



2016 TAHP 03
Decision issued: February 16, 2016
Citation issued: February 26, 2015
File No. [REDACTED]

IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011, c. 19
AND
A HEARING CONCERNING
DARREN LEA HANKEY
(a Former Authorized Person under the *Teachers Act*)

REASONS FOR DECISION ON FINDINGS AND DETERMINATION

Date(s) and location(s): November 24 - 25, 2015
Panel: Karen F. Nordlinger, Q.C., Chair, Ted Riecken, Fred Robertson
Counsel for the Commissioner: Maureen Boyd, Ministry of Justice
Counsel for the Respondent: Self-represented, not in attendance

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 February 26, 2015 (the “Citation”).
- [2] School District No. 42 employed the Respondent.
- [3] The Respondent holds a certificate of qualification.

PROCEDURE

The citation was properly served on the Respondent in accordance with section 56(3) of the *Teachers Act*.

ISSUE

The issues before the Panel are:

- (a) whether the Respondent is guilty of professional misconduct, conduct unbecoming, and/or incompetence; and
- (b) if the verdict is guilty, the appropriate orders on penalty, costs and publication.

REVIEW OF EVIDENCE AND PANEL'S FINDINGS OF FACT

1. This matter concerns a citation issued against the Respondent on or about February 26, 2015 in which eight allegations were made. We were advised at the hearing by counsel for the Commissioner that the eighth allegation was withdrawn.
2. The remaining seven allegations are as follows:
 - (a) From 2010 to 2013, Darren Lea Hankey ("Hankey"), then an authorized person under the *Teachers Act* (Professional Certificate No. [REDACTED]), while employed as an elementary teacher by School District no. 42 (Maple Ridge – Pitt Meadows) (the "District") at [REDACTED] (the "School") failed to properly complete and/or file report cards and failed to maintain all required permanent records for students at the School, and in particular:
 - (i) In the 2010-2011 school year, Hankey did not file copies of some or all of the Terms 1, 2 and 3 report cards in the general files ("G4 files") of the students in his class.
 - (ii) In the 2011-2012 school year, Hankey did not make copies of the Terms 2 and 3 report cards for some or all of the students in his class and/or he did not file them in the G4 files of some or all of the students in his class.
 - (iii) In the 2011-2012 school year, Hankey did not complete the permanent record cards for some or all of the students in his class.
 - (iv) In the 2012-2013 school year, Hankey did not make copies of the Terms 1 and 2 report cards for some or all of the students in his class and/or he did not file them in the G4 files of some or all of the students in his class.

- (b) Between 2010 and 2013, Hankey changed several report cards of students after they had been reviewed and signed by the School principal, and then reprinted those report cards, signed them, and forged the signature of the School principal on them:
 - (i) in the 2010-2011 school year, Hankey forged the signature of the School principal on the report cards of some or all of three students; and
 - (ii) in the 2012-2013 school year, Hankey forged the signature of the School principal on the report card of a student.
- (c) In 2011, Hankey dishonestly represented to the District that he was unable to work due to illness and claimed sick leave pay for some or all of the following dates: January 31, 2011 (1/2 day), February 22, 2011 (full day), March 10, 2011 (1/2 day) and June 22, 2012 (full day). On those days, Hankey was not absent from work due to illness but was absent to attend court on matters related to a charge against him under section 810(1) of the *Criminal Code of Canada*.
- (d) In December, 2012, Hankey took a laptop owned by the District and issued to another teacher from the cabinet in her classroom at the School, without the knowledge or permission of that teacher or of any school or District administrator, then inappropriately used that laptop during the winter break on multiple occasions to access websites with sexual content such as www.intothelifestyle.com. Hankey returned the laptop to the teacher's cabinet before the return to school in January 2013.
- (e) On approximately 35 occasions between September 2011 and March 2013, Hankey entered the School late at night to make phone calls to sexual "chat lines" and on some of those occasions used the School phone to make these calls.
- (f) In the 2012-2013 school year, Hankey inappropriately used a laptop, that was owned by the District and issued to him to use for work (the "Laptop"), to store and access approximately 200 explicit sexual images of himself and others.
- (g) In January and February, 2013, during the District investigation regarding Hankey's use of the Laptop, Hankey was dishonest:
 - (i) On or about January 31, 2013, when Hankey was asked by District staff to return the Laptop, Hankey dishonestly misrepresented to Harry Dhillon, the District Principal for Human Resources, that:
 - i. Hankey did not have possession of the Laptop, and
 - ii. the Laptop had been stolen from his car when Hankey was at the Skagit Casino.
 - (ii) On or about February 5, 2013, Hankey dishonestly misrepresented to an officer of the upper Skagit Police Department that the Laptop went missing

from the trunk of his car between December 24 and 26, 2012 while he was staying at the Skagit Casino.

3. The Respondent did not attend the hearing and was not represented by legal counsel. The panel is satisfied that the Respondent has been duly served with the Citation and Notice of Hearing. The panel is further satisfied that all documents required to be provided to the Respondent were provided to him, either by personal service or by mail, both ordinary and registered.
4. It is fair to say that the Respondent has not participated in these proceedings since the serving of the Citation. He did participate in an investigation prior to the service of the Citation, about which more will be said later.
5. The position of the Commissioner is that the Citation alleges conduct by the Respondent that, if proved, would amount to professional misconduct pursuant to s. 63(1)(b) of the Teachers Act.
6. The circumstances giving rise to the allegations took place over several years and began to unfold in January, 2013, when a fellow teacher at the Respondent's school, Kimberley Bligh, returned from Christmas break and found that her school-issued laptop had been utilized by someone else. The laptop had remained in a locked cupboard over the school break and when she retrieved it, she found that it was sticky and its search history revealed a number of sites that she had not visited. Ms. Bligh provided an affidavit in these proceedings outlining her involvement in this matter. She indicated that her classroom was located two doors down the hallway from the Respondent's. The sites that appeared on her laptop had names such as "sexy swingers into the lifestyle" as well as websites for movie theatres, Grouse Mountain, Hemlock Mountain, Netflix and the Tim

Horton's Wi-Fi. She deposed that she had not used the laptop over the winter break and did not recognize the websites. Her laptop is used from time to time by her students and, as a result of her concern that a student might inadvertently access one of these websites and her recognition that the laptop had been used in contravention of District policy, she provided the laptop to the school principal, Sheila Pace. To her knowledge, the Respondent had never asked to use her laptop, nor accessed it in the past.

7. Sheila Pace was the Respondent's principal during the relevant times. She confirmed that he taught a grade four/five class. Upon obtaining the laptop from Ms. Bligh, Ms. Pace provided it to the District Principal of School District 42, Harry Dhillon. Ms. Pace also provided a school access report to Mr. Dhillon, showing that the Respondent entered the school at 15:14 on January 4th and left the school at 16:01 January 4th.
8. Mr. Harry Dhillon is the District Principal responsible for approximately 1,000 teachers in School District 42. He was, in fact, the person who hired the Respondent in September of 2000.
9. Mr. Dhillon confirmed that he received the laptop assigned to Ms. Bligh from Ms. Pace upon the opening of school in January, 2013. He provided the laptop to Richard Eskandar, the Information Technology Manager for School District 42, for a review of it for the period of 6:00 p.m. on September 21, 2012 to 7:00 a.m. on January 7, 2013. He also asked Mr. Eskandar to make a copy of the hard drive, and to identify internet usage, including web sites, email usage, including any web-based and district network usage, and to identify any other concerns or potentially unacceptable use of the computer. Mr. Eskandar was able to identify the Respondent as the user through usernames and

passwords, and he provided a list of sites identified during that time period to Mr. Dhillon. The sites included, on multiple occasions, “sexy swingers into the lifestyle”. In addition, there were recreational sites visited, such as Grouse Mountain, Silver City Theatre, Hemlock Mountain and Hollywood Three Cinemas. It appears that several of the inappropriate sites were blocked by Websense. However, these sites were accessed through Tim Horton’s and MacDonald’s Wi-Fi, away from the school property. Websense is a service set up by the Provincial Learning Network to block access to inappropriate sites. Mr. Eskandar was able to access the suspicious sites through his iPad. He described them as sites to connect swingers for sexual purposes. They were inappropriate sites, he testified.

10. The policy of School District 42 on internet use prohibits use of the network for “illegal, inappropriate or obscene purposes, or in support of such activities”.
11. As a result of his concerns that the policy had been breached by the Respondent, on January 30, 2013, Mr. Dhillon wrote the first letter of investigation to the Respondent, advising him of the laptop use investigation. On the advice of Mr. Eskandar, he asked for the return of the school laptop issued to the Respondent.
12. The return of the laptop by the Respondent proved to be difficult. The Vice-Principal of the school, Michael Scarcella, was asked by Mr. Dhillon to obtain the laptop from the Respondent. Mr. Dhillon received an email from Mr. Scarcella outlining his attempts to obtain the laptop from the Respondent. The Respondent advised Mr. Scarcella that the laptop was not at the school. Mr. Scarcella provided Mr. Dhillon’s cell phone number so that the Respondent could make immediate arrangements to return the laptop to Mr.

Dhillon. Mr. Scarcella later saw the Respondent at the school, who promised to call Mr. Dhillon.

13. Mr. Dhillon did speak to the Respondent on January 31, at approximately 3:00 p.m. when the Respondent first advised him that he would drop the laptop off in the morning, and that his laptop did not work because the screen was broken. At approximately 3:40 p.m., the Respondent called to tell Mr. Dhillon that in fact he did not actually have the computer, as it had been stolen from his car when he was at the Skagit Casino in Washington State. Mr. Dhillon then reported the theft of the computer to the District Information Technology nominee. That person then reported the theft to the RCMP, but was told that the person in possession of the laptop must report the theft. The Respondent was advised of this by the Vice-Principal and, in an email from Mr. Dhillon to Ms. Pace, Mr. Dhillon confirmed that the Respondent had the necessary information to complete the incident report relating to the theft for insurance purposes. On February 13, 2013, Mr. Dhillon wrote a second letter of investigation to the Respondent relating to the allegations that the Respondent lied to the Vice-Principal when asked to provide him with the laptop issued to him by the District; initially lying to Mr. Dhillon when asked to provide the laptop issued to him by the District; and failing to advise the School Principal and/or School District in a timely manner about the theft of the laptop computer issued to him by the District.

14. Mr. Dhillon received a telephone call February 6, 2013 from the Respondent, who advised him that he had been advised by the RCMP to report the theft to the Skagit Police. He had done so, and had received a file number. He advised that the computer had been stolen on December 24, 2012.

15. Notwithstanding the alleged theft, on February 27, 2013, almost four weeks after the computer was requested, the laptop issued to the Respondent was returned to Mr. Dhillon by George Serra, the president of the Maple Ridge Teachers Association. Apparently, the Respondent had given the laptop to Mr. Serra to return to Mr. Dhillon.

16. Again, Mr. Dhillon provided the laptop to Richard Eskandar. Mr. Eskandar did a review of the computer and testified that he found more than 200 images, which were simply downloaded and not put into folders. Many of the images were sexual in nature and mixed in with photos of his family, legal documents, and report cards for students. A few of those images were exhibited in these proceedings. They showed the Respondent in sexually explicit poses by himself and with others. On March 8, 2013, Mr. Dhillon wrote another letter of investigation to the Respondent with regard to the false reporting of the theft of the laptop and the unacceptable use of the laptop. Mr. Dhillon obtained a report from the Skagit Police. The reporting officer advised that the Respondent had told him that he and his family were staying at the Skagit Hotel on December 24 to December 26. He noticed the laptop was missing on December 25 when it was in the trunk of his vehicle, which was unlocked. The Respondent advised the police that he did not report the theft because he “had not filed proper paperwork with his work and did not want to get into trouble”.

17. In or about April, 2013, another teacher at the school advised Ms. Pace about a blog she had found on the internet. Ms. Pace found the blog and notified Harry Dhillon by email April 30, 2013. The blog referred to the Respondent using the school for phone sex.

18. Ms. Pace testified that in 2011, she had been alerted earlier to a late night access by the Respondent in an email from a colleague, and had asked the Respondent about it. The Respondent's response at that time was that he had previously worked graveyard shift at Safeway and sometimes liked to work late at night. At that time, Ms. Pace advised him such access was inappropriate and he should work at home.
19. After the blog issue arose, an Access Report for the school was ordered to see if there were other occasions when the Respondent entered the school at odd hours. The Report is from September 1, 2011 to June 11, 2013 filed as an Exhibit in these proceedings and shows numerous such occasions, usually late at night or in the early hours of the morning.
20. On May 10, 2013, Mr. Dhillon wrote to the Respondent, advising him that he was under investigation for "using school phones during the evening for phone sex and participating in pornographic videos and photography". A further item in the letter is not being pursued in these proceedings.
21. Upon receiving a report from parents of students of the school of conduct by the Respondent which relates to withdrawn allegations in these proceedings, Mr. Dhillon wrote a further letter of investigation to the Respondent dated May 14, 2013, placing the Respondent on a paid leave of absence, which stated:

"Given the nature and increasing number of issues under investigation, and given the involvement of parents and students in these matters, the District has determined that placing you on a paid leave of absence pending the conclusion of the matters under investigation is an appropriate measure to ensure the allegations and investigation do not negatively impact the school."

22. A teacher on call (“TOC”) was brought in to take over the Respondent’s classroom. She asked to see report cards of the students. Ms. Pace testified that report cards, assessments of students and Permanent Record cards (“P.R. cards”) are basic significant documents that must be kept as the students’ records. She had created a checklist for the teachers of her school to remind them what must be completed and by when with regard to these records. The P.R. cards include records of attendance and relevant assessments, for example, psych ed assessments. By the end of the year, P.R. cards and report cards are to be filed in a G4 file by the teachers once signed. Teachers are not required to file the report cards for the first two terms, but must file them at year end.
23. Ms. Pace went through the G4 files in the spring of 2013 in order to give the information to the TOC, but could not find the report cards from the fall of 2012 or the spring of 2013 which she had signed. These documents were not in the G4 file. Upon further inquiry, she found that no report cards were filed and no P.R. cards were filed in the G4 file. For 2010/2011 year, the P.R. cards were completed, but there were no report cards filed in the G4 file. For the 2011 – 2012 year there were no report cards or P.R. cards, and for the year 2012/2013, there were no report cards filed for terms 1 and 2.
24. Both Mr. Dhillon and Ms. Pace further testified the G4 file was important because it allows team members access to information to assess the ongoing progress of students. On May 30, 2013, after the Respondent had been put on leave, she approached him, asking him to provide the 2012 report cards. He advised her that he would come to the school to find them, but that it would take a while because some things had been moved. When Ms. Pace followed up with him the next day, he said that reports were on a flash drive. She asked him to bring it to the school so that the reports could be printed. The

Respondent advised her that he was unable to do so, as he was leaving to go to Kamloops to visit his brother. She then asked him to come to the school that morning so that the reports could be copied from the flash drive, but again the Respondent said he was unable to do so and gave her an excuse. He finally agreed to meet with Ms. Pace the next Monday, June 4, 2013, at 5:00 p.m. The Respondent did attend, but advised Ms. Pace that he wished to make corrections to the report cards and he required a laptop. Ms. Pace attempted to arrange a laptop for him over the next few days, but there were difficulties with it. The report cards were finally delivered on June 10th.

25. Ms. Pace began reviewing the cards, but they did not accord in all aspects with her memory. She found discrepancies between the list of marks and the report cards. Given the concerns about the discrepancies and the reliability of the marks, the TOC and Ms. Pace came to an agreement that the TOC would do an assessment of the students in her class. The final report cards and the P.R. cards were filed by the TOC.
26. Ms. Pace made a chart of the discrepancies she found in the report cards and, as she was doing so, noticed that some of the report cards, although signed with her name, were not her signature. Nor was there a personal comment to the student as she would usually make. She identified several such cards that were exhibited.
27. She testified that if a teacher wished to change something on a report card after she had signed it, it was not generally a problem, she would simply re-sign the card. She discovered that the report cards had so many errors on them that they could not be relied upon.

28. Ms. Pace emailed Mr. Dhillon with her concerns about missing report cards and P.R. cards on May 23rd. On June 14, 2013, Mr. Dhillon wrote a further letter of investigation relating to the missing report cards and Permanent Record cards.
29. On July 2, 2013, Mr. Dhillon wrote a further letter of investigation to the Respondent with regard to the allegation that the Respondent had forged the signature of Ms. Pace on a number of student report cards.
30. Mr. Dhillon, during this time, recalled an incident in March of 2011 relating to a charge of assault against the Respondent. As a result, he followed up with the Teachers Regulation Branch for information as to the conclusion of that assault charge. He discovered that the assault charge had resulted in a peace bond, the Respondent was released on his own recognizance, and there was a \$1,000 fine with 12 months' probation. No further action was taken by the College of Teachers at that time. Mr. Dhillon obtained the Court records relating to the assault charge. Mr. Dhillon reviewed the Absence Report for the Respondent and found that he had called in sick on dates in which he was attending Court on the assault charge on January 31, February 22, March 10 and June 22 of 2011.
31. As a result, Mr. Dhillon sent a further letter of investigation dated August 26, 2013, alleging misuse of sick time in contravention of the Collective Agreement provision Article C 22.4. The Court records and District records re the Respondent's absences were exhibited in these proceedings.
32. In February, 2013, the District hired Mary Stewart, an educator in human resources management consultant to investigate the alleged misconduct of the Respondent.

33. On June 25, 2013, Mary Stewart interviewed the Respondent. She was accompanied by Richard Eskandar. The Respondent was accompanied by George Serra, a representative of the Maple Ridge Teachers Association. Ms. Stewart made notes of her interview with the Respondent and her notes were exhibited in this proceeding by way of an Affidavit from Ms. Stewart. Mr. Eskandar confirmed that the notes accurately set out what was said. Ms. Stewart further deposed that on September 4, 2013, she again interviewed Mr. Hankey with regard to further allegations made by that time. The Respondent was again accompanied by Mr. Serra and her notes of that interview were exhibited before us and attached to an Affidavit sworn by Ms. Stewart on September 18, 2015.

34. Counsel for the Teacher Regulation Branch submits that the statements made by the Respondent in his interviews with Mary Stewart are admissible, even though they are hearsay, because they are statements against interest. Although Mr. Hankey is not deceased and is otherwise available by summons, the fact that he has chosen not to attend these proceedings forces the panel to the conclusion that the Commissioner should not be required to present Mr. Hankey in order to avail themselves of the exception to the hearsay rule. We also find the statements admissible as necessary and reliable.

35. Mr. Hankey, in his interview with Ms. Stewart, admitted much of the basis for the Citation. He admitted that he removed the laptop from Kim Bligh's classroom and used it for personal reasons, including downloading inappropriate sexual content. He further admitted that he lied to Harry Dhillon with regard to the whereabouts of his personal laptop and made up the story that it was stolen. He lied to the Skagit Police with regard to the theft of the laptop. He admitted to the inappropriate use of the laptop issued to him, including downloaded images of a sexual nature. He had no explanation as to why he

would use the computer in that fashion. He denied that he accessed the inappropriate images at the school or that the students would have had access to his computer where they could have inadvertently seen the inappropriate material.

36. The Respondent further admitted that he used the school phone at odd hours for sex chats.

37. He admitted that many of the sexually explicit images on his laptop were of him and that he had participated in sexually explicit photography.

38. The Respondent admitted that he did not file all of the necessary records in the G4 file as alleged. He further admitted that he forged the signature of Ms. Pace on the report cards for some of the students after he changed them. Further, the report cards provided late to the school after its request were not exact duplicates of the report cards issued to the parents in Term 1 and Term 2 of 2012 and 2013. He admitted that some of the marks given to the students were best guesses and that the marks on his class records would be different than the marks on the report cards in some cases. The TOC then got inaccurate records for the students she was taking over. The Respondent failed to make copies of the report cards that were issued to students for the 2012-2013 school year.

39. The Respondent was further interviewed by Mary Stewart on September 4, 2013 relating to the August 28, 2013 letter of investigation. During that interview, the Respondent admitted that he called in sick on days in which he was required to attend Court relating to a domestic abuse issue. He took sick days on four occasions for a total of three full days of employment. He was paid for those days. He indicated that he knew he could take

personal discretionary days, but did not wish the District to know that he was required to attend Court.

40. The Respondent's employment with the School District was terminated on February 21, 2014 and notice of the termination was sent to the Respondent on February 24, 2014.

ANALYSIS AND DECISION

41. Commissioner's counsel refers us to *F.H. v. McDougall*, 2008 SCC 53 at paragraph 49 where the Supreme Court of Canada held that the balance of probability test is the only standard in a civil case. That standard is described as being a determination as to whether it is more likely than not that an alleged event occurred. Considering all of the evidence that the panel has heard from the witnesses and the admissions made by the Respondent during the investigation by Mary Stewart, the panel is of the view that the factual basis of the allegations is made out. The next question is whether or not the factual nature for each of the allegations amounts to professional misconduct or conduct unbecoming a teacher. We are urged to find that the appropriate finding is one of professional misconduct, as all of the misconduct was connected to the Respondent's position or duties as a teacher or involved the Respondent's use of District resources.

42. The appropriate test for determining whether conduct constitutes professional misconduct is whether the conduct is a marked departure from the standards expected of teachers in the province. In *The Matter of the Teachers Act v. Kiteley*, June 9, 2014, the panel stated:

“The Act does not define professional misconduct and it is 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 amount to professional misconduct 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* 2005 LSBC 16 and was used by another panel of the Branch in a decision released earlier this year (*Re In the Matter of the Teachers Act – and – Freeman*, February 6, 2014).

43. We accept that “marked” means “clearly noticeable” (Oxford English Dictionary, 3rd ed.)

44. The standard of conduct for teachers is a high one, given their position of trust in the community and with their students. Here, the published standards breached are submitted to be:

(c) Educators value and care for all students and act in their best interests. The explanatory note states:

“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.”

(d) Educators are role models who act ethically and honestly. The explanatory note 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. Educators have an understanding of the education system in BC and the law as it relates to their duties.”

45. The events leading to the Citation took place over a period of three years and, to a degree, the events became public knowledge in the School District. In *Ross v. New Brunswick School District No. 15*, 1996 1 SCR 825, La Forest, J. stated:

“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 ... The conduct of a teacher is evaluated on the basis of his or her position, rather than whether the conduct occurs within the classroom or beyond. Teachers are seen by the community to be the medium for the educational message and because of the community position they occupy, they are not able to ‘choose which hat they will wear on what occasion’ ... (paragraphs 42 to 44)

46. In the present case, most of the allegations dealt with in this proceeding raise issues of dishonesty as a result of the Respondent’s desire to hide his inappropriate behavior of a sexual nature utilizing school property, and his lack of due diligence in record keeping.. Some of his behaviours became the subject of internet chat in the community (allegations (c), (d), (e), (f) and (g). The dishonesty of the teacher as found relating to allegations (b), (c), (d), (e), (f) and (g) is not modelling integrity for students or the community. His conduct undermines the credibility of the profession in the community.

47. The panel has been referred to the policy of the District with regard to use of the internet which states:

“Use of the network for illegal, inappropriate or obscene purposes or in support of such activities, is prohibited.”

48. Clearly, the use of both Ms. Bligh’s laptop and his own District-issued laptop by the Respondent contravened the District policy. Compounding this conduct was the Respondent’s behavior in lying to Mr. Dhillon with regard to the whereabouts of his District computer and to the Skagit Police about the alleged theft. Clearly, dishonesty by a teacher is not model behavior to be followed by students and does not honour the fundamental trust that a community must have in its teachers.

49. Turning to allegation (a) of the Citation, the Respondent failed to maintain necessary records for the students as alleged, and failed to file those records in the appropriate files.

The panel finds that the failure to maintain records for the students is in contravention of the standards required of a teacher; in particular standard 1 and standard 5, which states:

“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.”

50. The Respondent failed to act in the best interests of the students and the community in failing to adequately process and file report cards and P.R. cards. It is fundamental that a record needs to be kept of the student’s progress to ensure that the student is provided with the assistance he or she needs and for future assessments. But we do not find that this failure rises to the level of professional misconduct, considering the factors in *Law Society of B.C. v. Lyons*, 2008 LSBC 09, set out below

51. Turning to allegation (b), there is both a provincial standard and an internal checklist provided by the school to assist teachers in maintaining proper records. The Respondent not only failed to keep the proper records, he had difficulty locating them when asked for them by the school. In addition, the evidence was that the records, when produced, were not necessarily consistent with the mark books.

52. In addition, the Respondent forged the signature of the school principal, which contravenes standards 1, 2 and 5 of the standard applicable to teachers in British

Columbia. Forgery is, of course, a seriously dishonest act with possible criminal consequences. This conduct does not honour the standard of integrity expected of a teacher and models egregious behavior for students. The panel finds that the conduct alleged in allegation (b) amounts to a marked departure from the standards expected of teachers, and amounts to professional misconduct.

53. In *The Law Society of B.C. v. Lyons*, 2008 LSBC 09, the following was stated in considering the issue of professional misconduct:

“In determining whether a particular set of facts constitutes professional misconduct or, alternatively, a breach of the Act or Rules, panels must give weight to a number of factors, including the gravity of the misconduct, its duration, the number of breaches, the presence or absence of mala fides and the harm caused by the Respondent’s conduct.”

54. Here, the Respondent admitted to the investigator that he knew of all the applicable standards and that he ought not to have used the school computer for personal reasons. He admitted to lying to Harry Dhillon and the Skagit Police, to making “best guesses” on some students’ marks, and to forging Ms. Pace’s signature. The panel has considered the Lyons factors and finds that the conduct was carried out over a long period of time with the Respondent’s knowledge that it was wrong. The conduct was egregious and a marked departure. It is only luck that prevented a student from not accessing any of the inappropriate sites on the computer.

55. The panel finds that allegations in the Citation (b) (c), (d), (e), (f) and (g) are proved, and constitute professional misconduct, as the conduct is a marked departure from the standard expected of a teacher.

56. The panel accepts that all of the conduct alleged is connected to the Respondent's employment, whether by use of school facilities and equipment or in breach of applicable policies and Collective Agreement provisions.

57. In summary, allegations (b) to (g) in the Citation are proved. The panel finds that the conduct of the Respondent, both in the individual allegations and taken as a whole, amounts to professional misconduct.

PENALTY & COSTS

58. Having found the Respondent guilty of professional misconduct under section 63(1)(b) of the *Teachers Act*, this Panel is empowered to impose a penalty on the Respondent. The Panel asks that counsel for the Commissioner provide written submissions with respect to penalty pursuant to a schedule to be set by the Hearing Coordinator of the Teacher Regulation Branch.

PUBLICATION

59. These reasons will be made public in accordance with section 66 of the *Teachers Act* unless an application is made to the panel under section 66(4) for non-publication or publication of a summary. If either party intends to make an application under section 66(4) regarding publication, they should either submit their written submissions, or provide written notice of their intent to make such an application, to the hearing coordinator by 2 weeks from release of reasons.

For the Panel

Date: February 16, 2016



Karen Nordlinger, Q.C., Panel Chair



Ted Riecken, Panel Member



Fred Robertson, Panel Member