2016 TAHP 04
Decision issued: April 1, 2016
Citation issued: April 29, 2013
Citation amended: September 23, 2014
File No.: [redacted]

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 CONSEQUENCES, COSTS AND PUBLICATION

Written submissions filed: July 3 and 20, 2015, February 18 and 26, and March 4, 2016
Panel: Meg Gaily, Chair, John Hall, Teresa Rezansoff
Counsel for the Commissioner: John G. Mendes and Alex Chang
Counsel for the Respondent: Steven Rogers

INTRODUCTION

[1] On May 28, 2015, the panel issued its decision finding the Respondent guilty of professional misconduct under section 63(1)(b) of the *Teachers Act* (the "Act") (the "Conduct Decision"). The parties agreed to conduct the penalty phase of the hearing by way of written submissions.

[2] The Commissioner's written submissions on penalty were filed July 3, 2015, and the Respondent's submissions were filed July 20, 2015. The Respondent also filed an affidavit she swore July 20, 2015, to which were attached a letter to the panel from the Respondent, and emails from three people identified as parents of students in the Respondent's 2011-2012 kindergarten class. The emails were written prior to the conduct hearing in November 2014.

[3] The Commissioner asked the panel to allow cross-examination of the Respondent on her July 20, 2015 affidavit and to present rebuttal evidence. The Respondent objected both to cross-examination and to the introduction of rebuttal evidence.

[4] The panel determined that the Commissioner was entitled to cross-examine the Respondent on her evidence of remorse and rehabilitation as mitigating factors in the determination of an appropriate penalty for the professional misconduct found by the panel in the Conduct Decision. The cross-examination of the Respondent on her affidavit occurred February 11, 2016. The Commissioner filed reply penalty submissions on February 18, the Respondent filed sur-reply submissions on the cross-examination on February 26, and the Commissioner filed a reply letter with the Respondent's consent on March 4, 2016.

CONSEQUENCES

Submissions

[5] In his submissions, the Commissioner seeks the following consequences:

- A limitation on the Respondent's certificate of qualification prohibiting her from teaching kindergarten to grade 3;
- A one-week suspension to be served while the Respondent would otherwise be working; and
- An order that the Respondent's certificate be suspended if she fails to complete the Justice Institute of British Columbia's course, "Creating a Positive Learning Environment" within nine months of the date of this panel's order.[1]

[6] In response, the Respondent argues that mitigating factors justify a lesser penalty than that requested by the Commissioner, and suggests the following consequences:

- A reprimand for professional misconduct;

- A requirement that the director of certification suspend the Respondent's certificate if she has not complied with the following conditions by the end of the 2015-2016 school year:

---

[1] The panel was advised that the Respondent has enrolled in this course currently scheduled for March 21-23, 2016.

- Enrolment in a peer mentorship program through the BCTF or District for the entire 2015-2016 school year; and

- Attendance in at least 3 professional development programs during the 2015-2016 school year with content related to classroom management, anger management or creating a positive classroom environment.

Applicable Law

[7] Section 64 of the Act sets out the consequences after a hearing as follows:

> 64. If a panel makes a finding under section 63(1)(b), (c) or (d), the panel may make an order setting out one or more of the following:
> (a) a reprimand of the authorized person;
> (b) a requirement for the director of certification to suspend the certificate of qualification, independent school teaching certificate or letter of permission of the authorized person for a fixed period;
> (c) a requirement for the director of certification to suspend the certificate of qualification, independent school teaching certificate or letter of permission of the authorized person until the authorized person has fulfilled conditions imposed by the panel;
> (d) a requirement for the director of certification to suspend the certificate of qualification, independent school teaching certificate or letter of permission of the authorized person until the authorized person satisfies the director of certification that the authorized person is able to carry out the professional duties and responsibilities of an authorized person;
> (e) a requirement for the director of certification to cancel the certificate of qualification, independent school teaching certificate or letter of permission of the authorized person;
> (f) a requirement for the director of certification to suspend or cancel the certificate of qualification, independent school teaching certificate or a letter of permission unless the authorized person has fulfilled conditions by a fixed date imposed by the panel;
> (g) a requirement for the director of certification not to issue a certificate of qualification, independent school teaching certificate or a letter of permission for a fixed or indeterminate period;
> (h) a requirement for the director of certification to place limitations and conditions on the certificate of qualification, independent school teaching certificate or letter of permission of the authorized person.

[8] The following factors are relevant to the determination of consequences under the Act:

(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.[2]

Discussion

[9] With respect to the nature and gravity of the allegations, this panel found the Respondent engaged in a pattern of conduct in a kindergarten classroom that included frequently yelling at kindergarten students, as well as inappropriately criticizing their work in earshot of other students and disposing of it. This panel also found that the Respondent had engaged in a pattern of conduct towards one student, Student A, which included yelling at him and reprimanding him for his behaviour in an insensitive manner. These were serious allegations and this panel found the Respondent's conduct displayed a significant disregard for the age and individual needs of young, often vulnerable students.

[10] With respect to the impact of the Respondent's conduct on her students, the parents and grandmother of Student A testified that the Respondent's conduct had a serious impact on Student A. In the Conduct Decision, the panel noted the conditions with which Student A was diagnosed in October 2013. The panel has no evidence from a health care professional regarding any lasting impact of the Respondent's conduct on Student A. None of the parents of other children in the Respondent's 2011-2012 kindergarten class testified before the panel. Although there are a few statements in the emails that were attached to the Respondent's affidavit to the effect that the Respondent had a positive impact on the writers' individual children, the panel places little weight on these statements as they were produced prior to and for the purposes of the Respondent's conduct hearing, and the authors of the emails did not testify before the panel.

[11] There was no evidence before the panel regarding the presence or absence of prior misconduct on the part of the Respondent.

---

[2] See Kiteley Penalty Decision, December 1, 2014, at para. 10, citing McGeough Penalty Decision, January 17, 2013 at para. 7.

[12] In considering the extent to which the Respondent has already suffered consequences for her conduct, in their July 2015 submissions, both the Commissioner and the Respondent indicated the progressive discipline imposed on the Respondent for the conduct in the 2011-2012 school year, which this panel identified as unprofessional conduct. This discipline included letters of expectation and direction and a determination by the District that she had engaged in professional misconduct.

[13] With respect to the role of the Respondent in acknowledging the gravity of her conduct, at the conduct hearing, the Respondent told the panel that she regretted some of her conduct during the 2011-2012 school year, particularly raising her voice at kindergarten students. Similar submissions respecting the Respondent's remorse were repeated in her July 2015 penalty submissions and in her affidavit. In her affidavit, the Respondent indicated that as a result of her remorse, she had taken steps to change her behaviour, including attending an anger management course, undergoing personal counselling, and having a peer mentor in her classroom.

[14] Under cross-examination on her affidavit, which took place in February 2016 some three and a half years after the 2011-2012 school year, the Respondent testified that she had been subject to discipline for conduct that had occurred since the 2011-2012 school year. The Respondent admitted to the panel that, as a result of a settlement agreement with her current school district, the Respondent agreed to take the anger management course and have a peer mentor assigned to her classroom. The Respondent also agreed to participate in personal counselling as a result of this discipline process.

[15] The panel finds that the Respondent's testimony during cross-examination on her affidavit undermines the credibility of her submissions that she feels remorse. The panel is not convinced that the Respondent feels full remorse about her behaviour in the 2011-2012 school year. The panel finds that the rehabilitative steps she has taken, such as an anger management course and counselling, were not entirely of her own volition, as they were consequences of discipline. The panel notes that the Respondent's 2015 affidavit and her testimony under cross-examination in February 2016 did not show that she appreciates the potential impact of her behaviour on her 2011-2012 kindergarten class or young learners generally.

[16] The panel will discuss the need to promote specific and general deterrence and the need to maintain public confidence in the teaching profession as a whole, after the discussion of mitigating factors.

Mitigating Factors

[17] The Respondent asks the panel to consider the following as mitigating factors: the size and composition of her 2011-2012 kindergarten class; her personal circumstances during the 2011-2012 school year; and her Aboriginal background.

[18] The Respondent argued that the panel should take into account the challenging composition of her kindergarten class in 2011-2012, which included a large number of English Language Learner (ELL) students (over half the class), 2 designated special needs students, and at least 1 or 2 other students suspected of having special needs. The Commissioner points to the Conduct Decision in which the panel listed the individuals who assisted in the Respondent's 2011-2012 class, as well as to the panel's finding that the Respondent had not taken advantage of resources available to her, as reasons why classroom composition and level of support should not be regarded by this panel as a mitigating factor in determining penalty. The panel agrees with the Commissioner. The size and composition of the Respondent's 2011-2012 kindergarten class is not a mitigating factor for her conduct in this case.

[19] The Respondent submitted that she "had an exceptionally difficult year in her personal life in 2011/2012. Her sister was diagnosed with cancer, her daughters were estranged, her father passed away" and she underwent surgery.[3] The Commissioner argues that the Respondent's personal circumstances are of minimal relevance. The Commissioner refers to the comments of the B.C. Court of Appeal in *McGuire*, a case involving the professional discipline of a lawyer who had experienced a divorce, a second relationship that ended in separation, the death of his dog, and untreated depression during the period in which the unprofessional conduct occurred. The Court of Appeal stated that "events of this kind, or worse ones, may well happen again in the [lawyer's] life and the public is entitled to be protected from another aberrant reaction of the kind that occurred here and recurred many times over. As the [discipline] panel stated … 'The Respondent is a good man, but at a time of great difficulty in his life he allowed himself to do what a lawyer, regardless of what strains or pressures he is under, must never do.'"[4]

[20] Applying the reasoning in *McGuire*, the panel finds that the Respondent's personal circumstances are not mitigating factors for her conduct.

---

[3] Respondent's submissions, July 20, 2015, para. 38.
[4] *McGuire v. The Law Society of British Columbia*, 2007 BCCA 442 at para. 14.

[21] The Respondent also asks this panel to consider as a mitigating factor her Aboriginal background and to take notice of the legacy of the Canadian government's treatment of Aboriginal people.[5]

[22] In her submissions, the Respondent referred the panel to a decision of a review panel of the Law Society of Upper Canada, *Robinson*.[6] The Respondent argues that *Robinson* "provides clear authority that this panel must consider and apply the *Gladue* factors in determining the appropriate penalty to impose on [the Respondent] as a result of this panel's findings of professional misconduct."[7]

[23] In *Gladue*,[8] the Supreme Court of Canada directed judges sentencing an Aboriginal offender to consider a wide range of circumstances, including the unique systemic or background factors which may have played a part in bringing the particular Aboriginal offender before the court. In *Ipeelee*,[9] the Supreme Court clarified *Gladue*, so that courts must take judicial notice of matters such as colonialism, displacement and residential schools, and how that translates into lower educational attainment, lower incomes, higher rates of substance abuse and suicide, and higher levels of incarceration for Aboriginal offenders. These factors provide the necessary context or understanding for evaluating case-specific information presented by counsel in these criminal sentencing decisions involving Aboriginal offenders.

[24] *Robinson* was the only authority cited by the Respondent in which a professional discipline panel has applied *Gladue/Ipeelee*, and the panel is not aware of any other analogous cases. The facts of *Robinson* are important to understanding the decision. *Robinson* involved an Aboriginal lawyer who had pled guilty to aggravated assault and had agreed that the facts underlying his criminal conviction amounted to conduct unbecoming a lawyer. Mr. Robinson had been threatened by another individual and had agreed to physically fight him. Instead of reporting the threat and proposed fight to the police, Mr. Robinson contacted one of his clients, who then assaulted the individual at the pre-arranged fight location while Mr. Robinson waited in his car. Mr. Robinson was sentenced to time served in pre-trial custody (approximately 2 years) and had undertaken to not practise law pending the resolution of his discipline hearing, which as the review panel noted, was over five years.

---

[5] Respondent's submissions, July 20, 2015 at para. 18.
[6] *Law Society of Upper Canada v. Robinson*, [2013] L.S.D.D. No. 75 (*Robinson*).
[7] Respondent's submissions, July 20, 2015 at para. 17.
[8] *R. v. Gladue*, [1999] 1 S.C.R. 688 at para. 69.
[9] *R. v. Ipeelee*, [2012] 1 S.C.R. 433 at para. 60.

[25] The *Robinson* review panel determined that the previous discipline hearing panel erred in concluding that Mr. Robinson's Aboriginal background was not a mitigating factor. The review panel found it was unreasonable for the hearing panel to conclude that there was no evidence that demonstrated that Mr. Robinson had been the subject of differential treatment by the police as a result of his Aboriginal heritage and his defence of Aboriginal accused persons in his community.[10] The review panel disagreed with the hearing panel's determination that Mr. Robinson's Aboriginal background was not a mitigating factor, stating the following:

> [45] … Here, there was case-specific information, presented by unchallenged witnesses, that the appellant had been subject to differential treatment based on his Aboriginal heritage and/or his defence work on behalf of Aboriginal clients. With respect, the hearing panel misapprehended or failed to appreciate the evidence on point. There was evidence of an adversarial relationship between the Sarnia police and the appellant. Equally important, there was overwhelming evidence that at a minimum, the appellant's state of mind, prior to the events of June 2007, was that the Sarnia police regularly singled him and other Aboriginal people out for different treatment. The evidence also disclosed that he was warned about continuing to practise in Sarnia.
>
> [46] On a correct appreciation of the evidence, contextualized by a history of systemic discrimination, there was certainly an evidentiary basis for concluding that the appellant was unlikely or felt unable to seek out the police to end his harassment at the hands of Mr. Verville. This "played a role" in bringing the appellant before the panel. None of this, of course, excuses the appellant's conduct. But it offers some mitigation for what he did.[11]

[26] The Respondent argues that the frustration and anger she inappropriately directed at her kindergarten students can partly be explained by her childhood experience and the legacy of systemic discrimination experienced by Aboriginal persons in Canada.[12]

[27] The Respondent was born in Alert Bay. Her father committed suicide when she was very young and she moved with her mother to Kingcome Inlet, where her first language was Kwakwala. She and her mother relocated to Victoria, and she spent her childhood and adolescence in Victoria and Kingcome Inlet. The Respondent's evidence is that she found university difficult when she participated in the Native Indian Teacher Education Program at the

---

[10] *Robinson*, *supra*, at para. 40.
[11] *Robinson, supra*, paras. 45-46.
[12] Respondent's submissions, July 20, 2015, para. 22.

University of British Columbia. She spent the first 15 years of her teaching career at Band-run schools in Kingcome Inlet, Alert Bay and Klemtu, as well as for 2 years at a Band-run school in Agassiz, before she moved to the public school system in the Surrey School District. In her first three years with the Surrey School District, the Respondent was employed as an Aboriginal Enhancement Teacher working at different schools in the district. Her first year teaching kindergarten was in 2009-2010 to an ELL class, then in 2010-2011, she began teaching regular kindergarten.

[28] The Respondent submits that adjusting to the public school system in Surrey after a career teaching at Aboriginal schools and then as an Aboriginal Enhancement Teacher is an example of challenges many First Nations people face finding a place in Canadian society. She submits her difficulties in teaching during the 2011-2012 school year were "in large part caused by her inexperience in the diverse composition" of the public school classroom that year, as compared to the smaller homogenous Aboriginal schools at which she had spent the previous many years teaching.[13]

[29] As the review panel in *Robinson* noted, systemic racism and discrimination that explains or provides context to why a licensee engaged in misconduct or conduct unbecoming is relevant.[14] The panel agrees that evidence that provides context to why the Respondent engaged in misconduct is relevant. The evidence in this case is less extensive than in *Robinson*, as it consists only of the Respondent's assertions that her experience as a teacher of Aboriginal descent at Hjorth Road elementary school during 2011-2012 "played a role" in bringing her before this panel. The panel has taken this into account as a mitigating factor in determining the appropriate consequence in this case, as set out below.

Determination

[30] The Respondent's professional misconduct should attract a penalty that reflects the seriousness of the allegations, and recognizes the goal of rehabilitation in the Respondent's particular circumstances.

[31] The panel found that the Respondent engaged in a pattern of professional misconduct that displayed a significant disregard for the age and individual needs of her young, often vulnerable students. The consequences for professional misconduct under the Act are separate and apart from progressive discipline that may be imposed in the context of the teacher's employment

---

[13] Ibid. at para. 21.
[14] Ibid., para. 78.

relationship. The panel finds that the need to promote specific and general deterrence and to maintain public confidence in the teaching profession as a whole weigh in favour of imposing a suspension of the Respondent's teaching certificate for one week, to occur when the Respondent would otherwise be working, but not necessarily teaching.

[32] This panel has concluded that the Respondent does not feel adequate remorse for her conduct and has not acknowledged that the steps she has taken to alter her behaviour were not entirely voluntarily. The panel acknowledges that the Respondent faced challenges transitioning to teaching in the public school system after several years teaching in Band-run schools. The panel also notes that the Respondent accepts that she is beginning to understand the sources of her anger and frustration based on her childhood experiences. Even considering the mitigating factor of her Aboriginal background discussed above, the panel finds that a restriction on the Respondent's teaching certificate such that she does not teach kindergarten or grade one students for a period of two years to allow for rehabilitation activities such as education and peer mentorship is appropriate in the circumstances.

COSTS

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

In her submissions of July 20, 2015, the Respondent indicated that she accepted publication of the panel's decision in this matter and its associated consequences. These reasons will be made public in accordance with section 66 of the Act.

ORDER

Accordingly, the panel orders the following:

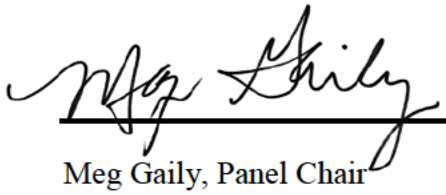
- Pursuant to section 64(b) of the Act, this panel orders that the Respondent's certificate be suspended for one-week, to be done while the Respondent would otherwise be working, but not necessarily when classes would be in session;
- Pursuant to section 64(h) of the Act, this panel orders that the director of certification place a limitation on the Respondent's certificate of qualification prohibiting her from teaching kindergarten to grade 1 for the next two school years

(2016-2017 and 2017-2018), and that the Respondent have peer mentorship for the first school year; and

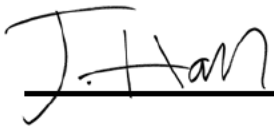
- Pursuant to section 64(f) of the Act, this panel orders that the Respondent's certificate be suspended if she fails to complete the Justice Institute of British Columbia's course, "Creating a Positive Learning Environment" within the next 2 sessions in which it is offered after the date of this panel's order, or earlier.

For the Panel

Date: April 1, 2016



Meg Gaily, Panel Chair



John Hall, Panel Member

Teresa Rezansoff, Panel Member