxicated state, he attempted to sexually assault her. In addition, he consumed alcohol himself in the presence of students. Mr. Leadbetter also allowed students to treat him as a friend, letting them call him "Uncle Ross". On May 10, 2010, the Preliminary Investigation Sub-Committee approved the Consent Resolution Agreement in which Mr. Leadbetter agreed to a reprimand and an undertaking to successfully complete the College Boundary Violation workshop.

Lebedoff, Sergie Glen - Conduct Review Decision

admitted to and was found guilty of professional misconduct and conduct unbecoming a member of the College. The respondent had sexual relations with a female person under the age of majority and continued to do so despite being warned by persons in authority. In addition, the respondent failed to declare on his Application for Teacher-on-Call that he had been censured by previous employers. On August 26, 2004, the Conduct Review Sub-Committee approved the Statement of Agreed Facts and Disposition. The Sub-Committee accepted that the appropriate penalty was that his certificate be cancelled.

Luscher, Johnathan Lamont - Consent Resolution Agreement

admitted to professional misconduct and agreed that his conduct was contrary to College Standard 2. Mr. Luscher was employed as a teacher-on-call and was on assignment at a secondary school when, during working hours, Mr. Luscher used a school laptop computer to access inappropriate material on the internet, using the school's wireless internet connection. His internet activity included accessing websites with adult content, which was erotic and sexualized in nature, and entering into interactive online chatting with at least one individual on one of these sites. According to the school district's investigation, approximately 200 images were viewed. At the end of the school day, Mr. Luscher deleted the internet history and returned the computer to the school. On November 23, 2010, the Preliminary Investigation Sub-Committee approved the Consent Resolution Agreement in which Mr. Luscher agreed to receive a reprimand.

Luu, Chi Yung - Conduct Review Decision

admitted to conduct unbecoming a member of the College. Mr. Luu was convicted by way of a guilty plea on two sets of criminal charges: 1) In December 2005, Mr. Luu was charged in Washington, USA with "voyeurism" arising out of an incident where he was found to have surreptitiously videotaped boys while they were undressed in a change room at a sports facility. 2) Upon news of the first charges, a warrant was executed at Mr. Luu's home in BC and the charges of possession of child pornography then followed. On October 5, 2007, a Conduct Review Sub-Committee accepted the Statement of Agreed Facts and Disposition and agreed that the College will not issue him a College teaching certificate for an indeterminate period.

Ma, Chung Yuk - Consent Resolution Agreement

admitted to professional misconduct. In June 2010, the College was notified that Ms. Ma was suspended for a period of 10 days. The school district investigation determined that Ms. Ma downloaded the song “Bad Romance” by Lady Gaga and brought it to her classroom after a student had suggested the song for the music portion of the class. Ms. Ma had not reviewed the song’s lyrics prior to allowing the children to listen and sing along to it. The song contained inappropriate, sexually suggestive content and inappropriate language for children in grade three to be exposed to. It was noted that Ms. Ma’s principal had previously instructed her to ensure that she checked for the appropriateness of songs to be used in school activities, and thus should have been more attentive to this issue. On October 19, 2010, the Preliminary Investigation Sub-Committee approved the Consent Resolution Agreement in which Ms. Ma agreed to receive a reprimand and an undertaking to complete the College’s Boundary Violations workshop.

Summary of the Consent Resolution Agreement executed: June 27, 2012

In the matter concerning:

Dale Andre Joseph Mailhiot

Dale Andre Joseph Mailhiot admitted to professional misconduct and agreed that his conduct was contrary to Standards 1 and 2. Mr. Mailhiot was employed as a high school teacher when, in February 2010, two student teaching assistants, who were using Mr. Mailhiot's computer to input student marks, noticed highly inappropriate files of an adult sexual nature minimized on the screen. The district's internet usage records for Mr. Mailhiot's computer indicated that, throughout that same day, Mr. Mailhiot regularly accessed various non-school-related websites, including social media, news sites and graphic adult material, the latter of which was inappropriate for Mr. Mailhiot to access on a school computer. Mr. Mailhiot admitted to the district superintendent that during the period between September 2009 and February 2010 he frequently used his work computer for non-school-related purposes. On June 27, 2012, the Commissioner executed the Consent Resolution Agreement in which Mr. Mailhiot agreed to receive a two-month suspension of his certificate of qualification.



DISCIPLINE CASE SUMMARY

- a. Stephen Gerald Paras (Certificate Issued: 1997.02.20)
-
- b. Professional misconduct
- c. The hearing was held on May 13, 2008, at the College's offices in Vancouver, B.C. This matter originated as a report under section 7 of the *Independent School Act*.
- d. Mr. Paras was employed at an independent Christian school between 1998 and 2004 when the incidences took place. During the 2002/2003 school year, he was employed as a principal when he failed to report his knowledge of a sexual assault of a 13-year-old female student by an adult male to either the Ministry of Children and Family Development or the Police. In addition, he suspended her as a form of discipline and detained and isolated the student in a confined space for an inappropriate period of time during the initial investigation. The other incidences included disrespectful and demeaning comments towards a student during a role play in a Religious Studies Class; inappropriate comments during a school assembly speech; violating the privacy of students by disclosing personal information to other students and parents; issuing an improper assignment to students in his Religious Studies class concerning circumcision; taking six months to grade an assignment submitted by one of his students; and imposing an excessive suspension on two of his students for their involvement in alcohol distribution and consumption that adversely impacted their education. On August 28, 2008, the Hearing Sub-Committee accepted Mr. Paras' admission of guilt and ordered a four-month suspension of his College teaching certificate beginning September 1, 2008 and ending on January 1, 2009.
- e. The Hearing Sub-Committee (the "Committee") accepted the Statement of Agreed Facts and Disposition and was unanimous in its decision that Mr. Paras had jeopardized the safety and educational progress of particular students and had, by a misuse of his position of authority, threatened the integrity of the school in the eyes of the student body and the larger community. His misconduct constituted emotional, physical, and intellectual abuse, which would cause a loss of self-esteem in the students and a loss of trust in the school system by the public. The Committee accepted Mr. Paras' admission and found that this conduct is contrary to the standards of behaviour expected of a teacher and found him guilty of professional misconduct.
- f. The Committee considered the submissions presented by counsel on penalty, publication and costs. The Committee unanimously agreed that Mr. Paras receive a four-month suspension of his College teaching certificate beginning September 1, 2008 and ending on January 1, 2009. The Committee found that his misconduct is serious and warrants a significant penalty. With respect to costs, the Committee recommended that no costs be levied to Mr. Paras. In the matter of publication, the Committee unanimously agreed that his name be published in accordance with sections 27.2 and 27.3 of the *Teaching Profession Act*.

Summary of the Consent Resolution Agreement executed: October 30, 2012

In the matter concerning:

Miko McGrady

Miko McGrady admitted to professional misconduct and agreed that his conduct was contrary to Standard 1. In August 2010, a district report advised that while employed as a secondary school teacher, Mr. McGrady made a comment about sexual orientation to an openly gay student that was inappropriate and insensitive to that student. It was also reported that Mr. McGrady would permit students in his charge to leave class during instructional time to purchase food and beverages from a nearby convenience store. When he received a notice of investigation from his employer relative to the above-noted misconduct, Mr. McGrady shared the notice with several of his students and held a discussion with them about it. With respect to the comment about sexual orientation, Mr. McGrady says that the phrase used was not motivated by homophobic intentions nor was it designed to be hurtful to the student in question. However, Mr. McGrady acknowledges that the comment was insensitive and should not have been made under any circumstances. In May 2011, a citation was issued. On October 30, 2012, the Commissioner executed the consent resolution agreement in which Mr. McGrady agreed to a two-week suspension of his certificate of qualification effective November 3, 2012, pursuant to section 64(b) of the *Teachers Act*.

McNeice, Kelly Glenn - Conduct Review Decision

admitted to conduct unbecoming a member of the College. In the years 2006 and 2007, Mr. McNeice was employed at an elementary school when he was alleged to have accessed and viewed, on his home computer, several images of child pornography on the internet. In 2007, Mr. McNeice was charged with accessing child pornography contrary to section 163.1(4.1) of the Criminal Code of Canada. Mr. McNeice pled not guilty to this charge and in September 2010, he was convicted of accessing child pornography. On November 1, 2010, the Conduct Review Sub-Committee accepted the Statement of Agreed Facts and Disposition and agreed that Mr. McNeice's College certificate of qualification be cancelled.

Member CR-A01-27

admitted to professional misconduct. In March and April of 2007, the Member had a student teacher completing her practicum under his supervision and in his classroom. During this time he entered into discussions with the student teacher that were inappropriate and deeply personal in nature, such as the marital problems and sexual issues he was having with his wife. In addition, when the Member was alone with the student teacher, he gave her a gift and then leaned into her to give her a kiss on the lips. Further, he sent the Member an email that stated how their relationship had changed from a working one and in another email; he informed the student teacher that he gave Human Resources a glowing report. On January 27, 2009, the Preliminary Investigation Sub-Committee approved the Consensual Resolution Agreement and the Member's undertaking to provide the Sub-Committee with confirmation and completion of a course in sexual harassment.

admitted to professional misconduct and conduct unbecoming a member of the College. The Member pleaded guilty to a charge of sexual exploitation, contrary to Section 153 of the Criminal Code of Canada. The Member admitted that, over a period of several months, he engaged in a sexual relationship with a 17-year-old female grade 12 student in his class. As part of his sentence, the Member was ordered to comply with the Sexual Offender Information Registration Act and provide a DNA sample. The court imposed a publication ban on all matters related to the criminal proceedings. On February 2, 2011, the Preliminary Investigation Sub-Committee approved the Consent Resolution Agreement in which the Member agreed to never reapply for a College certificate of qualification. The Member's College certificate of qualification was previously cancelled for non-payment of fees. The Sub-Committee agreed to withhold the Member's name from publication in order to protect the student's identity.

admitted that he took on the role of a personal counselor with a student in his class. The Member acknowledged that the counseling role may have breached certain professional boundaries but denies that the relationship ever became sexual or romantic in any way. Further, he admitted that the counseling relationship developed during a time in which he was experiencing difficult personal issues and stress related to teaching. On July 26, 2006, The Preliminary Investigation Sub-Committee approved the Consensual Resolution Agreement and accepted the Member's undertaking not to practice for a period of one year from the date of the Agreement and to return to teaching after the expiry of that year only after satisfying certain conditions. The Committee rescinded the citation and were satisfied that publication would cause grievous harm to the Member's psychological condition.

Member CR-A07-08

admitted to professional misconduct. In 2005, he was convicted under section 153(1)(A) of the Criminal Code of Canada and was sentenced to imprisonment for two years less a day and 12 months probation. The Member was a teacher at a Christian school in Alberta when he engaged in sexual relations with a 16-year-old female student between 2004 and 2005. On July 4, 2008, the Preliminary Investigation Sub-Committee (the “Sub-Committee”) approved the Consensual Resolution Agreement under which the Member agreed to an indefinite bar to the reissuance of a College Professional Certificate and his undertaking to not apply for a College teaching certificate in the future. The Sub-Committee agreed to withhold his name from publication as publication of his name may cause grievous harm to or identify the victim.

Member CR-A09-07

in his capacity as a substitute teacher's assistant, held a girl's hand making her very uncomfortable and also told a young man in the class that he was or looked **sexy**. In a further incident, the Member inappropriately touched a female student by reaching into her back pocket as she leaned over to put something away near his desk. On September 5, 2007, the Preliminary Investigation Sub-Committee approved the Consensual Resolution Agreement and the Member's undertaking to participate in and successfully complete a College Boundary Violation workshop and to provide confirmation of registration and completion of the program prior to December 31, 2007.

Member CR-A11-09

admitted to professional misconduct and conduct unbecoming a member of the College. While he was employed at a secondary school, he admitted that he had an inappropriate relationship with a grade 11 female student. His conduct included email communications that went beyond the normal student/teacher relationship, and which continued despite a directive from his employer not to interact with her. The student's email account that she used to communicate with the Member was called "your girl" and his account was called "your man". In communications with the student, he was sometimes disrespectful of colleagues, including comments about another teacher's sexuality. On November 19, 2009, the Preliminary Investigation Sub-Committee approved the Consensual Resolution Agreement in which the Member accepted a three-month suspension, effective from the date of approval. The Sub-Committee agreed to withhold the Member's name from publication in order to maintain the confidentiality of the student.

Member CR-E10-05

admitted that she was incompetent due to a medical condition. The member engaged in an inappropriate personal and sexual relationship with a student. She does not presently hold a valid College certificate. On October 25, 2005, the Preliminary Investigation Sub-Committee approved the Consensual Resolution Agreement and accepted the member's undertaking not to apply for a College certificate of qualification until such time certain conditions are fulfilled.

Member CRSC-A03-10 - Conduct Review Decision

admitted to professional misconduct and conduct unbecoming a member of the College. In November 2008, while employed as a teacher, the Member was charged with six offences under the Criminal Code of Canada. In May 2009, the Member plead guilty to the charge that she committed the offence of touching any part of the body of a young person for a sexual purpose, contrary to section 153(1)(a). A stay of proceedings was entered on all remaining charges. In August 2009, the Member was sentenced to imprisonment for six months by the BC Provincial Court, followed by a two-year probationary period. Further, the Court directed that the Member provide a DNA sample for forensic analysis and imposed a \$100.00 victim fine surcharge. In addition, the Court imposed a publication ban that prohibits any information that could identify the complainant or witnesses. On March 30, 2010, the Conduct Review Sub-Committee approved the Statement of Agreed Facts and Disposition and agreed that the Member not be issued a Certificate of Qualification for an indeterminate period. The Member's Certificate of Qualification was cancelled in 2009 for non-payment of fees.

Member CRSC-A05-09 - Conduct Review Decision

admitted to conduct unbecoming a member of the College. Between the years of 1977 to 1980, the Member worked at a facility for mentally disabled adults. During this time he initiated a sexual relationship with a mentally disabled resident. The sexual activity was repeated on several occasions. In 2007, the Member was charged with the indecent assault of the adult resident contrary to Section 156 of the Criminal Code of Canada. The charges were eventually stayed due to the fact that the victim died prior to the trial. On May 29, 2009, the Conduct Review Sub-Committee accepted the Statement of Agreed Facts and Disposition and agreed that the Member not be issued a Certificate of Qualification for an indefinite period of time. The Member's teaching certificate was cancelled in January 1997 for non-payment of fees.

Member CRSC-A10-08 - Conduct Review Decision

admitted to conduct unbecoming a member of the College. In about 1989, the Member was a teacher at an elementary school, when he befriended the mother of two boys, aged 9 and 12. The 12-year-old male student was in the Member's seventh grade class. Over the course of seven years, the boys slept overnight at the Member's home in the absence of any other adult. Upon occasion, the Member slept in the same bed as one of the boys and in the same room as the other brother. In addition, the Member purchased gifts for one of the boys and took him, alone, on a lengthy car-trip to another province. The Member denies that he sexually touched the boys, but admits that he engaged in an inappropriate personal relationship with the two students. On October 8, 2008, the Conduct Review Sub-Committee accepted the Statement of Agreed Facts and Disposition and agreed that the Member relinquish his College Certificate of Qualification.

Member CRSC-A11-07 - Conduct Review Decision

The Member admitted that his conduct amounted to conduct unbecoming a Member of the teaching profession. He was a teacher-on-call when he made statements that he may be a pedophile, that he viewed child pornography, and that he had sexual fantasies and thoughts that involved children. The Member was also found guilty of charges of assaulting his former common law partner and his son contrary to section 266 of the Criminal Code of Canada and received a conditional discharge with 12 months probation. Further, the Member was ordered under section 810 of the Criminal Code of Canada to not be in possession of any weapons and to have no contact with his psychiatrist following his arrest for uttering threats. On November 24, 2007, the Conduct Review Sub-Committee found the Member guilty of conduct unbecoming and agreed that the appropriate penalty be that the Member not be issued a Certificate of Qualification for a period of 50 years.

Member CRSC-B12-04 - Conduct Review Decision

admitted to and was found guilty of professional misconduct. In 1996 the respondent had inappropriate physical contact with a grade 11 female student, which progressed in 1997 to a sexual relationship in the student's Grade 12 year. The respondent further acknowledged making inappropriate comments towards another female student who was in his class from 1995 to 1997, during Grade 11 and Grade 12. On December 6, 2004, the Conduct Review Sub-Committee approved the Statement of Agreed Facts and Disposition. The Sub-Committee accepted that the appropriate penalty was a cancellation of his certificate of qualification and that publication of the member's name would be withheld as it may identify the victim.

Monteith, Dana Allison

admitted to professional misconduct and conduct unbecoming a member of the College. Mr. Monteith was employed as a secondary school teacher when he engaged in the following inappropriate conduct: using sexualized language in class, inviting underage female students to visit with him socially at his apartment where he served them alcoholic beverages often until they were intoxicated, consuming alcohol himself to the point of intoxication and smoking marijuana in the presence of students at his apartment, and engaging in inappropriate physical contact with at least three female students including kissing, hugging, massaging and sexual touching. Mr. Monteith also engaged in deception during the school district's investigation into his conduct. He was subsequently charged with three counts of sexual exploitation under the Criminal Code of Canada. In February 2009, Mr. Monteith pled guilty to one count of sexual exploitation and was sentenced to 45 days of incarceration and one year of probation. On March 4, 2010, the Preliminary Investigation Sub-Committee approved the Consent Resolution Agreement in which Mr. Monteith agreed to relinquish his College certificate of qualification and will not reapply for an indefinite period of time. His College certificate of qualification was cancelled for non-payment of fees on November 1, 2009.

Morgan, Justin Robert - Consent Resolution Agreement

admitted to professional misconduct. Mr. Morgan was employed as a secondary school teacher when the College received a report from the school district, advising that he had been suspended for 10 days, relating to his inappropriate use of the school computer system, his use of inappropriate language in the classroom and allowing students to use inappropriate language in the classroom. The school district investigation found that Mr. Morgan had accessed his Hotmail and Facebook accounts during class time. He also accessed the website Tumblr for classroom purposes and for a personal art project. Some of the images Mr. Morgan accessed and “re-blogged” to his blog for the latter purpose contained images of naked females and of people engaged in sexual acts. The investigation also found that Mr. Morgan used expletives in the classroom and allowed students in his class to use similar expletives. He also posted an inappropriate comment on the Facebook wall of a former female student, joking about whether the student had received a sexually transmitted infection on a trip. On May 10, 2010, the Preliminary Investigation Sub-Committee approved the Consent Resolution Agreement in which Mr. Morgan accepted a reprimand and an undertaking to complete the College Boundary Violations workshop.

Munro, Don James - Conduct Review Decision

admitted to conduct unbecoming a member of the College. Mr. Munro was employed as an on-site tutor for child actors from January 1999 to February 2006. In August 2006, he was charged with three counts of sexual assault; three counts of sexual touching; and two counts of sexual interference contrary to the Criminal Code of Canada, sections 271(1), 152 and 151 respectively. Mr. Munro was subsequently found guilty on six of the eight charges that all related to children. He was further charged in October 2007, with five counts of breaching his undertaking contrary to section 145(5.1) of the Criminal Code of Canada. In addition, he was charged in December 2007, with one count of sexual assault contrary to section 271(1); one count of sexual touching contrary to section 152; and one count of sexual interference contrary to section 151 of the Criminal Code of Canada. Mr. Munro was found guilty on all three charges that related to a child. None of the victims of his crimes were students of his and none of the sexual activity engaged in with these boys took place while he was carrying out his professional duties as a teacher. As a result of the criminal charges, he was sentenced to four and a half years at a federal penitentiary, where he is currently incarcerated. On October 19, 2009, the Conduct Review Sub-Committee accepted the Statement of Agreed Facts and Disposition and agreed that Mr. Munro not be issued a Certificate of Qualification for an indefinite period of time of at least ten years.

Nyeste, Grant Bruce - Conduct Review Decision

admitted to professional misconduct. In the 2005-2006 school year, he became involved in a personal and sexual relationship with a female student. In March 2007, Mr. Nyeste was charged with three counts contrary to sections 153(1)(a), 153(1)(b) and 271 of the Criminal Code of Canada . In January 2010, he pled guilty to the charges of sexual exploitation pursuant to section 153(1)(a) and (b) of the Criminal Code. The third count was stayed by Crown Counsel. As a result of his criminal conviction, Mr. Nyeste was sentenced to imprisonment in a provincial correctional centre for a term of six months on each count, to be served concurrently, and must comply thereafter with a probation order for two years upon his release. Additionally, the court ordered that Mr. Nyeste provide a DNA sample and that there be a publication ban on the identity of the victim. On July 12, 2010, the Conduct Review Sub-Committee accepted the Statement of Agreed Facts and Disposition and agreed that Mr. Nyeste not be issued a certificate of qualification for an indefinite period of time.



2020 TAHP 02
Decision issued: December 3, 2020
Citation issued: June 24, 2019
Citation amended: November 7, 2019
Citation further amended: March 3, 2020
File No.: [REDACTED]

IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011, c. 19

AND

A HEARING CONCERNING

JASON ALAN OBERT

(A Former Authorized Person under the *Teachers Act*)

REASONS FOR DECISION ON CONSEQUENCES, COSTS AND PUBLICATION

Written submissions filed: August 27, 2020 by the Commissioner; no submissions from the Respondent
Panel: Meg Gaily, Chair, Matthew Cooke, and Tom Longridge
Counsel for the Commissioner: Maureen S. Boyd, Ministry of Attorney General
Counsel for the Respondent: Jason Obert, self-represented

INTRODUCTION

- [1] In a decision issued on July 29, 2020 (the “Findings Decision”), the panel found the Respondent guilty of conduct unbecoming a teacher under section 63(1)(b) of the *Teachers Act*, S.B.C. 2011, c. 19 (the “Act”).
- [2] Once a panel makes a finding under section 63(1)(b) of the Act, the panel is empowered to make an order imposing any of the consequences set out under section 64 of the Act. In the Findings Decision, the panel directed the parties to file written submissions on appropriate penalty, publication and costs. A schedule for submissions was established for this purpose and the hearing coordinator communicated the schedule to the parties on July 30, 2020.
- [3] In accordance with the schedule, the Commissioner filed written submissions on August 27, 2020.

- [4] The Respondent participated in the findings hearing and the Findings Decision was sent to him in accordance with the Commissioner's Rules. However, the Respondent did not file any submissions on consequences by the deadline of October 21, 2020. The Act does not require the Respondent's participation in the panel's determination of consequences.

CONSEQUENCES

- [5] The panel found the Respondent guilty of conduct unbecoming a teacher. As the panel noted in the Findings Decision, "conduct unbecoming" relates to off-duty conduct, that is, conduct that does not occur in the course of the practice of the profession.¹ The details of that conduct are set out in the Findings Decision and are only summarized here.
- [6] The conduct occurred in September and October 2016, while the Respondent was an elementary school principal in School District No. 75 (Mission) (the "District").
- [7] The Respondent admitted that in September 2016, using the pseudonym "James 33", he exchanged text messages with "Sara", a person he approached on the "Skout" website and who represented to him that she was 15. He admitted that he continued to exchange texts with "Sara" for over a month after she had told him she was 15. The texts included sexualized comments, and requests and exchanges of pictures of "Sara". The Respondent also admitted that as "James 33", he sent similar sexualized texts to "Hannah", a person who represented to him that she was "Sara's" 14-year old friend. The Respondent admitted that he continued to send texts to "Hannah" for several weeks after she told him she was 14, and that he requested and received pictures of "Hannah" during this time. In the text exchanges, the Respondent asked these minor girls if they "smoked weed" and offered to buy them alcohol.
- [8] The Respondent admitted he arranged to meet these apparent 14 and 15 years-old-girls at a shopping mall on two separate occasions in October 2016. He further admitted that he went to the arranged locations both times, although he did not follow through with approaching and meeting the girls in person the first time.
- [9] The girls were in fact one adult, who was also a member of "Creep Catchers". The Respondent was recorded by the Creep Catchers while he was attempting to meet "Sara" at the food court of a shopping mall on October 14, 2016. The Creep Catchers posted the recording showing the "catch" of "James 33" on YouTube on or about October 21, 2016, identifying the location where it took place.
- [10] The Respondent's identity and profession was linked to the Creep Catchers video within 24 hours of its posting, resulting in numerous media reports, and public reaction.
- [11] The panel found that the testimony of Angus Wilson, the District Superintendent, provided compelling evidence about the adverse effects of the Respondent's conduct on the school community. The panel found that it was clear that the Respondent's conduct deeply shook

¹ Findings Decision, para. 115.

the confidence of the school's parents and teachers, as well as of the public, in the education system, and that it continues to affect that school community.²

- [12] What remains to be determined is the appropriate penalty for the Respondent's unbecoming conduct, as well as the matters of costs and publication.
- [13] Section 64 of the Act sets out the range of penalties that a panel may impose once it has made a finding of conduct unbecoming a teacher (or professional misconduct) under section 63(1)(b).
- [14] As the panel noted in the Findings Decision, the Respondent's certificate was cancelled on November 1, 2019 due to non-payment of fees. Since the Respondent no longer holds a certificate, the only consequences available to the panel under section 64 are either (or both) a reprimand³ or a requirement for the director of certification not to issue (or re-issue in this case) any authorization to teach.⁴
- [15] In common with other professional regulators mandated to carry out their oversight activities in the public interest, the protection of the public is an overarching consideration to be taken into account by the panel in fashioning an appropriate remedy.⁵
- [16] Prior consequences decisions have established that a penalty assessment must take into consideration the nature and gravity of the conduct, the principles of specific and general deterrence of the Respondent and other members of the teaching profession from engaging in similar conduct, proportionality, denunciation, rehabilitation (where appropriate) and the importance of fostering and maintaining public confidence in the ability of the Commissioner to properly supervise and regulate the conduct of teachers.⁶
- [17] The panel's penalty assessment weighs these considerations, taking into account any aggravating and mitigating factors.
- [18] Mitigating factors include such circumstances as the absence of any prior misconduct, the fact that the teacher has already suffered significant consequences, an acknowledgement by the teacher of their conduct (or misconduct), and any steps the teacher has taken voluntarily to address the misconduct.
- [19] Aggravating factors point to the need for a more severe sanction in order to both protect the public and motivate the teacher to change the problematic behaviour. Examples of aggravating factors include the following: repetitive conduct or conduct which continued over a period of time; risk of harm to a student (or students) or actual harm; lack of insight

² Findings Decision, para. 125.

³ Act, subs. 64(a).

⁴ Act, subs. 64(g) provides that the panel may make an order setting out: "a requirement for the director of certification not to issue a certificate of qualification, an independent school teaching certificate or a letter of permission for a fixed or indeterminate period."

⁵ See, for example, *In the Matter of the Teachers Act and Hankey*, 2016 TAHP 06 at para. 10.

⁶ See, for example, *In the Matter of the Teachers Act and Brisebois*, April 22, 2014, at para. 11 (*Brisebois*) and *In the Matter of the Teachers Act and McGeough*, January 17, 2013, at para. 7 (*McGeough*).

or remorse on the part of the teacher; and a prior disciplinary history of misconduct of the same or similar nature.

- [20] The Commissioner submits that in this case, the most important factors the panel should consider are the following:
- (a) The nature of the Respondent's conduct;
 - (b) General deterrence; and
 - (c) The need to maintain public confidence in the teaching profession as a whole.
- [21] The consideration of aggravating and mitigating factors is case specific and contextual.⁷ Like the panel in *Robertson*, the panel has reviewed all material evidence (set out in detail in its Findings Decision) and has sought to balance all the relevant factors, both mitigating and aggravating, taking into account the law, the evidence, the circumstances involved, and the interests of students, the public and the Respondent.
- [22] The panel considers first the following mitigating factors.
- [23] At the time of the conduct, the Respondent had held a certificate since 2003 (approximately 13 years) and had no prior discipline for misconduct. The Respondent's conduct did not involve any students.
- [24] The Respondent suffered significant consequences as a result of the conduct. The Commissioner suspended the Respondent's certificate in October 2016, pending resolution of the discipline process. The District terminated the Respondent's employment in November 2016. The Respondent's evidence at the findings hearing included that he had difficulty finding steady employment since the fall of 2016.
- [25] In November 2016, as was reported in the media at the time, the Respondent was charged criminally for the conduct. In July 2017, the Crown stayed the charges after the Respondent entered a recognizance with conditions.
- [26] At the time of the findings hearing in March 2020, the Respondent testified he believed the Creep Catchers recording of him had been viewed approximately 30,000 to 40,000 times.
- [27] The panel now considers the following aggravating factors in this case.
- [28] The Commissioner submits that, although the Respondent's conduct did not involve persons with whom he had a student-teacher/principal relationship, it was not completely separate from his professional role. The evidence before the panel in the Chat Logs indicated that, in some instances, the Respondent was exchanging text messages with "Sara" and "Hannah" during, or shortly after, normal school hours. As detailed in the Findings Decision, in several of the text exchanges, the Respondent asks "Sara" and

⁷ *In the Matter of the Teachers Act and Robertson*, 2016 TAHP 02 at para. 5 (*Robertson*).

“Hannah” questions about their schoolwork and the school they attend, and he offered to tutor “Sara”.

- [29] Throughout the findings hearing (and the TRB investigation of his conduct), the Respondent explained and justified his conduct as research for a fictional (or non-fictional) piece on the Creep Catchers he was planning to write in his off-hours. The Respondent repeatedly asserted that he knew that “Sara” and “Hannah” were not minors, but that he knew that they were “likely” members of Creep Catchers. He asserted that he and the person(s) sending the texts as “Sara” and “Hannah” were all aware that they were playing “roles” when they were exchanging texts.
- [30] The panel expressly found that the Respondent’s explanation for his conduct was not plausible, particularly given the undisputed evidence that after the aborted first meeting (which he said he avoided because he knew that they were really Creep Catchers), the Respondent continued to exchange texts with “Sara” and “Hannah” as if they were minors and arranged to meet them at a shopping mall a second time.
- [31] As noted in the Findings Decision, under cross-examination by the Commissioner’s counsel, the Respondent acknowledged that it was not appropriate for an elementary school principal to join or participate in the activities of the Creep Catchers. However, he maintained his position that his actions were in furtherance of his research.
- [32] The panel agrees with the Commissioner’s submission that the Respondent’s explanation and justification for his conduct suggests that the Respondent is not willing to fully accept responsibility for his conduct and, in particular, to acknowledge the effect of his conduct on the school community and the public’s confidence in the teaching profession. Like the panel in *McGeough*, the panel finds that the Respondent’s “self-absorbed view and inability to understand the impact of his actions”⁸ on others is an aggravating factor, which weighs heavily against the mitigating factor of the Respondent’s lack of prior discipline.
- [33] The Commissioner also points to the aggravating factor of the Respondent’s dishonesty. The Respondent admitted he used a false name, “James 33”, and photos of other men when he created the online profile and when he was communicating with “Sara” and “Hannah”.
- [34] The Respondent knew his conduct was problematic and likely criminal, but he continued it for over a month. In the Findings Decision, the panel detailed the text exchanges in which the Respondent expressly told “Sara” and/or “Hannah” that he could get into trouble and lose his job and career, and where he speculated whether they were, in fact, police officers. The Respondent could easily have ceased his conduct, in particular, he could have refused to exchange further text messages with “Sara” (and later “Hannah”) as soon as they admitted to him that they were minors. He did not.
- [35] As noted above, the Respondent did not provide submissions on consequences, thus the panel has no evidence of steps the Respondent may have taken to address his conduct.

⁸ *McGeough*, at para. 17.

- [36] The panel weighs this aggravating factor (*i.e.*, that the Respondent knew that his conduct was problematic and likely criminal, and openly acknowledged as such to “Sara” and “Hannah” in text exchanges but persisted with it) against the mitigating factor of consequences to him (that is, that he lost his employment and was criminally charged).
- [37] As the Commissioner acknowledges, the Respondent’s conduct did not involve him sexually touching any minor. The Respondent’s conduct involved texting, seeking and receiving pictures of “Sara” and “Hannah”, and arranging to meet them in person at a mall. However, as detailed in the Findings Decision, the text exchanges indicate that the Respondent was interested in a relationship with “Sara”, including in texts exchanged in the short period between the abandoned first meeting and the Creep Catchers “catch”.
- [38] The Respondent’s conduct in this case had a very public nature – within a few weeks of starting to exchange text messages with apparent minors, he arranged to meet them at public locations close to the community where he worked. More importantly, the Creep Catchers recording attracted significant media coverage and public attention, particularly when the Respondent’s identity as an elementary school principal was revealed; as of March 2020, the recording was still accessible to the public.
- [39] The Commissioner submits that the public nature of the Respondent’s conduct is “an affront to the status and reputation of teachers”⁹ and significantly undermined public confidence in the profession and the education system.
- [40] The Commissioner submits that the circumstances of this case directly engage the need for general deterrence to unequivocally articulate that “sexual conduct by teachers or other authorized persons towards minors is career-ending”.
- [41] In the panel’s view, the public nature of the Respondent’s conduct is an aggravating factor, which weighs against the fact that no actual students or minors were involved. In the food court of a shopping mall, the Creep Catchers recorded the Respondent, an elementary school principal, when he was purportedly attempting to meet in person a 15-year-old girl, “Sara”, with whom he had been exchanging text messages in which he told her she was “hot” and “mint” and had offered as her “daddy” to buy her shoes and a cell phone.
- [42] As the panel noted in the Findings Decision, the public does not condone sexual relationships between adults and minors, or communications between adults and minors of a sexualized nature (and such conduct is prohibited under the *Criminal Code*).
- [43] In the panel’s view, it is necessary to impose a sanction commensurate with the gravity of the Respondent’s unbecoming conduct to instill public confidence in the effectiveness of the teacher discipline process and to achieve the goals of specific and general deterrence. In particular, there is a strong need for general deterrence in the circumstances of this case involving conduct unbecoming (that is, occurring outside the practice of the profession).
- [44] The Commissioner seeks a 25-year ban on the re-issuance by the director of certification of any authorization to the Respondent allowing him to teach in the K-12 system. The

⁹ *Robertson*, at para. 15.

Commissioner submits it is the only appropriate penalty in this case and that in other cases, lengthy bans on the re-issuance of a certificate have been imposed where the conduct fell short of sexual touching or other sexual contact.

- [45] The Commissioner referred the panel to *McGeough*, in which the teacher had an inappropriate relationship with a 17-year-old student, and although it did not involve sexual relations, it had “sexual overtones”. The teacher encouraged the student to keep their relationship secret and, among other things, gave the student gifts and invited her to his home. The teacher had no prior misconduct during his 20-year career. In his submissions on appropriate penalty, Mr. McGeough attributed his behaviour to “a severe psychological break”.
- [46] The *McGeough* panel imposed a 15-year ban on the issuance of a certificate, particularly in light of the “highly intense and personal nature” of his communications with the student and his “complete failure” to appreciate the impact of his behaviour on the student. The *McGeough* panel was of the view that a significant penalty was warranted to protect the public’s confidence in the teaching profession and assure the public that conduct such as Mr. McGeough’s would not be tolerated.¹⁰
- [47] The Commissioner referred the panel to *Robertson*, a 2015/2016 case involving a teacher who had openly engaged in sexual relationships with three female students many years earlier in the 1970s when the students were 15 and/or 16. The teacher had also made misrepresentations about his conduct while seeking further employment within the public school system, shortly after his employment with the school district where he had engaged in the relationships was terminated. The panel was of the view that the passage of time from misconduct to consequence was, for the most part, generated by the teacher’s own “wilful blindness, lack of remorse, or acceptance of what he did as being wrong and his actions to avoid consequences.”¹¹ The panel directed that the teacher’s certificate be cancelled and imposed an indefinite ban on the re-issuance of any certificate.
- [48] The Commissioner also referred the panel to the following three consent resolution agreements, in which the teachers agreed to a lifetime ban on the re-issuance of their certificates: *Wait*, *Nelson*, and *Canacari*.¹² In all three of these consent resolution agreements, the teachers were convicted of criminal offences.
- [49] In *Wait*, the teacher agreed to a lifetime ban where he used his school district laptop to engage in sexually explicit online “chat”, to store pornography including images of teenaged girls, and to write, store and access six pornographic stories, one of which involved a male teacher having sex in a classroom with a female student. Mr. Wait was also convicted of sexual assault for touching the buttocks of a female minor.
- [50] In *Nelson*, the teacher held a party at his home, during which he attempted to sexually assault one of his former students while he was intoxicated. He reported himself to the

¹⁰ *McGeough*, para. 19.

¹¹ *Robertson*, para. 33.

¹² *Consent Resolution - Robin James Wait* (June 2016); *Consent Resolution – Christopher David Nelson* (September 2015); and *Consent Resolution - Francesco Gabriel Canacari* (September 2016).

police and was charged with one count of sexual assault, to which he entered a guilty plea. Mr. Nelson agreed that a certificate would never be issued to him again.

- [51] In *Canacari*, after a trial, the teacher was convicted of three offences arising out of activity that took place in 2010, including criminal harassment and unlawfully being in a dwelling house. In relation to the criminal harassment, the trial judge found that the teacher had asked one of his female students to send texts from her phone to the victim of his harassment, and then told the student to erase the number and messages from her cell phone. The teacher's appeal of his conviction was dismissed. In 2015, the teacher pleaded guilty to three offences involving forgery that occurred in 2013. Mr. Canacari agreed that a certificate would never be issued to him again.
- [52] Among other things, the panel must consider proportionality in determining the appropriate consequences. In those cases summarized above where a lifetime ban was imposed or agreed to, the educators were convicted of criminal offences and, in the majority of the cases, the conduct involved students.
- [53] In *Panghali*, a case in which the teacher was convicted of the 2nd-degree murder of his wife in violent circumstances after which he had burned her remains to conceal his crime, the panel imposed a 25-year ban on the re-issuance of a certificate, noting that a ban of 25 years is effectively a permanent ban.¹³
- [54] The panel has found that the Respondent's unbecoming conduct seriously undermined the public's confidence in the education system, as well as the dignity and credibility of the teaching profession. The panel agrees with the Commissioner's submission that for the purposes of general deterrence and to communicate to the public that conduct by an educator towards minors will not be tolerated, a lengthy ban on any re-issuance of a certificate to the Respondent should be imposed.
- [55] The Respondent was not criminally convicted for his conduct and his conduct did not involve students. However, given the Respondent's explanation and justification for his conduct, coupled with its public notoriety and its impact on the school community, the panel is of the view that a 15-year ban on the re-issuance of a certificate is an appropriately lengthy ban in the circumstances of this case. The panel acknowledges that the practical effect of a 15-year ban in this case is that it is extremely unlikely the Respondent will ever be able to qualify to teach again.
- [56] The panel finds that a reprimand under subsection 64(a) is inappropriate in this case.

COSTS

- [57] Section 65 of the Act permits costs to be awarded where a respondent's conduct during the hearing has been improper, vexatious, frivolous or abusive. The Commissioner has not sought costs in this case. No costs are awarded.

¹³ *In the Matter of the Teachers Act and Mukhtiar Singh Panghali*, January 20, 2014.

PUBLICATION

[58] Section 66 of the Act expressly requires that the panel's reasons for making an order under section 64 be published, subject to limited exceptions, none of which apply here. The panel directed publication of its Findings Decision and also directs publication of these reasons.

ORDER(s)


[59] The Panel orders that, pursuant to section 64(g) of the *Teachers Act*, the Director of Certification will not re-issue to the Respondent a Certificate of Qualification, an Independent School Teaching Certificate or a Letter of Permission for a period of 15 years from the date of this decision.

For the Panel

Date: December 3, 2020



Meg Gaily, Panel Chair



Matthew Cooke, Panel Member



Tom Longridge, Panel Member



2020 TAHP 01
Decision issued: July 29, 2020
Citation issued: June 24, 2019
Citation amended: November 7, 2019
Citation further amended: March 3, 2020
File No.: [REDACTED]

IN THE MATTER OF THE *TEACHERS ACT*, S.B.C. 2011, c. 19

AND

A HEARING CONCERNING

JASON ALAN OBERT

(A Former Authorized Person under the *Teachers Act*)

REASONS FOR DECISION ON FINDINGS AND DETERMINATION

Dates and location of hearings: March 3-5 and 11, 2020, at the Teacher Regulation Branch
Panel: Meg Gaily, Chair, Matthew Cooke, and Tom Longridge
Counsel for the Commissioner: Maureen S. Boyd and Michael Oland, Ministry of Attorney General
Counsel for the Respondent: Jason Obert, self-represented

INTRODUCTION

[1] The Commissioner of the Teacher Regulation Branch (the “Commissioner”) appointed a panel to conduct a hearing into a citation the Commissioner issued under section 56(1) of the *Teachers Act*¹ (the “Act”) on June 24, 2019.² The Commissioner amended the citation pursuant to s. 56(4) of the Act on November 7, 2019,³ and the citation was further amended on March 3, 2020⁴ (the “Citation”).

¹ S.B.C. 2011, c. 19.

² Exhibit #3, Citation dated June 24, 2019.

³ Exhibit #1, Amended Citation dated November 7, 2019.

⁴ Exhibit #2, Further Amended Citation dated March 3, 2020.

- [2] Under the former *Teaching Profession Act*, the British Columbia College of Teachers granted Jason Alan Obert (the “Respondent”) a professional certificate on November 5, 2003, which was valid from September 1, 2003.
- [3] In 2012, School District No. 75 (Mission) (the “District”) employed the Respondent as an elementary school principal. At the time of the incidents described in the Citation, the Respondent was the principal of Windebank Elementary School (the “School”).
- [4] In the Citation, the Commissioner alleges the following:
1. In or about September and October 2016, [the Respondent], an authorized person under the *Teachers Act* (Professional Certificate No. [REDACTED]), while employed as an elementary school principal by School District No. 75 (Mission):
 - a. Responded by text message to a profile posted on the website “Skout” of a female, who purported to be an 18 year old named “Sara”;
 - b. Communicated electronically with Sara on the internet application “TextNow”;
 - c. Continued to communicate electronically with Sara after she represented to him that she was 15 years old;
 - d. Sent inappropriate electronic messages to Sara and to her purported friend “Hannah”, which messages included comments by [the Respondent] about using marijuana, Sara’s appearance, and other sexualized content;
 - e. Made arrangements to meet Sara on two occasions in October 2016; and
 - f. On or about October 14, 2016, went to a mall in Abbotsford to meet with Sara, where he was video-recorded by the group “Creep Catchers” while attempting to meet Sara. The recording of this encounter was posted online.

This conduct is contrary to Standard #2 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, 4th Edition, January 2012. [The Respondent] is guilty of conduct unbecoming a teacher under section 63(1) of the *Teachers Act*.

- [5] The Respondent admitted that the Citation and the Amended Citation were delivered to him. The Commissioner’s counsel delivered the Further Amended Citation to the Respondent in person at the hearing on March 3, 2020.

ISSUES

- [6] In this conduct hearing, the discipline panel must make the following three determinations:
- (a) Has the Commissioner proved on a balance of probabilities that the conduct set out in the Citation occurred?

- (b) If so, does the proven conduct breach any of the Standards (in particular, the Commissioner alleges the Respondent's conduct breached Standard #2)?
- (c) If so, does the conduct amount to conduct unbecoming a teacher such that the Respondent is guilty of conduct unbecoming a teacher under s. 63(1)(b) of the Act?

The panel's findings with respect to the conduct proved by the Commissioner are set out in its findings of fact. The issue of whether that conduct breaches Standard #2 and amounts to conduct unbecoming is addressed in the panel's analysis and decision.

REVIEW OF EVIDENCE AND PANEL'S FINDINGS OF FACT

- [7] The panel heard from five witnesses, including the Respondent. The Commissioner's witnesses were:
- Chelsea Bullon, who started the Fraser Valley "Creep Catchers" chapter;
 - Brian Mitchell, an investigator with the Teacher Regulation Branch ("TRB");
 - Special Constable Samuel Ward, Abbotsford Police Department; and
 - Angus Wilson, Superintendent of the District.
- [8] The Respondent testified on his own behalf. He did not call any other witnesses.
- [9] The Respondent obtained his certificate in 2003 and began his career as an elementary school teacher in both Ontario (for the first year) and British Columbia. He obtained his first position as an administrator in 2011.
- [10] In 2012, the District hired the Respondent as an elementary school principal at Silverdale Elementary School ("Silverdale"). In late October 2012, the District identified a discrepancy between the Respondent's explanation to the District about an entry on his pre-employment municipal criminal record check and information about the entry provided by the RCMP.⁵ The Respondent admitted he met with the District about this discrepancy and identified the letter he received from the Acting Assistant Superintendent, Randy Huth, in which Mr. Huth wrote the following:

I am satisfied from our discussion that you understand that as a school principal you have a responsibility to act as a role model and to conduct yourself in a manner which will ensure the continued confidence and trust of the community in the school district. We appreciate your cooperation and your understanding of the importance of honesty and integrity in your role as a principal in the district.

⁵ Ex. #48, letter dated October 29, 2012 from Randy Huth, Acting Assistant Superintendent to the Respondent.

- [11] In September 2015, the Respondent became the principal of Windebank Elementary School (the “School”), where he was working at the time of the incidents set out in the Citation.
- [12] The Respondent testified that he wanted to present his version of the events to the panel (he referred to his testimony as his “capital T truth” or the “alternative narrative”). His explanation for his conduct was that in the summer of 2016, he became interested in the Creep Catchers and was intending to write a fictional or non-fictional piece about them. The Respondent admitted that in September and October 2016, as part of his personal research into the Creep Catchers, he sent the text messages attributed to “James 33” to “Sara” and “Hannah”, which are reproduced in the text chat logs discussed below.
- [13] The Respondent testified that he knew at that time that the persons he was exchanging text messages with were not a 15-year-old girl and her 14-year-old friend. The Respondent admitted that he arranged to meet “Sara” and “Hannah” in person on two different occasions in October 2016 and that he went to a mall to meet them, but he asserted that he knew that they were part of the Creep Catchers, and he went because he wanted to talk to the Creep Catchers as part of his research.
- [14] Ms. Bullon testified that in August 2016, she formed the Fraser Valley chapter of “Creep Catchers”. Ms. Bullon described Creep Catchers as a group of individuals who would pose as under-age kids in online chat sites so that they could “catch” people who wanted to chat with and meet under-age kids in person. The Creep Catchers would record the in-person meeting at which they revealed to the “creep” that he or she had been communicating with persons who were, in fact, adults, and members of Creep Catchers. The Creep Catchers would then post the video of the “catch” on YouTube. Ms. Bullon testified that as a member of Creep Catchers, she would cooperate with the police in their criminal investigations of the people who had been caught by Creep Catchers. Ms. Bullon told the panel that she is no longer a member of Creep Catchers.
- [15] Ms. Bullon testified that in late August or early September 2016, she posted a decoy profile on the “Skout” website posing as an 18-year-old named “Sara”. Ms. Bullon testified that she was the only person who responded to the texts sent to the Sara profile on Skout.
- [16] For the Sara profile, Ms. Bullon used the photo of a woman named Michelle Lordache, who Ms. Bullon described as young looking. Ms. Bullon said that Ms. Lordache consented to Creep Catchers using her photo for the Sara profile, and that Ms. Lordache also provided other photos of herself, which she knew were to be used as part of the Sara decoy profile. Ms. Bullon identified a series of photos of Ms. Lordache tendered by the Commissioner as photos she used for the Sara profile and when responding to texts as Sara.⁶
- [17] Ms. Bullon testified that in early September 2016, the Sara profile on Skout received a text from “James 33.” Ms. Bullon testified that posing as Sara, she replied to the text from “James 33” and that she and “James 33” then exchanged several texts. Ms. Bullon testified that she did not know that “James 33” was the Respondent.

⁶ Exhibit #4, copies of photographs of Michelle Lordache and Natasha Johnson.

- [18] At the hearing, Ms. Bullon identified a document tendered by the Commissioner comprised of a series of screen shots, which Ms. Bullon said she took on her cell phone, capturing the text exchanges between Ms. Bullon as Sara and “James 33” on the Skout website (the “Skout Chat Log”).⁷ The screen shots show the profile picture of Ms. Lordache as Sara, beside texts from Sara in blue text boxes, together with a profile picture of “James 33” beside texts from him in white text boxes. Ms. Bullon’s evidence was that she sent the texts as Sara, and that no one else had access to her phone.
- [19] At the hearing, the Respondent admitted that he created the “James 33” profile on Skout, and he admitted that the photo in the Skout Chat Log is the one he used as “James 33.” The Respondent admitted that he initiated contact with Sara on Skout. The Respondent also admitted that he sent all of the texts from “James 33” reproduced in the Skout Chat Log.
- [20] The Respondent alleges that Ms. Bullon deleted text exchanges from the Skout Chat Log. Ms. Bullon denies editing or deleting texts from the Skout Chat Log. The Respondent did not submit evidence at the hearing to support his assertion that Ms. Bullon deleted texts, such as screen shots of the text exchanges taken from his cell phone. The Respondent testified that the reason for his inability to corroborate his evidence is that he threw his cell phone off the Mission Bridge the day after he was videotaped by the Creep Catchers because he was afraid they would find out who he was and come to his house to confront him.
- [21] In the screen shots in the Skout Chat Log, the text exchanges are not consistently reproduced in chronological order, the text exchanges are not dated, and many text exchanges are duplicated. However, both Ms. Bullon and the Respondent testified that they sent the texts as Sara and James 33 respectively, and both agreed that the content of the texts in the Skout Chat Log is accurate, although the Respondent alleges texts are missing. The Respondent did not deny that he sent any of the texts attributed to James 33 reproduced in the Skout Chat Log.
- [22] The panel finds that Ms. Bullon and the Respondent sent the texts reproduced in the Skout Chat Log. The panel has used the names Sara and James throughout the following summary of the texts reproduced in the Skout Chat Log.
- [23] In their initial text exchange on the Skout Chat Log, in her 5th text, Sara states, “I wanna be honest, you seem like a nice guy ... I’m 15 is that okay with you?” James texts, “Whoa. Why are u on here?” Sara texts that she is on to meet new people and is shy in person. James then texts, “Lol u a cop”, and asks her to send him a picture of herself making a peace sign. Sara then texts James a picture identified by Ms. Bullon as one of Ms. Lordache making a peace sign. Sara texts, “Happy now Lolz.” James then texts the following to Sara: “Ya but when was that second pic taken; Btw u look amazing; U should not be shy; Guys ur age must hit on u all the time”. Still in their initial exchange, James asks Sara if she has ever dated “an older guy before”, and Sara responds the oldest was 18.⁸

⁷ Exhibit #6, Skout Chat Log (17 pages of screen shots; page references are to the page numbers appearing on the bottom right corner of the printed pages in the Commissioner’s book of documents, Tab 34).

⁸ Ex. #6, Skout Chat Log, pp. 1-3.

- [24] The panel finds that the Respondent did not cease communicating with Sara after she represented to him that she was a minor.
- [25] Further in the initial text exchange on Skout, Sara texts James that her mother has taken away her phone and she is using her friend's phone. James then texts, "Bad girl u should listen to ur mom" and asks, "U smoke weed." Sara texts, "I haven't tried it yet. Do you?" James texts, "I do." James asks Sara her name, which she tells him is Sara, and he tells her his name is James. When Sara asks James for a phone number, he provides one and texts, "Shoot me a text now to confirm the number."⁹
- [26] Ms. Bullon testified that after the initial contact with James 33 on Skout, she switched to communicating with James 33 using the "TextNow" app. Ms. Bullon identified a document tendered by the Commissioner made up of over 100 pages of screen shots, which Ms. Bullon testified she took on her cell phone, capturing the text exchanges between James 33 and Sara on TextNow (the "TextNow Chat Log").¹⁰
- [27] The TextNow Chat Log shows the dates and times of the text messages, but it does not identify or show the profile picture of the person sending the texts. Ms. Bullon testified that as Sara, she sent the texts in the blue text boxes in the TextNow Chat Log, and that the Respondent's texts to Sara as "James 33" are in the white text boxes.
- [28] At some point in the exchanges on TextNow, Sara's friend "Hannah" exchanges texts with James 33, in keeping with the story that Sara's mother had confiscated her phone, and Sara has to use her friend's phone. Ms. Bullon testified that she sent the texts to James 33 attributed to Hannah. Ms. Bullon testified that for Hannah, she used photos of a woman named Natasha Johnson who had consented to the use of her photos by Ms. Bullon for the purposes of Creep Catchers. Ms. Bullon identified four photos of Ms. Johnson tendered by the Commissioner as the photos she used when responding to texts as Hannah.¹¹ Ms. Bullon's evidence was that she was the only person who had access to her phone, and that she was the only person posing as Sara and Hannah sending texts to James 33. Ms. Bullon denied editing or deleting any of the texts in the TextNow Chat Log.
- [29] The Respondent admitted that as James 33, he sent the texts to Sara and Hannah reproduced in the TextNow Chat Log. The Respondent alleged that the TextNow Chat Log was missing several text exchanges and that Ms. Bullon or someone else had edited and deleted the texts. However, the Respondent did not produce evidence to corroborate his allegations, such as copies of screen shots taken on his cell phone, and he repeated his explanation that he had thrown his cell phone off the Mission Bridge on or about October 15, 2016.
- [30] The text exchanges in the TextNow Chat Log commence on September 18, 2016. The last text exchanges are from October 14, 2016, the date the Respondent arranged to meet Sara and Hannah, and the date on which their meeting was recorded by Creep Catchers. The

⁹ Ex. #6, Skout Chat Log, pp. 4-7.

¹⁰ Exhibit #7, TextNow Chat Log (120 pages of screen shots; page references are to the page numbers appearing on the bottom right corner of the printed pages in the Commissioner's book of documents, Tab 35).

¹¹ Exhibit #4, copies of photographs of Natasha Johnson and Michelle Lordache.

screen shots in the TextNow Chat Log are duplicative and are not consistently reproduced in chronological order.

- [31] Special Constable Samuel Ward is a civilian member of the Abbotsford Police Department (the “APD”) where he works as a digital forensic analyst, performing data extraction and analysis from cell phones and computers. Constable Ward testified that in October 2016, another member of the APD (a Constable Sovio) performed the initial extraction of all of the data from a cell phone and saved this digital extraction to an APD computer. Constable Ward understood that the digital extraction was from a cell phone that Ms. Bullon had provided to the APD.
- [32] Constable Ward testified that Detective Tony Demers of the APD asked him to further extract the text exchanges from the digital extraction. Constable Ward testified that he used a program designed to read databases in order to extract from the initial digital extraction the messages on the TextNow App between James 33 and Sara. Constable Ward generated a chat log in a table form, which he then provided to Detective Demers (the “Ward Chat Log”). The APD provided the Ward Chat Log to the TRB. Constable Ward identified the document tendered by the Commissioner as the Ward Chat Log.¹²
- [33] Constable Ward testified that the Ward Chat Log shows the texts exchanged between Sara and James using the TextNow App, but that it did not capture the texts exchanged on the Skout website.
- [34] The information in the Ward Chat Log is set out in four columns. The left column identifies the person sending the text as either “James 33” or “Sara”. The middle two columns identify the times the text was sent and received in Greenwich Mean Time, and the fourth column reproduces the content of the texts. The Ward Chat Log includes all of the texts that were screen captured in the TextNow Chat Log.
- [35] Although he asserts that text exchanges have been deleted, the Respondent does not deny that he sent the texts attributed to James 33 reproduced in the TextNow Chat Log, which are also attributed to James in the Ward Chat Log.
- [36] The panel finds that as Sara and James 33/James, Ms. Bullon and the Respondent sent the texts reproduced in the TextNow and Ward Chat Logs. The panel has used the names Sara and James throughout the following summary of the exchanges.
- [37] In an exchange from September 19, 2016, the texts from James to Sara include the following: “Love to see what U wore today **sexy**”; “So how long u been single” “U must get hit on a lot ur pretty hot Sara.” James also asks Sara when she broke up with her 18-year-old boyfriend and, “He ur first?”¹³
- [38] During the September 19, 2016 exchange, James texts Sara, “Send me a pic girl” to which Sara responds, “Where’s my pic? James then texts the following: “Snap?”; “No offence

¹² Ex. #17, Ward Chat Log (22 pages; page references are to the page numbers appearing on the bottom right corner of the printed pages in the Commissioner’s book of documents, Tab 33).

¹³ Ex. #7, TextNow Chat Log, pp. 4-5; Ex. #17, Ward Chat Log, p. 1.

but I can get in trouble talking to u lol”; “scare u off?” Sara texts, “Huh what do you mean?” James texts, “Nothing”, “When u turn 16”, “U use snap chat?”¹⁴ In response to a picture sent by Sara (a photo identified by Ms. Bullon as one of Ms. Lordache), the texts sent by James include the following: “U are mint”; “What about a body shot”; “Ur eyes are deadly Sara”; and “U look good just saying like it is.”¹⁵

- [39] In an exchange from September 25, 2016, Sara texts James that her mother was going away and Hannah would probably come over for the weekend. In this context, the texts exchanged between James and Sara include the following:

James: Cool; U guys gonna party

Sara: My step dad works graveyard ... sleeps all day gone at night.

James: Or just have me over

Sara: He doesn't care what I do! Sounds good to me!

James: Cool What u an Hannah gonna do

Sara: What ever we want lolz

James: What kinda music u like; U guys smoke weed?

Sara: I've never tried; All sorts of music

James: Drink

Sara: I've never been drunk; Why will you bring some?

James: Did u want?

Sara: I'm game

James: Is Hannah

Sara: She says yup!

James: We ll see how the week goes; If ur still down.¹⁶

- [40] During the September 25, 2016 exchange, Sara texts that Hannah is colouring Sara's hair black and that she can't send James a picture because she looks like she “painted her head with tar”, to which James texts, “U would look soo hot painted in tar lol.”¹⁷ The following text exchange occurs (the emojis have been deleted):

Sara: Mud bath hahaha always wanted to try that lolz

James: Lol mmmm

Sara: Expensive though!

James: Who said u was paying lol

Sara: U paying???”

James: Of course; U dint ever have to ask; U just assume

Sara: Awe! Wow your so sweet James

James: That's how it fella should treat ya Sara¹⁸

¹⁴ Ex. #7, TextNow Chat Log, pp. 6-7, 15-16; Ex. #17, Ward Chat Log, p. 1.

¹⁵ Ex. #7, TextNow Chat Log, p. 17; Ex. #17, Ward Chat Log, p. 1.

¹⁶ Ex. #7, TextNow Chat Log, pp. 35-36; Ex. #17, Ward Chat Log, p. 5.

¹⁷ Ex. #7, TextNow Chat Log, pp. 36-37; Ex. #17, Ward Chat Log, pp. 5-6.

¹⁸ Ex. #7, TextNow Chat Log, pp. 37-38; Ex. #17, Ward Chat Log, p. 5.

- [41] Later on September 25, 2016, James texts Sara, and Hannah tells him Sara went home. James then texts Hannah, “How old are u”, to which Hannah texts, “15” “Almost.” James texts, “How old is Sarah”, and Hannah texts, “15”.¹⁹
- [42] On September 26, 2016, James texts Sara and Hannah answers. James asks Hannah for a picture and Hannah sends a picture, which Ms. Bullon identified as a photo of Ms. Johnson. James then texts, “Wow Hannah”, “Ur hot”, “When u take that”. James texts, “So u single?”, “U and Sara must get hit on a lot”, to which Hannah texts, “I am, her more than me lol!” James texts, “She dating anyone now”, to which Hannah texts, “No”.²⁰
- [43] The panel finds that by September 26, 2016, the Respondent had been exchanging texts with Sara and Hannah for approximately ten days, even though both of them represented to him that they are minors. The panel also finds that after several days of exchanging text messages, the texts attributed to James 33 do not refer to the Creep Catchers or provide any indication that the person sending the texts is conducting research into Creep Catchers.
- [44] In an exchange between James and Sara on September 27, 2016, James asks what happened to Sara’s phone and offers to buy her a new one (the emojis have been omitted):
- James: So why did ur mom take ur phone
 ...
 Sara: It’s a long story ... maybe I’ll tell you the whole thing on Sunday when you come hangout ... it has to do with the ex though
 James: Ohh did U do something naughty with ur phone
 Sara: Lol
 James: Or did ur mom not like the ex

 James: Give me a hint what’s up with ur phone; Is she gonna give it back or should I buy u one
 Sara: She said eventually but it’s been 2 months now lolz she’s a bitch; Maybe you should hahaha
 James: Wanna go get one tomorrow? Ud have to hide it from her; ?
 Sara: I do but I’m super busy 2moro ... I have dance after school and then dinner at my Grama’s; You would seriously get me a phone?!
 James: Yes; Seriously; U need a phone; not safe without a phone these days; Where u do dance?²¹
- [45] Through texts exchanged on September 28, 29 and 30, 2016, James, Sara and Hannah arrange to meet at Highstreet, a shopping mall in Abbotsford, on Sunday, October 2, 2016.
- [46] The Respondent admitted that he arranged to meet Sara and her friend Hannah at the Highstreet mall on October 2, 2016. The Respondent admitted that he went to the Highstreet mall and exchanged texts with Sara when he was there on October 2, 2016, but that he did not meet Sara and Hannah as arranged.

¹⁹ Ex. #7, TextNow Chat Log, pp. 39-42; Ex. #17, Ward Chat Log, p. 5.

²⁰ Ex. #7, TextNow Chat Log, p. 45; Ex. #17, Ward Chat Log, p. 7.

²¹ Ex. #7, TextNow Chat Log, pp. 51-53; Ex. #17, Ward Chat Log, pp. 8-9.

[47] The TextNow Chat Log contains the following text exchange from October 2, 2016, commencing after Sara has sent James a picture of Ms. Lordache holding a soft drink from McDonald's:

James: When u take that; You look super cute by the way
 Sara: Right now lol I look rough today lolz; So when r u coming?
 James: Where r u
 Sara: At high street lolz
 James: U look good Sarah take a pic of u two
 Sara: I'm shopping lolz u coming?
 James: Yea u at Walmart?; Sarah you look different in those pics send me one of u two
 Sara: I said I looked rough thanks ...
 James: All the pics u ve sent u look good; But they look like different girls; Take a pic of the store where u are
 Sara: Why you playing? Come see me or not
 James: I'm not I wanna see u; Why u so sketchy just send some pics
 Sara: Your being sketchy ...
 James: That's how we validate we send pics; Lol; I'm not sure why u can't send a pic; I'm in the Walmart parking lot; Whereabout are u; ?; Where u go? Lol
 Sara: I'm walking; Near cupcake place
 James: K where to? Come to Walmart
 Sara: I come to Walmart Mcdonald if you buy me a sundae lolz
 James: Ok; How long it take you
 Sara: 5 min
 James: Wait I'm about ten minutes away; I started driving back
 Sara: Okay; I'm sitting in the back, Hannah is in the washroom
 ...
 James: How much time we have
 Sara: U coming?
 James: Yes; Bringing a joint we can smoke; How much time we have
 Sara: Till 6
 James: K can I give u a ride?
 Sara: Sure; That would be awesome
 James: Ok her mom ok with that
 Sara: We can just tell her we took the bus; ???
 James: K cool; Wait coming; U still at mcdicks
 Sara: K 1 min
 James: I'm just driving up mt Lehman; Come to the parking lot; By the escalator; I'll buy you a sundae after
 Sara: What e u wearing
 James: And some cupcakes
 ...
 James: WhT u feel like; Can I call u
 Sara: Just come down here; No minutes
 James: Ok Where r u
 Sara: At the Mcdonald's lolz; In Walmart
 James: Go out the exit; And go to the escalator; Like ur going to London drugs; ok
 Sara: I'll wait here lolz

James: Lol y
 Sara: Cuz ur kinda scaring me now
 James: lol I'm cautious I don't know if ur a cop
 Sara: I'm not lolz just come down hahaha
 James: So not coming? Come to London drugs I ll buy u some cupcakes. U there
 Sara: No ur freaking me out ... I'm leaving
 James: Ok; sorry; I'm here if u change ur mind; where u go? What happened
 Sara: No come here ... lolz
 James: Still there? I don't see u; ?: Lol ur not here?
 Sara: I'm here
 James: Who u with
 Sara: Myself ... Hannah is walking around she got board
 James: Come to the pet food; Ok; ?; Ok; Not coming?
 Sara: I'm gonna call a cab, ur messing with me
 James: Ya ur a cop or something; Why would u call a cab just wait til Hannah's Mom comes; There's something about this that don't add up too bad ur quite fin; Fine; U see me walk by; Maybe another time lol
 Sara: What were you wearing? Lolz
 James: Black
 Sara: I didn't see you you're a jerk ...
 James: I'm a lil freaked out Sarah; Ur too good to be true; Why didn't u come to pet food; Lol; Where r I now; U
 Sara: Cuz u were scaring me; I'm coming outside
 James: Yea but wouldn't pet food be safer than outside lol; where r u
 Sara: Go the fuck away
 James: Lol what?!; That turned quick
 Sara: I'm mad at you!!
 James: What did I do; Where r u; ?
 Sara: You ditched, .. not ok I don't wanna talk to right now ...²²

- [48] The Respondent testified that by the time he arranged to meet Sara and Hannah at Highstreet on October 2, 2016, he knew that Sara and Hannah were adults and likely members of Creep Catchers. The Respondent told the panel that he had done a “reverse search” of the picture of Sara on Google and had discovered that it was a picture of Michelle Lordache and that she was associated with Creep Catchers. The Respondent did not produce a copy of the reverse search he performed to corroborate his evidence. The Respondent does not deny that he arranged to meet Sara and Hannah, but testified that when he went to Highstreet, he saw a woman (who he identified at the hearing as Ms. Bullon) at the McDonald's with a group of people. He testified that although he was researching Creep Catchers, he decided he was not ready to talk to them at that time.
- [49] The panel finds that the Respondent arranged to meet Sara and Hannah at Highstreet shopping centre in Abbotsford on October 2, 2016.

²² Ex. #7, TextNow Chat Log, pp. 68-80 Ex. #17, Ward Chat Log, pp. 12-14.

[50] At the hearing, the Respondent admitted that although he did not meet Sara and Hannah at Highstreet on October 2, 2016, he continued to exchange texts with them. The following text exchange is dated October 3, 2016:

Hannah: She's pretty upset

James: What did she say

Hannah: She just kept saying why did he do that? Why couldn't he come to me? She honestly think you just faked and never came. Her feelings are hurt though ... she didn't think you would act like that I guess

James: I see; Sorry one has to be cautious

Hannah: Of what? Sara is harmless lol what is she gonna do??

James: Lol not sure u two are real; Lol; Both so shy about pics lol; Are u real lol; ?; No

Hannah: I don't know what to say? Lol of course I'm real, ... so is Sara! U don't have to believe us ..

James: Lol send me a pic lol; U chat with a lot of guys?

Hannah: No u send one; No I don't

James: Ya see that's the weird part; Why u guys don't send pics lol!

Hannah: Neither do u!

James: But I've got a job n career I could lose²³

[51] The TextNow Chat Log shows that on October 6, 2016, James and Sara texted each other about the missed meeting at Highstreet:

James: How are u; U ok? I'm sorry; I messed up

Sara: I was pretty hurt

James: I'm sorry; How can I make it up to u

Sara: I dunno

James: What u doing tomorrow; Get u a phone

Sara: I was really sad James

James: 2 phones

Sara: No plans yet; Lolz

James: Let's hang out; Make it up to u; Go shopping; ?

Sara: Maybe .. I don't wanna get ditched again ..

James: I will never do that to you again Sara; Should I pick u up?

Sara: U promise

James: I promise; N pinky swear; Can I call u:?

Sara: No I'm just headed home I'll give you one more chance ...²⁴

[52] Later on October 6, 2016, Hannah responds to texts from James. Hannah tells James she was just going to jump in the shower and James texts, "Ok shoot me a pic lol". Hannah texts, "Of me in the shower?? Lol". James texts, "Of ur shower of course", "U shouldn't send nude photos silly", "Lol". Hannah sends James a picture of a shower door and texts, "hahaha happy now". James texts, "Yes", "Thank U", "It looks safe", "I was worrie there for a" "Bit" "Now what about ur leg lol". Hannah texts back, "They are hairy hahaha so

²³ Ex. #7, TextNow Chat Log, pp. 83-85; Ex. #17, Ward Chat Log, p. 15.

²⁴ Ex. #7, TextNow Chat Log, pp. 88-90; Ex. #17, Ward Chat Log, p. 16.

no leg lol". James then texts, "Lol hairy legs are hot lol" "Ok arm?" Hannah then sends him a picture of her arm.²⁵

- [53] Throughout his testimony, the Respondent alleged that Ms. Bullon had deleted text exchanges, which would show that he knew Sara and Hannah were part of Creep Catchers and support his assertion that he was engaged in research. He told the panel that he repeatedly referred to "the group" or to Creep Catchers in text exchanges with Sara and Hannah, but that Ms. Bullon must have deleted these texts to build the Creep Catchers' case against him.
- [54] The TextNow Chat Log includes an entry from October 7, 2016, in which James sends the following texts: "Hey", "What u doing" "Getting the group together lol". Hannah or Sara texts back, "Hey! What group lolz".²⁶ Early in the morning of October 8, 2016, James texts, "How was ur night?", "Where'd u go thought u were gonna be around", and "U know what group". Hannah then texts, "Me and Sara lol? That group? Sry we ended up not hanging out ... I'm sick", to which the Respondent texts, "Ohh hope ur feeling better."²⁷
- [55] The text exchanges of October 7 and 8, 2016 contain the only references to "the group" in the TextNow Chat Log.
- [56] Although the Respondent's evidence was that he knew or strongly suspected that Sara and Hannah were members of Creep Catchers, a suspicion bolstered by the people he saw at the McDonald's at the Highstreet Walmart on October 2, 2016, the Respondent continued to exchange text messages with Sara and Hannah. On October 12, 2016, the Respondent and Hannah exchange the following series of texts:

James: Cool; So how's school going

Hannah: It's ok ... same old lol

James: Lots of dudes hitting on u

Hannah: Sara is coming over 2moro if you wanna talk to her!; ?; Where? At school?

James: Lol anywheres

Hannah: Not really ... guess I'm not what they're looking for

James: What are u looking for

Hannah: Someone like me I guess .. same interests. someone relaxed and smart lol

James: Lol does Sara get hit on a lot

Hannah: Ya she is gorgeous

James: She with anyone right now

Hannah: No; She tells most of them off lol

James: U see her make out with her ex? Most of them? Lol

Hannah: Not make out ... just kiss; Ya u .. she said yes

James: Yes to who

Hannah: Like she wanted to get to know u .. she has turned everyone else down since and after she broke up with the bf she stayed away from guys for a long time ... u were the first in a while she thought maybe; But I'm not sure how she feels now ...

²⁵ Ex. #7, TextNow Chat Log, pp. 92-95; Ex. #17, Ward Chat Log, p. 17.

²⁶ Ex. #7, TextNow Chat Log, p. 96; Ex. #17, Ward Chat Log, p. 17.

²⁷ Ex. #7, TextNow Chat Log, p. 97; Ex. #17, Ward Chat Log, p. 17.

James: I see
 Hannah: ???
 James: Not sure what to say; I feel horrible; And only hope I'll have another chances;
 Chance
 Hannah: Then you should try and make it up to her
 James: How it's impossible to contact her lol; Flowers?
 Hannah: I dunno ... just keep trying to contact her through me I guess
 James: I will; Tell her what I said
 Hannah: Okay ... I will
 James: Any pics of her? That a no?
 Hannah: U have pics of her lol
 James: Send me one more recent one
 Hannah: Of her or me?
 James: Both or her; ?; Can't I see her?
 Hannah: Sry my phone keeps freezing; I'll send it again
 James: Lol send me s pic before it breaks lol
 Hannah: Did u get it?
 James: No send it again; Please
 [Hannah sends James a picture identified by Ms. Bullon as one of Ms. Lordache]
 Hannah: ?
 James: Cool when's that from?
 Hannah: Last week I think
 James: Who she take that for lol
 Hannah: Probably u
 James: Ur right she is gorgeous; ...²⁸

[57] On October 13, 2016, James and Sara exchange the following texts:

James: What's up; How was ur day
 ...
 James: How u been; When we gonna be able to chill
 Sara: I've been so so ... idk ... I'm not sure you'll show
 James: I will; U need to let me show u; And let me make it up to u; I owe u; How's
 school
 Sara: Okay last chance!
 James: Ok when
 Sara: Sunday?
 James: Ok what time u think
 Sara: Or maybe 2moro night
 James: Either works; What's up tomorrow; Can I call u
 Sara: Nothing really, going to the mall maybe
 James: Cool seven oaks?
 Sara: Ya I like the boathouse store lolz; And foot locker I want new shoes
 James: Cool should daddy buy u some shoes? ?lol guess not; That freak you out
 Sara: No sorry Hannah's mom is nosy ... I'd love that

²⁸ Ex. #7, pages 102-106; Ex. #17, Ward Chat Log, pp. 18-19.

James: I think I owe u a shopping spree; What u think
 Sara: Really !?!?!
 James: Yea really I owe u Sara; U need a daddy? To take care of u
 Sara: That would be awesome!! Sure
 James: Cool; How u getting to the mall tomorrow; ?
 Sara: My mom
 James: So why did ur mom take ur phone; Did she find a pic on it?
 Sara: Ya lots of them
 James: What were u doing; U n ex? ?
 Sara: No him
 James: That made her mad?
 Sara: I got my phone taken cuz I kept talking to him even though my mom told me not to ... and she thought he was a loser. So I'm being punished ... it's not fair
 James: Phone gone forever? That ok ur daddy can get u a new phone; Remember u have a daddy who takes care of ur needs
 Sara: !!!
 James: So we gonna hang tomorrow?
 Sara: I will let you know for sure ... my mom always messes up my plans but I'll really try hard
 James: ?That's what moms do;
 [At this point, James attempts to call Sara, but it is not answered]
 James: Why no answer
 Sara: It's not working ... Hannah says she's outta minutes lolz; I'm trying to answer
 James: Oh well; If daddy can't hear ur voice send me a pic
 Sara: Sorry
 James Lol; No pic? What u two doing; Y u so afraid of pics; Cause ur not who u say u are? Lol
 Sara: I'm not afraid lolz but you never ever send any pics so there
 James: lol send one more I'll send one blackb; Back; For ur daddy; ? Lol?
 Sara: Nope u first this time!
 [At this point, James sends a photo, which the Respondent identified as one of himself]
 James: Ur turn?
 Sara: Her mom just came hold up ...²⁹

[58] The TextNow Chat Log reflects that James arranged to meet Sara and Hannah at the food court at the Sevenoaks Shopping Centre in Abbotsford on the evening of Friday, October 14, 2016. The following entries from October 14, 2016 are the last entries in the TextNow Chat Log:

James: Ok let me know when ur here
 Sara: We are here; Lolz; In front of a&aw
 James: No ur not lol
 Sara: With Hannah yes I am; Where r u?
 James: There a guy sitting behind u
 Sara: Then come over silly

²⁹ Ex. #7, TextNow Chat Log, pp. 107-113; Ex. #17, Ward Chat Log, pp. 20-21.

James: No who is the guy sitting behind u; is he with u
 Sara: Where? No lol just me and Hannah
 James: Come over to the Starbucks; I'm just at the entrance
 Sara: Come here ... ur scaring me
 James: This again
 Sara: Well!
 James: U want me to come sit down with u two
 Sara: Of course!
 James: Is that ok?
 Sara: Ya why not
 James: U want a coffee?
 Sara: Not really thanks though
 James: Lol us see the sign behind u
 Sara: Come over lolz
 James: Turn around; lol; U looked to the side lol
 Sara: Come here u weirdo lolz; U coming? Or ditching again
 James: I'm right here come over
 Sara: Where??³⁰

- [59] The panel finds that the Respondent arranged to meet Sara and Hannah in person on October 14, 2016 at the Sevenoaks shopping centre.
- [60] In summary, based on the evidence set out in the Skout Chat Log, the TextNow and Ward Chat Logs, as well as the testimony of both Ms. Bullon and the Respondent, the panel finds that the Respondent initiated contact with the Sara profile on Skout, exchanged text messages with Sara after she represented to him that she was 15 both on the Skout website and using the TextNow app, and arranged to meet Sara on two occasions in October 2016.
- [61] The Commissioner tendered in evidence the recording made by the Fraser Valley Creep Catchers of the “catch” of “James 33” at the Sevenoaks Mall on October 14, 2016 (the “Video”).³¹
- [62] Both Ms. Bullon and the Respondent identified themselves as the people sitting in the food court area of the mall in the Video when it starts. The Video clearly shows the Respondent reacting as male persons confront him while he is sitting with Ms. Bullon, calling him James, and asking him why he is at the mall to meet 14 and 15-year old girls. Ms. Bullon identified the men recording the “catch” whose voices are heard as Mike MacDonald and Chad Dean, members of the Fraser Valley Creep Catchers. Ms. Bullon’s voice is also heard on the Video asking similar questions of the Respondent.
- [63] In the Video, the Respondent can be overheard saying “all I did was talk” as he puts up his hood and walks away from the food court area of the mall. The Video also shows the mall parking lot and the Respondent getting into his vehicle and driving away. The Respondent testified that after he left the food court, he left the mall and walked around the streets near

³⁰ Ex. #7, TextNow Chat Log, pp. 118-120; Ex. #17, Ward Chat Log, pp. 21-22.

³¹ Ex. #5, Video.

- the mall, before returning to his vehicle. The Respondent admitted that he is the person getting into his vehicle in the Sevenoaks mall parking lot in the Video.
- [64] The Respondent also admitted that, although he suspected Sara and Hannah were members of Creep Catchers before he arranged to meet them in person, he took no steps to protect himself, such as asking a friend or family member to accompany him when he went to meet them at the mall, or recording their meeting himself.
- [65] Ms. Bullon testified that after Mr. MacDonald had edited the Video, she posted the Video to YouTube on Friday, October 21, 2016.
- [66] Based on the evidence of the Video, together with the testimony of Ms. Bullon and the Respondent, the panel finds that the Respondent was recorded by the Fraser Valley Creep Catchers on October 14, 2016, while attempting to meet Sara, and that this video was posted on the Internet, via YouTube.
- [67] Angus Wilson became the Superintendent of the District in June 2016. He testified that he first met the Respondent in June 2016 when he was touring the schools as the new superintendent, and again at a meeting of the District principals.
- [68] Mr. Wilson described the role of a school principal as a leader and a manager, who occupies a position of inspiration for teachers, employees and students. In Mr. Wilson's opinion, a principal should have a deep belief in education and possess a good moral compass, and a principal should care about the students and the community.
- [69] Mr. Wilson testified that on the morning of Saturday, October 22, 2016, Rob Clarke, a Vice Principal in the District, contacted him and sent him a link to the Video. Mr. Wilson watched the Video and identified the man in the Video, "James 33", as the Respondent.
- [70] Mr. Wilson testified that he spent all of that Saturday in a series of phone calls with the District trustees, the senior staff of the School, as well as the District's lawyers, regarding the Video and the steps he and his staff had to take to deal with the impact of the Video on the School and its community.
- [71] Over that weekend, Mr. Wilson and Larry Jepson, the District Assistant Superintendent, had to arrange for a replacement principal at the School, which involved transferring the Silverdale principal to the School, and backfilling administrators from other schools, and arranging school counsellors to be available for staff and students of the School.
- [72] On the morning of Sunday, October 23, 2016, Constable Kevin Murray of the APD contacted Mr. Wilson and Mr. Jepson by email asking to speak with one of them as soon as possible about the Video.³²
- [73] Starting the weekend of October 22-23, 2016, Mr. Wilson said he received many emails and phone calls about the Video from concerned parents and staff of the School, and of

³² Ex. #27, email to Angus Wilson, cc. Larry Jepson, from Cst. Kevin Murray, APD, dated October 23, 2016, 10:20 a.m. re "priority matter".

Silverdale (the school where the Respondent had formerly been the principal). The Commissioner tendered in evidence some emails Mr. Wilson exchanged with members of the Parent Advisory Committees of the two schools about the Video.³³

- [74] On Sunday, October 23, 2016, Mr. Wilson contacted the Respondent by email and advised the Respondent not to attend at the School that Monday.³⁴
- [75] Mr. Wilson said that the process of replacing the Respondent was very disruptive. Mr. Wilson testified that on Monday, October 24, 2016, he sent letters to the parents of children attending the School,³⁵ as well to the parents of children attending Silverdale,³⁶ about the replacement of their principals. Mr. Wilson testified that he had to send a second letter to the Silverdale parents, as they were upset that their principal had been moved to the School to replace the Respondent.³⁷ Mr. Wilson testified he held a series of meetings with parents at the School and at Silverdale to address their concerns because, in Mr. Wilson's words, to learn that the principal of their child's school was alleged to be exchanging texts and meeting minors, as depicted in the Video on YouTube, represented "every parent's nightmare."
- [76] Mr. Wilson testified he spent several weeks in late October and November 2016 handling the effects of the Video on the School and the community. He said that he and Mr. Jepson were pulled away from their regular duties, as were several District school counsellors, which meant that they were not available to perform their normally assigned tasks.
- [77] Mr. Wilson described the media coverage of the Video as "extensive" and identified news stories about the Video the Commissioner tendered in evidence.³⁸ Mr. Wilson testified he received emails from members of the media asking for comment on the Video.³⁹ He also testified that he had to confront and eject television reporters from off the School property early in the week of October 24, 2016.
- [78] On Monday, October 24, 2016, Mr. Wilson advised the Respondent in a letter⁴⁰ that he was suspending him with pay, pursuant to section 15(5) of the *School Act*⁴¹, and that the District would be conducting an investigation into the matter.

³³ Ex. #28, email to Angus Wilson, cc. Larry Jepson and others, from Pontus Lindgren dated Sunday October 23, 2016 7:19 p.m. re "Mr. Obert and Silverdale Elementary"; and Ex. #31, email to Angus Wilson from Ashley Cau dated Sunday October 23, 2016 9:35 p.m., forwarding an email from Cheryl Chan, reporter, re "Interview request".

³⁴ Ex. #32, email to the Respondent from Angus Wilson dated Sunday October 23, 2016, 10:23 a.m., re "off from work".

³⁵ Ex. #33, letter from Angus Wilson to parents at Windebank Elementary School dated October 24, 2016.

³⁶ Ex. #34, letter from Angus Wilson to parents at Silverdale Elementary School dated October 24, 2016.

³⁷ Ex. #46, letter from Angus Wilson to Silverdale Parents dated October 25, 2016.

³⁸ Ex. #35, 604 Now, October 24, 2016, Crystal Scuor, "Creep Catchers Nabs Elementary School Principal"; and Ex. #36, BC News - Castanet, October 24, 2016, David Wylie, "Principal in creep sting?"

³⁹ Ex. #29, email to Angus Wilson from Cheryl Chan, Vancouver Sun/The Province, Sunday October 23, 2016 at 9:35 p.m. re "Comment on Jason Obert"; Ex. #30, email to Angus Wilson from Emily Lazatin, CKNW, Monday October 24, 2016, at 2:57 p.m. re "CKNW Radio Request".

⁴⁰ Ex. #37, letter from Angus Wilson to the Respondent dated October 24, 2016.

⁴¹ *School Act*, R.S.B.C. 1996, c. 412, s. 15(5): "If the superintendent of schools is of the opinion that the welfare of the students is threatened by the presence of an employee, the superintendent may suspend the employee, with pay, from the performance of his or her duties."

- [79] Brian Mitchell has been an investigator with the TRB for approximately seven years. Mr. Mitchell testified that under the *School Act*, if a superintendent suspends an “authorized person”⁴², the superintendent must send a report of the suspension “without delay” to the Commissioner.⁴³ Mr. Mitchell confirmed that on October 24, 2016, Mr. Wilson reported to the Commissioner that he had suspended the Respondent pursuant to subs. 15(5) of the *School Act*, and he copied the Respondent.⁴⁴
- [80] Mr. Mitchell confirmed that on October 26, 2016, the Commissioner advised the Respondent that as a result of Mr. Wilson’s report, the Commissioner was directing an investigation into the matter and had ordered the Director of Certification to suspend the Respondent’s certificate until the investigation was resolved.⁴⁵ The Respondent admitted he did not write to the Commissioner, requesting that the suspension be varied or rescinded, although the Commissioner advised him in the letter he had this option.
- [81] Mr. Wilson testified that as part of its investigation, the District arranged interviews with the Respondent in November 2016, but that the Respondent did not participate in the District investigation.⁴⁶
- [82] On November 25, 2016, the Respondent was charged with one count of child luring (an offence under the *Criminal Code*). The Respondent was released on bail (recognizance), the conditions of which included that he was to have no contact or communicate directly or indirectly with anyone who reasonably appeared to be under the age of eighteen (unless accompanied by his wife or an adult approved by his bail supervisor), and that he not attend at any school ground.
- [83] The Commissioner tendered in evidence an email dated November 28, 2016 from Sally Mercer, the TRB Manager of Communications, in which Ms. Mercer had compiled media reports from November 26 and 27, 2016 about the Respondent’s arrest.⁴⁷ Mr. Mitchell confirmed that he had received the email from Ms. Mercer. The email reproduces ten separate articles from sources such as the Canadian Press, the Vancouver Sun, the Province, the Victoria Times Colonist, CBC, and CKNW. Mr. Wilson is quoted in most of the media reports.
- [84] Mr. Mitchell testified that when criminal charges are laid against an authorized person, the TRB will postpone its discipline investigation until after the criminal proceedings have concluded and that these investigations always take longer than investigations where no criminal charges are laid.

⁴² *School Act*, s. 16(1): “In this section, “authorized person” means a certificate holder or a person holding a letter of permission issued under the *Teachers Act*, but does not include a superintendent.”

⁴³ *School Act*, s. 16(2): “If a superintendent of schools suspends an authorized person, the superintendent must without delay send to the commissioner a report regarding the suspension.”

⁴⁴ Ex. #11, letter from Angus Wilson to Commissioner, TRB, dated October 24, 2016.

⁴⁵ Ex. #12, letter from Hon. Bruce M. Preston, Commissioner, TRB, to Respondent dated October 26, 2016.

⁴⁶ Ex. #40, letter from Angus Wilson to Respondent dated November 15, 2016; Ex. #41, letter from Angus Wilson to Respondent dated November 23, 2016.

⁴⁷ Ex. #13.

- [85] The Respondent testified that his legal counsel advised him not to participate in the District investigation given the criminal proceedings. On December 14, 2016, the District dismissed the Respondent from his employment asserting cause.⁴⁸ The Respondent advised the panel that he did not commence a legal action for the termination of his employment.
- [86] On July 17, 2017, the Crown entered a stay of proceedings of the child luring charge, based upon the Respondent entering into a further 9-month recognizance, which included conditions that were substantially the same as his bail conditions.
- [87] Mr. Mitchell confirmed that on July 18, 2017, he contacted the Abbotsford Provincial Court and asked the Court Registry to provide him with the court record pertaining to the Respondent as part of the TRB's investigation. The Abbotsford Provincial Court provided the court record to Mr. Mitchell by fax on July 24, 2017.⁴⁹
- [88] Mr. Mitchell confirmed that on November 8, 2017, he contacted the APD and asked them to provide him a copy of the Ward Chat Log, which the APD provided to him on December 19, 2017.⁵⁰
- [89] Mr. Mitchell testified that in the course of his investigation, he interviewed Ms. Bullon by telephone on September 26 and in person on November 21, 2018.⁵¹ Mr. Mitchell testified that Ms. Bullon provided him with a flash drive, which is the Skout Chat Log. Mr. Mitchell said that he did not interview any other members of the Creep Catchers as part of his investigation.
- [90] As part of his investigation, Mr. Mitchell interviewed the Respondent once on April 3, 2019. Mr. Mitchell testified that it is standard practice for all TRB investigation interviews of authorized persons to be recorded and he identified the transcript tendered by the Commissioner as a copy of the transcript of his interview with the Respondent.⁵²
- [91] Early in the interview, Mr. Mitchell asked the Respondent if he acknowledged that, as a principal of a school, he holds a "position of trust and authority with respect to children" and that he was "in fact a role model." The transcript reflects the following exchange:

JO: That – as in that position I I held it, yes. That's entirely correct.

BM: Okay, so you acknowledge that and at the time you were doing this that you were a principal and that was your, you know, that was a, that's a significant position, right, of

⁴⁸ Ex. #45.

⁴⁹ Ex. #14, fax to Brian Mitchell from Abbotsford Provincial Court dated July 24, 2017, attaching the following: a copy of the information sworn November 25, 2016; a copy of the information sworn May 26, 2017; a copy of the bail recognizance dated December 2, 2016 with conditions; and a copy of the recognizance after allegation dated July 17, 2017, with conditions.

⁵⁰ Ex. #16, letter from Gwynne Oakley, Information and Privacy Analyst, APD, to Brian Mitchell dated December 19, 2017.

⁵¹ Ex. #24 and #25, copies of Brian Mitchell's interview notes.

⁵² Ex. #18, transcript of interview by Brian Mitchell of the Respondent dated April 3, 2019.

trust with the children?

JO: I uh yeah, in no way argue that.⁵³

- [92] In the interview with Mr. Mitchell, as in his testimony before the panel, the Respondent admitted that he exchanged text messages with Sara and Hannah, and continued to text them after they represented to him that they were minors. He also admitted that he arranged to meet Sara and Hannah on two occasions and that he went to the Sevenoaks mall and was recorded by the Creep Catchers.⁵⁴
- [93] During his interview with Mr. Mitchell, the Respondent explained all of his conduct as research into the Creep Catchers for the purposes of a story he planned to write about the Creep Catchers. Mr. Mitchell acknowledged that this was the first time he heard this explanation. The Respondent admitted to Mr. Mitchell that he did not participate in and was not interviewed by the District during its investigation into his conduct, and that he was not interviewed by the APD as part of its criminal investigation.⁵⁵
- [94] In May and June 2019, the Respondent provided Mr. Mitchell copies of notes from conversations the Respondent said he had with Ryan LaForge, the founder of the Surrey Creep Catchers, as well as outlines for fiction and non-fiction stories about the Creep Catchers, and manuscripts of draft stories.⁵⁶ There is no way to confirm the date that these documents were created by the Respondent.
- [95] Mr. Mitchell confirmed that the Respondent's certificate was cancelled on November 1, 2019, due to non-payment of fees.
- [96] Mr. Wilson told the panel that he runs a leadership course for District teachers and that several of the teachers were aware he was to testify at this hearing. Mr. Wilson testified that he believes the teachers at the School still feel betrayed by the Respondent and are still coping with the impact of his conduct on them and on the public's confidence in the school system.

ANALYSIS AND DECISION

- [97] There is no dispute that the applicable standard of proof in this case is the balance of probabilities.⁵⁷ In order to satisfy the balance of probabilities test, the evidence must be sufficiently clear, convincing and cogent.⁵⁸
- [98] The panel acknowledges that the Chat Logs are not a perfect record of the texts exchanged between the Respondent as "James 33" and Ms. Bullon as "Sara" and/or "Hannah" on Skout and TextNow. However, the Respondent admitted to the panel that he wrote and sent the texts to "Sara" and "Hannah" attributed to "James 33", which are reproduced in

⁵³ Ex. #18, p. 12.

⁵⁴ Ex. #18, p. 28.

⁵⁵ Ex. #18, p. 32 of 37, lines 33-36.

⁵⁶ Ex. #20, 21, 22 and 23.

⁵⁷ *F.H. v. McDougall*, 2008 SCC 53 at para. 49.

⁵⁸ *F.H. v. McDougall*, *supra*, at para. 46.

the three Chat Logs. Ms. Bullon denied that she deleted any text exchanges or edited the content of the emails sent by “James 33” or “Sara” or “Hannah” and the Respondent produced no evidence to undermine her testimony.

- [99] The panel finds that the text exchanges depicted in the Chat Logs are a reliable record of the texts exchanged between the Respondent and Ms. Bullon, posing as Sara and/or Hannah.
- [100] The Respondent also admitted that he arranged to meet “Sara” on two occasions, and on one of those occasions, he was filmed by the Creep Catchers, as depicted in the video posted on YouTube.
- [101] The Respondent rationalizes his conduct as research into the Creep Catchers. He asserts that the persons involved (that is, the Respondent and Ms. Bullon) knew they were playing roles, and both knew that they were not who they represented themselves to be. He alleged that Ms. Bullon had purposely deleted text exchanges in which he made it clear to her that he was researching the Creep Catchers. He also alleged that Ms. Bullon was financially motivated to set up Creep Catchers “stings” that would attract numerous hits on YouTube.
- [102] The panel finds that the Respondent’s explanation that his conduct was at best innocent personal research and at worst, flirtatious texting as part of role playing, is not plausible. The Respondent’s rationalization that his conduct was simply research and/or role playing does not alter the fact that he continued to send text messages to “Sara” after she represented to him that she was 15 years old, and that many of the messages to “Sara” and her friend “Hannah” (who represented that she was 14) were sexualized. Nor does the Respondent’s explanation alter the fact that the Respondent arranged to meet “Sara” and “Hannah” at a mall and went in person to the mall for the meeting, where he was recorded by Creep Catchers, in a video that was then posted on YouTube.
- [103] The fact that “Sara” was in reality an adult pretending to be a 15-year-old girl and her 14-year-old friend does not exonerate or excuse the Respondent’s behaviour. This was not a case of private role playing between two consenting adults. The texts are not innocuous flirtations as the Respondent asserts.
- [104] The panel finds that the Commissioner’s evidence is clear, convincing and cogent.
- [105] The panel finds that the Commissioner has proven that it is more likely than not that the conduct set out in paragraphs 1(a) through (f) of the Citation occurred.

Does the proven conduct breach the Standards?

- [106] Standard #2 provides as follows:

Educators are role models who act ethically and honestly.

Educators act with integrity, maintaining the dignity and credibility of the profession. They understand that their individual conduct contributes to the perception of the profession as a whole. Educators are accountable for their conduct while on duty, as well as off duty, where that conduct has an

effect on the education system. Educators have an understanding of the education system in BC and the law as it relates to their duties.

- [107] The Commissioner submits that the Respondent's conduct breaches Standard #2.
- [108] In response to a question from the panel, the Respondent agreed that a principal is a role model who acts as an example to the students and the school community as a whole, and that he agreed with and echoed the testimony of Mr. Wilson about the role of a principal.
- [109] In September and October 2016, the Respondent was an elementary school principal. Under cross-examination, the Respondent agreed that it was not appropriate for a principal to join the Creep Catchers or to participate in the activities of the Creep Catchers.
- [110] The Respondent explained his conduct as personal research into Creep Catchers for the purposes of writing a story when he was not at work. He chose to conduct this research through the first-hand experience of playing the role of a person exchanging what he described as flirtatious texts with young women who represented to him that they are minors.
- [111] The Respondent admitted that engaging in the conduct the panel has found to be proven by the Commissioner was extremely risky. The text exchanges clearly illustrate that the Respondent knew his conduct was problematic, exemplified by his comments to Sara and Hannah that he could get into trouble and lose his job and his career, and his repeated musings if they are in fact cops. The panel also notes that many of the text messages appear to have been exchanged during, or shortly after, normal school hours.
- [112] The Respondent, a principal, admitted he exchanged text messages with a person who had represented to him that she was 15, which included sexualized comments (such as suggesting that she was "hot" and "mint", asking if she was still a virgin, and referring to himself as her "daddy" who would buy her a cell phone and shoes). He admitted he sent similar sexualized texts to a person who represented that she was 14. In the text exchanges, the Respondent asked these minor girls if they smoked weed and offered to buy them alcohol. The Respondent admitted he arranged to meet these apparent 14 and 15-year-old girls at a mall on two separate occasions. The Creep Catchers filmed the Respondent "meeting" one of the girls and posted the "catch" on YouTube, identifying the location where the "catch" occurred.
- [113] The panel finds that the Respondent's conduct breaches Standard #2. In engaging in the conduct, the panel finds that the Respondent did not act with integrity. The panel further finds that the Respondent's conduct undermined the dignity and credibility of the profession and eroded the confidence of the community in the public education system.

Is it conduct unbecoming?

- [114] Section 63(1)(b) of the Act provides that, after a hearing, a discipline panel may make a finding that an authorized person has been guilty of conduct unbecoming a teacher. Section 1 of the Act defines an "authorized person" as a certificate holder. At the time of the conduct set out in the Citation, the Respondent was an authorized person. Although the

Act refers to “conduct unbecoming a teacher”, the legislative scheme imposing discipline under section 63(1) captures administrators (*e.g.*, principals and vice-principals), as only a certificate holder (that is, a teacher) can become an administrator.

[115] There is no definition of “conduct unbecoming” or “professional misconduct” in the Act. “Professional misconduct” is generally considered to relate to conduct while engaged in the practice of the given profession, whereas “conduct unbecoming” relates to off-duty conduct (conduct that is not in the course of the practice of the profession).⁵⁹ The panel must look to the case law to determine if the Respondent’s conduct amounts to conduct unbecoming a certificate holder.

[116] Canadian courts have found that educators are role models who occupy positions of trust and confidence. For this reason, the off-duty conduct of an educator may be subject to professional discipline. The British Columbia Court of Appeal has described this rationale as follows:

The reason why off-the-job conduct may amount to misconduct is that a teacher holds a position of trust, confidence and responsibility. If he or she acts in an improper way, on or off the job, there may be a loss of public confidence in the teacher and in the public school system, a loss of respect by students for the teacher involved, and other teachers generally, and there may be controversy within the school and within the community which disrupts the proper carrying on of the educational system.⁶⁰

[117] In its decision in *Ross*, a case involving a New Brunswick teacher who publicly made racist and anti-Semitic comments during his off-duty time, the Supreme Court of Canada made the following remarks about the reason educators are subject to discipline for their off-duty conduct:

It is on the basis of the position of trust and influence that we hold the teacher to high standards both on and off duty, and it is an erosion of these standards that may lead to a loss in the community of confidence in the public school system. I do not wish to be understood as advocating an approach that subjects the entire lives of teachers to inordinate scrutiny on the basis of more onerous moral standards of behaviour. This could lead to a substantial invasion of the privacy rights and fundamental freedoms of teachers. However, where a “poisoned” environment within the school system is traceable to the off-duty conduct of a teacher that is likely to produce a corresponding loss of confidence in the teacher and the system as a whole, then the off-duty conduct of the teacher is relevant.⁶¹

⁵⁹ James T. Casey, *The Regulation of Professionals in Canada*, loose-leaf (Toronto: Carswell, 1994) at p. 13-1 (2014 – Rel. 3).

⁶⁰ *Abbotsford School District 34 Board of Trustees v. Shewan* (1987), 21 B.C.L.R. (2d) 93 at 97 (C.A.), cited with approval in *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825 at para. 44 (S.C.C.) (*Ross*).

⁶¹ *Ross*, *supra*, at para. 45.

[118] Madam Justice Ross of the British Columbia Supreme Court summarized the applicable legal principles regarding the discipline of teachers for off-duty conduct in the first *Fountain* decision (*Fountain No. 1*) as follows:

The conduct giving rise to the citation occurred when Mr. Fountain was not performing his duties as a teacher. It is well settled that such off-duty conduct can give rise to discipline when the conduct has a negative impact on the teacher's ability to carry out his obligations as a teacher or where the conduct has a negative impact on the school system, for example, where the activities conflict with core values of the education system: see *Ross v. New Brunswick School District No. 15 ...*⁶²

[119] Madam Justice Ross identified the factors relevant to a determination of whether a teacher has engaged in conduct unbecoming, particularly in the absence of direct evidence:

- a) The nature of the conduct at issue;
- b) The nature of the position;
- c) Whether there is evidence of a pattern of conduct;
- d) Evidence of controversy surrounding the conduct;
- e) Evidence that the private conduct has been made public; and
- f) Evidence that the private conduct has been linked by the member to the professional status of the member.⁶³

[120] The panel has considered the application of the factors articulated by Madam Justice Ross in *Fountain No. 1* in this case. Using the pseudonym of "James 33", the Respondent continued to exchange sexualized text messages with a young woman for approximately one month after she had expressly represented to him that she was 15. The Respondent arranged to meet the young woman and her friend at a mall on two occasions and admitted he went to the arranged locations both times, although did not follow through the first time.

[121] The public does not condone sexual relationships between adults and minors, or communications between adults and minors of a sexualized nature.

[122] At the time of the conduct, the Respondent was the principal of an elementary school, and had been a certificate holder for thirteen years. The Respondent knew that a principal is a role model who must inspire trust and confidence in the community and whose conduct must reflect the values set out in the Standards.

[123] The Respondent's private conduct became very public when the recorded "catch" was posted on YouTube by Creep Catchers.

⁶² *Fountain v. British Columbia College of Teachers*, 2007 BCSC 830 at para. 51 (*Fountain No. 1*).

⁶³ *Fountain No. 1*, *supra*, at para 59.

- [124] Although he used a pseudonym, the Respondent's identity and profession was quickly linked to the Creep Catchers Video, resulting in numerous media reports, as well as public discussion and comment.
- [125] Mr. Wilson's testimony provided compelling evidence about the adverse impact of the Respondent's conduct on the School community. It is clear to the panel that the Respondent's conduct deeply shook the confidence of the School's parents and teachers, as well as of the public, in the education system. It is also clear to the panel that the Respondent's conduct continues to affect the School community.
- [126] The panel concludes that the Respondent's conduct clearly amounts to conduct unbecoming an authorized person.

ORDER

The panel finds the Respondent guilty of conduct unbecoming a teacher under s. 63(1)(b) of the Act.

PUBLICATION

Section 66 of the Act expressly requires that the panel's reasons for making an order under section 63(1)(b) be published, subject to limited exceptions, none of which apply here. Accordingly, the panel directs publication of these reasons.

CONSEQUENCES & COSTS

Having found the Respondent guilty of conduct unbecoming a teacher under section 63(1)(b) of the Act, this panel is empowered to impose a penalty on the Respondent. The Commissioner has requested that the submissions on appropriate penalty be submitted in writing by both parties.

Accordingly, the panel directs that submissions on penalty be made in writing and that any submissions on costs be submitted in writing. The deadlines for these submissions shall be set by the Hearing Coordinator of the Teacher Regulation Branch.

For the Panel

Date: July 29, 2020



Meg Gaily, Panel Chair

A handwritten signature in black ink that reads "Cooke". The letters are cursive and connected, with a prominent loop on the 'C'.

Matthew Cooke, Panel Member

A handwritten signature in black ink that reads "Tom Longridge". The signature is written in a cursive style with a large, sweeping 'T' and 'L'.

Tom Longridge, Panel Member



DISCIPLINE CASE SUMMARY

a. Russell Lance Read

- b. Professional misconduct and conduct unbecoming a member of the College.
- c. The hearing was held May 26-30, 2008, in relation to four Citations, at the College's offices in Vancouver, B.C. The penalty phase of the hearing was held on March 23, 2009. The report and recommendations of the Hearing Sub-Committee (the "Committee") were presented to Council on October 8, 2009, in accordance with section 22 of the *Teaching Profession Act*. This matter originated as a report under section 16 of the *School Act*.
- d. With respect to the incidents in 2002, Mr. Read was employed as a middle school teacher when he sent an email to a female grade twelve student, in which he referred to her and another grade twelve female student, as "grade 12 babes". The email also included an inappropriate remark and intensely personal information concerning several other students. As a result of this incident, the school district investigated Mr. Read, and he responded by preparing a petition or declaration asking students to sign in support of him relative to the investigation against him. Further, Mr. Read attended a grade twelve female student's workplace to provide her with pamphlets and information on a religion known as Wicca. In addition, in May 2002, Mr. Read interacted with a female student after having been instructed not to do so by the school's vice-principal. This arose from the student's complaint that Mr. Read had previously interacted with her in an inappropriate manner. In 2004, Mr. Read told an inappropriate joke with sexual content to his two grade eight computer classes. An investigation by the school district ensued as a result of the inappropriate joke containing the sexual innuendo, and subsequently, Mr. Read communicated his displeasure to the students of these classes in having been reported to the school principal. Further, in February 2004, Mr. Read suggested to a grade eight female student to conduct an internet search using words that were, or were similar to, the words "hot chicks", where she was to retrieve photographs for a website that she was constructing concerning herself. Mr. Read entered into a Statement of Agreed Facts and Admissions and admitted that his above-noted conduct constituted professional misconduct.

In or about the period between January 1979 and December 1983, while working as a teacher at a band school, Mr. Read was found to have given a young female the drug, amyl nitrate, and encouraged her recreational use of it. The incident did not occur in the school setting and the young female was not a student of Mr. Read's. In a second incident, Mr. Read was alleged to have touched this young female on the thigh for sexual purposes, while in his vehicle. In addition, Mr. Read was found to have engaged in a sexual encounter with this young female, while she was a minor.

- e. The Committee unanimously accepted the facts and admissions made by Mr. Read in the Agreed Statement of Facts and Admissions. Mr. Read's admission of guilt with respect



DISCIPLINE CASE SUMMARY

to the incidents that occurred in 2002 and 2004 constituted professional misconduct. With respect to the incidents that took place between 1979 and 1983, the Committee unanimously agreed that Mr. Read did supply the drug, amyl nitrate, to a minor child for unauthorized non-medical use, which falls clearly outside the scope of the standard of behaviour expected of teachers in their role outside of the classroom. Therefore, the Committee found Mr. Read guilty of conduct unbecoming a member of the College. With respect to the second incident, the Committee found that Mr. Read did not touch the young female on her thigh for sexual purposes while in his vehicle. However, the Committee did find that Mr. Read did engage in a sexual encounter with the young female. Notwithstanding that she was not a student of his nor was a student at the school at the time of the incident, the young female clearly known to Mr. Read to be a minor and a person who would not be able to consent to a relationship with an adult male. Mr. Read's actions were deemed inappropriate and fell outside of the ethical behaviour expected of teachers in their role outside of their classroom. The Committee found Mr. Read guilty of conduct unbecoming a member.

- f. The Committee further considered the submissions presented by counsel on penalty, publication and costs. The Committee unanimously agreed that Mr. Read be issued an indefinite suspension, with a ten-year bar to further re-application with the College. Mr. Read's Certificate of Qualification was cancelled in 2006 for non-payment of fees. In making their decision, the Committee considered both the more recent and historical events and noted that all of the behaviour, when considered in its entirety, required a very serious response by the College. The Committee further agreed that no costs be assessed to Mr. Read. It was the Committee's view that costs should not be used as a penalty, or a threat in cases which are difficult or expensive to prove. In addition, Mr. Read did not obstruct or impede the proceedings. With respect to publication, the Committee unanimously agreed that a summary of the circumstances of the decision and the action taken be published. That Mr. Read's name be published as the College must be transparent in order to fulfill its mandate to the public. By agreeing to abide by the *Standards for the Education, Competence and Professional Conduct of Educators in BC*, an educator enters into a contract with the public in which parents can confidently send their children into an educator's care.
- g. College Council considered the report and recommendations of the Committee and agreed to accept the recommendation and reasons as to penalty, costs and publication.

Palidwor, Edward Charles - Consent Resolution Agreement

admitted to professional misconduct. In December 2006, a Grade 5 female student attended Mr. Palidwor's Grade 2 classroom at recess. During this time, Mr. Palidwor assisted the student with a problem at the computer terminal. He placed his hand on the waist of the student and then moved it up her front until it touched her breast. The student then squeezed her elbows down towards her sides as a consequence of which Mr. Palidwor removed his hand from her chest. In March 2007, Mr. Palidwor was charged under section 151 of the Criminal Code with sexual touching, to which he pled not guilty. He plead guilty to the lesser and included offence of assault under section 266 of the Criminal Code. On October 28, 2008, the Preliminary Investigation Sub-Committee approved the Consensual Resolution Agreement in which Mr. Palidwor agreed to a cancellation of his College Certificate of Qualification.



Summary:

Re: Plehanov, Aleksandr Vladimirovich

This summary is published under section 54(3)(a) of the Teachers Act to protect the identity of students who were harmed, abused or exploited by Mr. Plehanov and in accordance with an order made by a judge of the Provincial Court of British Columbia under section 486.4 of the Criminal Code of Canada that prohibits the publication, broadcast or transmission of any information that could identify the students.

1. Between January 31, 2007 and March 15, 2010 Mr. Plehanov was employed as a teacher by School District No. 43 (Coquitlam) (the “District”).
2. At all material times, Mr. Plehanov was employed as a Teacher on Call (“TOC”) by the District.
3. On February 1, 2010, after a District investigation conducted in 2009 into Mr. Plehanov’s touching of female Grade 2 students at Elementary School A on October 13, 2009, the District suspended Mr. Plehanov from teaching duties for 4 days without pay beginning January 27, 2010.
4. The District required Mr. Plehanov to work with a psychologist on boundary issues and other aspects to assist him with behaving in an appropriate manner with students, noting that, prior to the suspension decision, Mr. Plehanov had agreed to do so. In addition, Mr. Plehanov was also required to work with a coordinator to assist him with curriculum, classroom management and other relevant teaching practices. Mr. Plehanov satisfied the requirements of meeting with a psychologist and a coordinator.
5. On February 5, 2010, the District reported Mr. Plehanov’s suspension to the B.C. College of Teachers (the “College”). On March 4-5, 2010, the Preliminary Investigation Sub-Committee of the College directed that a preliminary investigation be conducted by the College into Mr. Plehanov’s conduct that led to the District suspension. This investigation of Mr. Plehanov commenced on or about March 9, 2010.
6. On March 15, 2010, the District suspended Mr. Plehanov from teaching duties with pay as a result of complaints about Mr. Plehanov touching female Grade 2/3 students while he was a TOC at Elementary School B on March 10, 2010. On March 17, 2010, the District reported Mr. Plehanov’s suspension to the College.

On May 13, 2010, the District confirmed Mr. Plehanov's suspension was now without pay.

7. At the request of the RCMP the District did not fully conduct an investigation of the March 10, 2010 Elementary School B complaints, as the RCMP also received similar complaints concerning Mr. Plehanov and had commenced a criminal investigation of Mr. Plehanov's conduct of March 10, 2010 at Elementary School B.
8. On March 18, 2010, as a result of the RCMP investigation, Mr. Plehanov was charged with sexual interference, sexual exploitation and sexual assault allegedly to have occurred on March 10, 2010 at Elementary School B.
9. The RCMP continued their investigation of Mr. Plehanov which included investigation of an allegation concerning Mr. Plehanov inappropriately touching a female Grade 3 student at Elementary School C between January 9, 2008 and January 18, 2008.
10. As a result of the continued RCMP investigation Mr. Plehanov was charged again on April 27, 2011 with allegations of sexual interference and sexual assault with respect to the March 10, 2010 conduct at Elementary School B, the conduct between January 9, 2008 and January 18, 2008 at Elementary School C and the October 13, 2009 conduct at Elementary School A. Mr. Plehanov was also charged with criminal harassment of one of the complainants and her parent, which conduct was alleged to have occurred on June 3, 2010 near the complainant's home.
11. Mr. Plehanov pleaded not guilty to all of the above charges instituted on April 27, 2011, and on November 26, 2012 after a 14 day trial in the Provincial Court of British Columbia at Port Coquitlam, Mr. Plehanov was found not guilty of those charges and acquitted.
12. On May 10, 2010, the Preliminary Investigation Sub-Committee of the College suspended Mr. Plehanov and issued a Citation against him.
13. On June 23, 2011, Mr. Plehanov signed an Undertaking Not to Practice teaching effective from July 1, 2011.
14. After the District investigation resumed in 2013, and in consideration, amongst other things, of the incidents at Elementary School B and Elementary School C and Mr. Plehanov's failure to respect advice and directives regarding personal boundaries between teachers and students, the District terminated Mr. Plehanov effective October 3, 2013.

15. The College and District investigations established that:
 - a. Mr. Plehanov received advice and directives about personal boundaries with students including the standards applicable to physical contact with students, as follows:
 - i. May, 2007, at Elementary School D, from the Principal;
 - ii. June 2007, at Elementary School E, from the Principal in the presence of a Staff Representative;
 - iii. September, 2007, at Elementary School F, from the Principal and in the presence of a staff representative;
 - iv. January 2008, at Elementary School C, from the Principal;
 - v. April 2009 at a Secondary School in the District, from the Principal and Vice-Principal and in the presence of a Staff Representative; and
 - vi. September/October 2009, at Elementary School G, from two teachers and the principal.
 - b. Despite this advice and these directives and being the subject of the above District investigation in 2009 and disciplined thereafter in February 2010, Mr. Plehanov failed to respect the appropriate physical boundaries with Grades 2 and 3 female students, contrary to Standards #1 and #11 of the *Standards for the Education, Competence & Professional Conduct of Educators in British Columbia, Second Edition, May 2004*, on the date, at the place and in the capacity referred to in paragraph (i) below, and contrary to Standards #1, #2 and #5 and of the *Standards for the Education, Competence & Professional Conduct of Educators in British Columbia, Third Edition, February 2008*, on the dates, at the places and in the capacity referred to in paragraphs (ii) and (iii) below:
 - i. Between January 9, 2008 and January 18, 2008, as a TOC at a Elementary School C;
 - ii. On October 13, 2009, as a TOC at Elementary School A;
 - iii. On March 10, 2010, as a TOC at Elementary School B.
16. On May 3, 2014, Mr. Plehanov entered into a consent resolution agreement (the "Agreement") with the Commissioner for Teacher Regulation in which Mr. Plehanov agreed that his conduct described in paragraph 15(b):
 - a. Constitutes professional misconduct and conduct unbecoming;
 - b. Is contrary to Standards #1 and #11 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia, Second Edition, May 2004*; and,

- c. Is contrary to Standards #1, #2 and #5 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia, Third Edition, February 2008*.
17. Mr. Plehanov agreed to a cancellation of his Certificate of Qualification, pursuant to section 53(3)(c) and 64(e) of the *Teachers Act*.
 18. Mr. Plehanov agreed pursuant to section 53(3)(c) and 64(g) of the *Teachers Act* that he will not apply for, and understands the Director of Certification will be required not to issue him, a Certificate of Qualification, and Independent School Teaching Certificate or a Letter of Permission for a period of 3 years from May 5, 2014.



2021 TAHP 03
Decision issued: September 27, 2021
Citation issued: February 13, 2020
File No.: [REDACTED]

IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011, c. 19

AND

A HEARING CONCERNING

ALEKSANDR VLADIMIROVICH PLEHANOV

(a former Authorized Member under the *Teachers Act*)

REASONS FOR DECISION ON CONSEQUENCES, COSTS AND PUBLICATION

Written submissions filed: April 29, 2021 by the Commissioner; no submissions from the Respondent
Panel: Teresa Mitchell-Banks, QC, Ralf St. Clair and Alice Kedves
Counsel for the Commissioner: Michael Oland, Ministry of the Attorney General
Counsel for the Respondent: none

INTRODUCTION

[1] In a decision issued on March 17, 2021 (the “Findings Decision”), the panel found the Respondent guilty of conduct unbecoming a teacher under section 63(1) (b) of the *Teachers Act*, S.B.C. 2011, c. 19 (the “Act”).

[2] Once a panel makes a finding under section 63(1)(b) of the Act, the panel is empowered to make an order imposing any of the consequences set out under section 64 of the Act. In the Findings Decision, the panel directed the parties to file written submissions on appropriate penalty, and costs. A schedule for submissions was established for this purpose and the hearing coordinator communicated the schedule to the parties on April 7, 2021.

[3] In accordance with the schedule, the Commissioner filed written submissions on April 29, 2021.

[4] The Respondent did not participate in the findings hearing and the Findings Decision was sent to him in accordance with the Commissioner's Rules. The Respondent did not file any submissions on consequences by the deadline of May 28, 2021. The Act does not require the Respondent's participation in the panel's determination of consequences.

CONSEQUENCES

[5] The Commissioner seeks an order pursuant to section 64(g) of the Act that the director of certification not issue to the Respondent a certificate of qualification, an independent school teaching certificate or a letter of permission for a fixed period of 25 years.

[6] The Respondent has not held a teaching certificate since May 5th, 2014, when his certificate was cancelled as a term of a Consent Resolution. Although the Respondent has been eligible to apply for a new certificate since May, 2017, he has not done so.

[7] On October 31st, 2017, the Respondent was sentenced to six months in jail and probation for the sexual assault of a child. The court further prohibited him for a period of five years following his release from incarceration from seeking, obtaining, or continuing any employment or volunteer work that involves being in a position of trust or authority over persons under the age of 16 years.

[8] At the time of writing these reasons, the Respondent is still prohibited by a term of his sentence from teaching children under 16 years. The court and the Teachers Regulation Branch operate independently, with entirely different mandates. The disciplinary process under the *Teachers Act* must proceed to do its duty to regulate the profession and impose consequences following its finding of professional misconduct for the same behaviour.

[9] The penalties available to a panel are set out in section 64 of the *Act*. Most of them involve suspending or placing conditions on the teacher's certificate. As the Respondent no longer has a teaching certificate, the Commissioner says the only consequences available to the panel are either or both:

- (a) a reprimand of the authorized person;
- (g) a requirement for the director of certification not to issue a certificate of qualification, an independent school teaching certificate or a letter of permission for a fixed or indeterminate period.

- [10] Section 1 of the Act defines terms within the Act. An “authorized person” means
- (a) a certificate holder, or
 - (b) a person who holds a letter of permission issued under section 35 [issuance of letter of permission].
- [11] The Respondent is not a certificate holder nor does he hold a letter of permission under section 35. Therefore, section 64 (a), the option of giving a reprimand, is not available to us.
- [12] If we are wrong in this, the Commissioner does not seek a reprimand, nor does the panel find that it would be appropriate, given the seriousness of the Respondent’s misconduct. The Courts and this panel have already made it clear that the Respondent’s conduct is extremely serious. A reprimand will have lesser deterrent effect than that which has already been imposed on him. Given his previous history (discussed below) we find a reprimand would be ineffective in impressing upon the Respondent the seriousness of his misconduct.
- [13] Therefore, the question for the panel is the duration of the prohibition on the issuance of a teaching certificate or a letter of permission.
- [14] The function of the Teachers Regulation Branch, like many other regulators of professions, is to carry out their oversight in the public interest. The public interest is served by the disciplinary process under the *Teachers Act* ensuring that all children are taught by qualified and competent teachers so that the public can have confidence their children are being properly taught, and, by regulating and supervising the conduct of teachers so that the public can be certain that their children are being protected from misconduct, and should misconduct occur, it will be dealt with appropriately.
- [15] A fair penalty is one that is proportional to the gravity of the offence. Ideally people who commit the same offence should be treated the same way. However, no two cases are ever exactly alike on their facts and no two offenders are ever the same either. A fair sentence must not only be proportional to the offence, have some parity to other similar offences and offenders, but must also take into account the unique facts of the offence and the offender.
- [16] Clearly, the calculation of an appropriate penalty is not an arithmetic process. There are no formulas and no tariffs associated with offences. However, there are well established guiding principles to guide the decision makers.ⁱ

[17] A non-exhaustive list of relevant factors to be considered in determining an appropriate penalty include:

- a. the nature and gravity of the allegations;
- b. the impact of the conduct on the victim and students;
- c. the presence or absence of prior misconduct;
- d. the extent to which the teacher has already suffered consequences;
- e. the role of the teacher in acknowledging the gravity of the conduct;
- f. the need to promote specific and general deterrence;
- g. the need to maintain public confidence in the teaching profession as a whole; and
- h. denunciation of the conduct¹.

[18] In determining a fair consequence, both aggravating and mitigating factors are to be considered. Aggravating factors are those which require a more severe consequence in order to protect students through the principles of both specific and general deterrence. A non-exhaustive list includes:

- a. a history of prior misconduct (including its nature, frequency, and duration);
- b. whether remedial efforts have been made and failed;
- c. the offenders attitude towards the offence;
- d. efforts to hide the misconduct and whether they lied about it or tried to deceive;
- e. the age of the student(s) affected (if children were involved);
- f. and, as each offender is unique as is each offence, other relevant factors specific to the offender and the facts.

¹ See for example, *In Matter of the Teachers Act and McGeough* (January 7th, 20130). In some cases, rehabilitation through additional training, restrictions on practice, and so on, are also relevant factors in considering a penalty. Rehabilitation is not a relevant factor in this case for the reasons contained within our decision herein.

[19] Mitigating factors are those that may persuade the panel that a lesser consequence will be sufficient to deter the offender and others and still satisfy the public interest. A non-exhaustive list of factors may include:

- a. an exemplary prior history or at least no prior misconduct;
- b. a prompt admission of misconduct thus sparing a hearing and witnesses being called;
- c. true contrition and remorse because of their conduct and its effect on others;
- d. a voluntary apology to the people affected;
- e. voluntary restitution if there has been damage or loss as a result of their conduct;
- f. steps taken by the teacher to address their misconduct through counselling, re-education, etc.;
- g. offences involving a momentary loss of control;
- h. extenuating circumstances;
- i. relevant personal circumstances; and
- j. the extent to which the Respondent has suffered other consequences arising from his misconduct.

The nature and gravity of the offence

[21] The Respondent sexually violated a child of six years of age placed in his care by her father, a friend of his. The child was only with him for a few minutes and younger children were present. He has been found guilty of a criminal sexual assault of such a serious nature he was sentenced to a term of imprisonment with probation to follow with numerous conditions. He is now a Registered Sex Offender.

[22] The Respondent's sexual conduct is at the far end of the spectrum of professional misconduct.

The Impact of His Conduct on the Victim and Students

[23] Sexual assault harms all victims to varying extents. The effects to this little child of the sexual assault and having to testify to the experience at a trial, are not yet fully known and will not be for years to come.

The Presence or Absence of Prior Misconduct

[24] The Respondent has a prior history of inappropriate behaviour with young children in his care. In our Decision (at paragraph 42) we summarized his prior disciplinary history as follows:

The Respondent was disciplined in 2014 for failing to maintain appropriate physical boundaries with female students in Grades two and three. This misconduct resulted in a Consent Resolution Agreement where the Respondent agreed that his conduct constituted professional misconduct and conduct unbecoming, and ultimately agreed to the cancellation of his Certificate of Qualification. The respondent further agreed that he would not apply for, nor would the Director of Certification grant him, a Certificate of Qualification, and Independent School Teaching Certificate or a Letter of Permission for a period of three years from May 5, 2014.

[25] A prior history of this frequency and type of behaviour is clearly an aggravating factor. This is particularly so as it shows that the Respondent has a demonstrated propensity for violating physical boundaries with young school age children.

[26] The behaviour in this case was not deterred by his prior discipline. As submitted by the Commissioner:

“...it is an aggravating factor that the misconduct in this case occurred in 2016, after he had been disciplined in 2014 and after he had been charged, but acquitted, of sexual interference, sexual assault and sexual exploitation in 2010 and 2011. This Panel can draw an inference that when this misconduct occurred in 2016, the Respondent was aware of the appropriate boundaries of physical contact with minors from both a criminal and professional perspective.”

The Extent to which the Respondent has Suffered other Consequences

[27] The Respondent has offered no evidence of suffering consequences. The Respondent has lost his job and a serious criminal conviction and sentence (which is still in effect) will have had some effect on him. No doubt he has already suffered some alienation resulting from media coverage. All these consequences are directly the inevitable and natural result of his own behaviour. To reduce a penalty in these circumstance is like the old story of the man who kills his parents and then asks the court to have mercy on him as he is an orphan. In any event, the penalty we must impose, is primarily to protect children, maintain the integrity of the teaching profession the public trust. If indeed they are mitigating factors, which is questionable, they have little to no effect in reducing a penalty for such serious professional misconduct.

The Role of the Teacher in Acknowledging the Gravity of the Conduct

[28] Where Respondents have admitted guilt and therefore saved everyone the trouble and expense of a hearing, this is generally considered to be a mitigating factor. If a Respondent goes to a hearing, this is a neutral factor as they have a right to hear the evidence and argue their case. Insisting on your right to a hearing is not an aggravating factor.

The Need to Promote Specific and General Deterrence

[29] It is clear from the prior history of misconduct that this Respondent has not been deterred by previous disciplinary measures. Thus, the consequence imposed by the panel must be more severe than those previously administered if he is to be deterred.

[30] General deterrence to other members of the teaching profession and those seeking certification is of critical importance. By dissuading others from engaging in similar conduct, the sexual assault of a child, children are protected and the public may have confidence that the profession is being properly regulated.

The Need to Maintain Public Confidence in the Teaching Profession as a Whole

[31] The Respondent's conduct is of such a nature as to soil the reputation of the teaching profession and fracture the trust of the public in the profession:

[32] This Panel has already said of the Respondent's conduct that

... sexual assault of a child completely undermines the public's trust in the school system. No reasonable person who was informed of the Respondents conduct would ever wish to leave a child in his care. Certainly, no fellow teacher would trust him. Nor would parents and children. The nature of the Respondent's conduct could erode the public trust in teachers and the school system. (Decision, para. 37)

[33] We agree with the Commissioner that the maintenance of the reputation of the teaching profession and the importance of the public interest requires that any consequence imposed by the panel must unequivocally articulate that sexual misconduct towards children, let alone criminal sexual conduct is career ending.

[34] While taking into account the unique facts of the offence and the offender, a fair sentence is also within the range of those received by other Respondents for professional misconduct arising within a sexual context. A review of cases makes it clear that very lengthy bans have been administered even where the conduct falls short of sexual contact.

[35] In *McGeough*² the teacher was found to have entered into an inappropriate relationship with a 17 year old by sending her engaging in intimate email conversations, kissing her hand, rubbing her head, bestowing gifts upon her, taking her out for meals, and encouraging her to keep their relationship secret. The hearing panel found his conduct was a serious breach of the duty to value and care for students, act in their best interests, and also to act ethically and honestly (para. 19). It imposed a reprimand and a 15 year ban on issuance, which it felt was necessary to “assure the public that behaviour such as that exhibited by Mr. McGeough will not be tolerated” (para. 19).

[36] *Obert*³ was found guilty of conduct unbecoming a teacher relating to off duty conduct. Obert was an elementary school principal who exchanged texts of a sexual nature with two young girls who he believed to be 14 and 15 years of age and arranged to meet with him. The ‘girls’ were actually a member of Creep Catchers. The panel banned him for 15 years.

[37] Where actual sexual conduct is involved, the penalties imposed have been higher. *Robertson*⁴ had engaged in sexual activity with three female students aged 15 - 16 years of age, forty years prior to the hearing. The panel was rightly scathing in its description of his behaviour and imposed a lifetime ban.

[38] A number of cases have been resolved by consent resolution agreements. In a consent resolution the Respondents have admitted their misconduct and have agreed to a penalty – which by extension means they consider the penalty to be fit and appropriate. The following cases were considered in *Obert*:

- (a) *Robin James Wait* (June 2016): a lifetime ban was imposed for using his district laptop to engage in sexually explicit online “chat”, to store pornography, and to write and access pornographic stories (often during instructional time). He was convicted of sexual assault for touching the buttocks of a female minor and admitted to touching the upper back thigh of a woman on an escalator.
- (b) *Christopher Daniel Nelson* (September 2015): a lifetime ban was imposed on a teacher convicted of sexual assault of a former student at a party at his home.
- (c) *Francesco Gabriel Canacari* (September 2016): a lifetime ban was imposed. Canacari was convicted of two counts of unlawfully being in a dwelling house, one count of criminal harassment, two counts of forgery, and one count of causing a person to use a forged document. The criminal harassment involved asking a student

² Ibid

³ *In the Matter of the Teachers Act and Jason Allan Obert* (Dec. 3, 2020)

⁴ *In the Matter of the Teachers Act and Robert John Robertson* (February 3, 2016)

in his class to use her cellphone to send a text to the victim, and then erase the number and text.

[39] The victim in this case was not a student but was ‘student’ aged. We wish to make it clear that this is not a mitigating factor. No minor of any age should be sexually assaulted. The younger the child, the more vulnerable they are to adults as they are defenseless in their hands. Similarly, it is not a mitigating factor if the conduct occurred while on duty or off, or whether the teacher held a current certificate or not.

[40] The Commissioner seeks a ban of issuance of 25 years, which for this Respondent amounts to a lifetime ban. This would satisfy the principle of specific deterrence, as the Respondent would not likely ever gain certification again. However, in our view, the principle of general deterrence requires that younger members of the profession or those seeking certification, realize that the sexual assault of a child will have lifetime consequences. This is true even if it is a panel that finds a Respondent has committed a sexual assault of a child.

[41] Those who sexually assault children pose a clear danger to other children. No child, teacher, parent, or member of the general public, would feel that our school system is safe if such people were permitted to have any kind of teaching certificate.

[42] Barring exceptional circumstances, the message must be, you will never teach again. There is no other penalty that the disciplinary process under the *Teachers Act* can impose that will protect children from such behaviour in our school system and maintain the public interest.

COSTS

[43] The Commissioner has not sought costs and none are awarded.

PUBLICATION

[44] There is a publication ban under s. 486.4(2) of the *Criminal Code of Canada* restricting publication, broadcast or transmission in any way of evidence that could identify the Victim. That ban is sufficient to protect the identity of the victim. She is not identified in either our Decision on Findings or on Consequence. Section 66 of the Act requires that the panel’s reasons for making an orders should be published (subject to some exceptions), none of which are applicable here. The panel directs publication of its Findings Decision and also directs publication of these reasons.

ORDER

[45] The panel orders, that under section 64(g) of the Act, the director of certification will never re-issue to the Respondent a Certificate of Qualification, or an Independent School Teaching Certificate or a Letter of Permission. To be absolutely clear, the ban is for the lifetime of the Respondent.

For the Panel

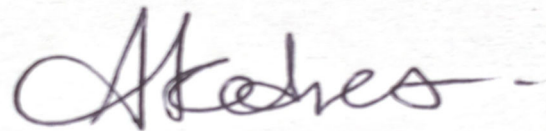
Date: September 27, 2021

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Teresa Mitchell-Banks, QC, Panel Chair

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Ralf St. Clair, Panel Member

Handwritten signature of Alice Kedves in purple ink, written over a horizontal line.

Alice Kedves, Panel Member



2021 TAHP 01
Decision issued: March 17, 2021
Citation issued: February 13, 2020
File No. [REDACTED]

IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011, c. 19

AND

A HEARING CONCERNING

Aleksandr Vladimirovich Plehanov

(A Former Authorized Member under the *Teachers Act*)

REASONS FOR DECISION ON FINDINGS AND DETERMINATION

Written submissions of the counsel for the Commissioner filed: June 30th, 2020.

Written submissions of the Respondent: none

Panel: Teresa Mitchell-Banks, Ralf St. Clair and Alice Kedves

Counsel for the Commissioner: Michael Oland

Counsel for the Respondent: none

INTRODUCTION

[1] A panel was appointed by the Commissioner to conduct a hearing into a Citation issued by the Commissioner on February 13, 2020 (the ‘Citation’)¹. The Citation was issued under s. 56(1) of the *Teachers Act*, S.B.C. 2011, c. 10 (the ‘Act’). The hearing is by way of written submissions.

[2] Aleksandr Vladimirovich Plehanov (the ‘Respondent’) held an Interim Certificate of Qualification, No. [REDACTED]. It was issued by the B.C. College of Teachers (the ‘College’) under the *Teaching Profession Act* on January 23, 2007 and was valid from January 1, 2007 until June 30, 2011.

¹ Exhibit 1

[3] The Respondent then held a Professional Certificate of Qualification, No. [REDACTED]. It was issued by the College under the *Teaching Professional Act* on December 23, 2008, was valid from January 1, 2009 and continued under the *Teachers Act* as of January 9, 2012.

[4] The Respondent's certificate of qualification was cancelled on May 5, 2014 as a term of a Consent Resolution Agreement he entered with the Commissioner on May 3, 2014.

[5] The Citation alleges:

1) On January 8, 2016 Aleksandr Vladimirovich Plehanov (the "Respondent" in the proceedings before us), formerly an authorized person under the Act, was convicted by the Supreme Court of British Columbia of sexual assault, contrary to s. 271(1) of the *Criminal Code of Canada*.

- a. the victim was 6 years of age at the time of the offence
- b. Plehanov knew the child's parents through church
- c. Plehanov's appeal of his conviction was dismissed by the British Columbia Court of Appeal on December 19, 2019
- d. There is a publication ban under s. 486.4(2) of the *Criminal Code of Canada* restricting publication, broadcast or transmission in any way of evidence that could identify the Victim.

2) This conduct is contrary to Standard #2 of the *Standards for the Education, Competence, and Professional Conduct for Educators in British Columbia*, Fourth Edition, January 2012. Mr. Plehanov is guilty of conduct unbecoming a teacher under section 63(1)(b) of the *Teachers Act*.

PROCEDURE

Service of the Respondent

[6] Plehanov (the 'Respondent) has not filed any submissions in response to the Citation. The Panel must therefore determine, as a preliminary issue, whether the Respondent was properly served with the Citation.

[7] Ms. Maggie Sam, Legal Assistant to the Legal Services Branch, filed an affidavit² affirming the following:

On February 19, 2020, I sent a letter dated February 19, 2020 from Ms. Boyd to Aleksandr Plehanov (the "Respondent") to be sent to him by ordinary mail and by registered mail to his last known address at [REDACTED] BC. Enclosed with the letter was a copy of the citation in this matter, issued February 13, 2020, and a copy of the

² Exhibit 2

Commissioner's Rules for Disciplinary and Professional Conduct Inquiries. A true copy of the letter, the citation and the Commissioner's Rules were attached to the Affidavit as Exhibit "A".

On February 20, 2020, I reviewed an email from the Respondent to Ms. Boyd responding to the February 19, 2020 letter. I therefore believe that the Respondent received the letter. A true copy of the email is attached to this Affidavit as Exhibit "B".

Although the February 19, 2020 letter lists that it was delivered "By Hand", due to the Respondent's February 20, 2020 email indicating his receipt of the letter, I did not proceed to have the letter delivered by hand.

On or about February 24, 2020, I confirmed that on February 22, 2020, the Respondent picked up the copy of the February 19, 2020 letter sent by registered mail. A true copy of the Canada Post tracking details is attached to this Affidavit as Exhibit "C".

On or about March 25, 2020, I sent a letter dated March 25, 2020 from Mr. Oland to the Respondent by mail and email, enclosing a copy of the document disclosure index in this matter. A true copy of the letter and the document disclosure index are together attached to this Affidavit as Exhibit "D".

On March 25, 2020, I received an email from the Respondent in response to the letter and email sent earlier that same day, requesting to postpone this matter. A true copy of the email is attached to this Affidavit as Exhibit "E".

On or about March 26, 2020, I sent a letter dated March 26, 2020 from Mr. Oland to the Respondent by mail and email, requesting a pre-hearing conference be held in this matter. A true copy of the letter and my email are together attached to this Affidavit as Exhibit "F".

On or about April 2, 2020, I received a copy of a letter dated April 1, 2020 from the Acting Hearing Coordinator at the Professional Conduct Unit of the Ministry of Education sent to Mr. Oland and the Respondent, requesting availability to attend a pre-hearing conference. A true copy of the letter is attached to this Affidavit as Exhibit "G".

On April 8, 2020, I sent a letter dated April 8, 2020 from Mr. Oland to the Acting Hearing Coordinator by email providing Mr. Oland's availability for the pre-hearing conference. A true copy of the letter and my email are together attached to this Affidavit as Exhibit "H".

On April 24, 2020, I reviewed a copy of a letter dated April 24, 2020 and an agenda from the Acting Hearing Coordinator sent to Mr. Oland and the Respondent by email regarding details for the pre-hearing conference set for May 26, 2020. A true copy of the letter, agenda and email are together attached to this Affidavit as Exhibit "I".

On May 14, 2020, I reviewed a copy of a letter dated May 14, 2020 from the Acting Hearing Coordinator sent to Mr. Oland and the Respondent by email, reminding parties of the upcoming pre-hearing conference by teleconference. A true copy of the letter and email are together attached to this Affidavit as Exhibit "J".

On May 29, 2020, I reviewed a copy of an email from the Acting Hearing Coordinator sent to Mr. Oland enclosing the summary of the pre-hearing conference sent to Mr. Oland and the Respondent from the Commissioner for Teacher Regulation in this matter. A true copy of the email and the pre-hearing conference summary are together attached to this Affidavit as Exhibit "K".

On May 29, 2020, I reviewed a copy of an email from the Acting Hearing Coordinator sent to, Mr. Oland enclosing a Notice of Hearing sent to Mr. Oland and the Respondent from the Commissioner. A true copy of the letter and the email are together attached to this Affidavit as Exhibit "L".

On June 2, 2020, I reviewed a copy of an email from the Acting Hearing Coordinator sent to Mr. Oland enclosing the Order from the Commissioner. A true copy of the email and the Order are together attached to this Affidavit as Exhibit "M".

[8] By way of a letter dated April 24, 2020, from the Acting Hearing Coordinator, the Respondent and counsel for the Commissioner were advised that a pre-hearing tele-conference was scheduled for Tuesday, May 26, 2020 at 10:00am -12:00pm. The tele-conference was attended by Howard Kushner, Commissioner, Michael Oland, Counsel for the Commissioner, and Aleksandar Acimovic, Hearing Coordinator. The Respondent did not participate.

[9] We have reviewed the Affidavit of Ms. Sam and the attached exhibits and find the contents of her Affidavit to be supported by the attached exhibits. Mr. Plehanov did respond upon occasion and therefore the Professional Conduct staff of the Commissioner did have his correct contact information, both email and residential address.

[10] We find that the Respondent was appropriately served with the Citation, disclosure, information regarding the pre-hearing conference and all other materials necessary for him to participate fully in these proceedings. However, after March 26th, 2020, the Respondent chose not to respond to communications from Ms. Sam or counsel for the Commissioner nor to attend the pre-hearing teleconference.

ISSUE

[11] Whether the Respondent is guilty of conduct unbecoming a teacher under paragraph 63(1)(b) of the *Teachers Act*.

BACKGROUND

[12] On April 14, 2014, following information that the Respondent had been criminally charged, the Commissioner for Teacher Regulation initiated an investigation into the Respondent's conduct.³

[13] On January 8th, 2016, the British Columbia Supreme Court found the Respondent guilty of sexual assault, contrary to section 271(1) of the *Criminal Code*.⁴ A certified copy of the Respondent's conviction was obtained.⁵

[14] In his Reasons for Judgment, Mr. Justice Blok described the circumstances of the offence and his reasons for conviction. The following is a brief summary of the facts as found by the Court. The Respondent and the victim's family became acquainted through their church. The church had a type of mentorship service and it was through this that the Respondent joined the victim's family on three or four outings and visited their home on approximately five occasions.⁶

[15] On March 31, 2013, Easter Sunday, the family went to church and in the afternoon, they gathered at their grandparents for a large extended family gathering. The father drove the Respondent and his children, of which there were a large number, in his 15-seat passenger van. The van was surrounded by windows, with four bench seats, and doors that opened outward on the side and back of the vehicle.⁷

[16] At about 9 p.m. the father started to round his children up (they ranged in ages from 3 to 12) to take them home. He focused on the youngest ones first.

[17] The father took the victim ('X') who was six years old and two younger children to the van. X was told to sit on the bench seat at the very back of the van and not to move out of it. She sat in a booster seat with a seat belt. The father assisted two younger children, one in the second of the four benches and another on the first bench seat and secured them in their car seats. The older children delayed in coming back to the van and so they had to be retrieved. The Respondent was left to mind the three children in the van while the father went in search of the older children.

[18] The Court found on the evidence that X had got up to retrieve her little brother's candy which had fallen. She then tripped and the Respondent caught her and used the opportunity to sexually assault her on two brief but separate occasions with a short period of time before the father interrupted him.

[19] The Court found that the Respondent hooked his finger in the front of her pants with his fingers touching her groin over her clothing. The victim said he "kind of rubbed my bum" and "he was rubbing his whole hand on my bum" and "that part of his fingers (that is "more than the first

³ Affidavit of Stephanie Jackson, para. 3

⁴ Ibid. Exhibit 4, R. v. Plehanov, 2016 BCSC 322

⁵ Exhibit A attached to the Affidavit of Stephanie Jackson

⁶ Exhibit 4, R. v. Plehanov, 2016 BCSC 322 para.5

⁷ Ibid at para.7

knuckle”) went under her pants at the waist near the front while his palm was on her groin.”⁸ The Respondent did not testify.

[20] The Respondent was convicted of sexual assault of a minor person under 16.

[21] On October 31, 2017, the Respondent was sentenced to six months imprisonment and 24 months’ probation with multiple conditions. He was also made subject to orders: (1) prohibiting him for a period of five years following his release from incarceration from seeking, obtaining, or continuing any employment or volunteer work that involves being in a position of trust or authority over persons under the age of 16 years; (2) requiring him to submit to a DNA sample; and, (3) requiring him to register as a sex offender for a period of 20 years under the Sex Offender Information Registration Act.

[22] The Respondent appealed his conviction. On December 19, 2019, the British Columbia Court of Appeal dismissed his appeal.

[23] On June 26, 2020, Ms. Chu of the British Columbia Prosecution Service advised Ms. Jackson, a lawyer with the Legal Services Branch, that the British Columbia Prosecution Service had not received an application for leave to appeal to the Supreme Court of Canada, nor an extension of time within which to make such an application.⁹ Therefore, the previous decisions from the British Columbia Supreme Court and British Columbia Court of Appeal are in effect.

COMMISSIONER’S POSITION

[24] It is the position of the Commissioner that:

- (a) The conviction for sexual assault of a minor contrary to section 271(1)(b) of the *Criminal Code* constitutes conduct unbecoming a teacher under section 63(1)(b) of the Act.
- (b) The Certificate of Conviction proves the criminal conviction.
- (c) The Respondent engaged in conduct unbecoming a teacher under section 63(1) (b) of the Teachers Act and pursuant to the section has the authority to make a finding of conduct unbecoming
- (d) An adverse finding may be made even though the Respondent no longer holds a Certificate of Qualification. This is because Subsection 43(2) of the Teachers Act extends the jurisdiction of the Teachers Act to former certificate holders for the purposes of certain disciplinary matters, including conduct unbecoming
- (e) Conduct unbecoming is defined by the jurisprudence – The jurisprudence defines unbecoming a teacher as off-duty conduct that impairs or harms the teacher’s ability to

⁸ Ibid. at para.67

⁹ Ibid. para. 13-14

fulfil their professional responsibilities, or where the fact of the conduct would undermine public confidence in the educational system.

(f) The Respondent's conduct is a serious breach of the Standards.

(g) The Respondent's sexual assault of a minor is conduct unbecoming – By committing sexual assault on a six-year-old child, the Respondent engaged in behaviour that breached the Standards and constitutes conduct unbecoming in accordance with the jurisprudence.

Onus and Standard of Proof

[25] The onus is on the Commissioner to prove the conduct and that it constitutes one or more of the adverse findings set out under subsection 63(1) of the Act. The Supreme Court of Canada in *FH v McDougall*, 2008 SCC 53 (“FH”). In that case, the Supreme Court of Canada wrote at para 49: ... in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred. The Court also concluded at para 46 that “evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test”.¹⁰

[26] This Tribunal is bound to follow the rulings of the Supreme Court of Canada. Therefore, the Commissioner must prove the allegations on a balance of probabilities based on evidence that is sufficiently clear, convincing and cogent.

ANALYSIS AND DECISION

The Certificate of Conviction and Proof of a Criminal Conviction

[27] A certificate of conviction is admissible as evidence under the Evidence Act to prove that a person was convicted of an offence. Subsections 71(1) and (5) of the Evidence Act are concerned with evidence of previous convictions and their admissibility in subsequent proceedings.

71 (1) In this section: "conviction" means a conviction

- (a) that is not subject to appeal or further appeal, or
- (b) for which no appeal is taken; [. . .]

(5) A certificate containing the substance and effect of the charge and of the conviction or finding of guilt, as the case may be, purporting to be signed by

¹⁰ Exhibit 5, Counsel for the Commissioner's Book of Authorities

(a) the officer having custody of the records of the court in which the offender was convicted or found guilty, or

(b) a person authorized to act for the officer,

is, on proof of the identity of a person named in the certificate as the offender, sufficient evidence of the conviction of that person or the finding of guilt against that person, without proof of the signature or of the official position of the person purporting to have signed the certificate.

[28] As noted, a certified Certificate of Conviction is attached as Exhibit A to the Affidavit of Stephanie Jackson.¹¹ The Certificate states that Aleksandr Plehanov, born [REDACTED] was tried and convicted of sexual assault contrary to section 271 of the *Criminal Code*. Therefore, the conviction of Aleksandr Plehanov is proven.

[29] Section 71(1) (5) also requires that identity be proven. Attached as Exhibit A to Ms. Sam's affidavit¹² is a letter to Aleksandr Vladimovorovich Plehanov enclosing the Citation issued February 13, 2020, TRB File No. [REDACTED] from which the rest of this process has flowed.

[30] Attached as Exhibit B to Ms. Sam's affidavit, is a copy of an email from the Respondent to Ms. Boyd, legal counsel for the Legal Services Branch of the Ministry of the Attorney General. The email is dated February 20, 2020, three months after the B.C. Court of Appeal dismissed his appeal.

From: Alex Plehanov

Sent: Thursday February 20, 2020 3:02pm

To: Maureen Boyd

Subject: Re: Teacher's license TRB file # [REDACTED]

Hi

Your attempts to interfere with my appeal process and my teacher certification status will be certainly a nice addition to the complaints I will be forwarding soon.

I was falsely accused and I have a legal right to fight allegations including going to the Supreme Court of Canada.

¹¹ Exhibit 3

¹² Exhibit 2

Status of my teacher certification is not my main concern right now and you could at least let me deal with the courts at the moment.

By proceeding with the hearing while appeal process is not complete you are giving more credibility my complaint (sic).

Thank you kindly

Alex Plehanov.

[31] From the contents of the letter, it is clear that the writer is Aleksandr Plehanov, that he is writing in regard to Teacher's license TRB file [REDACTED], and that he has been the subject of prosecution and an appeal.

[32] We find that the Respondent is the subject of the Certificate of Conviction and the criminal conviction of sexual assault against a minor is proven.

[33] Section 71(2) of the *Evidence Act* provides that a conviction in a Canadian court is admissible evidence to prove the person convicted of the offence did in fact commit it. More particularly, section 71(1)(2)(b) provides that "the commission of that offence is relevant to any issue in an action, proof of the conviction or finding of guilt, as the case may be, is admissible in evidence to prove that the person committed the offence, whether or not that person is a party to the action.

[34] By operation of statute, the Certificate of Conviction of the Respondent is admissible in these proceedings.

[35] The Respondent was found guilty by a criminal court of sexually assaulting the six-year-old child of a friend who had left the child (and two younger ones) momentarily in his care. His appeal from conviction was appealed and dismissed.

[36] Teachers hold positions of trust, confidence, and responsibility. It is on the basis of a teacher's position of trust and influence that we as a society hold teachers to high standards both on and off duty. This is particularly so as the public entrusts its children, a particularly vulnerable population, to the teaching profession at an early age.

[37] The sexual assault of a child by a teacher completely undermines the public's trust in the school system. No reasonable person who was informed of the Respondent's conduct would ever wish to leave a child in his care. Certainly, no fellow teacher would trust him. Nor would parents and children. The nature of the Respondent's conduct could erode the public trust in teachers and the school system.

[38] For the reasons mentioned in the case law and in the Standards, there is no question that the conduct of the Respondent in committing the sexual assault of a child is conduct unbecoming pursuant to s. 63(1) (b) of the *Teachers Act*.

Conduct unbecoming under Subsection 63(1)(b) of the Act

[39] Pursuant to section 63(1)(b), after a hearing, a panel may determine that an authorized person has been or is guilty of professional misconduct or conduct unbecoming a teacher.

[40] It is the position of the Commissioner that the Respondent is guilty of conduct unbecoming a former certificate holder. Section 43(2) of the Act extends the jurisdiction of the Act for former certificate holders for the purposes of some disciplinary matters including conduct unbecoming.

[41] The sexual assault which occurred on March 31, 2013, did not occur during the course of the Respondent's work as a teacher, but rather at a social gathering, when he assaulted his friend's six-year-old daughter. Nor does the Respondent currently hold a Certificate of Qualification which was cancelled on May 3, 2014, as a result of a Consent Resolution Agreement.¹³

[42] The Agreement was entered into as a result of investigations into numerous previous complaints that the Respondent had failed to respect the appropriate physical boundaries with Grades 2 and 3 female students, contrary to Standards #1 and #11 of the *Standards for the Education, Competence and Professional conduct of Educators I British Columbia*. Despite being disciplined the Respondent's inappropriate behaviour continued. In the Agreement, the Respondent agreed that his conduct constituted professional misconduct and conduct unbecoming. As a result, he agreed to cancellation of his Certificate of Qualification and his certificate was cancelled on May 3rd, 2014. He further agreed that he would not apply for, nor would the Director of Certification grant him, a Certificate of Qualification, and Independent School Teaching Certificate or a Letter of Permission for a period of 3 years from May 5, 2014.

[43] The Respondent has not sought a Certificate since and is therefore a "former authorized person" within the meaning of section 43(2) of the Act.

[44] Section 43(2) of the *Teachers Act* expressly extends jurisdiction to former authorized persons for the purpose of determining whether the former authorized person has been guilty of professional misconduct or conduct unbecoming a teacher.

[45] The Respondent is therefore subject to the jurisdiction of the panel to determine whether his sexual assault conviction (and the facts contained in the judgments of the courts), constitutes conduct unbecoming within the meaning of section 63(1) (b)

Conduct Unbecoming

[46] The *Teachers Act* does not define conduct unbecoming. However, the topic has been considered many times by courts across the country. Courts have held that off-duty conduct that

¹³ Affidavit of Maggie Sam, attached as Exhibit N

impairs a teacher's ability to carry out teaching responsibilities or undermines the public trust in the integrity of the school system constitutes conduct unbecoming. In *Ross. V. New Brunswick School District No 15*, [1996] 1 SCR 825 the Supreme Court of Canada explained:

Teachers are inextricably linked to the integrity of the school system. Teachers occupy positions of trust and confidence and exert considerable influence over their students as a result of their positions. The conduct of a teacher bears directly upon the community's perception of the ability of the teacher to fulfil such a position of trust and influence, and upon the community's confidence in the public-school system as a whole.¹⁴

[47] The Court went on to cite with approval the earlier British Columbia Court of Appeal case of *Shewan v. Abbotsford School district No. 34 (1987) B.C.J NO. 2495*. The Shewans were both teachers and husband and wife. A nude photograph of the wife, taken while off duty, was published by them in a magazine. The issue was whether the publication of such material by a teacher constituted conduct unbecoming and the significance of doing so while off duty. At paragraph 15 the court explained:

The reason why off the job conduct may amount to misconduct is that a teacher holds a position of trust, confidence and responsibility. If he or she acts in an improper way, on or off the job, there may be a loss of public confidence in the teacher and in the public school system, a loss of respect by students for the teacher involved, and other teachers generally, and there may be controversy within the school and within the community which disrupts the proper carrying on of the educational system.

[48] The British Columbia Supreme Court, in *Fountain v. British Columbia College of Teachers*, 2007 BCSC 830 ("Fountain") at paragraph 51 described conduct unbecoming as off duty conduct that has a negative impact on the teacher's ability to carry out his obligations as a teacher or where the conduct has a negative impact on the school system, for example, where the activities conflict with core values of the education system.

[49] In *Fountain*, the Court referred to the following comments by Justice La Forest of the Supreme Court of Canada in *Off Duty Conduct and the Fiduciary Obligations of Teachers* (1996-1998), 8 Educ & LJ 119 at 136-137, that off duty behaviour by teachers may cause demonstrable harm to the educational system, and to do so constitutes conduct unbecoming.

Certain kinds of outside activity, in other words, can result in demonstrable harm to the educational system. . . . including the risk that the misconduct may recur with resultant injury to students, the danger that students may be influenced by inappropriate role models, diminution of teaching effectiveness caused by loss of respect from students and the community and the public's loss of confidence in the educational system. It is these specific harms, and not the violation of a state-imposed moral code, that the prohibition of off-duty misconduct seeks to redress. BOA Tab 2 – Fountain at para. 63

[50] Even in cases where there is no direct evidence of impairment or harm caused by the off-duty misconduct, the Court found that depending on the conduct, harm could be inferred. After

¹⁴ At paragraph 46

reviewing the case law, the court (at paragraph 59) determined that the following factors were relevant in determining whether harm to the educational system could be inferred.

- (a) the nature of the conduct at issue;
- (b) the nature of the position;
- (c) whether there is evidence of a pattern of conduct;
- (d) evidence of controversy surrounding the conduct;
- (e) evidence that the private conduct has been made public; and
- (f) evidence that the private conduct has been linked by the member to the professional status of the member.

Standards of Conduct

[51] The Respondent's conduct must be measured against the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, (Fourth Edition, January 2012) (the 'Standards'), which were already in effect before the Respondent's sexual assault of a minor took place. Teachers conduct must meet the Standards in order to be issued and maintain a Certificate.

[52] The Commissioner argues that the Respondent's behaviour contravened both sections 1 and 2 of the Standards. They read as follows:

1. Educators value the success of all Students. Educators care for students and act in their best interests. Educators have a privileged position of power and trust. Educators are responsible for the physical and emotional safety of students...Educators do not abuse or exploit students or minors for personal, sexual, ideological, material, or other advantage.

2. Educators are role models who act ethically and honestly. Educators act with integrity, maintaining the dignity and credibility of the profession. They understand that their individual conduct contributes to the perception of the profession as a whole. Educators are accountable for their conduct while on duty, as well as off duty, where that conduct has an effect on the education system. Educators have an understanding of the education system in BC and the law as it relates to their duties.

[53] Previous cases involving teachers are clear that sexual assault is conduct unbecoming.

[54] In *Ontario College of Teachers v. Cameron*, 2008 ONOCT 11, a disciplinary committee of the Ontario College of Teachers was convened. Cameron had recently pleaded guilty to 8 separate criminal charges of gross indecency, indecent assault and sexual assault and attempt to have sexual intercourse with minors. All of these offences had taken place thirty years prior. The disciplinary committee found Cameron had failed to strive at all times to achieve and maintain the highest degree of professional competence to uphold the honour, dignity and ethical standards of

the teaching profession and further, that his conduct was disgraceful, dishonourable and unbecoming a member.¹⁵

[55] In *Ontario College of Teachers v Wood*, 2012 ONOCT 43, Wood was convicted of sexually assaulting a female adult whilst she was sleeping. Wood was sentenced to prison and a disciplinary Panel found that his conduct was unprofessional, disgraceful, dishonourable and conduct unbecoming a member.

[56] In the 1999 B.C. College of Teacher case of Daniel James Sullivan¹⁶ the disciplinary hearing panel found that a conviction for sexually assaulting a child constituted a “serious breach of trust” and was conduct unbecoming.

[57] Earlier, in the 1991 case of the BC College of Teachers and Randy Emerson Brodeur,¹⁷ the College found that convictions for two counts of sexual assault of a minor committed was conduct unbecoming.

CONSEQUENCES & COSTS

[58] Having found the Respondent guilty of conduct unbecoming under the *Teachers Act*, this panel is empowered to impose a penalty on the Respondent. The panel asks that counsel for the Commissioner and the Respondent advise the Hearing Coordinator of the Professional Conduct Unit whether submission on appropriate penalty should be submitted in writing or through an oral hearing. The panel directs that any submissions on costs be submitted in writing. The Hearing Coordinator of the Professional Conduct Unit shall set the deadlines for submissions.

¹⁵ At pages 6-7

¹⁶ BC College of Teachers Discipline Case Summary, Daniel James Sullivan (DOB 1936.09.20)

¹⁷ BC College of teachers Discipline Case Summary, Randy Emerson Brodeur (D.O.B.0 56/09/21)

For the Panel

Date: March 17, 2021

A handwritten signature in black ink that reads "Teresa Mitchell-Banks QC". The signature is written in a cursive style and is underlined.

Teresa Mitchell-Banks, Panel Chair

A handwritten signature in blue ink that reads "Ralf St. Clair". The signature is written in a cursive style and is underlined.

Ralf St. Clair, Panel Member

A handwritten signature in purple ink that reads "Alice Kedves". The signature is written in a cursive style and is underlined.

Alice Kedves, Panel Member

Pong, Victor Yee-Tak - Conduct Review Decision

admitted to professional misconduct for failing to provide a criminal record check and for committing a criminal offense. In 2008, while employed as a teacher, he admitted that he had an inappropriate relationship with a female student. In May 2009, Mr. Pong plead guilty to one count of sexual exploitation pursuant to section 153(1)(a) of the Criminal Code of Canada. As a result of the criminal charge, Mr. Pong was sentenced to imprisonment in a Provincial Correctional Centre for a term of four months and to comply thereafter with a probation order for 12 months upon his release. Mr. Pong was also ordered by the BC Provincial Court to provide a DNA sample. In addition, the Court ordered a ban on disclosure of the identity of the victim or witnesses pursuant to section 486.4(1) of the Criminal Code of Canada. On January 25, 2010, the Conduct Review Sub-Committee approved the Statement of Agreed Facts and Disposition and agreed that Mr. Pong not be issued a Certificate of Qualification for an indeterminate period. Mr. Pong relinquished his Certificate of Qualification in February 2009.



Decision Issued: December 18, 2013
Citation Issued: December 12, 2012
File No.: I [REDACTED]
Court reporter: Mitchell Preston Nardi

IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011, c. 19
AND
A HEARING CONCERNING
DEBRA IRENE PUNSHON
(an Authorized Person under the *Teachers Act*)

REASONS FOR DECISION ON FINDINGS AND DETERMINATION

Date and location: October 22, 2013 at the Teacher Regulation Branch
Panel: Meg Gaily (Chair), Lynn Bosetti, John Hall
Counsel for the Commissioner: Maureen S. Boyd
Counsel for the Respondent: Gretchen Brown

INTRODUCTION

1. A panel was appointed by the Commissioner to conduct a hearing with respect to an allegation set out in a citation issued in this matter on December 12, 2012 (the "Citation").¹
2. Debra Irene Punshon (the "Respondent") holds a Professional Certificate, No. [REDACTED] issued by the B.C. College of Teachers under the *Teaching Profession Act* on June 3, 1991, valid from January 1, 1988, and continuing under the *Teachers Act* (the "Act") as of January 9, 2012.
3. The Respondent currently maintains practising status with the Teacher Regulation Branch (the "Branch"). She retired from her employment with School District No. 68 (Ladysmith-Nanaimo) (the "District") effective June 30, 2012.

¹ The Citation is Exhibit #1 in these proceedings.

PROCEDURE

4. The Respondent admits that on December 17, 2012, a copy of the Citation was delivered to her in accordance with the requirements of section 56(3)(a) of the Act.

5. The Respondent did not attend the hearing, but was represented by legal counsel at the hearing. The hearing proceeded on the basis of an agreed statement of facts dated October 11 and 15, 2013 (“Agreed Statement of Facts”).² The parties agreed that each document attached to the Agreed Statement of Facts was a true copy of the original document. There were no witnesses called by either party at the hearing.

ISSUE

Allegation contained in the Citation

6. The citation sets out an allegation that the Respondent engaged in professional misconduct and/or conduct unbecoming a teacher, when she was absent from work without proper authorization from the school district. The Respondent requested leave between September 12-23, 2011 (ten working days) and had been denied, that is, the District granted the Respondent leave for only five working days, but the Respondent absented herself from work on or about September 12-23, 2011 in order to vacation with her family.

7. Briefly, the issue in this case is whether the Respondent’s unauthorized absence from work for five days in September 2011 constitutes professional misconduct under the Act. At the hearing, the Commissioner conceded that the Respondent’s conduct was not conduct unbecoming a teacher.

FACTS

8. The District hired the Respondent in September 1986 as a teacher-on-call (“TOC”) and then in January 1989, on a continuing status as an elementary teacher. From September 2007 through June 2012, the Respondent worked at McGirr Elementary School (the “School”). She was assigned to teach a grade two class for the 2011-2012 school year.

² The Agreed Statement of Facts is Exhibit #2 in these proceedings.

9. In April 2011, the Respondent purchased airline tickets for a trip to Hawaii for a family vacation/reunion in September 2011. The timing of the vacation meant that she would miss ten school days, from Monday, September 12, through Friday, September 23, 2011.

10. Under the terms of the collective agreement in effect in the District at the relevant time, short term leaves of absence, including discretionary leave and personal leave, must be approved by the Administrative Officer (here, the School principal) or the Superintendent (or the Superintendent's designate).

11. Although she purchased the tickets to Hawaii in April 2011, the Respondent did not request a short term leave of absence at that time because she wanted to ensure the availability of Jane Lauzier, the TOC that the Respondent wanted to substitute for her. In June 2011, the Respondent told Jill Wilkie, the School principal, about her planned autumn trip, but did not mention the dates or formally apply for leave. The Respondent also contacted Ms. Lauzier, who said that she probably could cover for the Respondent.

12. On or about August 30, 2011, the Respondent met with Ms. Wilkie and told her that her trip was planned for two weeks commencing on September 12, 2011 and that she had arranged for Ms. Lauzier to substitute for her. Ms. Wilkie told the Respondent to submit a *Teachers' Request for Short-Term Leave of Absence* right away. The Respondent did so, requesting three discretionary leave days and seven personal leave days.

13. Ms. Wilkie approved the request on August 31, 2011. Although she considered that the timing of the leave was problematic, as it was at the beginning of the school year, she was satisfied with the Respondent's arrangements because Ms. Lauzier was well-known at the School and Ms. Wilkie was confident that the Respondent would provide Ms. Lauzier with her class plans. Ms. Wilkie forwarded the form for approval by the District administration and expected that it would be approved.

14. The District administration office received the form on September 6, 2011, the first day of school. The Assistant Superintendent, Christine Southwick, approved four days of discretionary leave and one day of personal leave, amounting to five of the ten days the Respondent had requested. In making her decision, Ms. Southwick considered the following factors:

- a) the impact on student learning and in particular the potentially detrimental effect on students at the primary level of the absence of their teacher for two weeks at the start of the school year;

- b) the requested leave included the first day that the grade two students would be in their permanent classroom but would be taught by a teacher-on-call;
- c) the late notice given by the Respondent of the requested leave; and
- d) by granting five days of leave, the Respondent would have a total of nine days including weekend days to attend the family reunion.

15. Ms. Wilkie informed the Respondent of Ms. Southwick's decision on September 7, 2011. The Respondent emailed Ms. Southwick later that day to ask her to reconsider:

Hi Chris, I'd like you to reconsider my leave as I have rarely requested any discretionary days in my over 20 years with the district. I have only asked for time off for reasons other than health two times. This is an event that is very important to our family and I didn't have any choice as to when it was to be held. The reason it is seemingly late in being requested is because I wanted to make sure that I could have Jane Lauzier replace me. I think that you understand that the way things work, we can't always count on having the person replace us who would be best for the children. Jane was part of our start-up last year for [a child] and was working closely with the 2s and 3s last year. She was part of our Grade 1, 2 and 3 planning for September 2011 in June and is aware of my educational plan for the next two weeks. This is my 5th year at McGirr and the children know me well (not just those who I've taught). This week is going well and I feel satisfied that routines will continue to fall into place in my absence. Jill [Wilkie] has been aware of this event for several months. I would ask you to reconsider your decision. Thanks, Debbie

16. Ms. Southwick responded the same day, confirming that only five of the ten requested days of leave were authorized.

17. Subsequently, the Respondent told Ms. Wilkie that she was going to take the full trip even though five of the ten days had not been authorized. Ms. Wilkie advised her to carefully consider her decision.

18. The 2011-2012 school year commenced on Tuesday, September 6, 2011. Following the School's usual practice, students were not placed in classes that week, but worked by age groupings. The Respondent and the other grade two teacher worked with the students who would be placed in their classrooms. On the Friday afternoon, the teachers and principal of the School met to determine final class placements. On Monday, September 12, 2011, students were moved into their permanent classes and their parents found out who their child's teacher was for that school year. Students in the Respondent's class were taught by Ms. Lauzier that week and the week after.

19. The parties agree that the first day in the classroom and the weeks following it in September are an important time when class routines are established and students and their parents get to know the teacher.
20. The Respondent was absent from work for two weeks from Monday September 12 through Friday, September 23, 2011 only the first week of which was authorized.
21. The parties agree that the Respondent acknowledges that she made the decision to go to Hawaii for the entire ten day period before she left for Hawaii and that she knew at that time that only five days of leave had been approved.
22. On or about September 15 or 16, 2011, Ms. Wilkie asked Ms. Lauzier for confirmation that she would be substituting for the Respondent for the following week, which was the week of September 19, 2011.
23. On Tuesday, September 20, 2011, the Respondent sent the following email to Ruth Williams, the School secretary:

Hi Ruth, ... I think I mentioned to you to just to keep signing Jane [Lauzier] in on the leave of absence she was originally given the two weeks for. Derek [DeGear, Nanaimo District Teachers' Association] thought that would be best rather than to use sick leave. Then the district knows I'm being honest about my disobedience and am not trying to cheat them out of any money. ...
24. The Respondent returned to work on September 26, 2011. Ms. Wilkie did not receive any complaints from parents about the Respondent's absence.
25. On September 30, 2011, Ron Erikson, then the Acting Director of Human Resources for the District, interviewed the Respondent and during this interview, the Respondent acknowledged that Ms. Southwick "had a point" about the impact of a September leave, but felt comfortable because Ms. Lauzier would be replacing her.
26. On November 3, 2011, the District disciplined the Respondent by suspending her. The Respondent did not grieve either the denial of leave or the imposition of discipline.

THE ISSUES BEFORE THIS PANEL

27. In any conduct hearing before a discipline panel constituted under s. 57(1) of the Act, the panel must make the following three determinations:

1. Has the Commissioner proved on a balance of probabilities that the conduct set out in the Citation occurred?
2. Does the proven conduct breach any of the Standards for Education, Competence and Professional Conduct of Educators in British Columbia (the “Standards”)?
3. Does the conduct amount to professional misconduct such that the Respondent is guilty of professional misconduct under s. 63(1)(b) of the Act?

28. In this case, the Respondent admits that the conduct as alleged in the Citation occurred and the Commissioner is relieved of the onus to prove that it is more probable than not that the Respondent’s conduct occurred.

29. Accordingly, the issues before this panel are whether the Respondent’s conduct breaches one or more of the Standards and whether her conduct amounts to professional misconduct in the context of professional regulation under the Act.

Applicable Law

30. As stated by the Supreme Court of Canada in its 1996 decision in *Ross v. New Brunswick School District No. 15*, “... teachers occupy positions of trust and confidence and exert considerable influence over their students as a result of their positions. The conduct of a teacher bears directly upon the community’s perception of the ability of the teacher to fulfill such a position of trust and influence, and upon the community’s confidence in the public school system as a whole.”³

31. Teaching is a regulated profession because of the trust relationship between teachers and their students. Teachers in British Columbia are subject to discipline in the employment context under the terms of the applicable collective agreements, as well as to discipline by the Branch, the professional regulator.

32. Although the Respondent acknowledges that her conduct amounts to insubordination in the employment context and she has not taken issue with the resulting discipline, it does not necessarily follow that the Respondent engaged in professional misconduct.

33. The legislative scheme provides that, under subs. 16(2) and (3) of the *School Act*, RSBC 1996, c. 412, if a Superintendent or a school board suspends a teacher, a report of the suspension must be sent to the Commissioner.

³ [1996] 1 S.C.R. 825, 133 D.L.R. (4th) 1 at paragraph 43

34. Under s. 44 of the Act, upon receipt of a report of suspension, the Commissioner must conduct a preliminary review. Following that review, the Commissioner may conduct an investigation or issue a citation, or, if one of the following criteria is met, the Commissioner may decide to take no further action, as provided in s. 45 of the Act.

45 (1) The commissioner may decide after a preliminary review not to take further action in respect of one or more of the matters raised in a report or complaint if the commissioner determines that any of the following apply:

- (a) the matter is not within the jurisdiction of the commissioner or a panel;
- (b) the matter is frivolous, vexatious or trivial or gives rise to an abuse of process;
- (c) the report or complaint was made in bad faith or filed for an improper purpose or motive;
- (d) there is no reasonable prospect the report or complaint will result in an adverse finding by a panel;
- (e) it is not in the public interest to take further action in respect of the matter;
- (f) the matter has not been pursued in a timely manner.

35. The Commissioner has issued this Citation, which means that he considers that the conditions in s. 45(1) do not apply. The statutory scheme therefore contemplates that the suspension of a teacher by her or his employer for any reason, including for taking an unauthorized leave, is sufficiently serious to warrant a report to and a preliminary review by the Commissioner. By deciding to take further action, the Commissioner is effectively concluding that the circumstances of this particular suspension engage the public interest.

36. Once a citation is issued, the discipline panel must conduct a hearing and determine whether to dismiss the citation or make another order under s. 63 of the Act.

37. However, the determination of whether conduct that warrants a suspension in the context of employment *also* breaches one or more of the Standards and amounts to professional misconduct are matters that must be decided independently by this panel. The suspension of a teacher in respect of which a citation is issued is not necessarily professional misconduct, but must be determined on the facts of each case.

38. The Standards in effect at the time the Respondent's conduct arose were issued in 2008 (3rd edition – the 4th edition of the Standards has since been reissued in 2012, but the wording of the Standards remains the same). The Standards establish commonly held professional standards of practice and conduct for the teaching profession. The Commissioner alleges that the

Respondent's admitted conduct breaches Standards #1 and #2 (there is no allegation that the conduct breaches any of the other Standards). Standards #1 and #2 provide as follows:

1. Educators value and care for all students and act in their best interests.

Educators are responsible for fostering the emotional, esthetic, intellectual, physical, social and vocational development of students. They are responsible for the emotional and physical safety of students. Educators treat students with respect and dignity. Educators respect the diversity in their classrooms, schools and communities. Educators have a privileged position of power and trust. They respect confidentiality unless disclosure is required by law. Educators do not abuse or exploit students or minors for personal, sexual, ideological, materials or other advantage.

2. Educators are role models who act ethically and honestly.

Educators act with integrity, maintaining the dignity and credibility of the profession. They understand that their individual conduct contributes to the perception of the profession as a whole. Educators are accountable for their conduct while on duty, as well as off duty, where that conduct has an effect on the education system. Educators have an understanding of the education system in BC and the law as it relates to their duties.

39. Accordingly, this panel must determine whether the Respondent's admitted conduct in taking five days unauthorized leave breaches either or both of Standards #1 and #2.

40. In addition to determining whether the Respondent's conduct breached one or both of the two noted Standards, this panel must determine whether the Respondent's conduct amounts to professional misconduct, such that this panel finds her guilty of professional misconduct under s. 63(1)(b) of the Act.

41. The Act does not provide a definition of professional misconduct. The Commissioner referred the panel to the *Ontario College of Teachers Act Professional Misconduct Regulation*, which provides that the definition of professional misconduct under the *Ontario College of Teachers Act* includes, "an act or omission that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional."⁴

42. The Commissioner also pointed to the standard applied by the Law Society of British Columbia in its discipline proceedings, articulated in *Law Society of British Columbia v.*

⁴ O.Reg 437/97, section 1(18).

Martin.⁵ Both parties agree that this panel should adopt the *Martin* test in determining whether the Respondent's conduct amounts to professional misconduct.

43. *Martin* defines professional misconduct as “a marked departure from the conduct that the [regulator] expects of its members.”⁶ *Martin* asks the professional regulator to consider whether the behaviour “displays culpability which is grounded in a fundamental degree of fault, that is, whether it displays gross culpable neglect of his [of her] duties as a [member of the profession].”⁷ Although the Branch is not independent of government in the way that the Law Society of British Columbia is, we agree that the *Martin* test is an appropriate test to apply in determining professional misconduct for teachers.

44. A finding that the Respondent's conduct may have breached Standard #1 and/or Standard #2 does not necessitate a finding that the Respondent is guilty of professional misconduct under s. 63(1)(b) of the Act. Applying *Martin*, to find the Respondent guilty of professional misconduct, this panel must determine that the Respondent's conduct amounted to a “marked departure” from the Standards, that it displays “gross culpable neglect” of her duties as a teacher.

PANEL'S ANALYSIS AND FINDINGS

Does the Respondent's conduct breach the Standards?

45. The Commissioner says that the Respondent's conduct is the kind of conduct that brings the teaching profession into disgrace and disrepute, damaging the credibility of the public school system and the public's confidence in it.

46. According to the Commissioner, Standard #1 sets out the obligation of teachers to act in the best interests of their students, and Standard #2 recognizes that teachers are role models who transmit social and cultural values to students. The Commissioner submits that the Respondent's decision to take five days leave knowing that it was not authorized breaches Standard #1 because the Respondent placed her own interests above the interests of her students and the public, and breaches Standard #2 because the Respondent did not act ethically or as a role model for her students.

47. The Commissioner points to three factors that he says are significant and support his position that the Respondent's conduct breached Standards #1 and #2:

⁵ 2005 LSBC 16 (“*Martin*”).

⁶ *Martin* at paragraphs 171 & 154.

⁷ *Martin* at paragraph 154.

- a) the timing of the Respondent's absence at the beginning of the school year is not in the best interests of students because this is when the teacher's presence in the classroom is especially important;
- b) the purpose of the Respondent's absence, which was purely personal and was not due to circumstances beyond her control such as illness; and
- c) the Respondent's deliberate decision to take the unauthorized leave in the full knowledge that it would attract discipline from her employer.

48. The Commissioner points to the *School Regulation* under the *School Act* which stipulates that the duties of a teacher include encouraging the regular attendance of students assigned to the teacher.⁸ The Commissioner submits that taking an unauthorized absence contradicts the Respondent's obligation to encourage student attendance and is not acting as a role model to students, thereby breaching Standard #2.

49. The Commissioner says that the Respondent failed to fulfil the expectation of Standard #2 to act with integrity and maintain the dignity and credibility of the profession. The Commissioner says that the requirement in Standard #2 to act ethically and honestly as a role model and to maintain the dignity and credibility of the profession encompasses more than a bare requirement to be honest. The Commissioner says that integrity speaks to the possession of firm principles and high moral standards, which are broader than simple honesty. The Commissioner says that, in knowingly taking five days leave without authorization, the Respondent did not act with integrity and is in breach of Standard #2.

50. The Respondent says that her conduct, while it is admitted insubordination attracting discipline in the employment context, is not conduct which breaches either of Standards #1 or #2.

51. The Respondent points to the agreed evidence that, although she absented herself without authorization, she took all necessary steps to ensure that her assigned students had a trusted, experienced TOC known to the School to teach in her absence. She submits that she was honest with her principal and the School secretary about her insubordination – telling Ms. Wilkie that she intended to take her vacation as planned (all ten days, over and above the authorized five), and contacting the School secretary to confirm her continued absence and the need for the TOC the second week she was away.

⁸ B.C. Reg. 265/89, s. 4(1)(f).

52. The Respondent says that her conduct did not breach Standard #1 and notes the agreed evidence that the parents of her students did not raise any complaints or questions about her absence. She submits that the Commissioner has not put forward any evidence to demonstrate that her absence had a negative effect on any of her students or the operation of the School. The Respondent submits that she carefully balanced her obligations to her family with her obligations to her employer, and there is no evidence of any concern about or actual negative effect on her students because no parent expressed concern about her absence. Therefore, she says her conduct did not breach Standard #1.

53. The Respondent says her conduct did not breach Standard #2 because she acted with integrity in all her communications with her employer, she was direct and honest about her decision, and she showed an understanding of the rules that applied with respect to her duty to attend work. For this reason, the Respondent says she did not breach the provisions of Standard #2 as alleged by the Commissioner.

54. The question of whether the Respondent's conduct breaches Standards #1 and/or #2 is one of common sense. Given the facts of this case, there are no precedents for this panel to follow in reaching our determination.

55. With respect to Standard #1, we find that the Respondent's conduct did not breach this Standard. We note that Ms. Wilkie approved the whole of the leave requested by the Respondent and Ms. Southwick approved an absence of five days. This demonstrates that they considered that some period of absence was not contrary to the best interests of the Respondent's students. Further, the Respondent's actions in arranging a suitable substitute and in communicating with the School, together with the absence of any concerns from parents, show that her actions did not compromise the best interests of her students or negatively affect their emotional or physical safety.

56. The agreed evidence shows that the Respondent sought out and confirmed the availability of the TOC, Ms. Lauzier, and that Ms. Lauzier would teach the Respondent's class for her during her absence. The parties also agreed that the Respondent contacted the School and confirmed her ongoing absence (albeit unauthorized) and was honest that she would not be reporting for work during the five days for which she had not received approved leave. It is the panel's opinion that this conduct does not reflect a preference of the Respondent's interests over those of her students, such that it amounts to a breach of Standard #1 as alleged by the Commissioner.

57. Accordingly, this panel finds that the Respondent's conduct in taking five unauthorized days off work in September 2011 does not breach Standard #1.

58. Standard #2 requires teachers to be role models who act ethically and honestly “with integrity, maintaining the dignity and credibility of the profession.” The Commissioner asks this panel to find that Standard #2 requires more than a bare requirement to be honest, that integrity (as articulated in Standard #2) speaks to the possession of firm principles and high moral standards. According to the Commissioner, a teacher who knowingly takes unauthorized absence cannot be acting with the integrity required of Standard #2.

59. The Respondent points to the agreed evidence which illustrates that she was forthright and honest about her intention to take the unauthorized leave and that, as a role model to students, she was accountable for her conduct. The Respondent asserts, and it is agreed, that she took necessary action to ensure her absence did not negatively affect her students or the regular operation of the School, which she says shows she maintained the dignity and credibility of the profession and did not breach Standard #2.

60. The Respondent admits that she was insubordinate. She knew that she had only been granted five days leave, and she admits that she took an additional five days leave knowing it was not authorized by her employer.

61. Common sense dictates that this act of insubordination in and of itself displays a lack of integrity. The panel finds that the Respondent did not act with integrity when she took the unauthorized leave and is in breach of Standard #2. The panel stresses that it is only this single aspect of the Respondent’s conduct, the act of knowingly taking leave without authorization, which breaches Standard #2 and that in every other respect, her conduct did not breach the Standard.

Does the Respondent’s conduct amount to professional misconduct?

62. As noted earlier in these reasons, a finding that the Respondent breached one or more of the Standards does not necessitate a finding of professional misconduct under the Act. Applying the *Martin* test, to find the Respondent guilty of professional misconduct, this panel must determine that the Respondent’s conduct amounts to a marked departure from the Standards, that it displays gross culpable neglect of her duties as a teacher.

63. This panel has found that the Respondent did not act with integrity when she knowingly absented herself without authorization and that for this reason she is in breach of this aspect of Standard #2. The Commissioner says that the Respondent’s conduct in this respect displays a lack of integrity and contradicts her obligation to act as a role model to her students, that the conduct displays a marked departure from Standard #2 and a gross neglect of the Respondent’s duties as a teacher such that it amounts to professional misconduct under the Act.

64. In contrast, the Respondent says that her only wrongdoing was to take the leave despite the fact that her employer had denied it. She says there is no precedent for finding that failure to attend work in itself is professional misconduct attracting a finding of guilt under s. 63(1)(b) and subsequent sanction under the Act.

65. The Respondent says that the Act regulates the conduct of teachers as professionals, and that the legislature has established a separate regime through the *School Act*, its regulations, and the applicable collective agreements, to address the conduct of teachers as employees. The Respondent submits that while there may be overlap between these two regimes, cases like hers that are primarily employment matters should not be the subject of Branch proceedings and should not be addressed through professional misconduct hearings.

66. The Respondent directed this panel to the legislative history of the Act, including the Hansard debates in the legislature, and submits that the purpose of discipline panels under the Act, especially as reflected in the Hansard debates, is to hear matters in which a teacher's conduct has negatively affected students or the public's confidence in the profession.

67. The Respondent says that in the circumstances of this case, her conduct was not serious enough to constitute professional misconduct and that finding that it does will result in a significant and unwarranted expansion of what constitutes professional misconduct for teachers in this province. She submits:

Applying professional discipline to employment issues is especially problematic when the issue is, as it is here, insubordination through failure to attend work. Defining insubordination as professional misconduct has the potential to undermine the balance of power between employers and employees, particularly when we are dealing with a regulator which is a branch of government as opposed to a self-regulating body. Discipline by a government regulatory body for failure to attend work engages fundamental liberty issues for employees. While the employer has a right to compel attendance at work through the threat of disciplinary sanctions, governments are generally very cautious about intervening to support those rights.

68. This panel must make its determination of whether the Respondent's conduct amounts to professional misconduct on the facts before us. The Respondent's conduct demonstrates that although she knew she was going to be insubordinate and take leave without authorization, she ensured that her actions did not result in any negative impact on her students or the operation of the School. This panel finds that the Respondent did not put her interests before those of her students or the School.

69. Applying the test articulated in *Martin*, this panel finds that the Respondent's conduct does not amount to a marked departure from the conduct expected of teachers in this province. This panel finds further that the Respondent's conduct does not display a gross culpable neglect of her duties as a teacher, in fact, it is far from it. It is clear that the Respondent took steps to mitigate the adverse impact of her absence on her students and on the School. She delayed requesting leave until she had confirmed that Ms. Lauzier was able to substitute for her and, after she learned that she had only been granted five of the ten days of leave she had requested, she notified the principal of her intention to be absent for the whole ten day period and further contacted the School secretary to confirm her ongoing absence.

70. This panel agrees with the Respondent's submissions that in the circumstances of this case, the Respondent's conduct is not serious enough to warrant a finding of professional misconduct under s. 63(1)(b) of the Act.

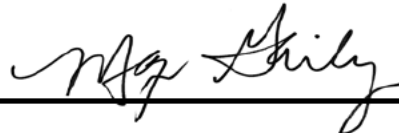
DECISION

71. In summary, for all of the reasons given, the panel finds that the Respondent, in knowingly absenting herself without authorization from teaching at the School for five days from September 19-23, 2011, did not engage in professional misconduct under subsection 63(1)(b) of the Act.

72. The panel dismisses the Citation pursuant to subsection 63(1)(a) of the Act. Given this panel's determination that the Citation is dismissed, there is no need for a further hearing to determine a sanction.

73. The Panel directs that submissions regarding the publication of these reasons be made in writing unless, within 3-weeks of the date of issuance of these reasons, either party objects in writing to the Hearing Coordinator of the Branch, in which case the Hearing Coordinator will set a schedule for filing submissions and the panel will determine whether to proceed orally or in writing.


For the Panel
Date: December 18, 2013



Meg Gaily, Chair



John Hall



Lynn Bosetti

Riedstra, Roland Melchior - Consent Resolution Agreement

admitted to professional misconduct. Mr. Riedstra was employed as a secondary school teacher when a report was made by a female grade 12 student (who was a peer tutor in Mr. Riedstra's dance class) that Mr. Riedstra had been sending her inappropriate text messages for a period of time. The district investigation determined that between February to May 2009, Mr. Riedstra texted the student several times. The messages were innocuous at first, but became increasingly suggestive. For example, in discussing the possible failure of the student in his class, Mr. Riedstra said, "No, I wouldn't fail you. I might fail you if you don't date me." On another occasion, after the student had brushed past Mr. Riedstra at school, Mr. Riedstra texted, "I got a good smell of you this morning and could feel your body through the fabric." Later that day, Mr. Riedstra sent the student a lengthy sexually explicit and graphic text message describing in detail specific sexual acts that would occur if they were to meet in his classroom in the evening. For example, he suggested that she wear a skirt because it would be easier to take off, that he would bend her over the counter and come at her from behind, and that she could "go down on [her] knees" and "finish [him] off." The student then changed her cell phone number and the texts ceased. During the district investigation, Mr. Riedstra admitted that he sent these and other text messages. On March 30, 2011, the Preliminary Investigation Sub-Committee approved the Consent Resolution Agreement in which Mr. Riedstra agreed to the immediate cancellation of his College certificate of qualification.

Semchuk, Gary Nicholas - Conduct Review Decision

was employed as an elementary school teacher from 1979 until 2008. He taught as a teacher-on-call and later as a full-time teacher with the school district. In May 2008, Mr. Semchuk was charged under the Criminal Code of Canada with touching for a sexual purpose contrary to section 151 and sexual assault contrary to sections 246.1 and 271(1) respectively. As a result of the charges pertaining to female students, it was determined in August 2010 that Mr. Semchuk presented a risk of sexual abuse to children, pursuant to section 4 of the Criminal Records Review Act. In July 2011, Mr. Semchuk was convicted of one count of sexual assault for a 1986 offence by the BC Supreme Court. In October 2011, the Court imposed a suspended sentence, followed by a two-year probationary period, a 10-year firearm prohibition, and a mandatory \$100 victim surcharge. Further, the Court ordered that Mr. Semchuk provide a DNA sample, have no contact with specified former students and their families, and no contact with females under age 16 except with written parental consent. In addition, the Court ordered that Mr. Semchuk be registered on the sex offender identification registry for 20 years and imposed a publication ban pursuant to section 486.4(2) of the Criminal Code. On December 29, 2011, the Conduct Review Sub-Committee accepted the Statement of Agreed Facts and Disposition wherein Mr. Semchuk agreed to relinquish his teaching certificate and to not reapply for a certificate of qualification in the future.



DISCIPLINE CASE SUMMARY

- a. A Respondent A-09-06 (Certificate Issued: 1991.06.03)
-
- b. Conduct unbecoming a member of the College.
- c. The hearing was held on September 13-17, 2004, at the College's offices in Vancouver, B.C. and in Prince Rupert, B.C. on May 16-20, 2005. The final phase of the hearing was held on September 20, 2006, at the College's offices. This matter originated as a report under section 16 of the *School Act*.
- d. The Hearing Sub-Committee (the "Committee") found that the Respondent, between 1977 and 1983, engaged in inappropriate conduct of a sexual nature with the complainant who was occasionally his student and who later became his stepdaughter. The inappropriate conduct included sexual touching and/or removing part of her clothing. The Committee found that there was insufficient proof that the Respondent engaged in inappropriate conduct with a friend of the complainant.
- e. The Committee was unanimous in its decision that the Respondent exhibited behaviour towards the complainant which constituted conduct unbecoming a member of the College. Upon reviewing the evidence, the Committee found the complainant's testimony reliable, consistent and unshaken by cross-examination.

With respect to the complainant's friend, the Committee was also unanimous in its decision that the allegations against the Respondent were unfounded, given the lack of corroborated evidence and inconsistent and unclear testimony.

Although the Committee found that the Respondent was a responsive and intelligent witness, they agreed that his testimony lacked consistency which led them to question the credibility and reliability of the Respondent's evidence.

- f. The Committee considered the submissions presented by counsel on penalty, publication and costs. It was unanimously decided that the Respondent's certificate be suspended for an 18 month period commencing the date of the Committee's decision on verdict. The Committee acknowledged the nature and gravity of the offence and the adverse impact that it has had on the complainant, however, it determined that the penalty of cancellation should be reserved for the more serious offences. The Committee believes that a suspension is sufficient to maintain public confidence in the teaching profession and to act as a persuasive deterrent to other teachers. Further, the Committee unanimously agreed that a nominal sum be assessed to the Respondent due to an adverse finding and that the Respondent's name not be made public so as to protect the identity of the victim.
- g. The Respondent appealed the decision on verdict and penalty on October 20, 2006, to the British Columbia Supreme Court. On August 11, 2008, the Respondent filed Notice of Abandonment of Appeal.

Sidhu, Jasbir Singh - Consent Resolution Agreement

admitted to conduct unbecoming a member of the College. In March 2007, Mr. Sidhu was involved in an access dispute with his former spouse concerning his two children. In the course of that conflict, he advised his ex-spouse that he had surreptitiously video taped sex acts between the two of them and threatened to expose the sex tapes to his spouse's place of employment if she did not accede to his demands. In April 2007, Mr. Sidhu was arrested and charged with extortion under the Criminal Code of Canada. In December 2007, he plead guilty to the lesser charge of engaging in threatening conduct directed at another person contrary to Section 264 (2)(d) of the Criminal Code and was given a one year suspended sentence. On July 7, 2009, the Preliminary Investigation Sub-Committee accepted the Consensual Resolution Agreement in which Mr. Sidhu agreed to a reprimand and an undertaking not to return to teaching until certain conditions are fulfilled. His teaching certificate was cancelled in November 2007 for non-payment of fees.

Soong, Tommy Po Yew - Consent Resolution Agreement

admitted to professional misconduct and conduct unbecoming a member of the College. While employed as a secondary school teacher during the 2007-2008 school year, Mr. Soong engaged in inappropriate behaviour with regards to his on- and off-duty interactions with students. His behaviour included having physical contact with two students, using obscenities in class and telling sexually related jokes while teaching, using unnecessarily sexualized examples in the course of classroom instruction, inappropriately using Facebook, and allowing students to inappropriately sexualize their assignments. In addition, between 2005 and 2007, Mr. Soong attended four student parties that were not sanctioned by the school. On one of these occasions, he brought alcoholic beverages and gave them to the students as a gift. On December 11, 2009, the Preliminary Investigation Sub-Committee approved the Consensual Resolution Agreement in which Mr. Soong accepted a one-year suspension of his College certificate of qualification and an undertaking to fulfill certain conditions prior to his return to teaching.

Sunter, Daniel Anderson

admitted to professional misconduct and agreed that his conduct was contrary to College Standards 1 and 2. During the summer of 2007, Mr. Sunter initiated a friendship through e-mail with a former student of his, who was then 17 years old, and they continued to correspond by e-mail for several months. Their correspondence became increasingly sexually suggestive and they eventually made a plan to meet at a hotel for the purpose of having sex. In January 2008, they met as pre-arranged and had consensual sex. After a teaching assistant became aware of the incident and reported it to authorities, Mr. Sunter pled guilty to sexual exploitation under section 153 of the Criminal Code of Canada. On June 17, 2011, the Preliminary Investigation Sub-Committee approved the Consent Resolution Agreement in which Mr. Sunter agreed not to reapply for admission to the College for a period of no less than 10 years. Mr. Sunter's College certificate of qualification was cancelled on November 1, 2010 for non-payment of fees.



IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011 c. 19

AND

IN THE MATTER CONCERNING

A TEACHER



CONSENT RESOLUTION SUMMARY

This summary is published under section 54(3) of the Teachers Act to protect the identity of students who were harmed, abused or exploited by the teacher.

1. The Teacher held a valid Professional Certificate of Qualification which was cancelled in 2016 due to non-payment of fees.
2. At all material times, the Teacher was employed as a high school teacher at a school in British Columbia (the “School”).
3. In 2015, the Commissioner received a report about the Teacher from the School principal.
4. After receiving the report, the Commissioner asked the Teacher to provide an undertaking not to teach in any role which required a certificate of qualification, independent school teaching certificate or letter of permission. The Teacher did provide that undertaking.
5. Also in 2015, the Commissioner initiated an investigation into the Teacher after learning that the Teacher had been charged with four counts of sexual exploitation.
6. The School terminated the Teacher’s employment.
7. The following events occurred:
 - a. Student A was a female student at the School with whom the Teacher exchanged sexually inappropriate messages and with whom he became involved in a sexual relationship.
 - b. While exchanging messages with Student A, the Teacher disclosed private

information about other students.

- c. The Teacher was charged and convicted on two counts of sexual exploitation under s.153(1)(a) of the *Criminal Code* (touching for a sexual purpose), two counts of sexual exploitation under s.153(1)(a) of the *Criminal Code* (inviting to touch for a sexual purpose), and one count of luring a person under the age of 18 for the purpose of facilitating the commission of an offence under s.153(1), contrary to section 172.1(1)(a) of the *Criminal Code*.
 - d. The Teacher was sentenced to a term of imprisonment followed by probation.
 - e. The criminal proceedings are subject to a court-ordered publication ban under section 486.4 of the *Criminal Code*.
8. [REDACTED], the Teacher entered into a consent resolution agreement with the Commissioner in which the Teacher agreed that his conduct described in paragraph 7 above constitutes professional misconduct and is contrary to Standard #1 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, Fourth Edition, January 2012.
 9. The Teacher agreed that he would never again apply for, and that the Director of Certification will never again issue to him, a certification of qualification, and independent school teaching certificate or a letter of permission.



IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011 c. 19

AND

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CONSENT RESOLUTION SUMMARY

This summary is published under section 54(3) of the Teachers Act to protect the identity of a student who was harmed, abused or exploited by the teacher.

1. The Teacher held a valid Professional Certificate of Qualification.
2. In November 2013, the Teacher's certificate of qualification was cancelled for non-payment of fees.
3. At all material times, the Teacher was employed as a high school teacher at a school in British Columbia (the "School").
4. In June 2012, the Commissioner received a report about the Teacher from a District Superintendent under s.16 of the *School Act*.
5. In July 2012, the Teacher signed an undertaking not to teach in any position requiring a certificate of qualification, independent school teaching certificate or letter of permission.
6. The following events occurred:
 - a. In July 2006, the Teacher began a sexual relationship with Student A who had graduated from the School in June 2006. The Teacher sent Student A numerous inappropriate emails, and served her alcohol and bought her cigarettes even though she was underage.
 - b. In July 2007, the Teacher sent Student B a number of emails which were overly familiar and at times inappropriate.

7. On [REDACTED] the Teacher entered into a consent resolution agreement with the Commissioner in which the Teacher agreed that his conduct described in paragraph 6 above constitutes professional misconduct and is contrary to Standard #1 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, Fourth Edition, January 2012.
8. The Teacher agreed that he would never again apply for, and that the Director of Certification would be required under section 64(g) of the *Teachers Act* never to issue to him, a certification of qualification, an independent school teaching certificate or a letter of permission.



IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011 c. 19

AND

IN THE MATTER CONCERNING

A TEACHER

CONSENT RESOLUTION SUMMARY

This summary is published under section 54(3) of the Teachers Act to protect the identity of a student who was harmed, abused or exploited by the teacher.

1. The Teacher held a valid Professional Certificate of Qualification, which was cancelled on November 1, 2020 for non-payment of fees.
2. At all material times, the Teacher was employed as a secondary school teacher by a school district at a school.
3. In November 2019, the Commissioner received a report about the Teacher from a District Superintendent under section 16 of the *School Act*.
4. In 2019, the Teacher entered into an inappropriate relationship with a Student, whom he taught in grade eight and again in grade twelve. In late June during the school year, the Teacher made a physical and romantic gesture towards the Student. Within days of the Student graduating, the Teacher commenced a sexual relationship with the Student.
5. In [REDACTED], the Teacher entered into a consent resolution agreement with the Commissioner in which the Teacher agreed that his conduct described in paragraph 4 constitutes professional misconduct and is contrary to Standards #1 and #2 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, Fourth Edition, January 2012.
6. The Teacher agreed that for a period of 20 years, he would not apply for, and the Director of Certification would be required not to issue to him, a certificate of qualification, an independent school teaching certificate or other authorization to teach, under section 64(g) of the *Teachers Act*.

7. In determining that a ban on reapplication for 20 years is an appropriate consequence, the Commissioner considered the following factors:
 - a. the Teacher's conduct was a serious breach of his position of power and trust as a teacher; and
 - a. he exploited the student-teacher relationship he had with Student by commencing the sexual and romantic relationship within days of graduation.



IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011 c. 19

AND

IN THE MATTER CONCERNING

A TEACHER



CONSENT RESOLUTION SUMMARY

This summary is published under section 54(3) of the Teachers Act to protect the identity of a student who was harmed, abused or exploited by the teacher.

1. The Teacher held a valid Professional Certificate of Qualification.
2. On November 1, 2016, the Teacher's certificate of qualification was cancelled due to non-payment of fees.
3. At all material times, the Teacher was employed as a high school teacher at a school in British Columbia (the "School").
4. In June 2015, the Commissioner received a report about the Teacher from a District Superintendent under s.16 of the *School Act*. This is designated Case 02.
5. In July 2015, the Teacher provided the Commissioner with an undertaking not to teach in any role or position requiring a Certificate of Qualification, Independent School Teaching Certificate or Letter of Permission.
6. On January 29, 2016, the Commissioner initiated an investigation into the Teacher's conduct under s.47(1)(b) of the *Teachers Act* after being advised that he had been charged under the *Criminal Code*. This is designated Case 03.
7. The following events occurred:
 - a. On January 28, 2016, the Teacher was charged with one count of sexual exploitation of a young person contrary to s.153 of the *Criminal Code*.

- b. On February 29, 2016, a judge of the B.C. Provincial Court ordered a publication ban in the criminal proceedings under s.386.4(1)(a) of the *Criminal Code*.
 - c. On February 22, 2017, the Teacher pleaded guilty to the charge of sexual exploitation of a young person, contrary to s.153 of the *Criminal Code*. The sentencing hearing has not yet taken place.
8. On [REDACTED] the Teacher entered into a consent resolution agreement with the Commissioner in which the Teacher agreed that his conduct described in paragraph 7 above constitutes professional misconduct and is contrary to Standard #1 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, Fourth Edition, January 2012.
9. The Teacher agreed that he would never again apply for, and that the Director of Certification would be required under section 64(g) of the *Teachers Act* never to issue to him, a certificate of qualification, an independent school teaching certificate or a letter of permission.



IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011 c. 19

AND

IN THE MATTER CONCERNING

A TEACHER



CONSENT RESOLUTION SUMMARY

This summary is published under section 54(3) of the Teachers Act to protect the identity of a student who was harmed, abused or exploited by the teacher.

1. The Teacher held a valid Professional Certificate of Qualification.
2. The Teacher's certificate of qualification was cancelled on November 1, 2016 due to non-payment of fees.
3. At all material times, the Teacher was employed as a high school teacher at a District school in British Columbia.

Case 02

4. In November 2015, the Commissioner initiated an investigation under s. 47(1)(b) of the *Teachers Act* after learning that the Teacher had been charged with sexual assault and sexual interference of a person under the age of 16. This is designated Case 02.
5. In December 2015, the Teacher signed an undertaking not to teach in any role which required a certificate of qualification, independent school teaching certificate or letter of permission.
6. The following events occurred:
 - a. In 2015, the Teacher was charged with one count of sexual assault contrary to section 271 of the *Criminal Code* and one count of sexual interference of a person under the age of 16, contrary to section 251 of the *Criminal Code*.

- b. In 2017, the Teacher pleaded guilty to the charge of sexual interference of a person under the age of 16, contrary to section 251 of the *Criminal Code*. On November 14, 2017, the Teacher was sentenced. The sentence imposed is under appeal before the British Columbia Court of Appeal.
 - c. The criminal proceedings are subject to a court-ordered publication ban under section 486.4 of the *Criminal Code*.
7. In 2015, the Teacher resigned from the District.

Case 03

8. In December 2015, the Commissioner initiated an investigation under s. 47(1)(b) of the *Teachers Act* after learning that the Teacher may have engaged in boundaries violations with a female student in the District. This has been designated Case 03.
9. The following events occurred:
 - a. In 2010, the Teacher initiated contact with a female high school student whom he taught (Student A). The Teacher exchanged several inappropriate messages with Student A over a two-year period.
10. The District had previously suspended the Teacher as follows:
 - a. The Teacher was suspended without pay for 6 months after he engaged in an inappropriate friendship with another female student (Student B).
11. On May 9, 2017, the Commissioner combined Case 02 and Case 03.
12. On [REDACTED], the Teacher entered into a consent resolution agreement with the Commissioner in which the Teacher agreed that his conduct described in paragraphs 6 and 9 above constitutes professional misconduct and is contrary to Standard #1 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, Fourth Edition, January 2012.
13. The Teacher agreed that he would never again apply for, and that the Director of Certification would be required under section 64(g) of the *Teachers Act* never to issue to him, a certification of qualification, an independent school teaching certificate or a letter of permission.



IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011 c. 19

AND

IN THE MATTER CONCERNING

A TEACHER

CONSENT RESOLUTION AGREEMENT

This summary is published under section 54(3) of the Teachers Act to protect the identity of students who were harmed, abused or exploited by the teacher.

1. The Teacher was issued a Professional Certificate of Qualification in 1999. He was employed as a high school teacher at a school in a school district in British Columbia.
2. The Teacher entered into an inappropriate personal and sexual relationship with an 18 year old former student (“Student A”), shortly after Student A graduated. The Teacher had taught Student A for two years.
3. Subsequently, the Teacher entered into an inappropriate personal relationship with a 17 year old grade 12 student (“Student B”), who was in one of the classes he taught. Weeks after Student B graduated, the Teacher gave Student B alcohol and initiated a sexual relationship with Student B.
4. In 2020, the Commissioner entered into a consent resolution agreement, in which the Teacher agreed that his conduct described above constitutes professional misconduct and is contrary to Standards #1 and #2 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, Fourth Edition, January 2012. The Teacher agreed to a cancellation of his certificate of qualification and that for a period of 15 years he would not apply for, and that the Director of Certification would be required under section 64(g) of the *Teachers Act* not to issue to him, a certificate of qualification, an independent school teaching certificate, or a letter of permission.
5. In determining that a cancellation is an appropriate consequence, the Commissioner considered the following factors:
 - a. the Teacher’s conduct involved serious boundary violations with two students at two

different times;

- b. this misconduct occurred over an extended period of time; and
- c. the Teacher was aware that at least one of the students was in a vulnerable state.



IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011 c. 19

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CONSENT RESOLUTION SUMMARY

This summary is published under section 54(3) of the Teachers Act to protect the identity of a student who was harmed, abused or exploited by the teacher.

1. The Teacher held a teaching certificate in British Columbia from 2016 until November 1, 2018, when it was cancelled for non-payment of fees.
2. The Teacher was employed by a school district in B.C. (the “District”) at a District school (the “School”).
3. On November 11, 2016, the Teacher resigned from the District effective November 30, 2016.
4. On November 18, 2016, the District made a report to the Commissioner regarding the Teacher under section 16 of the *Teachers Act*. This has been designated Matter 1.
5. On December 26, 2016, the Teacher signed an undertaking not to teach in any role which required a certificate of qualification, independent school teaching certificate or letter of permission.
6. On May 8, 2017, the Commissioner initiated an investigation under s.47(1)(b) of the *Teachers Act* after learning that the Teacher had been charged with two counts of sexual assault contrary to s.271 of the *Criminal Code* and two counts of sexual exploitation contrary to s.153 of the *Criminal Code*. This has been designated Matter 2.
7. On May 16, 2017, the Commissioner combined Matter 1 and Matter 2.
8. In 2016, while teaching at the School, the Teacher attended parties with students at the

School and was photographed drinking alcohol with them.

9. In 2016, the Teacher exchanged inappropriate and sexualized text messages with a 17-year old student at the School (“Student A”).
10. In 2016, the Teacher began a sexual relationship with Student A.
11. On February 28, 2018, the Teacher was convicted of one charge of sexual exploitation of a young person under the age of 18, contrary to s.153 of the *Criminal Code*.
12. On March 28, 2019, the Teacher was sentenced. The Teacher received a 15-month conditional sentence, two years’ probation, and registration on the National Sex Offender Registry for a period of 10 years.
13. On [REDACTED], the Teacher entered into a consent resolution agreement with the Commissioner in which the Teacher agreed that their conduct described in paragraphs 8, 9 and 10 above constitutes professional misconduct and is contrary to Standard #1 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, Fourth Edition, January 2012.
14. The Teacher agreed that they would never again apply for, and that the Director of Certification would be required under section 64(g) of the *Teachers Act* never to issue to them, a certificate of qualification, an independent school teaching certificate or a letter of permission.
15. In determining that a lifetime ban on reapplication is an appropriate consequence, the Commissioner considered the following factors:
 - a. the Teacher engaged in criminal misconduct involving a serious sexual exploitation of a student; and
 - b. there was a pattern of boundary violations in addition to the most serious violation which led to the criminal conviction.



IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011 c. 19

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CONSENT RESOLUTION SUMMARY

This summary is published under section 54(3) of the Teachers Act to protect the identity of a student who was harmed, abused or exploited by the teacher.

1. The Teacher held a valid Professional Certificate of Qualification which was cancelled in 2016 due to non-payment of fees.
2. At all material times, the Teacher was employed as an elementary school teacher in British Columbia.
3. In November 2015, a school principal made a report to the Commissioner about the Teacher under s.7 of the *Independent Schools Act*. This is designated Case 01.
4. In late November 2015, the Commissioner initiated an investigation into the Teacher's conduct after learning that the Teacher had been charged with one count of sexual interference of a person under 16, one count of sexual exploitation and one count of sexual assault. This is designated Case 02.
5. In July 2016, the Commissioner suspended the Teacher's certificate of qualification under s.50 of the *Teachers Act*.
6. The following events occurred:
 - a. In November 2015, the Teachers was charged with:
 - i. one count of sexual interference of a person under the age of 16, contrary to section 151 of the *Criminal Code* ("Count 1");
 - ii. one count of sexual exploitation of a young person under the age of 18,

contrary to section 153 of the *Criminal Code* (“Count 2”); and

iii. and one count of sexual assault, contrary to section 271 of the *Criminal Code* (“Count 3”).

- b. In July 2016, the Teacher pleaded guilty to Count 2 and Count 3. At this time, Count 1 was stayed.
 - c. In December 2016, the Teacher was sentenced to 18 months in prison and two years of probation on conditions in relation to Count 2. At this time, Count 3 was also stayed. The Court also ordered the Teacher to comply with the *Sexual Offender Information Registration Act* for a period of 20 years.
 - d. The criminal proceedings are subject to a court-ordered publication ban under section 486.4 of the *Criminal Code*.
7. In November 2015, the Teacher resigned from the school at which he had been teaching.
8. On [REDACTED], the Teacher entered into a consent resolution agreement with the Commissioner in which the Teacher agreed that his conduct described in paragraph 6 above constitutes professional misconduct and is contrary to Standard #1 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, Fourth Edition, January 2012.
9. The Teacher agreed that he would never again apply for, and that the Director of Certification will never again issue to him, a certification of qualification, and independent school teaching certificate or a letter of permission.



IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011 c. 19

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CONSENT RESOLUTION SUMMARY

This summary is published under section 54(3) of the Teachers Act to protect the identity of students who were harmed, abused or exploited by the Teacher.

1. The Teacher held a valid Professional Certificate of Qualification. It was cancelled for non-payment of fees in November 2019.
2. At all material times, the Teacher was employed as a high school teacher at a school in a school district.
3. In April 2018, the Commissioner received a report about the Teacher from a District Superintendent under section 16 of the *School Act*.
4. The Teacher entered into a sexual relationship with a former student (“Student A”), whom he taught in grade twelve. The Teacher continued to communicate with Student A after Student A graduated in June and the Teacher began a romantic and sexual relationship with Student A in November, within five months of graduation.
5. The Teacher entered into an inappropriate personal relationship with a student who was 16 years old (“Student B”). The Teacher was aware that Student B had personal challenges. The Teacher and Student B spoke together by phone in the evenings on many occasions and communicated by text. The Teacher brought Student B to his home on a number of occasions, where he spent time alone with Student B, including from late at night until early in the morning.
6. In April 2018, the District suspended the Teacher under section 15(5) of the *School Act*.
7. In May 2018, the Teacher gave an undertaking to the Commissioner not to teach in the

kindergarten to grade 12 education system until the final resolution of this matter.

8. In February 2019, the Teacher resigned from his employment with the District.
9. In [REDACTED] the Teacher entered into a consent resolution agreement with the Commissioner in which the Teacher agreed that the conduct described in paragraphs 4 and 5 constitutes professional misconduct and is contrary to Standards #1 and #2 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, Fourth Edition, January 2012.
10. The Teacher agreed under section 64(g) of the *Teachers Act* that for a period of 15 years, he would not apply for, and the Director of Certification would be required not to issue to him, a certificate of qualification, an independent school teaching certificate or a letter of permission.
11. In determining that a ban on issuance of a certificate or other authorization for 15 years is an appropriate consequence, the Commissioner considered the following factors:
 - a. the pattern of boundary violations by the Teacher; and
 - b. the Teacher's conduct in repeatedly bringing Student B to his home to spend time alone with him, particularly from late at night until early in the morning.



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CONSENT RESOLUTION SUMMARY

This summary is published under section 54(3) of the Teachers Act to protect the identity of a student who was harmed, abused or exploited by the teacher.

1. The Teacher holds a Professional Certificate of Qualification issued by the Director of Certification under the *Teachers Act* on July 8, 2015 and valid from July 8, 2015.
2. At all material times, the Teacher was employed as a high school teacher by a school district in British Columbia (the “District”).
3. On November 2, 2016, the District made a report to the Commissioner regarding the Teacher under section 16 of the *School Act*.
4. Between August and September 2016, the Teacher engaged in highly inappropriate communications with a Grade 11 student using Facebook messenger and text messaging. The conversations occurred late at night and were frequently intimate in nature. The comments the Teacher made included a sexual reference, comments about Student A’s personal appearance, and heart emojis.
5. On October 31, 2016, the District issued the Teacher a letter of discipline and suspended him without pay for one month.
6. On [REDACTED], the Teacher entered into a consent resolution agreement with the Commissioner in which the Teacher agreed that his conduct described in paragraph 4 above constitutes professional misconduct and is contrary to Standard #1 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, Fourth Edition, January 2012.

7. The Teacher agreed to a two-month suspension of his certificate of qualification. The Teacher also agreed to complete the course “Reinforcing Respectful Professional Boundaries” through the Justice Institute of B.C. by April 1, 2018.



BRITISH COLUMBIA
COMMISSIONER FOR
TEACHER REGULATION

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CONSENT RESOLUTION SUMMARY

This summary is published under section 54(3) of the Teachers Act to protect the identity of a student who was harmed, abused or exploited by the teacher.

1. The Teacher holds a valid Professional Certificate of Qualification, which was issued by the B.C. College of Teachers under the *Teaching Profession Act* on September 13, 1995, is valid from September 1, 1995, and was continued under the *Teachers Act* as of January 9, 2012.
2. At all material times, the Teacher was employed as a vice-principal by a school district (the “District”) in British Columbia at a District school (the “School”).
3. On March 3, 2017, the District superintendent advised the Commissioner that the Teacher was placed on an administrative leave.
4. On March 26, 2017, the Teacher signed an undertaking not to teach in the kindergarten to grade 12 education system in British Columbia.
5. In 2016, the Teacher entered into a text message group with two students and exchanged text messages during and outside of school hours. These text messages included inappropriate and unprofessional content, including profanity and comments about drinking alcohol. These text messages continued after the two students graduated, although on a less frequent basis.
6. In 2016, the Teacher engaged in an inappropriate sexual relationship with one of these students, who had recently graduated from the School. On one occasion, the Teacher

supplied alcohol to the student, who to his knowledge was a minor, before engaging in sexual activity with the student. The Teacher exploited the student for his sexual advantage.

7. Effective April 30, 2017, the Teacher resigned from the District.
8. On February 20, 2019, the Teacher entered into a consent resolution agreement with the Commissioner in which the Teacher agreed that his conduct described in paragraphs 5 and 6 constitutes professional misconduct and conduct unbecoming and is contrary to Standards #1 and #2 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, Fourth Edition, January 2012.
9. The Teacher agreed to a cancellation of his certificate of qualification under sections 53 and 64(e) of the *Teachers Act*.
10. In addition, the Teacher agreed that he will not apply for, and understands the Director of Certification (the “Director”) will be required under section 64(g) of the *Teachers Act* not to issue to him, a certificate of qualification, an independent school teaching certificate or a letter of permission for a period of five years.



IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011 c. 19

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CONSENT RESOLUTION AGREEMENT

This summary is published under section 54(3) of the Teachers Act to protect students who were harmed, abused or exploited by the Teacher.

1. The Teacher held a valid Professional Certificate of Qualification that was issued by the Director of Certification (the “Director”) under the *Teachers Act* on September 9, 2016. His certificate was cancelled on November 1, 2019 for non-payment of fees.
2. At all material times, the Teacher was employed as a secondary school teacher by a school district (the “District”).
3. In 2016 and 2017, the Teacher often engaged in inappropriate physical contact with students, such as touching their hands, shoulders, elbows, backs, knees and legs.
4. In August 2017, the Teacher gave alcohol to a former student who had graduated in June and engaged in sexual activity with the student (the “Student”). The Teacher had taught the student in Grade 12.
5. When the District interviewed the Teacher about the matter in paragraph 4, the Teacher was initially dishonest.
6. On January 31, 2019, the District disciplined the Teacher by terminating his employment for cause, after it had suspended the Teacher under section 15(5) of the *School Act*.
7. On January 31, 2019, the District made a report to the Commissioner regarding the Teacher, under section 16 of the *School Act*.
8. On March 3, 2019, the Teacher gave a written undertaking to the Commissioner not to teach in any role or position requiring authorization under the *Teachers Act*.

9. In 2020, the Commissioner entered into a consent resolution agreement, in which the Teacher agreed that his conduct described above constitutes professional misconduct and conduct unbecoming and is contrary to Standards #1 and #2 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, Fourth Edition, January 2012. The Teacher agreed that for a period of 15 years he will not apply for, and that the Director of Certification is required under section 64(g) of the *Teachers Act* not to issue to him, a certificate of qualification, an independent school teaching certificate, or a letter of permission.
10. In determining that a fifteen year ban on authorization to teach is an appropriate consequence, the Commissioner considered the following factors:
 - a. The Teacher engaged in inappropriate physical contact with students on a number of different occasions.
 - b. The Teacher engaged in a series of boundary violation with the Student.
 - c. The Teacher was dishonest in his initial responses to the District during its investigation.



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CONSENT RESOLUTION SUMMARY

This summary is published under section 54(3) of the Teachers Act to protect the identity of a student who was harmed, abused or exploited by the teacher.

1. The Teacher held a valid Professional Certificate of Qualification which was cancelled in 2016 due to non-payment of fees.
2. At all material times, the Teacher was employed as a high school teacher at a District school in British Columbia (the “School”).
3. In 2015, the Commissioner received a report about the Teacher from a District Superintendent, under s.16 of the *School Act*.
4. Also in 2015, the Commissioner initiated an investigation into the Teacher after learning that the Teacher had been charged with one count of sexual exploitation.
5. After receiving the District report, the Commissioner asked the Teacher to provide an undertaking not to teach in any role which required a certificate of qualification, independent school teaching certificate or letter of permission. The Teacher provided that undertaking in 2015.
6. In 2015, the District suspended the Teacher without pay pending the outcome of the District investigation. In 2016, the Teacher resigned from the District.
7. The following events occurred:
 - a. Student A was a female student at the School with whom the Teacher had a sexual relationship.

- b. In 2015, the Teacher was charged with, and in 2016 he pleaded guilty to, one count of sexual exploitation of a young person, contrary to section 153 of the *Criminal Code*.
 - c. The Teacher has not yet been sentenced in the criminal proceedings.
 - d. The criminal proceedings are subject to a court-ordered publication ban under section 486.4 of the *Criminal Code*.
8. [REDACTED] the Teacher entered into a consent resolution agreement with the Commissioner in which the Teacher agreed that his conduct described in paragraph 7 above constitutes professional misconduct and is contrary to Standard #1 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, Fourth Edition, January 2012.
9. The Teacher agreed that he would never again apply for, and that the Director of Certification will never again issue to him, a certificate of qualification, an independent school teaching certificate or a letter of permission.



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CONSENT RESOLUTION SUMMARY

This summary is published under section 54(3) of the Teachers Act to protect the identity of a student who was harmed, abused or exploited by the teacher.

1. The Teacher held a valid Professional Certificate of Qualification.
2. In 2015, the Teacher's certificate was cancelled under s.33(2)(f) of the *Teachers Act* after the Deputy Registrar of the Criminal Records Review Program advised the Director of Certification that the Teacher presents a risk of sexual abuse to children.
3. At all material times, the Teacher was employed as a middle school teacher at a school in British Columbia (the "School").
4. In 2012, the Commissioner received a report about the Teacher from a District Superintendent under s.16 of the *School Act*. This is designated Case 01.
5. In 2013, the Teacher self-reported to the Director of Certification that he had been charged with one count of sexual interference, one count of sexual exploitation and one count of sexual assault involving a student (Student A). These charges were stayed. This is designated Case 02.
6. The Teacher engaged in an inappropriate sexualized relationship with Student A over a number of years.
7. On [REDACTED], the Teacher entered into a consent resolution agreement with the Commissioner in which the Teacher agreed that his conduct described in paragraph 5 above constitutes professional misconduct and is contrary to Standard #1 of the *Standards for the Education, Competence and Professional Conduct of Educators in British*

Columbia, Fourth Edition, January 2012.

8. The Teacher agreed that he would never again apply for, and that the Director of Certification would be required under section 64(g) of the *Teachers Act* never to issue to him, a certification of qualification, an independent school teaching certificate or a letter of permission.



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CONSENT RESOLUTION AGREEMENT

This summary is published under section 54(3) of the Teachers Act to protect the identity of students who were harmed, abused or exploited by the teacher.

1. The Teacher holds a valid Professional Certificate of Qualification, No. [REDACTED], issued by the Director of Certification (the ‘Director’) under the *Teachers Act* on September 4, 2014, and is valid from September 4, 2014.
2. On March 28, 2020, the Teacher signed an undertaking not to teach in any position requiring a certificate of qualification, independent school teaching certificate or letter of permission.
3. At all material times, the Teacher was employed as a high school teacher by a school district in British Columbia (the ‘District’) at a District school (the ‘School’).
4. On December 10, 2019, the District made a report to the Commissioner regarding the Teacher, under section 16 of the *School Act*.
5. The following events occurred:
 - a. Student A had been the Teacher’s student in Grades 10, 11 and 12.
 - b. During Student A’s Grade 12 year, Student A spent a significant amount of time with the Teacher at the School and also spent time with the Teacher outside of School hours.
 - c. Student A graduated from the School in June.
 - d. The Teacher began a sexual relationship with Student A in September.



- e. The Teacher engaged in boundary violations with other students at the School, such that students viewed the Teacher more as a friend than a teacher.
6. The District terminated the Teacher's employment.
7. On [REDACTED], the Teacher entered into a consent resolution agreement with the Commissioner in which the Teacher agreed that the Teacher's conduct described in paragraph 5 above constitutes professional misconduct and is contrary to Standards #1 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, Fourth Edition, January 2012.
8. The Teacher agreed that the Teacher's certificate of qualification would be cancelled under sections 53 and 64(e) of the *Teachers Act*.
9. The Teacher further agreed that for a period of fifteen years from [REDACTED], the Teacher will not apply for, and understands the Director will be required not to issue to the Teacher, a certificate of qualification, an independent school teaching certificate or any other authorization to teach in the kindergarten to grade 12 education system under section 64(g) of the *Teachers Act*, or any successor legislation.
10. In determining that a cancellation is an appropriate consequence, the Commissioner considered the following factors:
 - a. The Teacher engaged in an inappropriate sexual relationship with a former student in breach of their fiduciary responsibilities; and
 - b. During the School year, the Teacher failed to maintain the appropriate professional boundaries required of a student-teacher relationship.



This summary is published anonymously under section 54(3) of the Teachers Act to protect the identity of a student who was harmed, abused or exploited by the teacher.

1. The Teacher held a Professional Certificate of Qualification and was employed as a high school teacher at a school in a school district in British Columbia.
2. The Teacher entered into an inappropriate intimate and sexual relationship with an eighteen year old student (the “Student”), approximately six weeks after the Student graduated:
 - a. The relationship arose directly out of the teacher-student relationship, which spanned four years from Grades 9 to 12. Over this four year period, the Student regularly and consistently spent time with Teacher, including time alone at the School. The Student talked to the Teacher about personal matters.
 - b. The Teacher was aware that the Student had a crush on him while the Student was in high school.
 - c. When the Student was in Grade 11, there was an incident in which the Teacher had a physical contact with the Student which was of a sexually suggestive nature.
 - d. In early August, the Student contacted the Teacher. They met a few times in August. The Teacher told the Student that he loved the Student and the Teacher initiated sexual activity.
3. In 2019, the Commissioner entered into a consent resolution agreement, in which the Teacher agreed that his conduct described in paragraph 2 above constitutes professional misconduct and is contrary to Standards #1 and #2 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, Fourth Edition, January 2012. The Teacher agreed to a cancellation of his certificate of qualification and that for a period of ten years he would not apply for, and that the Director of Certification would be required under section 64(g) of the *Teachers Act* not to issue to him, a certificate of qualification, an independent school teaching certificate, or a letter of permission.





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CONSENT RESOLUTION AGREEMENT

This summary is published under section 54(3) of the Teachers Act to protect the identity of students who were harmed, abused or exploited by the teacher.

1. The Teacher holds a valid Professional Certificate of Qualification, No. [REDACTED]. It was issued by the B.C. College of Teachers under the *Teaching Profession Act* in 1988 and was continued under the *Teachers Act* as of January 9, 2012.
2. At all material times, the Teacher was employed as a high school teacher by a school in a school district (the “District”).
3. Over several years, the Teacher failed to maintain appropriate professional boundaries with students, when he:
 - a. communicated with students using social media about personal matters, including making comments to students of a sexual nature;
 - b. gave inappropriate personal gifts to students; and
 - c. spent time alone with students doing one-on-one activities, such as exercising with the student or playing sports.
4. Further, the Teacher was not honest during the District’s investigation and during the Commissioner’s investigation.
5. In June 2018, the District made a report to the Commissioner regarding the Teacher, under section 16 of the *School Act*, after the District suspended the Teacher without pay for eight weeks.

6. In [REDACTED], the Teacher entered into a consent resolution agreement with the Commissioner in which the Teacher agreed that the Teacher's conduct described in paragraphs 3 and 4 above constitutes professional misconduct and is contrary to Standards #1 and 2 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, Fourth Edition, January 2012.
7. The Teacher agreed that his certificate of qualification would be cancelled under sections 53 and 64(e) of the *Teachers Act*.
8. In determining that a cancellation is an appropriate consequence, the Commissioner considered the following factors:
 - a. the Teacher failed to maintain appropriate teacher-student boundaries in a number of ways;
 - b. this conduct occurred on many occasions over a long period of time; and
 - c. the Teacher deliberately misled both the district and the branch during the investigations.



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CONSENT RESOLUTION SUMMARY

This summary is published under section 54(3) of the Teachers Act to protect the identity of a student who was harmed, abused or exploited by the teacher.

1. The Teacher held a valid Professional Certificate of Qualification.
2. On November 1, 2019, the Teacher's certificate was cancelled for non-payment of fees.
3. At all material times, the Teacher was employed as a high school teacher at a B.C. public school (the "School").
4. In August 2018, the Commissioner received a report about the Teacher from a District Superintendent under s.16 of the *School Act*.
5. Student A was in Grade 12 and was a student in the Teacher's class. Student A would often be in the Teacher's classroom during breaks and before and after class. The Teacher was also Student A's official mentor, and assisted Student A with schoolwork and university applications. Shortly after Student A graduated from the School, the Teacher began a relationship with Student A which later became sexual in nature.
6. In 2020, the Teacher entered into a consent resolution agreement with the Commissioner in which the Teacher agreed that their conduct described in paragraph 5 above constitutes professional misconduct and is contrary to Standard #1 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, Fourth Edition, January 2012.



7. The Teacher also agreed that they would never again apply for, and the Director of Certification would be required not to issue them a certificate of qualification, an independent school teaching certificate or a letter of permission at any time in the future, under section 64(g) of the *Teachers Act*.
8. In determining that a lifetime ban on reapplication is an appropriate consequence, the Commissioner considered the following factors:
 - a. The Teacher engaged in an inappropriate sexual relationship with a former student in breach of their fiduciary responsibilities; and
 - b. The Teacher acknowledged that their conduct was inappropriate and cooperated with the Commissioner's investigation.



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CONSENT RESOLUTION SUMMARY

This summary is published under section 54(3) of the Teachers Act to protect the identity of a student who was harmed, abused or exploited by the teacher.

1. The Teacher held a valid professional Certificate of Qualification, No. ██████████ It was issued by the Director of Certification (the “Director”) under the *Teachers Act* on August 29, 2012 and is valid from August 29, 2012.
2. The Teacher’s certificate of qualification was cancelled on November 1, 2019 for non-payment of fees.
3. At all material times, the Teacher was employed as a secondary school teacher by a school district in British Columbia (the “District”) at a District school (the “School”).
4. On May 2, 2018, the District made a report to the Commissioner regarding the Teacher, under section 16 of the *School Act* after learning that the Teacher had begun a sexual relationship with a student at the School. This has been designated Matter 1.
5. In May 2018, the Teacher was charged with one count of sexual exploitation of a young person by a person in a position of trust or authority, contrary to section 153(1) of the *Criminal Code* and one count of sexual assault, contrary to section 271 of the *Criminal Code*. The criminal proceedings are subject to a publication ban under sections 486.4 of the *Criminal Code*.
6. On June 16, 2018, the Teacher resigned from the District, effective immediately.
7. On July 6, 2018, the Commissioner initiated an investigation under section 47(1)(b) of the

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Teachers Act after learning that the Teacher had been charged with breaching his bail conditions, contrary to sections 145(3) and 145(5.1) of the *Criminal Code*. This has been designated Matter 2.

8. In February 2019, the Teacher pleaded guilty to a number of charges including sexual exploitation and was sentenced in February 2020.
9. On [REDACTED] the Teacher entered into a consent resolution agreement with the Commissioner in which he agreed that his conduct described in paragraphs 4, 5 and 8 above constitutes professional misconduct and conduct unbecoming and is contrary to Standards #1 and #2 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, Fourth Edition, January 2012.
10. Under the terms of the consent resolution agreement, the Teacher agreed that he would not apply for, and understand the Director of Certification will be required, under section 64(g) of the *Teachers Act* not to issue to him, a certificate of qualification, an independent school teaching certificate or letter of permission at any time in the future.
11. In determining that a lifetime ban on reapplication is an appropriate consequence, the Commissioner considered the following factors:
 - a. The Teacher engaged in criminal misconduct involving a serious sexual exploitation of a vulnerable student.
 - b. There was a pattern of boundary violations in addition to the most serious violation which led to the criminal conviction.
 - c. The Teacher attempted to mislead and obstruct the District's investigation.



Summary

This summary is published without names under section 54(3)(a) of the Teachers Act to protect the identity of a student who was harmed, abused or exploited by a former authorized person (the “Teacher”) and in accordance with an order made by a judge of the British Columbia Provincial Court under section 486.4 of the Criminal Code of Canada that prohibits the publication, broadcast or transmission of any information that could identify the student.

The Teacher taught at the high school level. In 2011, when he had been teaching for over 20 years, the Teacher engaged in inappropriate conduct and communication with a 17 year old female student, who was in one of his classes and whom he had taught in previous years. The Teacher was photographed kissing her on the lips and the Teacher and the student exchanged hundreds of MSN messages. In these MSN messages, the Teacher:

- repeatedly told the Student that he loved her, that she was his universe, that her brain was “sexy”, and that “you and i = oneness loving completeness”,
- told her that he was “more than [her] teacher”,
- made plans to meet with the Student outside of school hours,
- referred to having erections, discussed the purchase of condoms, and made other sexually explicit statements,
- discussed ways to communicate so they could avoid family members and others becoming aware of their relationship, including discussing that cellphone calls can be traced,
- offered to provide financial assistance to her after graduation and assisted her in obtaining reference letters from other teachers for her application for a scholarship,
- made negative comments about his teaching assignments for the following year, and
- suggested “I think if we wait to july 1 it may be easier on me” [sic].

The Teacher was suspended from work when the District became aware of this conduct and his certificate of qualification was subsequently cancelled under section 37(4) of the *Teachers Act*.

In 2014, the Teacher entered into a consent resolution agreement in which:

- he admitted that his conduct was contrary to Standards #1 and 2 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*,
- admitted that his conduct constitutes professional misconduct, and
- agreed that he will not apply for, and the Director of Certification will be required not to issue to him, a certificate of qualification, an independent school teaching certificate or a letter of permission for 10 years.



IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011 c. 19

AND

IN THE MATTER CONCERNING

A TEACHER



CONSENT RESOLUTION SUMMARY

This summary is published under section 54(3) of the Teachers Act to protect the identity of students who were harmed, abused or exploited by the Teacher.

1. The Teacher holds a valid Professional Certificate of Qualification.
2. At all material times, the Teacher was employed as a teacher at a high school in B.C. (the “School”).
3. In 2018, a school district (the “District”) made a report to the Commissioner about the Teacher, under section 16 of the *School Act*.
4. The following events occurred in 2017:
 - a. Student A was a Grade 12 student taught by the Teacher at the School.
 - b. The Teacher allowed a relationship to develop with the Student which violated acceptable professional boundaries and left Student A viewing the Teacher as a friend and parental figure.
 - c. Between June 10 and November 2, 2017, the Teacher exchanged 5,455 text messages with Student A which violated acceptable professional boundaries. Of those, 2,496 of the messages were sent by the Teacher. The Teacher’s messages to Student A included the following:



- i. telling Student A that the Teacher loved them;
 - ii. making negative comments about Student A's parents and sibling;
 - iii. using profanity in their communications with Student A;
 - iv. texting Student A over the summer months, on weekends, early in the morning and late at night;
 - v. engaging in negative commentary with Student A about another teacher at the School;
 - vi. discussing Student A's sexuality and sexual orientation;
 - vii. pressuring Student A to allow the Teacher to help them with schoolwork;
 - viii. the Teacher's sharing personal information about their childhood and issues they had with their parents when growing up;
 - ix. telling Student A that they were intelligent and attractive;
 - x. telling Student A that they would "officially" be friends once Student A graduated;
 - xi. telling Student A that the Teacher needed Student A as much as Student A needed the Teacher and
 - xii. telling Student A that they enjoyed spending time with them.
 - d. Student A's mother contacted the Teacher in May, 2017 indicating that she thought it best if Student A stopped texting with them. The Teacher continued to exchange messages with Student A regardless.
 - e. In some of their exchanges, Student A expressed a desire to harm themselves. The Teacher's response was to counsel Student A by text message. This was contrary to the District's critical incident policy which requires teachers who are concerned about self-harm to report the matter to School administrators so that a risk assessment can be done and parents can be notified.
 - f. The Teacher gave Student A gifts.
5. In February 2018, the District issued the Teacher a letter of discipline and suspended them for two months without pay. In addition, the Teacher was transferred to a different school and was required to complete the course *Reinforcing Respectful Boundaries* through the Justice Institute of B.C. The Teacher completed the course in March, 2018.

6. On [REDACTED], the Teacher entered into a consent resolution agreement with the Commissioner in which the Teacher admitted that the conduct described in paragraph 4 above constitutes professional misconduct and is contrary to Standard #1 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, Fourth Edition, January 2012.
7. The Teacher has agreed to 2-month and 2-week suspension of their certificate of qualification under sections 53 and 64(b) of the *Teachers Act*.
8. In determining that a 2-month and 2-week suspension is an appropriate consequence, the Commissioner considered the following factors:
 - a. the Teacher's interactions with Student A demonstrate a pattern of inappropriate behaviour over a period of time;
 - b. the Teacher failed to appreciate the impact of their behaviour on the student and its effect on their future well-being; and
 - c. the Teacher left an impression with the family that they would only engage in limited text or email contact with the student and only in relation to school-related matters.



IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011 c. 19

AND

IN THE MATTER CONCERNING

A TEACHER

CONSENT RESOLUTION SUMMARY

This summary is published under section 54(3) of the Teachers Act to protect the identity of a student who was harmed, abused or exploited by the teacher.

1. The Teacher holds a valid Professional Certificate of Qualification.
2. At all material times, the Teacher was employed as a secondary school teacher by a school district at school (the “School”) in the district.
3. In 2018, the Commissioner received a report about the Teacher from a District Superintendent under s.16 of the *School Act*. The Commissioner also received complaints about the Teacher.
4. In 2018, the Teacher gave an undertaking that he would not teach or work in any position in the kindergarten to grade 12 education system in British Columbia.
5. The Teacher entered into a sexual relationship with Student A when Student A was in Grade 12.
6. The Teacher entered into a sexual relationship with a former student, Student B, within four months of the date of her graduation from Grade 12.
7. In 2020, the Teacher entered into a consent resolution agreement with the Commissioner in which the Teacher agreed that his conduct described in paragraph 6 above constitutes professional misconduct and is contrary to Standard #1 and #2 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, Fourth Edition, January 2012.

8. The Teacher agreed to cancellation of his certificate under sections 53 and 64(e) of the *Teachers Act*. The Teacher also agreed that he would never again apply for, and the Director of Certification would be required not to issue to him a certificate of qualification, an independent school teaching certificate or a letter of permission at any time in the future, under section 64(g) of the *Teachers Act*.
9. In determining that a cancellation of the certificate and a lifetime ban on reapplication are appropriate consequences, the Commissioner considered the following factors:
 - a. he engaged in repeated, serious boundary violations over a long period of time; and
 - b. he sought to hide his conduct and told the students not to say anything about his conduct with them.



IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011 c. 19

AND

IN THE MATTER CONCERNING

A TEACHER

CONSENT RESOLUTION SUMMARY

This summary is published anonymously under section 54(3) of the Teachers Act to protect the identity of a student who was harmed, abused or exploited by the teacher.

1. The Teacher holds a valid Professional Certificate of Qualification.
2. At all material times, the Teacher was employed as a middle school teacher by a school district (the “District”) in British Columbia.
3. In September, 2017, the Commissioner received a report about the Teacher from the District Superintendent under s.16 of the *School Act*.
4. In the 2016-2017 school year, the Teacher engaged in a series of boundary violations when she:
 - a. made personal comments about a student in the class;
 - b. disclosed to the class personal information about a student’s family which was of a deeply personal nature and also was not true;
 - c. made comments of a sexualized nature to the class; and
 - d. had inappropriate physical contact with students.
5. In 2020, the Teacher entered into a consent resolution agreement with the Commissioner in which the Teacher agreed that her conduct described in paragraph 4 above constitutes professional misconduct and is contrary to Standards #1 and #2 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, Fourth Edition, January 2012.



6. The Teacher agreed to a reprimand under sections 53 and 64(a) of the *Teachers Act* and to complete the course *Reinforcing Respectful Professional Boundaries* at the Justice Institute of BC.





2019 TAHP 01
Decision issued: February 19, 2019
Citation issued: September 12, 2017
File No. [REDACTED]

IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011, c. 19
AND
A HEARING CONCERNING
DUC-HUNG TRAN

REASONS FOR DECISION ON PENALTY, COSTS AND PUBLICATION

Date(s) and location(s): November 6-7, 2018, Teacher Regulation Branch

Panel: Karen F. Nordlinger, Q.C., Chair, Peter Van Huizen, Rebecca Blair

Counsel for the Commissioner: Maureen Boyd, Ministry of Justice

Counsel for the Respondent: Claire Hatcher, Pender Litigation

INTRODUCTION

[1] A Citation was issued against the Respondent on September 12, 2017 alleging that, while working as a teacher at a secondary school in School District #42 (Maple Ridge-Pitt Meadows), he

“told a female grade 11 student [“Student”] who was in his class, to come with him into a classroom and then into a storage room to speak privately. He closed the door and then he hugged her and said words to the effect that he was attracted to her. He told her not to tell anyone what he had done.”

- [2] A Disciplinary Hearing Panel (the “Panel”) was appointed to conduct a hearing with respect to the allegations set out in the Citation.
- [3] The parties filed a joint submission in which they agreed to the relevant facts as set out in the Citation, that the Respondent’s conduct as disclosed therein was a breach of standards No. 1 and 2 of the Standards for the Education, Competence and Professional Conduct of Educators in British Columbia, and that such conduct constitutes professional misconduct under s. 63 of the *Teachers Act*.
- [4] The Panel released its Decision on Verdict on April 24, 2018. Given the Panel’s review of the agreement between the parties, the law and the evidence, the Panel determined that the Respondent’s conduct in relation to the Citation amounted to professional misconduct.
- [5] The Panel directed that submissions regarding penalty, publication and costs be made in writing, which were received by the Panel January 2, 2019.
- [6] The findings of professional misconduct are based on conduct as set out in the Hearing Decision on Verdict at paragraph 4.
- [7] The Commissioner submits that the appropriate consequence under s. 64 of the *Teachers Act* is cancellation of the Respondent’s Certificate of Qualification for the following reasons:
- (a) His conduct is a significant boundary violation of a sexual nature;
 - (b) The public interest requires a strong disciplinary response that protects the safety of Students through general deterrent;
 - (c) The evidence shows that a lesser disciplinary response will not effectively serve the goal of specific deterrence.
- [8] The Commissioner submits that there is a presumption established by the authorities for cancellation of the Certificate in similar circumstances, and that there are no compelling reasons to impose a lesser penalty under s. 64. S. 64 allows for lesser penalties once a finding is made under s. 63(1) (b) (c) or (d). Those lesser penalties are in a range from a reprimand or suspension to cancellation of a Certificate with or without conditions.
- [9] The conduct complained of took place in February, 2014. The Respondent was suspended with pay pursuant to s. 15(5) of the *School Act*, on February 5, 2014 until further notice. On November 5, 2014, the Board of Trustees of the District decided to continue the suspension of the Respondent, but to make the suspension without pay, while allowing the Respondent access to medical leave benefits.
- [10] Following an investigation by an independent investigator, the Respondent was:
- (a) suspended without pay for six weeks to commence upon his return from medical leave;
 - (b) transferred to another school not attended by the Student in question,

- (c) to complete a Professional Boundaries Course;
- (d) to continue treatment for his medical condition, including counselling; and
- (e) to be monitored by administrators in the school where he taught.

[11] The Respondent served the six weeks' suspension without pay from April 27, 2015 to June 5, 2015, at which time he returned to teach in the District as a teacher on call. He was medically approved to return to work in September, 2015 at a 90% basis and returned to full-time teaching in January of 2016.

[12] It is clear that the primary principle in regulation of the teaching profession is that it be done in the public interest: *In the Matter of the Teachers Act -and- Hankey*, 2016 TAHP 06. Several factors have been determined to be relevant in imposing penalty, as follows:

- (a) the nature and gravity of the allegations;
- (b) the impact of the conduct on the Students;
- (c) the presence or absence of prior misconduct;
- (d) the extent to which the teacher has already suffered consequences;
- (e) the role of the teacher in acknowledging the gravity of the conduct;
- (f) the need to promote specific and general deterrence; and
- (g) the need to maintain public confidence in the teaching profession as a whole.

In the Matter of the Teachers Act -and- McGeough, (January 17, 2013)

[13] The Commissioner submits that both aggravating and mitigating factors must be taken into consideration by the Panel in assessing penalty. Aggravating factors include:

- (a) conduct which was repeated or which continued over a long period of time;
- (b) significant or lasting harm on the Students subject to the teacher's conduct or the creation of a risk of significant harm;
- (c) a lack of explanation or remorse by the teacher;
- (d) conduct intended to hide the teacher's misconduct; and
- (e) a disciplinary record, particularly with misconduct of the same or similar nature.

[14] Mitigating factors may include:

- (a) the absence of any prior misconduct;
- (b) the fact that a teacher has already suffered significant consequences;
- (c) an acknowledgment by the teacher of the misconduct (such as admissions of misconduct, timely apology to the subject of the misconduct, and any acts of restitution, such as returning funds taken without approval), and

- (d) steps taken voluntarily by the teacher to address his or her misconduct or shortcomings (such as taking appropriate courses or counselling).

*In the Matter of the Teachers Act -and- Robertson, 2016 TAHP 02,
Hankey, 2016 TAHP 06 and
In the Matter of the Teachers Act -and- Ammon, 2017 TAHP 01.*

- [15] The Commissioner submits that the most important factors in this case are:
- (a) the nature and gravity of conduct;
 - (b) specific deterrence; and
 - (c) general deterrence and the enhancement of public confidence in the profession and education system.
- [16] Cancellation is required to protect the Students and ensure public confidence in the profession and in the education system as a whole by the message of general deterrence.
- [17] The Commissioner submits that the conduct of the Respondent was deliberate and intentional and thus is very serious by its nature. He approached the Student knowing that he wished to tell her that he was attracted to her, and he did so by taking her into a private setting, closing the door, and asking her for a hug when he could see that she was uncomfortable in the situation. The Respondent's evidence was that the Student immediately rebuffed him and berated him for his conduct. His description was that her reaction woke him up, and he realized what he had done. The incident in total took approximately 15 minutes. After the incident, but while still in the classroom, the Respondent asked the Student not to say anything to anyone.
- [18] The next day, the Respondent asked the District if he could take a personal leave. He did not disclose his interaction with the Student. He indicated to Human Resources that he felt he was not able to "give it all to the kids" and "declining enrollment, he may help to save a colleague".
- [19] The fact that there was no progression of the conduct to any sexual activity is, it is argued by the Commissioner, solely attributable to the Student and her rebuff of the Respondent.
- [20] The Student immediately reported the conduct to her father and the next day, with her parents, met with the school principal. The Student's description of her feelings in a subsequent District interview was that she was "just really uncomfortable and scared". The Student ultimately determined that she did not wish to return to the school if the Respondent was still teaching there. The Respondent was ultimately moved to another school.
- [21] There is no evidence of any longer-term harm to the Student past the District interview. However, the Commissioner points out that it is the "risk of harm" that defines the severity of the conduct. *Ammon*, (supra)
- [22] The Commissioner submits that the conduct of the Respondent was at the more serious end of professional misconduct, as it was a planned intentional violation. He was able to

maneuver the Student into a private situation in order to advise her of his feelings for her because of his position of trust and breach of fiduciary duty to the Student. In addition, the Commissioner submits that the Respondent was not honest with Human Resources when he advised them that his reasons for requesting a leave had to do with other people's interests. The Respondent's explanation for his advice to Human Resources was that he was "trying to believe this would just go away", referring to the incident the day before.

R. v. Audet, [1996] 2 SCR 171 and
Ross v. New Brunswick School District No. 15, [1996] 1 SCR 825

- [23] The Respondent's evidence was that, at the time of the incident, he was feeling overwhelmed and unappreciated, largely as the result of his parental and marital relationships. He was attracted to the Student because she had given him a hug and made him feel appreciated prior to this incident. The evidence differs somewhat on who initiated that earlier hug. The Respondent, in his evidence, acknowledged that it was, in any event, inappropriate. The Respondent also acknowledged in cross-examination that he controlled the Student's ability to exit the storage room, and that he let her out. He has admitted that he told her at the time that he was thinking of leaving teaching to go into real estate.
- [24] The Respondent admitted that when he told the Student not to say anything to anyone, he was concerned about his career and his family and friends. He knew that if his conduct to the Student was disclosed, it could affect his job and impact his marriage.
- [25] The Respondent sought medical assistance after the incident for his issues relating to his emotional turmoil and the effect the incident had on his relationships. He and his wife separated for a time and we accept that there were significant ramifications on the Respondent. Commencing in April, 2014, various medical certificates from Dr. Johnson, his family doctor, were provided to the District during his medical leave. Dr. Johnson's certificate stated that the medical leave was due to "Major Depressive Disorder". All of the certificates sent by Dr. Johnson give the same reason for the medical leave.
- [26] The Respondent was medically approved to return to work in September, 2015 on a 90% basis, and on a full-time basis in January, 2016. He has been teaching on a full-time basis since then.
- [27] The Respondent tendered two medical reports of his treating psychiatrist, Dr. Biju Mathew, who began treating the Respondent on January 2, 2015 on referral from Dr. Johnson. In the first report dated January 6, 2015, Dr. Mathew states:
- "Essentially, this patient presents with features of a possible Major Depressive Disorder."
- [28] He goes on to itemize the medications to be taken by the Respondent, one of which he had already been taking, and stating that the Respondent had agreed to see him on a regular basis.

- [29] In his second report dated September 29, 2015, in response to a letter from the Respondent's counsel, he summarized his findings as:
- “This patient was suspended from work for a violation of boundaries involving a female student as mentioned above. This contributed to the development of a Major Depressive Disorder in this patient.
- [30] Subsequent to the receipt of the report of September 29, 2015, counsel for the Respondent wrote to Dr. Mathew asking him to opine, if possible, on whether or not the reported symptoms of the Respondent at the time of the incident were consistent with depression.
- [31] In response, Dr. Mathew wrote a second letter dated October 26, 2015 in which he wrote:
- “I wish to clarify the following clinical features. This patient was already sliding into a depressive phase when the boundary violation occurred as indicated in my report dated September 29, 2015 in the History of Presenting Complaint.”
- [32] It is clear that Dr. Mathew was not treating the Respondent at the time of the incident. The Commissioner submits that this comment was written in response to a request “which suggested the answer which was desired.”
- [33] Clearly, Dr. Mathew was relying on the circumstances as described to him by the Respondent, as was Dr. Johnson when he provided his medical certificates. There is nothing legally inappropriate with regard to their use of such patient-reported circumstances, as that is generally the basis for all medical opinion, at least in the first instance. The comment of Dr. Mathew in his report of October 26, 2015 is consistent with the diagnosis of Dr. Johnson in his medical certificate dated April 16, 2014, a date much closer to the actual incident.
- [34] The Commissioner submits that the opinion of Dr. Mathew is to be given little weight, as Dr. Mathew was the treating physician and thus is not impartial. Nor is Dr. Mathew a forensic psychiatrist who can opine on the effect of the Respondent's mental state on his conduct towards the student during the incident.
- [35] With respect to this issue, the Panel finds that the reports of Dr. Mathew are helpful in terms of the ongoing nature of a Major Depressive Disorder, and the Respondent's willingness to deal with this disorder. We acknowledge that there is not a great deal of weight to be given to his conclusion that there was a depressive disorder at the time of the incident, as he was not the treating physician at that time. However, Dr. Johnson was the treating physician at that time, and he came to the same conclusion as set out in his several medical certificates, which were done close to the time of the incident and throughout the period leading up to the Respondent's return to work.
- [36] The Panel accepts that the Respondent was feeling overwhelmed at the time of the incident. There is no doubt that the circumstances of the incident and its ramifications contributed to the Respondent's depressive disorder after the incident. The Panel accepts

the medical evidence for context but not as a basis for excusing the conduct of the Respondent.

[37] The Respondent acknowledges his professional misconduct. The Commissioner takes issue with such acknowledgments as a mitigating factor, submitting that the Respondent gave inconsistent evidence in this regard. The Panel has noted the inconsistencies, but does not find them to be of sufficient significance to obliterate the mitigating aspect of his admission. They relate to comments he made in answer to questions at his branch interview and at the hearing. Given the lapse of time, the counselling he has had with regard to his actions and his mental state, we accept that there may be variations in what he believes now as to what he believed at the time of the incident. Those variations are not significant in the context of this matter.

[38] The Commissioner submits that the Respondent's evidence in cross is inconsistent with his answers at the branch interview with regard to his attraction to the student, and that such inconsistencies reflect a lack of insight and remorse by the Respondent into his actions. The Panel finds that the answers, again coming some years apart, are not totally inconsistent, but rather representative of his mindset then and his mindset now. In his cross-examination, he said in answer to the question "And because you knew it was not the right thing to be talking to [*the Student*] about attraction to her? Answer: "I did not think of right or wrong in that moment when I closed the door." And at his branch interview, he stated:

Question: "And to tell her you were attracted to her?"

Answer: "Absolutely."

Question: "You knew it was wrong?"

Answer: "I know it now, but I mean at the time, in that mindset, nothing mattered to me, I just didn't care."

[39] The words "Attracted to you" are not defined by the Respondent, either in the incident as reported by the Student or in his evidence before us or in his earlier branch interview. He stated at the hearing in direct that

"When I look back at it now, I think I was attracted to the idea of somebody caring for me. Somebody saw me as a human being. I mean, I think that's what stood out more than anything is that I needed just someone to be there for me at that point in my life."

[40] The two statements are not necessarily inconsistent.

[41] The Commissioner also submits that the Respondent's acceptance of responsibility is viewed from his own self-interest. He was asked in direct if he had a clear memory of the incident, and he responded that it was "super clear. It was a very traumatic event, I mean, both for myself and for [*the Student*]." He further stated that "I didn't know what was happening to me" in relation to his actions during the incident, and that "a lot of my

family members found out what happened to me” through publication of the findings decision.

[42] The Commissioner also submits that the Respondent placed a positive gloss on his conduct when he described the incident to Dr. Mathew, who set it out in his letter dated September 29, 2015 as “Around that time, a female student belonging to his class came and hugged him on a couple of occasions to show her appreciation for his good teaching. He turned around and told her that he was attracted towards her. This shocked the student very much.”

[43] In cross-examination, the Respondent was asked the following when this portion of the letter was put to him:

Question: “You told him that *[the Student]* had hugged you?”

Answer: “No. Oh, I mean—the same incident I said I recall her—if you’re talking about the first time, where she walked past me, I recall her hugging me. That’s my recollection.”

Question: “And you told him that she hugged you to show appreciation for your teaching?”

Answer: “No. I mean, I just—I wouldn’t assume anything—I can’t read into what *[the Student]* hugged me, or I’m not going to guess why she hugged me.”

[44] It seems that Dr. Mathew may have conflated two incidents reported by the Respondent in his comment in his letter of September 29, 2015. We cannot find that the Respondent necessarily described it in the way that it has been interpreted by Dr. Mathew, as Dr. Mathew’s evidence was that he sought only enough particulars to give some context to his medical treatment.

[45] The Respondent did give inconsistent evidence above the first hug in the sense that the statement in the Agreed Statement of facts was that the Student stated to the Police that he hugged her the first time. He then stated in cross-examination that he would not dispute the Student’s account, he recalled it differently, but he did not recall the exact order of events.

[46] This evidence is confusing; however, the Panel’s impression was that he did not want to say the Student was wrong or untruthful, even though his recollection was different.

[47] The inconsistencies in his evidence, correctly pointed out by counsel for the Commissioner, are largely related to the two time frames the Respondent was dealing with—the time of the incident and the time of the hearing some five years later. In the interim, the Respondent has had counselling from Dr. Mathew, gone through a marital separation, and some marriage counselling, so it is not surprising that his evidence of what he thought of his actions at the time of the incident and what he believes now have changed.

- [48] The Panel accepts that the Respondent was in a mental/emotional state at the time of the incident that clouded his judgment. He made a very serious mistake and has been disciplined for it. We also accept that he acknowledged the inappropriateness of his conduct both to the District and in these proceedings.
- [49] The Commissioner asserts that this is an appropriate case for the cancellation of his certificate. Several decisions are relied on in support of this position. The Panel has considered them, but finds that all of them relate to conduct of a much more serious nature than the conduct here. In *McGeough* for example, there was physical contact, including kissing and persistent communications of a romantic and sexual nature. The decision was to impose a 15-year ban on the issuance of a certificate.
- [50] In *Neal*, there were several text messages of a personal nature sent to the student. The teacher also lied to the District about her conduct. The teacher agreed to a cancellation of her certificate.
- [51] The other cases also involved conduct of a sexual or grooming nature more extensive and serious than the conduct of the Respondent here.
- [52] The Commissioner relies on *Young v. British Columbia College of Teachers* for the proposition that there is a presumption of cancellation for sexual misconduct. The Court of Appeal held in paragraphs 16 and 17, as follows:
- “Notwithstanding some earlier authorities, I agree with Mr. Laughton that sexual relations between a teacher and a student must be regarded very seriously. In such cases, the maximum penalty for disqualification without a right to reapply for two years would, in the absence of special circumstances, be the proper disposition. This is to ensure continued respect for and faith in the integrity of the school system. ...
- But the imposition of the maximum penalty cannot be an invariable rule. If it were, there would be no need to have a hearing to impose a penalty when this kind of misconduct is established.”
- [53] The Commissioner submits that the principle of presumptive cancellation was undermined in the 2005 decision of the Court of Appeal in *Mitchell v. British Columbia College of Teachers*, 2005 BCCA 76 wherein the Court of Appeal suggested that the panel in a discipline case must consider lesser penalties which would “adequately deter others, protect the public’s faith in the educational system, and assist in the College’s ability to regulate the conduct of its members.” (para. 12)
- [54] This principle was again undermined by the decision in *McGuire v. Law Society of British Columbia*, 2007 BCCA 442 in which the Respondent lawyer misappropriated funds and was disbarred. The Court of Appeal upheld the disbarment despite several mitigating factors, stating:
- “The public is entitled to expect that the severity of the consequences reflect the gravity of the wrong. Protection of the

public lies not only in dealing with ethical failures when they occur, but also in preventing ethical failures. In effect, the profession has to say to its members, ‘don’t even think about it’ and that demands the imposition of severe sanctions for clear, knowing breaches of ethical standards.”

- [55] The *McGuire* decision, *supra*, related to willful misappropriation of funds over a significant period of time by the lawyer. His personal circumstances leading up to the misappropriation were considered not to affect the penalty, given the severity of the offence.
- [56] With regard to the Commissioner’s submission on presumption of cancellation of certificate, we find that this dire consequence cannot be an “invariable rule”, *Young v. British Columbia College of Teachers* (*supra*). Each case must be assessed according to its own circumstances.
- [57] We must assess both the aggravating and mitigating factors in determining penalty, keeping in mind the goals of specific deterrence and general deterrence, including the enhancement of public confidence in the education system.
- [58] The aggravating factors to be considered are the gravity of the conduct and the effect on the Student. We accept that there was harm to the Student. She had to deal with a frightening and confusing situation. The fact that she stood up to the Respondent is remarkable and praiseworthy. Even the Respondent recognized her courage when he said he was proud of her for “berating” him.
- [59] We have no evidence of any long-term harmful effect on the Student, but common sense tells us that such a breach of trust by a teacher will be something she will remember and be affected by for some time. Hopefully, she will be able to put it behind her. Unfortunately, we do not have access to a Restorative Justice mechanism or model in this area, as the Panel thinks it may be of some assistance in helping to resolve ongoing issues for victims and Respondents arising out of inappropriate conduct.
- [60] With regard to the gravity of the conduct, we have already commented in our earlier decision that it was a marked departure from standards expected of teachers and manifestly crossed the line.
- [61] The mitigating factors in favour of the Respondent are as follows:
- (a) there is no history of previous misconduct;
 - (b) the Respondent has been disciplined by the District by a six-week suspension and there has been publication of the Panel’s Decision on Verdict. He has also suffered personal travails, such as personal shame and a marital separation with subsequent reconciliation; however, we place less weight on this factor;
 - (c) he acknowledged his mistake and is remorseful;

- (d) he has participated and continues to participate in counselling and fulfilled other conditions imposed by the District;
- (e) the incident, while serious and concerning, was a single occurrence and, upon recognizing his inappropriate behaviour, he immediately removed himself from the situation by taking a personal leave.
- (f) the Respondent has been teaching for three years on a full-time basis since the incident with no further conduct issues.

[62] The Panel has come to the conclusion that it is unlikely the Respondent will reoffend. We accept as genuine his remorse and he has shown a willingness to learn from his mistakes. He has testified that his personal life is much better and he has found some peace. He is more focused on his family and is no longer involved in pursuing other money-making endeavours such as real estate. He is and has been taking his medication.

[63] As such, we do not believe that cancellation of his certificate is necessary for the protection of the public or as a specific or general deterrence. Given he has already served a significant suspension, we find that a further suspension would serve no purpose, and would likely be disruptive to his current students. He should be reprimanded and placed on conditions to continue counselling and medications for so long as his treating physicians feel necessary.

[64] No submissions on costs or restriction of publication were made and the Panel does not order restriction or publication. If costs are an issue, submissions may be arranged in the usual way.

For the Panel

Date: February 19, 2019



Karen Nordlinger, Q.C., Panel Chair



Peter Van Huizen, Panel Member



Rebecca Blair, Panel Member



2019 TAHP 01
Decision issued: February 19, 2019
Clarification issued: March 8, 2019
Citation issued: September 23, 2017
File No.: [REDACTED]

IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011, c. 19
AND
A HEARING CONCERNING
DUC-HUNG TRAN

**CLARIFICATION OF
REASONS FOR DECISION ON PENALTY, COSTS AND PUBLICATION**

Date(s) and location(s): November 6-7, 2018, Teacher Regulation Branch

Panel: Karen F. Nordlinger, Q.C., Chair, Peter Van Huizen, Rebecca Blair

Counsel for the Commissioner: Maureen Boyd, Ministry of Justice

Counsel for the Respondent: Claire Hatcher, Pender Litigation

Subsequent to our decision in this matter, counsel asked for clarification with regard to the continuing conditions imposed on the Respondent. Counsel have advised that they have come to agreement on an Order clarifying the conditions. The Panel accepts counsel's agreement, and makes the following Order, by consent:

- [1] The Respondent will provide a written report from his treating psychiatrist every six months for the first two years after this decision and thereafter annually, until his treating psychiatrist confirms in writing that ongoing treatment is not necessary to ensure his fitness to teach. The report will state whether the Respondent:

- (a) continues to be fit to carry out the duties and responsibilities of a teacher;
- (b) continues to receive treatment and specifically if he is prescribed medication for depression or other mental conditions, and
- (c) is compliant with treatment.

For the Panel

Date: March 8, 2019



Karen Nordlinger, Q.C., Panel Chair



Peter Van Huizen, Panel Member



Rebecca Blair, Panel Member

Van Vloten, John Willem Van Bommel - Conduct Review Decision

admitted to professional misconduct. Mr. Van Vloten taught French, Social Studies, Art, Bible Study, History and Physical Education for 19 years at an independent school. In 2005, a few of Mr. Van Vloten's students approached his desk and observed him viewing pornographic images of adult women on his classroom computer. It was later discovered that Mr. Van Vloten accessed and viewed adult pornographic material from the internet on his classroom computer during school hours on at least three other occasions between 2004 and 2005. Mr. Van Vloten further admitted to using inappropriate names to refer to female students such as, "babe" and "sweetheart" and making inappropriate comments concerning sex education class. On June 13, 2008, the Conduct Review Sub-Committee accepted the Statement of Agreed Facts and Disposition and agreed to a twelve-month suspension of Mr. Van Vloten's certificate of qualification, which ends on June 13, 2009.

Summary of the Consent Resolution Agreement executed: September 19, 2012

In the matter concerning:

Cosmas Quirinus Ignatius Van Wermeskerken

Cosmas Quirinus Ignatius Van Wermeskerken admitted to professional misconduct and agreed that his conduct was contrary to Standard 1. In June 2010, the BC College of Teachers received a district report indicating that, while Mr. Van Wermeskerken was employed as a teacher-on-call, he used inappropriate language in his class. When teaching middle school students about sex education and discussing ways to prevent sexually transmitted diseases, he included sexually graphic details and referred to oral sex in an overly colloquial manner. He also failed to adhere to appropriate language boundaries with students. A citation was issued on May 3, 2011. On September 19, 2012, the Commissioner executed the consent resolution agreement in which Mr. Van Wermeskerken agreed to receive a reprimand pursuant to section 64(a) of the *Teachers Act*.

Walraven, Kasper Jacobus

admitted that he had inappropriate physical contact with a student by placing a pop bottle between her legs, above the knees. Further, he admitted that he removed a stray hair from the upper chest area of another female student. On both occasions, Mr. Walraven stated that he did not intend his actions to be sexual in nature. On June 26, 2006, the Preliminary Investigation Sub-Committee approved the Consensual Resolution Agreement under which the respondent relinquished his teaching certificate.

Widen, Theodore Guy - Consent Resolution Agreement

admitted to professional misconduct. In 2006, Mr. Widen engaged in inappropriate written communications with students regarding personal issues not related to matters of education. He disclosed his use of anti-depressants; disciplinary issues relating to himself; and used sexually suggestive language and content with female students. On December 16, 2008, the Preliminary Investigation Sub-Committee approved the Consensual Resolution Agreement in which his Certificate of Qualification will be suspended until certain conditions are fulfilled.

Summary of the Consent Resolution Agreement executed: October 5, 2012

In the matter concerning:

David Victor Wiens

David Victor Wiens admitted to professional misconduct and agreed that his conduct was contrary to Standards 1 and 2. Mr. Wiens was employed as a secondary school social studies teacher when a district investigation concluded that Mr. Wiens had engaged in an inappropriate relationship with a female student, Student A, which did not include sexual misconduct. In March 2010 the Preliminary Investigation Sub-Committee of the BC College of Teachers approved a consent resolution agreement in which Mr. Wiens agreed to relinquish his certificate of qualification and not make any statement that contradicted the terms of the agreement. In November 2010, the Ministry of Attorney General notified the College that Mr. Wiens had been charged with sexual exploitation and sexual assault contrary to sections 153(1)(a), 153(1)(b) and 271 of the *Criminal Code* with respect to conduct that occurred with Student A. Court documents indicated that Mr. Wiens had engaged in sexual activity with a 14-year-old female grade nine student at the school who was no longer in Mr. Wiens' class. Conduct included kissing and petting, Mr. Wiens touching Student A's breasts through her clothing and skin-to-skin, and the student fondling Mr. Wiens' penis on at least two occasions. In February 2011, Mr. Wiens pled guilty to one count of sexual exploitation and was sentenced in June 2011 to one year in jail and two years' probation. On October 5, 2012, the Commissioner executed the consent resolution agreement in which Mr. Wiens agreed to never re-apply for a certificate or letter of permission and in which he acknowledged that the Director of Certification will not issue a certificate or letter of permission in accordance with section 64(g) of the *Teachers Act*.

Williamson, Carl James - Conduct Review Decision

admitted to conduct unbecoming a member of the College. In July 2006, Mr. Williamson was employed at an independent school when he disclosed to school authorities that he had viewed adult pornography on a school computer. He entered into an accountability agreement with school administrators which he subsequently breached. In January 2007, Mr. Williamson acknowledged to school authorities that he again viewed adult pornography on a school computer. The matter was reported to the College and, in May 2007, the College concluded that Mr. Williamson understood the College's standards for professional conduct and took no further action. In December 2009, a video from a school security camera revealed that Mr. Williamson was accessing and viewing adult pornographic images on a school computer. During the school's investigation, Mr. Williamson acknowledged that he accessed and viewed pornographic images on the school computer and that over the previous 18 months he had spent \$8,000 on the services of prostitutes and escorts. In addition, Mr. Williamson acknowledged that he had inappropriate sexual thoughts about students between the ages of 12 and 18. A police investigation and a forensic examination on Mr. Williamson's classroom and home computer were also conducted. The police found pornographic images of adult females on both computers, but no charges were laid against Mr. Williamson. On January 29, 2010, the school notified the College of Mr. Williamson's suspension and subsequent resignation with a summary of its investigation findings. In April 2010, Mr. Williamson's certificate of qualification was suspended pending the outcome of the matter. On March 14, 2011 the Conduct Review Sub-Committee accepted the Statement of Agreed Facts and Disposition and agreed that Mr. Williamson not be issued a certificate of qualification for an indefinite period but for no less than 20 years. Mr. Williamson's certificate of qualification was cancelled in November 2010 for non-payment of fees.

Yaskow, Wayne Raymond

admitted to professional misconduct. At the conclusion of the 1982-1983 school year, Mr. Yaskow signed the yearbook of a female student in his grade 9 social studies class, and gave her a note that said “for your eyes only.” In the note, he expressed his fondness for her. During the summer of 1983, the student worked for Mr. Yaskow by preparing transparencies for the upcoming school year, and a relationship developed between them. The relationship progressed from holding hands, hugging and kissing to, eventually, sexual intercourse. The student did not return to the same school the next year, which had been decided before the two became involved. The relationship between Mr. Yaskow and the student was that of a boyfriend and girlfriend in love, and it continued for over one year. On July 15, 2010, the Preliminary Investigation Sub-Committee approved the Consent Resolution Agreement in which Mr. Yaskow agreed to relinquish his College certificate of qualification.

Young, David Michael

admitted to and was found guilty of professional misconduct. Mr. Young, a math department head as well as an athletic director and basketball coach of a school, engaged in a personal relationship with a 15 year old female student who was a member of the school's basketball team, in or about December 2005. Mr. Young described the relationship with the student as taking a sexual turn in January 2006, following a senior girl's basketball trip. On October 24, 2006, the Preliminary Investigation Sub-Committee approved the Consensual Resolution Agreement and the respondent's certificate of qualification was cancelled.