



Report issued: January 17, 2013
File No.: [REDACTED]
Court reporting Service(s): Central Reporting
Services, and Coast Reporting

IN THE MATTER OF:
THE TEACHER REGULATION BRANCH OF THE MINISTRY OF
EDUCATION
AND A CITATION CONTINUED PURSUANT TO SECTION 88
OF THE
TEACHERS ACT
CONCERNING
JAMES MARTIN MCGEOUGH

REASONS FOR DECISION ON PENALTY, COSTS AND PUBLICATION

DATE and PLACE of HEARING:

**September 25, 2012
The Ministry of Education, Teacher Regulation Branch (the "Branch")
Vancouver, BC**

PRESENT: **Eric Wredenhagen, Counsel for the Branch**

RESPONDENT: **Not Present**

MEMBERS of the HEARING PANEL (the "Panel"):

**Patricia Haslop (Chair)
Teresa Rezansoff
Fred Robertson**

COURT REPORTER: **Coast Reporting**

SWORN IN: **9:30 A.M.**

INTRODUCTION

1. A panel of the Disciplinary and Professional Conduct Board (the “Panel”) was appointed to conduct a hearing with respect to allegations set out in a citation issued against James Martin McGeough on April 13, 2011. This matter originated as a Registrar’s Report and report under section 16(1) of the *School Act*. The citation alleged that Mr. McGeough engaged in an inappropriate relationship and inappropriate conduct with a 17 year old female student between October 2008 and February 2009 while employed as a teacher in School District No. 39 (Vancouver) by:

- (a) engaging in numerous private and otherwise inappropriate e-mail communications with the student;
- (b) placing emotional pressure on the student and disregarding her well-being in those e-mails;
- (c) counselling and advising the student to keep their relationship secret, to delete some or all of the e-mails, and create a secret “Hush mail” account so that the e-mails would not be discovered;
- (d) engaging in inappropriate touching of the student by kissing her hand, kissing and rubbing her head and massaging her back; and
- (e) cultivating a personal relationship with the student.

2. The hearing was convened at the Teacher Regulation Branch located at 400-2025 Broadway, Vancouver, B.C. at 9:30 a.m. on September 25, 2012.

PENALTY and PUBLICATION

- 3. The Panel released its Reasons for Decision on Verdict (the “Reasons”) on October 12, 2012. In its Reasons, the Panel found that Mr. McGeough’s conduct in relation to the Student constituted professional misconduct pursuant to section 63(1)(b) of the *Teachers Act* (the “Act”).
- 4. The Panel directed that submissions regarding penalty, publication and costs be made in writing, subject to any objection to do so proceeding within ten days of the release of the Reasons. No objection was made by either party. In response to the Panel’s directions, Mr. McGeough provided written submissions by e-mail dated October 22, 2012 (the “McGeough Submissions”). Mr. Eric Wredenhagen, counsel for the Teacher Regulation Branch (the “Branch”) provided written submissions dated October 23, 2012 (the “Branch Submissions”).
- 5. The Panel convened via teleconference on November 5, 2012 to determine what consequences for the finding of misconduct should be imposed pursuant to section 64 of the Act.

The Branch Submissions

6. Section 64(a) to (h) of the Act sets out the types of orders which can be made once a panel makes a finding under section 63(1)(b) of the Act. Most of them give the panel the power to require the director of certification to suspend and/or attach conditions to or cancel a certificate of qualification, independent school teaching certificate or letter of permission. The evidence adduced by the Branch for the penalty hearing was that Mr. McGeough's certificate of qualification was cancelled on November 1, 2011 for non-payment of fees (Affidavit #2 of Sheila Cessford). The Branch's position was that, accordingly, the only types of orders a panel could make under section 64 of the Act are either or both of a reprimand under section 64(a), or a requirement that the director of certification not issue a certificate of qualification, an independent school teaching certificate or a letter of permission for a fixed or indeterminate period under section 64(g) of the Act. The Branch maintained that, regardless of whether the Panel issued a reprimand, it should in any event make an order under section 64(g) requiring that director of certification not issue a certificate of qualification, an independent school teaching certificate or a letter of permission to Mr. McGeough for a period of ten (10) years.

7. The Branch relied on the decision of *BC College of Teachers v. Clegg* (August 20, 2003) for the proposition that, when considering appropriate penalty, the factors to be considered would include:

- (a) the nature and gravity of the allegations;
- (b) the impact of the conduct on the student;
- (c) the presence or absence of prior misconduct;
- (d) the extent to which the teacher has already suffered consequences;
- (e) the role of the professional 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.

8. The Branch argued that the most important penalty considerations are the need to promote specific and general deterrence against the repetition of acts of this nature in the future, and also the need to maintain the public's confidence in the teaching profession as a whole; there should be a clear message to the profession and the public that conduct of this nature cannot be tolerated and proper boundaries between teacher and student must be maintained. The Branch also argued that, while the relationship here was non-sexual (although there was some physical touching, as well as repeated invitations by Mr. McGeough to enter into a personal relationship), it was nonetheless clearly outside the normal and acceptable boundaries of a teacher-student relationship and it was pursued by Mr. McGeough solely for his own benefit. In particular, Mr. McGeough persisted in communicating with the Student even after she stated that he was "suffocating" her, and that she had come to believe that their relationship was "wrong." Despite

acknowledging he caused her stress and difficulty, he was ultimately deriving too much benefit from his communications to her to stop.

9. The Branch maintained that there can be no justification for the manner in which Mr. McGeough challenged the Student's values, her reservations about a relationship with Mr. McGeough, the values of her ethnic community and other ethnic communities, all under the guise of counselling the Student in her best interests. According to the Branch, the appropriate penalty should be one that communicates to the profession the necessity of maintaining and respecting appropriate professional boundaries, despite difficult life circumstances and the necessity of maintaining the ethical values of the profession by acting at all times in the best interests of students. As for Mr. McGeough's submission that he was at a "low point" in his life and was experiencing difficulty dealing with depression, the Branch made the point that the School District previously found there was no causal relationship between his conduct towards the Student and his depression (Cessford Affidavit #1, Exhibit Q, page 2). That finding was uncontroverted by Mr. McGeough in these proceedings. That being so, this factor should be given minimal, if any, weight for purposes of mitigation of penalty.

10. As for the question of publication the Branch noted that the publication of a hearing panel's reasons is mandatory under section 66(2) of the Act unless the panel "considers that making public the written reasons under subsection (1) would cause significant hardship to the person who was harmed, abused or exploited by the authorized person." There is no basis in the evidence before the Panel which would support a finding that the Student (who has not been identified) would experience "significant hardship" through publication of the Reasons in the ordinary course. Accordingly, the Branch maintains that the Reasons should be published as contemplated by the Act. The Branch did not seek an order as to costs.

The McGeough Submissions

11. Mr. McGeough said he was not looking to defend his actions but rather wished only to "point out the price [he had] already paid" for his actions and the price he would continue to pay "for the rest of his life." He does not expect to teach again and was hoping any "penalty can be left at that." He asked:

... If others who've made mistakes are given a second chance then should I not also be allowed to rebuild my life and contribute to society again?

12. Mr. McGeough went on to submit as follows:

First of all I've lost a career that I enjoyed on a personal level. I worked hard for the Vancouver District for twenty years and was proud of accomplishments that I achieved for my school and for many individuals that I helped. Besides teaching I coached, sponsored clubs and events, worked on the timetable committee for many years and was the founding member and head teacher of a mini-school program. From my perspective it feels as if none of my achievements and only my mistakes at the end of my career were what mattered. All the pride of the contribution is gone. Not only has that disappeared but

I was given little help to deal with or recover from my mistakes, severe depression and breakdown.

On a monetary level, I have lost the best five to ten earning years of my life as well as close to half of the monthly pension that I would have qualified for had I kept teaching until retirement between the age of 60 and 65 as I had originally planned. This is not a onetime penalty but will continue for the rest of my life and will cost me hundreds of thousands of dollars. If the enormity of what I've lost is not apparent to others, it is certainly apparent to me every month when I receive my pension.

The public embarrassment for me is also life changing. I've moved from Vancouver even though my son (21 years old) and my mother (91 years old) are still there. I have relied heavily on the support of my family throughout this most difficult time in my life but I now have less contact with them than when I lived in Vancouver. When I'm in Vancouver visiting now I am uncomfortable in public places due to the number of people I've taught and worked with. I fear meeting others from my teaching career as it is difficult to explain what happened to me during my breakdown. I hope persons involved realize the impact my actions have not only on me but also on my son who is attending university and my ex-wife who still works in the Vancouver district. I realize why persons in charge feel the necessity to inform school districts of my status but I am still hoping that the publication aspect of this can be minimized. Further publication serves no practical purpose other than to shame me and my family more than has already been done.

13. Mr. McGeough pointed out that he taught for 20 years without incident and attributes his behaviour towards the Student to a "severe psychological break." He pointed to psychiatric evidence quoted in submissions to the effect it was unlikely he would repeat similar behaviour in the future. He said he is extremely remorseful for his actions and just wants to move forward with his life and "put this behind" him. He maintains that the fact that the process has been long and drawn out (his "mistakes occurred approximately four years ago") should be "recognized as a significant part of any penalty." From his perspective, further penalization and publication of his errors is only vindictive.

FINDINGS ON PENALTY

14. The Panel agrees that the factors to be taken into account in assessing an appropriate penalty are those set out in the *Clegg* decision referred to in paragraph 7 above. Turning first to the nature and gravity of the allegations, while Mr. McGeough's relationship with the Student was not strictly speaking sexual it had sexual overtones, was clearly outside the normal and acceptable boundaries of a teacher-student relationship and constitutes a serious breach of the standards expected of teachers. Mr. McGeough initiated and intensely pursued e-mail communications with the Student starting at least as early as in or around October 2008 through to February 2009. In those e-mails, he said things such as "I will always love you," "I am (and probably always will be) crazy about you," etc. During that same period of time, Mr. McGeough took the Student out for meals or coffee, gave her gifts, gave her rides, called her for long telephone conversations, and invited her to his home (he was there alone). The evidence is that

there were occasions where he rubbed and kissed the Student's head, kissed her hand, comforted her and massaged her back.

15. In some e-mail exchanges, Mr. McGeough talked to the Student about other students in the school. In others, he instructed the Student as to how to keep their e-mail communications secret through use of a hushmail.com account. In one e-mail exchange (November 30, 2008), Mr. McGeough talked about the need to be cautious and discrete and said he would "try to explain why the college of teachers makes such a big deal of the age thing:"

... they think that teachers should be held to a higher standard than the law ... the assumption is that you are not mature enough to make an informed decision on your own until you are 19 (age of majority) ... therefore a teacher cannot be involved with you until you are 19 ... that doesn't seem right to me but they make up the rules for teacher certification ... If I even say that I care for you, they would frown up that as me possibility trying to take advantage of you ... whether I am or not ... I don't know ... it doesn't seem fair or right to me so it's best to be discrete.

16. Turning next to the impact of Mr. McGeough's conduct on the Student, she told the School District that, while she was initially flattered by his attention and enjoyed spending time with him, she had no interest in a sexual or romantic relationship. When it became apparent that he was romantically interested in her, she had reservations and decided to cut off communications as of December 29, 2008. However, she continued to feel pressured and fearful because of the way he would stare at her in School and his continued e-mail communications. Between the period December 29, 2008 to February 6, 2009 (the day the Student told another teacher about their relationship), Mr. McGeough sent her more than 70 e-mails, many of them lengthy, expressing (for example) a desire to speak with her, to see her, talking about his emotions, his depression, the pain of a broken heart, his relationship with his wife, and how he could not handle not seeing her.

17. The Panel was particularly struck and troubled by the fact the Mr. McGeough did not seem to have any regard or recognition for the impact his actions had on the Student; rather he spoke only to the impact his actions have had on himself and, to a limited extent, his family. By failing to appreciate the impact of his conduct on the Student, the Panel's view is that he has not demonstrated an understanding of the gravity of his own misconduct. His self-absorbed view and inability to understand the impact of his actions on the Student weighs heavily against him.

18. Other factors which need to be taken into account are the fact that Mr. McGeough, during his 20 year teaching career, did not engage in other misconduct. The Panel also acknowledges that Mr. McGeough has suffered consequences as a result of the disciplinary proceedings (described by him in his submissions) but those consequences are ones which would be experienced by any teacher who misconducted himself or herself in a similar way.

19. The Panel finds that the totality of Mr. McGeough's misconduct constitutes a serious breach of the standards applicable to teachers, especially the duty to value and care for students and to act in their best interests and the requirement to act ethically and honestly. Taking all relevant factors into account, the Panel is of the view that a significant penalty is warranted in

this case to protect the public's confidence in the teaching profession as a whole and assure the public that behaviour such as that exhibited by Mr. McGeough will not be tolerated. Also favouring a significant penalty is the need to promote specific and general deterrence and to communicate to the profession the need to maintain and respect appropriate professional boundaries regardless of one's personal circumstances. The Panel believes that a 15 year prohibition on the issuance of a certificate of qualification is appropriate, particularly considering the highly intense and personal nature of Mr. McGeough's e-mail communications with the Student and his complete failure to appreciate the impact of his behaviour on the Student. Having considered all of the evidence, the Branch submissions and from Mr. McGeough, the Panel therefore orders

- (a) a reprimand be issued to Mr. McGeough pursuant to section 64(a) of the Act; and,
- (b) a requirement for the director of certification not to issue a certificate of qualification to Mr. McGeough for a period of fifteen (15) years, pursuant to section 64(g) of the Act.

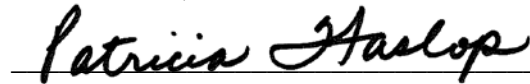
PUBLICATION

20. The Panel has determined that there is no basis on which it could find, on the evidence presented at the hearing, that the Student would experience significant hardship through publication of the Reasons. Given this finding, the Panel orders that publication occur in the usual manner as contemplated in section 66(1)(2) and (3) of the Act.

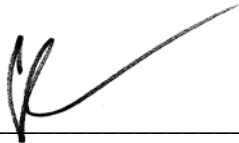
COSTS

21. As noted, the Branch did not ask that the Panel make any order as to costs. The Panel finds that Mr. McGeough's conduct in regards to the hearing does not meet the test outlined in section 65(1) of the Act and, therefore, does not make an order as to costs.

For the Panel,



Patricia Haslop, Chair



Teresa Rezanoff



Fred Robertson