



2024 TAHP 01
Decision issued: August 7, 2024
Citation Issued: August 30, 2023
File No.: [REDACTED]

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

AND

A HEARING CONCERNING

JEFFREY FORDEN MOONEY

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

REASONS FOR DECISION ON FINDINGS AND DETERMINATION

Date and Location: June 11, 2024, Vancouver, BC
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 panel was appointed by the Commissioner to conduct a hearing into a Citation issued by the Commissioner under s.56(1) of the *Teachers Act*, SBC 2011, c.19 ("the Act") on August 30, 2023.
- [2] This matter arises as the result of email and text communications between the teacher and four female students. The students will be referred to "A", "B", "C" and "D". They all attend the same independent school in West Vancouver.
- [3] It is alleged by the Commissioner in the Citation that the Respondent, an authorized person under the Act, while employed as a Grade 7 teacher:

- a. With regard to student A, in or about June and July of 2021, exchanged private messages with her using the chat function of the school's Google Workspace for Education Platform ("Google Chat") in which he made comments that included sexual references and innuendo, comments about student A and other students, advised her not to screenshot to her friends because he did not want to get fired, and offered to finish a homework assignment for her.
- b. With regard to student B, in or about June 2021 he exchanged private messages with her on Google Chat in which he used profanity, made comments about other students and a staff member, and asked for information about student crushes. In addition, he sent student B a friend request, discussed his condominium, and asked student B to keep the messages secret.
- c. With regard to student C, in or about June 2021, he exchanged private messages with her on Instagram advising her that she was "cool" and made comments about other students.
- d. With regard to student D, in or about June and September 2021, he exchanged private messages on Instagram with her in which he used profanity, made comments about other students and told her to keep the messages to herself.

[4] The Commissioner alleges that the allegations set out above, if proved, amount to conduct contrary to Standard #2 of the Standards and that the Respondent is guilty of professional misconduct under s. 63(1)(b) of the Act. A second matter set out in the Citation was not pursued at the hearing. Evidence was adduced by way of affidavits of the witnesses, on Order of the Commissioner. Oral and written submissions were received from Commissioner counsel.

PROCEDURE

[5] The Hearing of this matter was set for June 11 to 13, 2024. The Respondent did not appear at the hearing and it was heard only on June 11, 2024. The panel is satisfied that the Respondent was properly served with The Citation, Notice of Hearing and affidavits within the meaning of s.56(3)(a) of the Act. The Citation and Notice of hearing were sent to his

last known address as required by the Act, both by ordinary mail and registered mail (returned as undeliverable) and the affidavits were provided to him at an email address he had used in communicating with counsel for the Commissioner. The Commissioner also engaged the services of a skip tracer to ascertain the Respondent's whereabouts so that he could be personally served, but without success. Section 56(3)(a) does not require personal service of the Citation or the Notice of Hearing. The Commissioner's Rules are also relevant: a list of all relevant documents and a summary of witness evidence must be provided to the teacher at least 28 days prior to the hearing (Rule 42); copies of any listed document will be provided to the teacher within a reasonable time upon request (Rule 43); and the Notice of Hearing must be provided to the teacher (Rule 62). The affidavit of the legal assistant at the Legal Services Branch of the Ministry of the Attorney General, Ms. Perera, in essence, deposes to the timeline of the steps taken to inform the Respondent of all the processes under the Act. The panel accepts that evidence and is satisfied that the matter may proceed in the Respondent's absence under s. 62 of the Act.

[6] The Commissioner relies on Standard #1 and #2 of the *Professional Standards of Conduct for BC Educators (June 2019)* and alleges that the Respondent has violated those standards, amounting to professional misconduct. Those standards 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 respect and value the diversity in their classrooms, schools and communities, inclusive of First Nations, Inuit and Métis, and other worldviews and perspectives. Educators foster students' positive personal identity, mental and physical well-being, social and personal responsibility, and intellectual development. Educators engage students in meaningful participation in their own learning. Educators treat students equitably with acceptance, dignity and respect. Educators understand the importance of confidentiality, and protect student privacy, 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 act ethically and maintain the integrity, credibility and reputation of the profession.

Educators are role models. Educators are held to a higher standard and are accountable for their conduct on duty and off duty. Educators understand the law as it relates to their duties. Educators' individual conduct contributes to the perception of the profession as a whole. Educators know and recognize the importance of the Professional Standards for BC Educators.

REVIEW OF EVIDENCE AND PANEL'S FINDINGS OF FACT

[7] The Respondent received a Professional Certificate of Qualification from the Director of Certification, issued on January 13, 2016. He was an authorized person in accordance with the definition under the Act at the time of the alleged misconduct. He relinquished his certificate on October 26, 2021, and thus, at the time of this hearing, he was a former authorized person. Section 43(2) of the Act extends jurisdiction to determine professional misconduct to "the former authorized person as if the former authorized person were a certificate holder". Therefore, his conduct properly falls to be considered under s.43(2) of the Act. (See *In the Matter of the Teachers Act and Plehanov*, 2021 TAHP 01). The panel finds that it has the jurisdiction to determine whether his conduct amounts to professional misconduct as alleged.

[8] The conduct alleged relates to the four female students and amounts to allegations of inappropriate communications with those students, helpfully set out in Commissioner's counsel submissions as follows: (all references in the submission to paragraph numbers in the source affidavits deleted)

Student A:

Student A was a Grade 7 student who was in classes the Respondent taught. She deposed to the accuracy and authenticity of Google Chats with the Respondent, which occurred often late at night. The following exchanges occurred:

- a. On June 23, 2021, at approximately 11:40 p.m., the Respondent offered to finish a homework assignment for Student A if she didn't tell anyone.
- b. On June 23, 2021, at approximately 11:42 p.m., in response to Student A saying "COCKADOODLEDOO", the Respondent said "Cock lol". Student A responded with "EW WEIRDO".
- c. On June 23, 2021, at approximately 11:43 p.m., the Respondent said, "Aww ok but for real [Student A] I'll miss you". After exchanging many more messages, at approximately 11:54 p.m., the Respondent said "Go to bed Jesus".
- d. On June 27, 2021, at approximately 12:27 a.m., the Respondent said "You're a BIG weirdo" and then said, "But I like it". In response to Student A calling him a "Weirdo," the Respondent said, "You have no idea". The Respondent then called Student A an "Idiot" for drinking her mom's coffee.
- e. On June 27, 2021, at approximately 12:29 a.m. the Respondent said "Tell me a story" and "About... I dunno". In response to Student A telling the Respondent about other students who were in a fight, the Respondent said "Wtf [what the fuck]".
- f. On June 27, 2021, at approximately 12:35 a.m., the Respondent said that adults are the best because "we can drive and drink and buy shit and have sex and do alllll the fun stuff and "(You didn't hear that from me)". Student A responded with "Weirdos" and the Respondent said, "Says the girl who memorized all the lyrics to WAP [Wet Ass Pussy]". Student A implied she would screenshot his messages and send them to her friends. The Respondent said, "Don't though" and "But actually don't I don't want to get fired".

- g. On June 27, 2021, at approximately 12:40 a.m., in response to Student A saying that "Also you know that the tech guy at school can like c stuff;", the Respondent said, "that's why I don't use this to talk to people" and "I'm entertaining af [as fuck]".
- h. On June 27, 2021, at approximately 12:41 a.m., the Respondent said, "Dream of snakes in your bed" and "eating your knees".

Student B:

Student B was a Grade 7 student who was in classes the Respondent taught. She deposed to the accuracy and authenticity of the following Google chats with the Respondent:

- a. On June 16, 2021, at approximately 12:05 p.m., the Respondent said "I'm so handsome".
- b. On June 16, 2021, at approximately 6:02 p.m., the Respondent gave Student B his address, asked her not to tell anyone, and discussed details of his condo (address deleted), including that "the grass is nasty af [as fuck]". The Respondent also said, "points for guessing what I bought it for and what it's worth now" and told Student B he bought the condo for \$530,000 and that it had increased in value to \$925,000. He then said, "Jeffrey Mooney may appear foolish and aloof... but he ain't".
- c. On June 16, 2021, at approximately 6:38 p.m., the Respondent said, "100% of our conversations have to be confidential" and "It's "Mr. Mooney you're fired" if anyone finds out".
- d. On June 16, 2021, at approximately 6:40 p.m., the Respondent said, "Mr. (name of teacher deleted) is... really gross" and "Like.... I think sex jokes are funny and whatever whatever, no big deal, but he takes it to a level that's ... wow. Wrong, even for adults it's just wrong" and "locker room talk" is his excuse". When Student B did not reply, the Respondent said, "Sorry... too

much?" and Student B said, "umm" and "aksjkshdkj" and "its ok" and changed the subject.

- e. On June 16, 2021, at approximately 6:50 p.m., the Respondent said "As if I want to know anything more about [Student A]", in response to Student B saying she thinks he looked up Student A's address.
- f. On June 16, 2021, at approximately 6:51 p.m., the Respondent said "I live in a mf [mother fucking] condo".
- g. On June 16, 2021, at approximately 9:22 p.m., the Respondent said he was "so lonely" and then asked, "Who do you like???" and when Student B didn't respond, he wrote ".....???". On June 17, 2021, at approximately 2:59 p.m., Student B responded with "I like myself" and the Respondent said, "I like you too".

Student C:

Student C was a Grade 7 student at the school. Counsel informed the panel that her mother was reluctant to have her daughter swear an affidavit for fear of trauma to the child, but the mother forwarded screen shots of Student C's Instagram messages with the Respondent, to the Head of School. Those screenshots are attached as Exhibit C to the affidavit of the Head of School. The messages contained in the screenshots are as follows.

- a. In the first message, on June 14, 2021, at approximately 10:25 p.m., the Respondent said, "Ugh... you?!" and "Nah you're cool. But please don't tell people about this [flushed face emoji that represents embarrassment]". On June 15, 2021, at approximately 7:56 p.m., Student C said "ahahaha ok" and the Respondent said, "Bullshit you've already told someone [face with tears of joy emoji that represents crying with laughter]".
- b. On June 16, 2021, the Respondent asked, "Who do you have a crush on". Student C replied with "what" and the Respondent then asked, "Who do you

hate". They exchanged several more messages and then the Respondent asked again, "Okay crush who is it" and then said, "It's (name deleted)" and "I'm saying (name deleted)".

- c. On June 16, 2021, in reference to another student, the Respondent said, "She calls everyone bestie ffs [for fuck's sake]". Student C said that in reality that student has no friends and the Respondent replied with three face with tears of joy emojis and then said, "Whoa" and "Savage".
- d. On or about June 16, 2021, the Respondent said, "Nah you're actually good shit".

[9] No affidavit evidence was adduced from either Student C or her mother. Although Student C has not deposed directly as to the authenticity of the messages and they are hearsay, Commissioner's counsel relies on the Head of School's verification of her receipt of the messages from Student C's mother in her affidavit. Counsel refers to *R v. Khan* (1990) 2 SCR 531, in which the Supreme Court of Canada relaxed the usual hearsay test in cases involving children's evidence of sexual abuse to that of necessity and reliability. The Supreme Court recognized that more flexibility was required in dealing with the hearsay evidence of children in such cases. At par. 29 of the decision, the Court states "Necessity for these purposes must be interpreted as 'reasonably necessary'. The inadmissibility of the child's evidence might be one basis for a finding of necessity. But sound evidence based on psychological assessments that testimony in court might be traumatic for the child or harm the child might also serve".

[10] Here, the matter is not one of sexual abuse and there was no evidence at all with regard to any trauma the student might experience in the event she was to give direct evidence. However, the evidence of the messages is inadmissible and the child is not available. The panel finds these circumstances are sufficient to find that the admission of the hearsay evidence is reasonably necessary, where the allegations are of serious professional misconduct, subject to finding that it is reliable. In addition, this is an administrative board with more room for flexibility than a Court. Hearsay evidence is often allowed in such proceedings. However, its weight is a matter for determination by the panel.

- [11] With regard to reliability, the evidence of the Junior School Principal, is that he and the Head of School interviewed the Respondent the same day that the school was informed by the parents of Student D of their concerns of inappropriate messaging by the Respondent. During that interview, the Respondent admitted to messaging with the four students A, B, C and D, on Google Chat and Instagram. The evidence of the Head of School is that she received the screenshots of the messages with Student C, directly from the mother of Student C with an email that thanked her for informing the mother of the situation. In addition, the Instagram handle on the messages is the same as that on the messages from the Respondent to Student D.
- [12] In all of these circumstances, the panel finds that the evidence of the Head of School of messages from the Respondent to Student C is admissible.

Student D:

Student D was a grade 7 student at the school in the 2020-2021 school year. She was a Grade 10 student at the time of her affidavit. She was taught by the Respondent and deposed that he was a popular teacher. On one occasion he gave answers to test questions to some students while it was being written. He would joke with students and intervene in students' private conversations more than other teachers. He gave Student D and another student his Instagram profile and advised them that if they followed him, they should not tell anyone what his profile was. She followed him and he followed her back. She told her mother about the messaging in September 2021. She deposed to the accuracy of the messages exhibited in her affidavit which were as follows:

- a. After Student D followed the Respondent on June 5, 2021, the Respondent said, "Oh no.... [man facepalming emoji that represents frustration or embarrassment]" and "Keep this to yourself I don't need half the school trying to follow me [face with tears of joy emoji]".
- b. On June 5, 2021, the Respondent said, "I thought your page would be way more "inappropriate"" and said he was "So disappointed". He also said, "I

only follow dirty shit though I don't post it so don't expect that [face with tears of joy emoji]" and then, "I probably shouldn't talk like that with you [flushed face emoji]. In response, Student D said he should see her chat with another student. The Respondent said, "I'd honestly love to see it [face with tears of joy emoji]" and "She's dirty af [as fuck]" and "For a wildly inexperienced person". Student D said, "That's what I said" and "Gtg [got to go] night".

- c. On June 6, 2021, at approximately 8:11 a.m., the Respondent said, "Speaking of experience.... Why do YOU know so much?!" and Student D did not reply. The Respondent sent another message on June 11, 2021, to which Student D also did not reply.
- d. On September 20, 2021, the Respondent replied to one of Student D's Instagram stories about her dog and then asked about Student D's experience at the senior campus. In response to Student D saying she liked the senior campus better than the junior campus, the Respondent said, "That's not surprising. You were clearly way too much for what ██████████ could handle. It's a little too.... Juvenile... What are your classes like? I don't know how the schedule works there". In response to Student D explaining, the Respondent said, "Wtf [what the fuck] that sounds awesome [face with tears of joy emoji]".

[13] The messages on Google Chat were retrieved by the Director of Information Technology at the school. He deposes that he received a request from the Junior School Principal on September 23, 2021 for a search of the Respondent's Google Chat history for inappropriate communications with students. He also searched the Respondent's school issued laptop but found no concerning messages. He exported the messages of concern from Google Chat and confirmed that they are attached to his affidavit. He also confirmed that the timestamps indicated on them are accurate.

ANALYSIS AND DECISION

- [14] The Commissioner relies on Standards 1 and 2 of the *Professional Standards for BC Educators*, set out earlier, as the foundational ideals and expectations of educators.
- [15] The Respondent was hired by the school and entered into two employment agreements for two different time periods in the school years 2021 and 2022. In both agreements he agreed to:
- a. adhere at all times to the standards of personal and professional conduct, on and off duty, and acting at all times as a role model for students;
 - b. adhere at all times to applicable standards of professional conduct established by the British Columbia Teachers Council under the *Teachers Act* of British Columbia.
- [16] In addition, he confirmed that he was aware of the “Code of Conduct” for teachers when interviewed by the Junior School Principal on September 23, 2021.
- [17] In June 2021, the Respondent was subject to a performance review and he entered into an improvement plan, dated June 4, 2021. The plan was comprehensive and included an “Agreed Action” of “Maintaining professional relationships and boundaries with students at all times”. It was signed by the Respondent on June 7, 2021.
- [18] The Respondent was clearly aware that his communications with the four students were inappropriate, as he cautioned them not to tell anyone about the messages as he did not want to get fired.
- [19] As was said in *In the Matter of the Teachers Act and Hankey*, 2016 TAHP 03, citing par. 37 of *In the Matter of the Teachers Act and Kitely*, June 9, 2014:

“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." (p.42)

- [20] The Commissioner submits that the tenor of the messages in large part are efforts by the Respondent to establish a personal relationship with the students and the sexual innuendo in some of the messages raises the spectre of grooming. Asking about their crushes and the nature of other classmates' relationships is highly personal and inappropriate. He also used profanity, discussed other staff members with the students and offered to finish homework for student A. The affidavit of the skip tracer hired to ascertain the Respondent's whereabouts sets out the efforts made, including property searches. No property was found in the name of the Respondent. The Commissioner submits he was lying to Student B when he gave details of a large increase in value in the condominium. When the skip tracer attended the condominium at the address provided by the Respondent, the current owner did not know of him or his whereabouts.
- [21] The Commissioner submits further that any apparent willingness on the part of the students to engage in these communications with the Respondent does not ameliorate their inappropriateness. The students indicated their discomfort with the inappropriate comments by either not responding or changing the subject.
- [22] The applicable standard of proof is the balance of probabilities (*F.H. v. McDougall*, 2008 SCC 53 Par.49). Having reviewed the evidence presented, the panel is satisfied that the factual basis of the allegations contained in the Citation have been made out. The next question is whether the established conduct is a marked departure from the norms expected of a teacher in British Columbia. The Standards set out expectations based on core principles such as trust in teachers to protect and foster "the emotional, esthetic, intellectual, physical, social and vocational development of students" and to maintain the "dignity and credibility" of teachers as a whole.
- [23] The Respondent ignored his responsibilities to the affected students by communicating with them on personal matters such as their crushes and their sexual experience. He attempted to prompt them into sexualized topics causing discomfort for the students. He engaged them in gossiping about their classmates and he made comments about his own

colleague. He lied to Student B about the condominium in an obvious attempt to impress her. He counselled the students to keep the messages to themselves while making his own admissions that he knew the communications could get him fired. The panel accepts that the evidence of his admission in the interview that he had messaged the four students is hearsay, but accepts the Commissioner's submission that it is reliable and admissible as a statement against his interest. He continued messaging the students in June even after he had agreed to the performance plan, wherein he had committed to respecting boundaries.

[24] The inescapable conclusion reached by this Panel is that the Respondent knowingly used his position of trust in an attempt to form a personal relationship with the students beyond that of educator and student. By doing so and by using digital communication inappropriately, he failed in his duty to provide an appropriate role model for the students. We heard no evidence of governing regulations over the use of digital communication in the education system, however in the absence of evidence of such regulations, the panel is of the view that digital communications with students should never encompass personal or sexual content and should be used with great caution by educators. In all of the circumstances, the panel finds that the Respondent has breached Standards 1 & 2 and that his conduct is a marked departure from that expected of teachers in British Columbia.

[25] In conclusion, we find that the Respondent is guilty of professional misconduct.

PENALTY AND COSTS

[26] Having found the Respondent guilty of professional misconduct pursuant to s. 63(1)(b) of the Act, this panel is empowered to impose a penalty on the Respondent. The Panel asks Counsel for the Commissioner to provide written submissions with respect to penalty pursuant to a schedule to be set by the Hearing Coordinator of the Teachers Regulation Branch.

PUBLICATION

[27] 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 within two weeks of the release of these reasons.

For the Panel

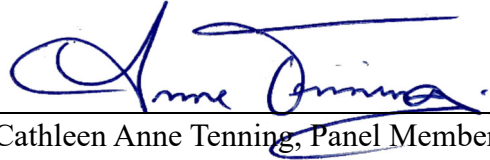
Date: August 7, 2024



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



Jatinder Kaur Bir, Panel Member



Cathleen Anne Tenning, Panel Member