



2025 TAHP 01

Decision issued on February 5, 2025, and amended on February 12, 2025

Citation Issued: August 30, 2023

File No.: [REDACTED]

IN THE MATTER OF THE *TEACHER'S ACT*, SB 2011, c. 19

AND

JEFFREY FORDEN MOONEY
(A Former Person under the *Teachers Act*)
("the Respondent")

REASONS FOR DECISION ON CONSEQUENCES, COSTS AND PUBLICATION

Written Submissions filed: September 11, 2024

Panel: Karen F. Nordlinger, K.C., Chair, Jatinder Kaur Bir, Cathleen Anne Tenning

Counsel for the Commissioner: Julia Roe and Maureen S. Boyd

Counsel for the Respondent: Self-represented, not in attendance

INTRODUCTION

- [1] A disciplinary hearing panel was appointed to conduct a hearing into allegations of professional misconduct by the Respondent. A Decision of the panel was made dated August 7, 2024. The Respondent did not appear at the hearing, nor was he represented. The Panel directed written submissions on the consequence portion of the hearing to deal with penalty, publication and costs. The Respondent was provided with the Commissioner's written submission and invited to provide his written submission. He did not do so.
- [2] In its decision, the panel determined that the Respondent was guilty of professional misconduct in relation to his inappropriate communication with four female students, while employed by an independent school in West Vancouver. The facts are fully set out in the decision.

CONSEQUENCES

- [3] Section 64 of the *Teachers Act* sets out a number of consequences available to impose upon a teacher, an “authorized person” under the Act, found to have been guilty of professional misconduct. However, the Respondent relinquished his teaching certificate on October 16, 2021. Thus, consequences affecting his certificate, such as cancellation, suspension, reprimand or limiting conditions are not available to the Panel, as he has relinquished his certificate. We are left, for determination, with only the consequence under s.64 (g) of the *Act* which is a requirement not to re-issue any authorizations to teach. The Commissioner submits that an appropriate consequence would be a ban on such authorization for a period of 18 to 24 months.
- [4] The factors to be considered in determining consequences are set out in *In the Matter of the Teachers Act-and- McGeough* (January 17, 2013) (Par.7) 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.

and *In the Matter of the Teachers Act -and- Obert* (December 3, 2020), (Par. 16) as follows:

“ . . . 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.”

- [5] The Commissioner’s submission is that several of the factors are less relevant in this case, as the Respondent is no longer a certificate holder and has not been employed in the education system since 2021. The factors relied upon by the Commissioner as the most compelling are;
- a. the nature of the misconduct,
 - b. general deterrence,

- c. the need to maintain public confidence in the teaching profession as a whole.
- [6] The Panel must also weigh the relevant factors along with any aggravating or mitigating circumstances. The aggravating circumstances here are the Respondent's use of school digital communication inappropriately; the relentless number of communications to the four students, which continued even after the students had stopped replying (Student D) and after the school had warned him of his lack of boundaries with students; the panel's concern with the nature of the communications which approached grooming; and, his clear knowledge of the inappropriateness of the communications when he asked for secrecy from the students so that he would not be fired. In addition, there has been no expression of remorse or indeed, of any indication that Mr. Mooney even understood the seriousness of the potential harm to the students. He expressed only his understanding of the serious effect on him and his employment, if caught.
- [7] The mitigating factors are: there is no evidence of a prior discipline history. However, the Commissioner points out that he had a relatively short teaching career. This is not the situation of a single disciplinary action in a lengthy unblemished career; he admitted to the communications with the students when confronted by school administration in September 2021 however he did not express remorse; as he did not participate in this process, there is no evidence of any steps taken by him to redress his shortcomings, or of any adverse impacts on the Respondent other than the fact of his termination. Nor has he provided evidence of any mitigating personal circumstances.
- [8] The panel agrees with the Commissioner that the misconduct is at the "serious end of the spectrum" as it relates to the duty of a teacher not to harm or exploit students. Teaching is a profession resting on trust. Given the importance of the education system in maintaining, supporting and educating people in a free and democratic society, trust in the system by the students, parents and general public is fundamental. Protection of the public is a cornerstone duty of any professional regulator. The conduct of the Respondent in attempting to form relationships with young female students outside of the professional realm breached that trust and must be seen, at the very least, as exploitative and serious. The penalty must be of sufficient weight to act as a general deterrence to other teachers and to maintain the public's confidence in the system. See *Ross v. New Brunswick School District No. 15*, (1996) SCJ No.40 and *R. v Audet*, (1996) SCJ No. 16.
- [9] In considering the appropriate penalty, we have been referred to previous decisions, with the caution that each case is different and must be considered as guidance rather than authority or precedent: *Blake, Sara Administrative Law in Canada*, 2nd (Toronto Carswell, 1997) pp. 84-85.
- [10] The Commissioner refers to the following cases which resulted in a lifetime ban on re-issuance of certificates for actual sexual conduct with a student or minors:
- In the Matter of the Teachers Act-and-Robertson* 2016 TAHP 02
- Christophere Daniel Nelson*, September 25, 2015 – Consent Resolution Agreement
- Robin James Wait*, June 14, 2016 – Consent Resolution Agreement

Bryan Edmund Cederholm, January 24, 2019 – Consent Resolution Agreement. In this matter there was no sexual contact, but multiple inappropriate electronic communications with female students, even after being disciplined for previous similar conduct. Mr. Cederholm agreed to a lifetime ban.

- [11] As will be apparent, the last three cases were the result of agreements and must be considered with caution, as many factors may contribute to the making of an agreement of which we cannot be aware.
- [12] Lengthy bans on recertification were found after a hearing in:
- a. *McGeough* (Supra) – a 15 year ban was imposed for an inappropriate relationship with a 17 year old female student which included “highly intense and personal emails”, socializing, gift giving, invitations to his home and some non-sexual touching. The panel stated that the lengthy ban was necessary to “assure the public that behaviour such as that exhibited by Mr. McGeough will not be tolerated”, and for general deterrence (Par.19).
 - b. *In the Matter of the Teachers Act -and- Jason Alan Obert*, 2020 TAHP 02, an elementary school principal was caught by Creep Catchers after exchanging overtly sexual texts with two girls he believed to be 14 and 15 years of age. He was not criminally charged. He was charged with conduct unbecoming as a result of this off-duty conduct. There was no evidence of sexual touching or of inappropriate conduct with students at his school. After considering the mitigating and aggravating circumstances, the panel found that a lengthy ban of 15 years for recertification was necessary in light of the public notoriety of the case and the need to reassure the public that such conduct would not be tolerated.
- [13] *In the Matter of the Teachers Act – and Eric Christian Oun*, April 27, 2021, a lesser penalty of a six month ban was agreed to by the teacher after his agreement that he professionally misconducted himself by sending numerous electronic messages to three elementary school students which contained inappropriate comments, terms of affection, and pressure to respond. However, in the words of the Commissioner’s submission “There was no objective evidence of sexual comments or intent” (Par. 51). In addition to the ban on recertification, the parties agreed the teacher was to complete a course on respectful professional boundaries.
- [14] We agree with the Commissioner’s submission that in some respects the Oun situation is analogous to the situation before us. We also agree, however, that the sexual innuendo and personally invasive comments in the communications in this matter, as outlined in our decision, raise the impugned conduct to a more serious level. The fact that there was no sexual contact reduces the level in this case.
- [15] We have considered the mitigating and aggravating circumstances as set out above and the previous decisions and agreements made in these types of matters. There was no evidence of actual harm to the students, other than their discomfort with the communications, which we do not mean to minimize. However, it may be assumed that the affected students will

view their teachers as somewhat less trustworthy going forward. Hopefully the results of this process will give them some comfort that they were heard and appropriate steps were taken, so that trust in their teachers may be regained. However, the conduct of the Respondent has the effect of harming the reputation of the teaching profession as a whole. He has breached the fundamental duty to his students and the public. The panel has considered the Commissioner's submission as to penalty of a ban on certification to teach of 18-24 months. However, considering all of the factors set out above and the Respondent's lack of accountability in simply relinquishing his certificate, the Panel finds that a 60 month ban on reapplication for a teaching certificate is warranted.

COSTS

[16] The Commissioner is not seeking costs and accordingly no costs order is made.

PUBLICATION

[17] These reasons will be made public in accordance with s. 66 of the *Teachers Act*.

ORDER

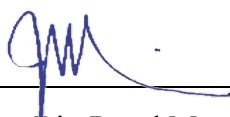
[18] Pursuant to s.64 (g) of the *Teachers Act*, the panel orders that the Respondent shall not apply for, and the Director of Certification shall not issue, a certificate of qualification, an independent school teaching certificate or a letter of permission to the Respondent for a period of 60 months from the date of this decision.

For the Panel

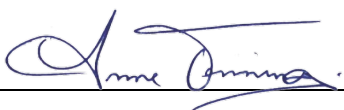
Date: February 12, 2025



Karen F. Nordlinger, K.C., Panel Chair



Jatinder Kaur Bir, Panel Member



Cathleen Anne Tenning, Panel Member