

IN THE MATTER OF
THE TEACHER REGULATION BRANCH OF THE MINISTRY OF EDUCATION
AND A CITATION ISSUED PURSUANT TO SECTION 56(1)
THE *TEACHERS ACT*, SBC 2011, c. 19
AND A HEARING CONCERNING
James Martin McGeough

REASONS FOR DECISION ON VERDICT

Date(s) and location(s): September 25, 2012, Teacher Regulation Branch
Panel: Patricia Haslop (Chair), Fred Robertson, Teresa Rezansoff
Counsel for the Teacher Regulation Branch: Eric Wredenhagen
Respondent: Not in attendance

INTRODUCTION

A panel of the Disciplinary and Professional Conduct Board 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 as a report under section 16(1) of the *School Act*. The citation alleges that the 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 "Hushmail" 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.

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. Mr. McGeough did not attend and no counsel appeared on his behalf.

PROCEDURE

By letter dated April 13, 2011, the former College of Teachers (the “College”) served Mr. McGeough with the citation. Counsel for the Teacher Regulation Branch (the “TRB”) filed an acknowledgement of service of the citation signed by Mr. McGeough on May 14, 2011. On February 24, 2012, the TRB hearing coordinator sent a letter on behalf of the Acting Commissioner providing notification to Mr. McGeough that the hearing date was scheduled for September 25, 2012. On August 23, 2012, the TRB hearing coordinator sent a further letter to Mr. McGeough re-confirming the hearing date. The panel accepted that the citation was properly served on Mr. McGeough in accordance with section 56(3) of the *Teachers Act*, S.B.C. 2011, c. 19 (the “*Teachers Act*”). The citation in this matter is attached to these Reasons for Decision on Verdict as Schedule “A” and forms part of these Reasons.

As Mr. McGeough acknowledged receipt of the citation, the panel exercised its discretion to proceed with the hearing in his absence in accordance with section 62 of the *Teachers Act*.

ISSUE

The issue before the Panel is whether Mr. McGeough is guilty of professional misconduct by engaging 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 by School District No. 39 (Vancouver).

EVIDENCE

On August 29, 2012, the Acting Commissioner issued an order, pursuant to Rule 49(h) of the Commissioner’s Rules for Disciplinary and Professional Conduct Inquiries, that evidence for this hearing could be provided in affidavit form. The TRB tendered all of its evidence through two affidavits from Sheila Cessford who holds the position of Director, Professional Conduct, for the TRB. The first affidavit from Ms. Cessford attaches, amongst other things, an extensive exchange of e-mail communications between Mr. McGeough and the student between October 2008 and February 2009 and a letter dated October 1, 2010 from Lorraine Shore, counsel for Mr. McGeough, in which there is an acknowledgement that her client had an inappropriate relationship with a student at the school where he was employed as a teacher.

As Mr. McGeough did not participate in the hearing, all of the affidavit evidence was uncontested and the panel accepts that there are no issues regarding the authenticity or authorship of the e-mails or letters.

The evidence reflects that Mr. McGeough was employed as a mathematics teacher at a school in School District No. 39 (Vancouver) at the material time, teaching grades 8, 10 and 12. In early February 2009, it came to the attention of the school principal that Mr. McGeough and a female student in Grade 12 had been engaging in extensive e-mail communications with each other in the 2008-09 school year. When the student was interviewed, she revealed that, in addition to the e-mail communications, she and Mr. McGeough had spent time together outside of the school at restaurants, coffee shops and, on one occasion, at Mr. McGeough's home, and that there had also been some physical contact between them. The School District initiated an investigation which culminated in suspension, and subsequently termination, of Mr. McGeough's employment as a teacher for just cause. The College became aware of allegations against Mr. McGeough when it received a copy of a notice of suspension issued to him by the Superintendent of Schools on March 23, 2009 and a notice from the Deputy Registrar of the Criminal Records Review Program that a check had revealed an outstanding charge.

The e-mail communications attached to Ms. Cessford's affidavit between Mr. McGeough and the student span the period from October 2008 to February 2009. The e-mails document a personal relationship between Mr. McGeough and the student in which the teacher professes his love for the student. The e-mails are too numerous and, in some cases, too voluminous to reproduce in these reasons but a few examples will suffice to illustrate the nature of the communications that were being sent to the student.

In an e-mail forwarded to the student on December 2, 2008, Mr. McGeough signed off the e-mail with the words, "Idiot Emo White Dork (who's still in love with you)". In another e-mail written on the same day, Mr. McGeough wrote, "Love" in the subject line. The body of that e-mail message contained the words, "I'll always love you ... no matter what you do".

On December 5, 2008, Mr. McGeough referred to himself in an e-mail to the student as, "one who truly loves you and is totally, absolutely, way over his head, fucked up in love with you... (sorry for the swearing)". On December 8, 2008, Mr. McGeough wrote to the student, "I'll love you always – regardless of what you do".

There were a series of e-mails to the student in which Mr. McGeough discussed his failing marriage and expressed his intention to leave, or separate from, his wife.

For example, in an e-mail sent to the student on December 2, 2008, Mr. McGeough, in reference to his wife, wrote, "I told her that you felt responsible somewhat for what was happening and I don't think she feels badly towards you at all... we were both planning this (*separation*) for a while...just not sure when to do this. So far as cheating goes we were NOT cheating, emotionally or otherwise. She knows that you offered me friendship and nothing more. I told her I can't go on living with her and feeling the way I do about you... even though you said friendship only".

In an e-mail sent to the student on December 8, 2008, Mr. McGeough, again in reference to his marriage, wrote, "Point 1 – it's going to happen regardless... we will separate and then we will divorce. You have no say in the matter. With or Without You (U2 song) ... it's going to happen".

On December 2, 2008, Mr. McGeough e-mailed the student to say, “I talked with my wife some more this morning. She’s in a good frame of mind. We talked about what this separation would look like and she seems pretty happy”. Similarly, on December 5, 2008, he e-mailed the student that he was “willing to walk away from everything because I now feel this so strongly...not just you and me but me...alone. I must do what I want. In one sense my obligations to my family are changing...I don’t need to be here in this relationship with my wife the same way as when (*son*) was young. I have done that...even though my heart was not with my wife I stayed...”.

On January 31, 2009, Mr. McGeough stated in an e-mail to the student, “This proves that I’m not leaving my wife because of you... I know that’s true but I think it must be obvious to you and everyone else (not that many others even know about us)”.

There were also e-mails in which Mr. McGeough expressed thoughts about he and the student being “a couple”. For example, on January 17, 2009, Mr. McGeough sent an e-mail to the student stating, “I can’t offer you to be a trophy wife but...I can offer you to be a trophy girlfriend (and you don’t even need to be a girlfriend...haha!) I’ll soon have a downtown apartment (yours to use whenever you want...no strings attached) and a car...(Mini – but you need to learn how to drive a standard)...I can’t offer you the “trophy wife” position...I’m not sure I even believe in marriage anymore but...whatever is mine is yours...I don’t mind sharing”. Similarly, on January 21, 2009, Mr. McGeough wrote to the student, “Soon, it’ll just be you, me and what we want to be. I know what we have can be very good... I hope you can believe it too. I have no doubts about just how good it can be between us – this does not have to be a romantic relationship...I get excited just thinking about telling you stuff”. Later that same day, Mr. McGeough wrote, “The second idea is to do some of your own research into unusual relationships – the age difference is really the only one that will remain a problem as you will graduate. I’ll be living on my own, etc”.

The e-mail exchanges also contained discussion of other students and teachers. In an e-mail sent on November 30, 2008, Mr. McGeough refers to other students when he writes, “(*student*) is definitely weird but (*student*) isn’t bad...just immature (acts like a little kid)”. On December 17, 2008, Mr. McGeough wrote, “Things seemed a bit weird in class today... (*Student*) was sort of distant...hard to explain...I don’t know what to make of it. (*Student*) was still very nice...(*Student*) totally self centred and worried about marks (seems very mini school haha!)... (*Student*) seemed nicer and a bit more outgoing than usual, I’m not sure who else to mention”.

On January 20, 2009, Mr. McGeough wrote in reference to another teacher, “I worked NS (*night school*) tonight with (*teacher*)- I wasn’t really going to tell her anything but she kept asking me...”.

Some of the e-mails also contained references by Mr. McGeough to the fact that he was in a depressed and stressed state of mind, and expressions of his emotional dependence on the student.

In an e-mail to the student on December 2, 2008, for example, Mr. McGeough wrote, “I told her that you felt responsible somewhat for what was happening and I don’t think she feels badly towards you at all”. Three days later, he sent a further e-mail stating, “You say I need to snap out of it...I think it’s you that has the strange ideas here”.

On January 21, 2009, Mr. McGeough e-mailed the student to say that his wife and son were concerned about him. Amongst other things, he said, “I think they see that I’m very depressed. Why am I depressed? The person that I have the most fun emailing and talking to is not talking to me at all right now and I don’t even know why. Can you tell me when we can start talking? I know that in a couple of weeks I’ll be ok enough – I’d probably be in pretty good shape right now if you started talking to me”.

Mr. McGeough also discussed the impact his relationship with the student was having on his relationship with his wife. For example, in an e-mail sent to the student on November 29, 2008, he wrote, “...anyhow, she (*wife*) started looking through my email... so when I got home we talked...I didn’t tell her anything about you but she knows your name...this is probably scaring you but I think she’s ok...”. On November 30, 2008, he wrote, “She would never say anything about this to anyone...however, she’s afraid that someone else will find out and the emails would come out... she is not a vindictive person – she seems fine with everything and we’re talking”. Later that day, Mr. McGeough wrote to the student that, “My wife’s main concern is to make sure that this does not come out into the open at this time. Like I said before, neither of us wants to make the other one suffer...” and “... my wife kind of freaked out early this morning. She said that if the emails fell into the wrong hands and I couldn’t teach that it would leave our family in a very difficult financial position. I have to try to protect them too...It would not be good for anyone if I couldn’t earn a living”.

The e-mail exchanges also contained references to Mr. McGeough seeking to dismiss or overcome the student’s personal, social and cultural concerns over her relationship with him. On December 8, 2008, Mr. McGeough wrote, “It is very liberating to say to yourself that you will follow your path and do what you feel – regardless of the pressures of society and what everyone else is telling you. It takes a lot of courage and I’m probably asking too much. You are young and I know your family puts a lot of pressure on you to be a certain way... and you don’t follow what your father asks...so you live a lie” and he goes on to say, “the Chinese, Filipino, Indo, etc. people who move here are so worried about appearance and how things will look to the ‘community’. It really pisses me off. They want everything to appear like it is ok... even when people at home are in hell and basically being tortured (NOT my code word this time) – mentally, physically or emotionally. I wish they could get over it and let people just be people. There are many people out there who could accept us as a couple ... as odd as we may seem”. On January 21, 2009, he e-mailed the student to say, “The ethnic difference... that’s starting to be accepted by a large part of society”.

Mr. McGeough continued to send e-mails to the student even after she had ceased to respond to his communications. In January and February 2009, there are numerous e-mails sent by Mr. McGeough to the student in which he expresses his anxiety over her lack of response. On January 17, 2009, he wrote, “I still don’t know why the big “no communicado” –it’s very weird to me”. On February 5, 2009, he wrote, “This silence of yours is killing me (perhaps literally)”; in another e-mail written on the same day to the student, Mr. McGeough wrote, “You won’t respond to my emails, texts or phone calls. You never said goodbye to me or anything”.

There were also e-mails in which Mr. McGeough counselled the student to keep their relationship secret, to delete some or all of the e-mails and create a secret “Hushmail” account so that their e-mails would not be discovered.

On November 30, 2008, there were several e-mails exchanged between Mr. McGeough and the student addressing the desire to keep their communication secret and to be cautious. On December 1, 2008, Mr. McGeough wrote:

Hey- I think I know of a fairly safe way to save the emails if you want...dun dun dun...select them all forward them to [REDACTED]@hushmail.com

then delete them all

check all folders to make sure none are left somewhere

make sure today's emails are deleted

empty the trash

In her letter of October 1, 2010, Ms. Shore acknowledged that her client had an inappropriate personal relationship with a grade 12 student at his school in the 2008 – 2009 school year. She noted that her client had never attempted to deny the relationship and readily admitted its existence and its inappropriateness. Ms. Shore stated that her client accepted full responsibility for engaging in the relationship. Her letter went on to state that her client acknowledged that he touched the student on a few occasions but that the touching was affectionate, not sexual, and that he made no overtures to initiate a sexual relationship. Mr. McGeough acknowledged rubbing and kissing the student's head and massaging her neck and shoulders. The evidence set out in Ms. Cessford's affidavit indicated that the School District investigation revealed that Mr. McGeough also kissed the student's hand in his car and massaged her back while they were alone at his home. The School District investigation further revealed that Mr. McGeough:

- took the student out for meals and/or coffee (7 times);
- gave her gifts;
- gave her rides to and from work, home and other events;
- comforted her, in his car;
- drove her to a park;
- called her at home at night for long telephone conversations;
- wrote songs for her, and sent her the lyrics of both his songs and a Leonard Cohen song (*Suzanne*);
- invited her to his home at Christmas when his wife and child were away.

Mr. McGeough held a certificate of qualification from September 1, 1989 to July 1, 2011. His certificate of qualification was suspended for non-payment of fees on July 1, 2011 and cancelled effective November 1, 2011. He has not held a certificate of qualification since that time.

SUBMISSIONS

Counsel for the TRB submitted that the evidence supports a finding that Mr. McGeough is guilty of professional misconduct pursuant to section 63(1)(b) of the *Teachers Act*. Mr. Wredenhagen submitted that Mr. McGeough's behaviour was not in keeping with the obligations of a teacher pursuant to Standards for the Education, Competence & Professional Conduct of Educators in British Columbia, specifically Standards 1 and 2 which are reproduced for convenient reference:

Standard 1: Educators value and care for all students and act in their best interests.

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.

Standard 2: Educators are role models who act ethically and honestly.

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.

Mr. Wredenhagen also submitted that Mr. McGeough's behaviour with respect to the student was not consistent with the obligations of a teacher pursuant to the norms and standards imposed on teacher conduct by the courts and previous decisions of discipline hearing panels established by the College, as well as consent resolutions entered into by the College.

DECISION

The panel finds that Mr. McGeough engaged in an inappropriate personal relationship and in 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) and that he is guilty of professional misconduct for the reasons that follow.

The documentary evidence establishes that Mr. McGeough engaged in numerous private and inappropriate e-mail communications with the student between October 2008 and February 2009 in which he: (a) professed his love for the student; (b) expressed his intention to leave or separate from his wife; (c) discussed his failing marriage; (d) expressed thoughts about being a "couple" with the student; (e) discussed other students and teachers; and (f) discussed his depressed and stressed state of mind and referred to his dependence on the student.

Mr. McGeough, through the e-mail exchanges, placed emotional pressure on the student and disregarded her well-being by discussing the impact that his relationship with her was having on his marriage, by seeking to dismiss the student's concerns over her relationship with him, and by continuing to send unsolicited e-mails to the student even after she had ceased to respond to his communications.

Mr. McGeough, through the e-mail exchanges, counselled and advised the student to keep their relationship secret, to delete some or all of the e-mails between them, and to create a secret "Hushmail" account so that their e-mails would not be discovered.

Mr. McGeough engaged in inappropriate touching of the student by kissing her hand, kissing and rubbing her head, and massaging her neck, shoulders and back.

In addition to sending e-mails, Mr. McGeough made further efforts to cultivate a personal relationship with the student by taking her out alone for meals and coffee, driving her in his car, writing a song for her, calling her at home and engaging in personal telephone conversations, giving her gifts, and inviting her to his home while his family was away.

The panel has determined that Mr. McGeough's conduct towards, and communications with, the student constituted a violation of Standards 1 and 2 of the Standards for the Education, Competence & Professional Conduct of Educators in British Columbia. Mr. McGeough failed to discharge his fiduciary obligation to put the interests and welfare of the student ahead of his own personal interests and needs. The panel concluded that Mr. McGeough's personal communications with the student by e-mail, telephone and in person were designed to satisfy his own emotional needs and were completely improper behaviour for a person charged with the responsibility of fostering the emotional development of students and ensuring their emotional and physical safety. The panel determined that Mr. McGeough exploited the student for his own personal advantage through his emotional dependence on her during a difficult period in his life, and that he violated professional boundaries.

The panel finds that Mr. McGeough failed to act in the ethical and honest manner required of a role model by taking steps to conceal his communication with the student, by engaging in discussion of other students and teachers with her, by placing emotional pressure on her by discussing his own emotional state and failing marriage, and by suggesting that she herself was the one with problems.

The panel concluded that Mr. McGeough violated the position of power and trust that the community expects of teachers and that his pursuit of a personal relationship with the student was harmful to her and undermined the public's perception of the integrity of the profession as a whole: See *R. v. Audet*, [1996] S.C.J. No. 61 at para. 41 and *Ross v. New Brunswick*, [1996] S.C.J. No. 40 at para. 45.

In reaching this conclusion, the panel had regard to the 2010 decision in *Killin*, in which it was held that the apparent consensual nature of the relationship between the parties was not an excuse for its occurrence and that it is up to the teacher to establish and maintain professional boundaries with students. In the present case, the e-mails suggest that the student was initially willing to enter into a personal relationship with Mr. McGeough although that subsequently changed; however, the panel finds that the student's initial willingness to communicate with Mr.

McGeough did not, and could not, make the communications between them appropriate. It is clear on the evidence that Mr. McGeough overstepped his professional boundaries by fostering a personal relationship with the student, communicating with her in the manner that he did, engaging in inappropriate touching of the student, and failing to cease his e-mail communications with her even after she made her discomfort regarding those communications known and stopped communicating with him.

Mr. McGeough acknowledged during the School District investigation that he was aware of the expectations of teachers and the standards for their behaviour but that he nevertheless engaged in an inappropriate personal relationship with the student.

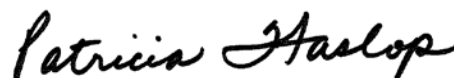
In conclusion, the evidence overwhelmingly establishes that Mr. McGeough has engaged in professional misconduct.

PENALTY

The panel directs that submissions regarding penalty, publication and costs may be made in writing unless, within ten days after delivery of these Reasons for Verdict, either party objects in writing to the Hearing Coordinator at the Teacher Regulation Branch, in which case the panel will consider and determine whether such submissions shall be made orally or in writing. The Hearing Coordinator will contact the parties to set a schedule for the filing of submissions.

For the Panel

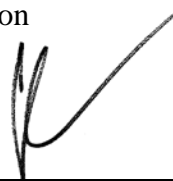
Date: October 12, 2012



Patricia Haslop, Chair



Fred Robertson



Teresa Rezansoff