



2020 TAHP 02
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Citation further amended: March 3, 2020
File No.: [REDACTED]

IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011, c. 19

AND

A HEARING CONCERNING

JASON ALAN OBERT

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

REASONS FOR DECISION ON CONSEQUENCES, COSTS AND PUBLICATION

Written submissions filed: August 27, 2020 by the Commissioner; no submissions from the Respondent
Panel: Meg Gaily, Chair, Matthew Cooke, and Tom Longridge
Counsel for the Commissioner: Maureen S. Boyd, Ministry of Attorney General
Counsel for the Respondent: Jason Obert, self-represented

INTRODUCTION

- [1] In a decision issued on July 29, 2020 (the “Findings Decision”), the panel found the Respondent guilty of conduct unbecoming a teacher under section 63(1)(b) of the *Teachers Act*, S.B.C. 2011, c. 19 (the “Act”).
- [2] Once a panel makes a finding under section 63(1)(b) of the Act, the panel is empowered to make an order imposing any of the consequences set out under section 64 of the Act. In the Findings Decision, the panel directed the parties to file written submissions on appropriate penalty, publication and costs. A schedule for submissions was established for this purpose and the hearing coordinator communicated the schedule to the parties on July 30, 2020.
- [3] In accordance with the schedule, the Commissioner filed written submissions on August 27, 2020.

- [4] The Respondent participated in the findings hearing and the Findings Decision was sent to him in accordance with the Commissioner's Rules. However, the Respondent did not file any submissions on consequences by the deadline of October 21, 2020. The Act does not require the Respondent's participation in the panel's determination of consequences.

CONSEQUENCES

- [5] The panel found the Respondent guilty of conduct unbecoming a teacher. As the panel noted in the Findings Decision, "conduct unbecoming" relates to off-duty conduct, that is, conduct that does not occur in the course of the practice of the profession.¹ The details of that conduct are set out in the Findings Decision and are only summarized here.
- [6] The conduct occurred in September and October 2016, while the Respondent was an elementary school principal in School District No. 75 (Mission) (the "District").
- [7] The Respondent admitted that in September 2016, using the pseudonym "James 33", he exchanged text messages with "Sara", a person he approached on the "Skout" website and who represented to him that she was 15. He admitted that he continued to exchange texts with "Sara" for over a month after she had told him she was 15. The texts included sexualized comments, and requests and exchanges of pictures of "Sara". The Respondent also admitted that as "James 33", he sent similar sexualized texts to "Hannah", a person who represented to him that she was "Sara's" 14-year old friend. The Respondent admitted that he continued to send texts to "Hannah" for several weeks after she told him she was 14, and that he requested and received pictures of "Hannah" during this time. In the text exchanges, the Respondent asked these minor girls if they "smoked weed" and offered to buy them alcohol.
- [8] The Respondent admitted he arranged to meet these apparent 14 and 15 years-old-girls at a shopping mall on two separate occasions in October 2016. He further admitted that he went to the arranged locations both times, although he did not follow through with approaching and meeting the girls in person the first time.
- [9] The girls were in fact one adult, who was also a member of "Creep Catchers". The Respondent was recorded by the Creep Catchers while he was attempting to meet "Sara" at the food court of a shopping mall on October 14, 2016. The Creep Catchers posted the recording showing the "catch" of "James 33" on YouTube on or about October 21, 2016, identifying the location where it took place.
- [10] The Respondent's identity and profession was linked to the Creep Catchers video within 24 hours of its posting, resulting in numerous media reports, and public reaction.
- [11] The panel found that the testimony of Angus Wilson, the District Superintendent, provided compelling evidence about the adverse effects of the Respondent's conduct on the school community. The panel found that it was clear that the Respondent's conduct deeply shook

¹ Findings Decision, para. 115.

the confidence of the school's parents and teachers, as well as of the public, in the education system, and that it continues to affect that school community.²

- [12] What remains to be determined is the appropriate penalty for the Respondent's unbecoming conduct, as well as the matters of costs and publication.
- [13] Section 64 of the Act sets out the range of penalties that a panel may impose once it has made a finding of conduct unbecoming a teacher (or professional misconduct) under section 63(1)(b).
- [14] As the panel noted in the Findings Decision, the Respondent's certificate was cancelled on November 1, 2019 due to non-payment of fees. Since the Respondent no longer holds a certificate, the only consequences available to the panel under section 64 are either (or both) a reprimand³ or a requirement for the director of certification not to issue (or re-issue in this case) any authorization to teach.⁴
- [15] In common with other professional regulators mandated to carry out their oversight activities in the public interest, the protection of the public is an overarching consideration to be taken into account by the panel in fashioning an appropriate remedy.⁵
- [16] Prior consequences decisions have established that a penalty assessment must take into consideration the nature and gravity of the conduct, the principles of specific and general deterrence of the Respondent and other members of the teaching profession from engaging in similar conduct, proportionality, denunciation, rehabilitation (where appropriate) and the importance of fostering and maintaining public confidence in the ability of the Commissioner to properly supervise and regulate the conduct of teachers.⁶
- [17] The panel's penalty assessment weighs these considerations, taking into account any aggravating and mitigating factors.
- [18] Mitigating factors include such circumstances as the absence of any prior misconduct, the fact that the teacher has already suffered significant consequences, an acknowledgement by the teacher of their conduct (or misconduct), and any steps the teacher has taken voluntarily to address the misconduct.
- [19] Aggravating factors point to the need for a more severe sanction in order to both protect the public and motivate the teacher to change the problematic behaviour. Examples of aggravating factors include the following: repetitive conduct or conduct which continued over a period of time; risk of harm to a student (or students) or actual harm; lack of insight

² Findings Decision, para. 125.

³ Act, subs. 64(a).

⁴ Act, subs. 64(g) provides that the panel may make an order setting out: "a requirement for the director of certification not to issue a certificate of qualification, an independent school teaching certificate or a letter of permission for a fixed or indeterminate period."

⁵ See, for example, *In the Matter of the Teachers Act and Hankey*, 2016 TAHP 06 at para. 10.

⁶ See, for example, *In the Matter of the Teachers Act and Brisebois*, April 22, 2014, at para. 11 (*Brisebois*) and *In the Matter of the Teachers Act and McGeough*, January 17, 2013, at para. 7 (*McGeough*).

or remorse on the part of the teacher; and a prior disciplinary history of misconduct of the same or similar nature.

- [20] The Commissioner submits that in this case, the most important factors the panel should consider are the following:
- (a) The nature of the Respondent's conduct;
 - (b) General deterrence; and
 - (c) The need to maintain public confidence in the teaching profession as a whole.
- [21] The consideration of aggravating and mitigating factors is case specific and contextual.⁷ Like the panel in *Robertson*, the panel has reviewed all material evidence (set out in detail in its Findings Decision) and has sought to balance all the relevant factors, both mitigating and aggravating, taking into account the law, the evidence, the circumstances involved, and the interests of students, the public and the Respondent.
- [22] The panel considers first the following mitigating factors.
- [23] At the time of the conduct, the Respondent had held a certificate since 2003 (approximately 13 years) and had no prior discipline for misconduct. The Respondent's conduct did not involve any students.
- [24] The Respondent suffered significant consequences as a result of the conduct. The Commissioner suspended the Respondent's certificate in October 2016, pending resolution of the discipline process. The District terminated the Respondent's employment in November 2016. The Respondent's evidence at the findings hearing included that he had difficulty finding steady employment since the fall of 2016.
- [25] In November 2016, as was reported in the media at the time, the Respondent was charged criminally for the conduct. In July 2017, the Crown stayed the charges after the Respondent entered a recognizance with conditions.
- [26] At the time of the findings hearing in March 2020, the Respondent testified he believed the Creep Catchers recording of him had been viewed approximately 30,000 to 40,000 times.
- [27] The panel now considers the following aggravating factors in this case.
- [28] The Commissioner submits that, although the Respondent's conduct did not involve persons with whom he had a student-teacher/principal relationship, it was not completely separate from his professional role. The evidence before the panel in the Chat Logs indicated that, in some instances, the Respondent was exchanging text messages with "Sara" and "Hannah" during, or shortly after, normal school hours. As detailed in the Findings Decision, in several of the text exchanges, the Respondent asks "Sara" and

⁷ *In the Matter of the Teachers Act and Robertson*, 2016 TAHP 02 at para. 5 (*Robertson*).

“Hannah” questions about their schoolwork and the school they attend, and he offered to tutor “Sara”.

- [29] Throughout the findings hearing (and the TRB investigation of his conduct), the Respondent explained and justified his conduct as research for a fictional (or non-fictional) piece on the Creep Catchers he was planning to write in his off-hours. The Respondent repeatedly asserted that he knew that “Sara” and “Hannah” were not minors, but that he knew that they were “likely” members of Creep Catchers. He asserted that he and the person(s) sending the texts as “Sara” and “Hannah” were all aware that they were playing “roles” when they were exchanging texts.
- [30] The panel expressly found that the Respondent’s explanation for his conduct was not plausible, particularly given the undisputed evidence that after the aborted first meeting (which he said he avoided because he knew that they were really Creep Catchers), the Respondent continued to exchange texts with “Sara” and “Hannah” as if they were minors and arranged to meet them at a shopping mall a second time.
- [31] As noted in the Findings Decision, under cross-examination by the Commissioner’s counsel, the Respondent acknowledged that it was not appropriate for an elementary school principal to join or participate in the activities of the Creep Catchers. However, he maintained his position that his actions were in furtherance of his research.
- [32] The panel agrees with the Commissioner’s submission that the Respondent’s explanation and justification for his conduct suggests that the Respondent is not willing to fully accept responsibility for his conduct and, in particular, to acknowledge the effect of his conduct on the school community and the public’s confidence in the teaching profession. Like the panel in *McGeough*, the panel finds that the Respondent’s “self-absorbed view and inability to understand the impact of his actions”⁸ on others is an aggravating factor, which weighs heavily against the mitigating factor of the Respondent’s lack of prior discipline.
- [33] The Commissioner also points to the aggravating factor of the Respondent’s dishonesty. The Respondent admitted he used a false name, “James 33”, and photos of other men when he created the online profile and when he was communicating with “Sara” and “Hannah”.
- [34] The Respondent knew his conduct was problematic and likely criminal, but he continued it for over a month. In the Findings Decision, the panel detailed the text exchanges in which the Respondent expressly told “Sara” and/or “Hannah” that he could get into trouble and lose his job and career, and where he speculated whether they were, in fact, police officers. The Respondent could easily have ceased his conduct, in particular, he could have refused to exchange further text messages with “Sara” (and later “Hannah”) as soon as they admitted to him that they were minors. He did not.
- [35] As noted above, the Respondent did not provide submissions on consequences, thus the panel has no evidence of steps the Respondent may have taken to address his conduct.

⁸ *McGeough*, at para. 17.

- [36] The panel weighs this aggravating factor (*i.e.*, that the Respondent knew that his conduct was problematic and likely criminal, and openly acknowledged as such to “Sara” and “Hannah” in text exchanges but persisted with it) against the mitigating factor of consequences to him (that is, that he lost his employment and was criminally charged).
- [37] As the Commissioner acknowledges, the Respondent’s conduct did not involve him sexually touching any minor. The Respondent’s conduct involved texting, seeking and receiving pictures of “Sara” and “Hannah”, and arranging to meet them in person at a mall. However, as detailed in the Findings Decision, the text exchanges indicate that the Respondent was interested in a relationship with “Sara”, including in texts exchanged in the short period between the abandoned first meeting and the Creep Catchers “catch”.
- [38] The Respondent’s conduct in this case had a very public nature – within a few weeks of starting to exchange text messages with apparent minors, he arranged to meet them at public locations close to the community where he worked. More importantly, the Creep Catchers recording attracted significant media coverage and public attention, particularly when the Respondent’s identity as an elementary school principal was revealed; as of March 2020, the recording was still accessible to the public.
- [39] The Commissioner submits that the public nature of the Respondent’s conduct is “an affront to the status and reputation of teachers”⁹ and significantly undermined public confidence in the profession and the education system.
- [40] The Commissioner submits that the circumstances of this case directly engage the need for general deterrence to unequivocally articulate that “sexual conduct by teachers or other authorized persons towards minors is career-ending”.
- [41] In the panel’s view, the public nature of the Respondent’s conduct is an aggravating factor, which weighs against the fact that no actual students or minors were involved. In the food court of a shopping mall, the Creep Catchers recorded the Respondent, an elementary school principal, when he was purportedly attempting to meet in person a 15-year-old girl, “Sara”, with whom he had been exchanging text messages in which he told her she was “hot” and “mint” and had offered as her “daddy” to buy her shoes and a cell phone.
- [42] As the panel noted in the Findings Decision, the public does not condone sexual relationships between adults and minors, or communications between adults and minors of a sexualized nature (and such conduct is prohibited under the *Criminal Code*).
- [43] In the panel’s view, it is necessary to impose a sanction commensurate with the gravity of the Respondent’s unbecoming conduct to instill public confidence in the effectiveness of the teacher discipline process and to achieve the goals of specific and general deterrence. In particular, there is a strong need for general deterrence in the circumstances of this case involving conduct unbecoming (that is, occurring outside the practice of the profession).
- [44] The Commissioner seeks a 25-year ban on the re-issuance by the director of certification of any authorization to the Respondent allowing him to teach in the K-12 system. The

⁹ *Robertson*, at para. 15.

Commissioner submits it is the only appropriate penalty in this case and that in other cases, lengthy bans on the re-issuance of a certificate have been imposed where the conduct fell short of sexual touching or other sexual contact.

- [45] The Commissioner referred the panel to *McGeough*, in which the teacher had an inappropriate relationship with a 17-year-old student, and although it did not involve sexual relations, it had “sexual overtones”. The teacher encouraged the student to keep their relationship secret and, among other things, gave the student gifts and invited her to his home. The teacher had no prior misconduct during his 20-year career. In his submissions on appropriate penalty, Mr. McGeough attributed his behaviour to “a severe psychological break”.
- [46] The *McGeough* panel imposed a 15-year ban on the issuance of a certificate, particularly in light of the “highly intense and personal nature” of his communications with the student and his “complete failure” to appreciate the impact of his behaviour on the student. The *McGeough* panel was of the view that a significant penalty was warranted to protect the public’s confidence in the teaching profession and assure the public that conduct such as Mr. McGeough’s would not be tolerated.¹⁰
- [47] The Commissioner referred the panel to *Robertson*, a 2015/2016 case involving a teacher who had openly engaged in sexual relationships with three female students many years earlier in the 1970s when the students were 15 and/or 16. The teacher had also made misrepresentations about his conduct while seeking further employment within the public school system, shortly after his employment with the school district where he had engaged in the relationships was terminated. The panel was of the view that the passage of time from misconduct to consequence was, for the most part, generated by the teacher’s own “wilful blindness, lack of remorse, or acceptance of what he did as being wrong and his actions to avoid consequences.”¹¹ The panel directed that the teacher’s certificate be cancelled and imposed an indefinite ban on the re-issuance of any certificate.
- [48] The Commissioner also referred the panel to the following three consent resolution agreements, in which the teachers agreed to a lifetime ban on the re-issuance of their certificates: *Wait*, *Nelson*, and *Canacari*.¹² In all three of these consent resolution agreements, the teachers were convicted of criminal offences.
- [49] In *Wait*, the teacher agreed to a lifetime ban where he used his school district laptop to engage in sexually explicit online “chat”, to store pornography including images of teenaged girls, and to write, store and access six pornographic stories, one of which involved a male teacher having sex in a classroom with a female student. Mr. Wait was also convicted of sexual assault for touching the buttocks of a female minor.
- [50] In *Nelson*, the teacher held a party at his home, during which he attempted to sexually assault one of his former students while he was intoxicated. He reported himself to the

¹⁰ *McGeough*, para. 19.

¹¹ *Robertson*, para. 33.

¹² *Consent Resolution - Robin James Wait* (June 2016); *Consent Resolution – Christopher David Nelson* (September 2015); and *Consent Resolution - Francesco Gabriel Canacari* (September 2016).

police and was charged with one count of sexual assault, to which he entered a guilty plea. Mr. Nelson agreed that a certificate would never be issued to him again.

- [51] In *Canacari*, after a trial, the teacher was convicted of three offences arising out of activity that took place in 2010, including criminal harassment and unlawfully being in a dwelling house. In relation to the criminal harassment, the trial judge found that the teacher had asked one of his female students to send texts from her phone to the victim of his harassment, and then told the student to erase the number and messages from her cell phone. The teacher's appeal of his conviction was dismissed. In 2015, the teacher pleaded guilty to three offences involving forgery that occurred in 2013. Mr. Canacari agreed that a certificate would never be issued to him again.
- [52] Among other things, the panel must consider proportionality in determining the appropriate consequences. In those cases summarized above where a lifetime ban was imposed or agreed to, the educators were convicted of criminal offences and, in the majority of the cases, the conduct involved students.
- [53] In *Panghali*, a case in which the teacher was convicted of the 2nd-degree murder of his wife in violent circumstances after which he had burned her remains to conceal his crime, the panel imposed a 25-year ban on the re-issuance of a certificate, noting that a ban of 25 years is effectively a permanent ban.¹³
- [54] The panel has found that the Respondent's unbecoming conduct seriously undermined the public's confidence in the education system, as well as the dignity and credibility of the teaching profession. The panel agrees with the Commissioner's submission that for the purposes of general deterrence and to communicate to the public that conduct by an educator towards minors will not be tolerated, a lengthy ban on any re-issuance of a certificate to the Respondent should be imposed.
- [55] The Respondent was not criminally convicted for his conduct and his conduct did not involve students. However, given the Respondent's explanation and justification for his conduct, coupled with its public notoriety and its impact on the school community, the panel is of the view that a 15-year ban on the re-issuance of a certificate is an appropriately lengthy ban in the circumstances of this case. The panel acknowledges that the practical effect of a 15-year ban in this case is that it is extremely unlikely the Respondent will ever be able to qualify to teach again.
- [56] The panel finds that a reprimand under subsection 64(a) is inappropriate in this case.

COSTS

- [57] 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 has not sought costs in this case. No costs are awarded.

¹³ *In the Matter of the Teachers Act and Mukhtiar Singh Panghali*, January 20, 2014.

PUBLICATION

[58] 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. The panel directed publication of its Findings Decision and also directs publication of these reasons.

ORDER(s)


[59] The Panel orders that, pursuant to section 64(g) of the *Teachers Act*, the Director of Certification will not re-issue to the Respondent a Certificate of Qualification, an Independent School Teaching Certificate or a Letter of Permission for a period of 15 years from the date of this decision.

For the Panel

Date: December 3, 2020



Meg Gaily, Panel Chair



Matthew Cooke, Panel Member



Tom Longridge, Panel Member