



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.<sup>1</sup>

[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

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<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

[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

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<sup>2</sup> See, for example, Ryan, November 8, 2002; Miller, September 5, 2003.

<sup>3</sup> See Panghali, January 20, 2014, at para. 6.

<sup>4</sup> 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**

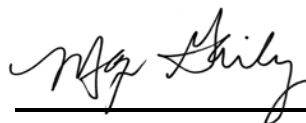
[14] Section 66 of the Act expressly requires that the panel's reasons for making an order under section 64 be published, subject to limited exceptions, none of which apply here. Accordingly, the panel directs publication of these reasons.

**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.

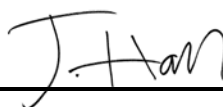
For the Panel

Date: December 1, 2014



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Meg Gaily, Panel Chair



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John Hall, Panel Member



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Daniel Blais, Panel Member