



2022 TAHP 04  
Decision issued: 2022-08-29  
Citation issued: 2020-11-13  
File No.: [REDACTED]

IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011, c. 19  
AND  
A HEARING CONCERNING  
NICOLA JULIE PENDLETON

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

**REASONS FOR DECISION ON CONSEQUENCES AND COSTS**

Date(s) and locations(s): by written submissions  
Panel: Meg Gaily, Chair, Lisa Kishkan and Terence Berting  
Counsel for the Commissioner: Maureen Boyd and Lauren Witten  
Counsel for the Respondent: no submissions received

**INTRODUCTION**

- [1] In a decision issued on April 7, 2022 (the “Findings Decision”), the panel found the Respondent guilty of professional misconduct 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 communicated to the parties on April 21, 2022.
- [3] In accordance with the schedule, the Commissioner filed written submissions on May 26, 2022 (the “Penalty Submissions”).

- [4] The Respondent did not participate in the findings hearing. The Findings Decision was sent to her in accordance with the Commissioner's Rules. The Respondent did not file any submissions on consequences by the deadline of June 30, 2022. 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 professional misconduct because while she held a conditional certificate she repeatedly represented that she held a professional certificate of qualification to gain personal benefit. The details of the Respondent's conduct are set out in the Findings Decision and are only summarized here.
- [6] The Respondent was issued a conditional certificate on September 4, 2012, valid from September 4, 2012 to June 30, 2017. In March 2017, the Acting Director of Certification granted the Respondent's request to extend her conditional certificate by one year. The Respondent's conditional certificate expired June 30, 2018.
- [7] The Respondent received her teacher education in Australia and to obtain a professional certificate in this province, the Respondent was required to complete certain academic coursework at an approved post-secondary institution prior to June 30, 2017. The date to complete the coursework was extended to June 30, 2018 when the conditional certificate was extended.
- [8] The Respondent admitted she did not complete the required coursework necessary to obtain a professional certificate prior to June 30, 2018.<sup>1</sup>
- [9] In or about May 2018, the Respondent submitted an application to the TQS (the Teacher Qualification Service) and included with it a copy of a professional certificate of qualification, purportedly issued to her on January 18, 2018. At that time, the Respondent held an expiring conditional certificate and did not hold a professional certificate.
- [10] In June 2018, when applying for a position as a teacher at Lakeside, an independent school in Kelowna, the Respondent represented that she held a professional certificate and provided a copy of a professional certificate of qualification, purportedly issued to her January 18, 2018. At the time, she held a conditional certificate, which expired on June 30, 2018. The Respondent obtained employment at Lakeside on August 20, 2018, and worked at Lakeside until sometime in the fall of 2019, when Lakeside learned she did not hold a professional certificate and that her conditional certificate had expired on June 30, 2018.
- [11] On June 29, 2018, the Respondent emailed the Certification Unit stating that she was "having difficulty paying [her] 2018-2019 Annual Practice Fee for [her] Professional BC Teaching Certificate." At the time, the Respondent held a conditional certificate, which expired the following day.

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<sup>1</sup> Findings Decision, para. 119.

- [12] The panel found that the evidence clearly established that at the time she held a conditional certificate, the Respondent submitted a false professional certificate of qualification to the TQS in May 2018, and to Lakeside in June 2018.<sup>2</sup>
- [13] The panel found that the evidence clearly established that in late June 2018, when she held a conditional certificate, which was about to expire, the Respondent represented to Lakeside that she held a professional certificate and represented that she held a professional certificate in an email to the Certification Unit asserting that she was having difficulty paying fees for her professional certificate.<sup>3</sup>
- [14] The panel found that the evidence established that the Respondent did not hold a professional certificate of qualification issued to her by the TRB in January 2018 or at all.<sup>4</sup>
- [15] The panel found that the Respondent's conduct was directly related to her engagement in the teaching profession. At the time the Respondent misrepresented her credentials, she was in the process of obtaining employment as a teacher at Lakeside and submitting an evaluation to the TQS, which is used for salary purposes. The panel found the Respondent's conduct amounted to a clear breach of Standard #2 and constitutes professional misconduct under subs. 63(1)(b) of the Act.<sup>5</sup>
- [16] What remains to be determined is the appropriate penalty for the Respondent's professional misconduct, as well as the matters of costs and publication.
- [17] Section 64 of the Act sets out the range of penalties that a panel may impose once it has made a finding of professional misconduct under section 63(1)(b).
- [18] Subsections 64(b), (c), (d), (e), (f) and (h) provide a discipline panel with the authority to issue orders requiring the director of certification to suspend or cancel a certificate of qualification, with or without conditions, or to place limitations and conditions on a certificate of qualification.
- [19] The Respondent never held a professional certificate and her conditional certificate expired on June 30, 2018. The panel agrees with the Commissioner's submission that, in this case, there is no certificate that could be cancelled or to which a suspension, condition or limitation could attach under subsections 64(b), (c), (d), (e), (f) or (h).
- [20] Subsection 64(a) authorizes the panel to order "a reprimand of the authorized person." However, the Commissioner submits that because the Respondent is not an "authorized person" as that term is defined under the Act,<sup>6</sup> she cannot be subject to a reprimand under subs. 64(a).<sup>7</sup>

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<sup>2</sup> Findings Decision, paras. 127 -128, 140-141.

<sup>3</sup> Findings Decision, paras. 128-129, 140.

<sup>4</sup> Findings Decision, para. 126.

<sup>5</sup> Findings Decision, paras. 142 and 144.

<sup>6</sup> Act, s. 1: "In this Act "authorized person" means (a) a certificate holder, or (b) a person who holds a letter of permission issued under section 35"; see also Findings Decision, para. 47.

<sup>7</sup> Penalty Submissions, para. 35.

- [21] In *Plehanov*, the respondent was not a certificate holder and did not hold a letter of permission under s. 35 of the Act. In the *Plehanov* penalty decision, the discipline panel found that the option of ordering a reprimand under subs. 64(a) is not available where the respondent is not a certificate holder, but noted that if their determination was wrong, a reprimand was not appropriate in the circumstances of that case.<sup>8</sup>
- [22] Subsection 43(2) of the Act extends the meaning of “authorized person” to include a former authorized person “for the purposes of determining whether a former authorized person ... has been guilty of professional misconduct or conduct unbecoming.”<sup>9</sup> Subsection 43(2) does not expressly extend the definition of “authorized person” for the purposes of imposing penalties. The Commissioner submits that given this limited purpose, subs. 43(2) “may not be sufficiently clear to extend the power to reprimand to a former authorized person.”<sup>10</sup>
- [23] In the circumstances of this case, the panel finds that ordering a reprimand under subs. 64(a) is not an appropriate penalty. It is not necessary to determine whether subs. 64(a) could apply to a person in a similar situation to the Respondent.
- [24] The panel finds that the most appropriate consequence under section 64 in the circumstances of this case is a requirement that the director of certification not issue a certificate of qualification (or an independent school teaching certificate, or a letter of permission) to the Respondent for a fixed or indeterminate period.<sup>11</sup> The issue is the duration of this ban.
- [25] As a professional regulator mandated to carry out its oversight activities in the public interest, the protection of the public is an overarching consideration the panel must take into account in fashioning an appropriate remedy.<sup>12</sup>
- [26] As other consequences decisions have established, a penalty assessment must also consider the following factors: the nature and gravity of the conduct; the impact of the conduct on students; the presence or absence of prior misconduct; the extent to which the teacher has already suffered consequences; the role of the teacher in acknowledging the gravity of the conduct; the need to promote specific and general deterrence; and the need to maintain public confidence in the teaching profession as a whole.<sup>13</sup>
- [27] The panel’s penalty assessment weighs these considerations, taking into account any aggravating and mitigating factors.

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<sup>8</sup> *In the Matter of the Teachers Act – and – Plehanov*, 2021 TAHP 03, paras. 11-12.

<sup>9</sup> See also Findings Decision, para. 49.

<sup>10</sup> Penalty Submissions, para. 35.

<sup>11</sup> 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.”

<sup>12</sup> *In the Matter of the Teachers Act - and - Hankey*, 2016 TAHP 06 at para. 10, *In the Matter of the Teachers Act – and – Obert*, 2020 TAHP 02 (**Obert**) at para. 15.

<sup>13</sup> *In the Matter of the Teachers Act – and – McGeough* (January 17, 2013), at para. 7.

- [28] 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.
- [29] Aggravating factors point to the need for a more severe sanction 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 or remorse on the part of the teacher; conduct intended to hide the teacher’s misconduct; and a prior disciplinary history of misconduct of the same or similar nature.
- [30] The Respondent does not have any prior discipline, which is normally a mitigating factor. However, this is attributed to the fact that the Respondent had a very short teaching history in this province; as described in the Findings Decision, she taught at Lakeside for approximately one year. Accordingly, the panel affords little weight to this factor.
- [31] As detailed in the Findings Decision, the evening before the first day of the findings hearing, the Respondent sent an email to the PCU program coordinator to which she attached two documents from a doctor practising at a clinic in Australia, dated May 31, 2010 and February 10, 2022 respectively, which the Respondent referred to as “medical certificates.”<sup>14</sup>
- [32] In the context of the findings hearing, the panel found that the “medical certificates” were vaguely worded and did not provide a sufficient basis for delaying the hearing.<sup>15</sup>
- [33] As it is the only evidence provided by the Respondent in these proceedings, the panel considered the two documents attached to the February 14, 2022 email. The panel finds that the evidence in the two documents does not provide evidence of medical conditions, which affected or explained the Respondent’s conduct at the relevant time, which could be a mitigating factor. The 2010 letter indicated that the doctor had been the Respondent’s general practitioner since 1987 and that the Respondent had suffered from migraines since she was eight. The 2022 letter stated that the Respondent “has chronic pain syndrome and chronic fatigue syndrome” and “is currently undergoing testing for Early Onset Alzheimer’s.” Neither letter provides any information regarding the extent of the Respondent’s conditions or how these conditions might have affected her conduct at the relevant time. As such, the panel affords little weight to this evidence.
- [34] There is an absence of evidence of other mitigating factors in this case because the Respondent did not participate in the process.
- [35] The Commissioner submits that there is no indication that the Respondent has suffered any consequences for her actions outside this process, pointing out that when the Respondent’s conditional certificate expired, she was no longer authorized to teach and she was not

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<sup>14</sup> Findings Decision, paras. 13, 32-37.

<sup>15</sup> Findings Decision, para. 39.

eligible for a professional or conditional certificate because she had not completed the required courses. The Commissioner submits that there is no evidence that the Respondent lost any employment due to the expiry of her conditional certificate – by the time she commenced employment at Lakeside in August 2018, the conditional certificate had expired and she did not hold any certification. The panel agrees with the Commissioner that this should not be considered a consequence that could mitigate the appropriate consequences or the need for deterrence.

- [36] There is no evidence before the panel that the Respondent’s conduct harmed any students; however, there is also no evidence before the panel that the Respondent has acknowledged her conduct or expressed remorse for it – in fact, the evidence is that she continued to assert she held a professional certificate.
- [37] In the Findings Decision, the panel summarized the Respondent’s ongoing representations that she held a professional certificate during the Branch’s 2019-2020 investigation, after the expiry of the conditional certificate.<sup>16</sup> The panel determined it did not have jurisdiction to consider the Respondent’s post-certificate conduct for the purposes of making a finding of professional misconduct. However, the panel finds that this is evidence that the Respondent failed to take responsibility for her conduct, even when confronted with it during the professional regulator’s investigation, which is an aggravating factor.
- [38] The Commissioner cites *Ontario College of Teachers v. Sacco*, a case in which the member falsely claimed to have completed a course to qualify to teach French as a second language and falsified documents from the university where she said she took the course.<sup>17</sup> The member continued to lie about this during the school board’s investigation of her. The discipline committee found that the member’s “ongoing deceitful intent compounded her actions” and warranted a more severe penalty.<sup>18</sup>
- [39] The Commissioner submits that, as in *Sacco*, the fact that the Respondent continued to represent that she held a professional certificate compounded her actions and called for a more severe penalty than might otherwise apply.<sup>19</sup> The panel agrees with this.
- [40] The Commissioner submits that the following three areas are central to the panel’s assessment of consequences in this case:
- a) The nature and gravity of the Respondent’s conduct;
  - b) Public confidence in the teaching profession as a whole; and
  - c) The need for specific and general deterrence.

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<sup>16</sup> Findings Decision, paras. 110, 113, 116, 119-123.

<sup>17</sup> *Ontario College of Teachers v. Sacco*, 2013 LNONCTD 62.

<sup>18</sup> *Sacco*, para. 36.

<sup>19</sup> Penalty Submissions, para. 24.

- [41] The Commissioner submits that the Respondent’s conduct was “calculated and prolonged, continuing over a number of months” and is “qualitatively distinct from a momentary lapse in judgment or a simple mistake, which might not warrant the same degree of penalty.”<sup>20</sup>
- [42] The Commissioner submits that the Respondent’s conduct, that is, the “use of a fraudulent certificate to illegitimately occupy a position of trust and influence over students”, is very serious because it created a real risk to the reputation of the teaching profession when she was hired as a teacher – the risk was not speculative. The Commissioner submits that this is inherently damaging to the profession and the public interest.<sup>21</sup>
- [43] The Commissioner points out that the Respondent did not violate a technicality or fall short of an onerous standard when she falsified her professional certificate, but that she “flouted a basic social expectation: that people are honest about their credentials and qualifications when seeking, maintaining, or using a licence to practice a profession.”<sup>22</sup> According to the Commissioner, such fundamental dishonesty “has a profound impact on the public confidence in the teaching profession and warrants significant denunciation and deterrence to dissuade others from similar conduct.”<sup>23</sup>
- [44] The Commissioner cites the decision in *Ontario College of Teachers v. Racicot (Racicot)*, in which the discipline committee found Ms. Racicot guilty of professional misconduct for falsifying her credentials.<sup>24</sup> In order to be admitted to a Bachelor of Education program at the University of Ottawa, Ms. Racicot represented that she had completed an undergraduate degree, which she had not. She obtained her B.Ed. and a certificate with the Ontario College in 1993 and began teaching. In 1994, the University of Ottawa (“U of O”) realized its mistake and wrote to Ms. Racicot that it was suspending her B.Ed. Ms. Racicot acknowledged to the U of O that she had not obtained an undergraduate degree and in 1995, the U of O advised her it had decided not to suspend her B.Ed., but would inform the Ministry of Education about the error, which it did. However, in 1998, Ms. Racicot gained admission to another post-secondary institution for further educational training, again falsifying that she had an undergraduate degree. Ms. Racicot failed to reply to the College’s investigation, which commenced in 1999.
- [45] In finding Ms. Racicot guilty of professional misconduct, the discipline committee made the following comments about Ms. Racicot’s behaviour:

The Committee accepts that Lorraine Racicot did not have a Bachelor of Arts degree from the Université de Sherbrooke and is persuaded that she clearly knew that it was a requirement for admission to a Bachelor of Education degree. Lorraine Racicot misrepresented her professional credentials and sought and achieved employment as a teacher as a result.

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<sup>20</sup> Penalty Submissions, para. 13, citing Findings Decision, paras. 88, 91, and 92-94.

<sup>21</sup> Penalty Submissions, para. 14, citing Findings Decision, para. 93.

<sup>22</sup> Penalty Submissions, para. 14.

<sup>23</sup> Penalty Submissions, para. 15.

<sup>24</sup> *Ontario College of Teachers v. Racicot*, 2001 LNONCTD 22.

The Committee finds this conduct to be disgraceful, dishonourable and unprofessional. In addition, the Committee believes that this reprehensible behaviour must be dealt with severely as it undermines the integrity of the profession, which depends upon its members providing accurate information concerning their qualifications.<sup>25</sup>

- [46] The Commissioner stresses that denunciation and general deterrence are important factors in this case, asserting that the Respondent’s conduct strikes at the heart of the Branch’s regulatory role in ensuring that only properly qualified individuals—both in terms of professional qualifications and moral character— occupy the privileged position of trust that teachers hold in British Columbia.<sup>26</sup>
- [47] The Commissioner stresses that the penalty imposed by this panel should affirm “the importance of fostering and maintaining public confidence in the ability of the Commissioner to properly supervise and regulate the conduct of teachers.”<sup>27</sup>
- [48] The Commissioner seeks a ban of 18 to 24 months in this matter and submits that a ban of this length is necessary to maintain public confidence in the teaching profession as a whole and “will send an unequivocal message that it is not appropriate to lie about professional regulatory requirements and that this type of dishonest conduct will not be tolerated.”<sup>28</sup>
- [49] There are very few decisions with facts that are analogous to this case. Other than *Racicot*, all of the decisions cited to the panel by the Commissioner involved teachers who legitimately held teaching certificates and who were found guilty of professional misconduct for conduct that included falsifying a teaching evaluation,<sup>29</sup> or medical expenses.<sup>30</sup> In one case, the teacher used a false name (that of his spouse) to take temporary positions, which had been offered to his spouse.<sup>31</sup> In each of these decisions, the members entered “no contest” to the respective citations and were suspended for periods from 3 to 9 months. In a decision involving a school principal who submitted invoices and received reimbursement for non-existent school supplies over a period of several months, the discipline committee agreed with the joint submission on penalty that an 18-month suspension was appropriate.<sup>32</sup>
- [50] The Commissioner submits that a suspension of a certificate and a ban on issuance do not have the same effect and impact, and for this reason, the length of the ban should be longer than the length of an appropriate suspension. The Commissioner submits the following:

A suspension temporarily takes away a certificate holder’s ability to earn a living as a teacher and so usually has a direct and immediate financial

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<sup>25</sup> *Racicot*, paras. 15-16.

<sup>26</sup> Penalty Submissions, para. 27.

<sup>27</sup> Penalty Submissions, para. 32, citing *Obert*, para. 16.

<sup>28</sup> Penalty Submissions, para. 33.

<sup>29</sup> *Ontario College of Teachers v. Wakeford*, 2006 LNONCTD 44.

<sup>30</sup> *Ontario College of Teachers v. Mackenzie*, 2019 LNONCTD 23

<sup>31</sup> *Ontario College of Teachers v. Alphonso*, 2016 ONOCT 1.

<sup>32</sup> *Ontario College of Teachers v. Gillet*, 2012 LNONCTD 7.



impact. By contrast, a ban on issuance has a lesser effect, because a former certificate holder has already given up the entitlement to earn a living as a teacher and re-ordered her life and finances.

... to achieve a commensurate deterrent effect, a ban that is issued in place of a suspension should be longer than the length of an appropriate suspension.<sup>33</sup>

- [51] The Commissioner submits that here, where the Respondent holds no certificate and where her professional life will not be interrupted, the corresponding range for a ban to achieve a comparable deterrent effect is 24 months.<sup>34</sup>
- [52] In *Racicot*, the Ontario discipline committee directed the College's registrar to revoke Ms. Racicot's certificate of qualification and registration immediately, but the decision does not indicate whether Ms. Racicot was permitted to re-apply for certification at a future date if she completed her necessary education. In addition, because it was "sufficiently concerned about the conduct of the member", the committee fined Ms. Racicot \$2,000,<sup>35</sup> a penalty that is not available to this panel under the Act.
- [53] The Respondent's conduct is blatantly dishonest and cannot be condoned.
- [54] The panel finds that the Respondent's conduct is not quite as extreme as Ms. Racicot's, who obtained her teaching credentials, a Bachelor of Education encompassing a two-year program of studies, knowing she was not entitled to the degree or certification because she did not have the requisite undergraduate degree. Several years after she was advised that the regulator knew she did not hold an undergraduate degree, Ms. Racicot again misrepresented that she held an undergraduate degree to obtain further employment-related certification from a post-secondary institution.
- [55] In this case, the Respondent legitimately held a conditional certificate and her misrepresentations to gain employment at Lakeside occurred within a period of a few months in 2018.
- [56] However, the panel finds that this conduct (representing that she held a professional certificate, when her conditional certificate was expiring, and falsifying a professional certificate to gain employment), is reprehensible and undermines the integrity of the profession in this province.
- [57] The panel also considers as an aggravating factor the Respondent's continued representations to the Branch during its 2019-2020 investigation into her conduct that she held a professional certificate long after her conditional certificate had expired. It is evidence that the Respondent has not acknowledged her conduct and lacks remorse and is reprehensible conduct that undermines the integrity of the profession and the role of the professional regulator.

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<sup>33</sup> Penalty Submissions, paras. 18 and 19.

<sup>34</sup> Penalty Submissions, para. 34.

<sup>35</sup> *Racicot*, para. 17.

[58] The panel understands that this case is the first case of unauthorized practice under the Act, as noted in the Findings Decision. In the circumstances of this case, particularly where the panel has found the Respondent represented that she held a professional certificate knowing that the conditional certificate she held was about to expire and continued to make this representation for several months after she no longer held any certificate, the panel finds that appropriate length of a ban on the issuance of a conditional certificate, or any other certificate or letter of permission, to the Respondent is 18 months.

### **COSTS**

[59] 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 did not seek costs in this case and no costs are awarded.

### **PUBLICATION**

[60] 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 directs publication of these reasons.

### **ORDER(s)**

[61] 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 for a period of 18 months from the date of this decision.


For the Panel

Date: August 29, 2022



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Meg Gaily, Panel Chair



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Lisa Kishkan, Panel Member



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Terence Berting, Panel Member