



2022 TAHP 02  
Decision issued: 2022-04-07  
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 FINDINGS, DETERMINATION AND PUBLICATION**

Date(s) and location(s): February 15 and 16, 2022 at the office of the Teacher Regulation Branch and virtual  
Panel: Meg Gaily, Chair, Lisa Kishkan and Terence Berting  
Counsel for the Commissioner: Maureen Boyd and Lauren Witten  
Counsel for the Respondent: Did not attend

**INTRODUCTION**

- [1] A panel was appointed by the Commissioner to conduct a hearing into a citation issued by the Commissioner under section 56(1) of the *Teachers Act*, S.B.C. 2011, c. 19 (the “Act”) on November 13, 2020 (the “Citation”).<sup>1</sup>
- [2] Nicola Julie Pendleton (the “Respondent”) held a Conditional Certificate of Qualification issued on September 4, 2012, which was initially valid to June 30, 2017 and was extended for one year to June 30, 2018 (the “Conditional Certificate”). The Conditional Certificate expired on June 30, 2018.
- [3] In general terms, the Citation alleges that the Respondent repeatedly represented that she held a professional certificate of qualification during the time that the Respondent in fact

---

<sup>1</sup> Exhibit #1, Citation issued November 13, 2020.

held a Conditional Certificate (that is, before June 30, 2018) to gain personal benefit. The Commissioner alleges that this conduct breaches the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*<sup>2</sup> (the “Standards”) and amounts to professional misconduct or, alternatively, conduct unbecoming a teacher.

[4] The Citation also alleges that on June 29, 2018, the Respondent falsely represented to employees of the Ministry of Education that she held a Professional Certificate of Qualification. The Citation alleges that the Respondent continued to represent to Ministry employees and others on several dates in 2019 and 2020, after the Respondent’s Conditional Certificate had expired, that she held a Professional Certificate. The Citation also alleges that the Respondent made untrue statements during an investigation interview with an employee of the Professional Conduct Unit (“PCU”) on February 15, 2020 (after the Conditional Certificate expired). The Commissioner alleges that this conduct breaches the Standards and amounts to professional misconduct or, alternatively, conduct unbecoming a teacher.

[5] The particulars of the allegations in the Citation are set out further below.

## PROCEDURE

[6] The Respondent did not attend the hearing and was not represented by legal counsel at the hearing.

[7] Section 62 of the Act provides that the discipline panel may proceed with the hearing in the absence of a party as follows:

62. If an authorized person who is the subject of a citation being heard by a panel fails to attend the hearing, on proof that a copy of the citation was delivered to the authorized person’s last known address in accordance with section 56(3)(a) [*citation*], the panel may proceed with the hearing and may take, without further notice, any action it is authorized to take under this Act and make any order that the panel could have made in the presence of the authorized person.

[8] Section 56(3)(a) of the Act requires the Commissioner to deliver a copy of the citation to the last known address of the authorized person who is the subject of the citation.

[9] Under section 40 of the Act, the Commissioner may make rules of practice and procedure, which are set out in the *Commissioner’s Rules for Disciplinary and Professional Conduct Inquiries*, September 2015 (the “Rules”).

[10] Rule 42 provides that after a citation has been issued, and at least 28 days before the start of the hearing, discipline counsel must provide to the person under citation the following:

---

<sup>2</sup> *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, 4<sup>th</sup> ed., January 2012.

- a) A list of every document relevant to the citation in the commissioner’s possession or available to the commissioner in his files, whether or not discipline counsel intends to introduce that evidence at hearing, and
  - b) A summary of the anticipated evidence of any person whom discipline counsel intends to call as a witness at the hearing.
- [11] Rule 43 provides that, upon request of a person under citation, discipline counsel will, within a reasonable period, provide to the person under citation a copy of any document described in Rule 42(a). Rules 44 and 45 impose the same disclosure obligations as Rules 42 and 43 on respondents to a citation.
- [12] The Act does not address adjournment of a hearing. Rule 63 provides that a person under citation (or discipline counsel) may request to change the date or location of a hearing, but must do so in writing, setting out the reasons for the request, and deliver the request to the Commissioner and the other party to the proceeding. Rule 64 stipulates that the request for a change in dates or location of the hearing must be made as soon as the reason for the change is known by the person making the request.
- [13] Counsel for the Commissioner provided a copy of an email from the Respondent dated February 14, 2022, at 11:32 p.m., to which she attached two documents (the “Feb 14 Email”).<sup>3</sup> The Feb 14 Email was sent to the PCU program coordinator, Jayme L’Hirondelle, from the following email address: “pendie14@yahoo.ca” (the “Yahoo Email”).
- [14] Counsel for the Commissioner tendered evidence showing that the Yahoo Email was the email address provided by the Respondent in her application for a teacher’s certificate of qualification submitted August 1, 2012.<sup>4</sup> The panel addresses the Feb 14 Email further below.
- [15] Counsel for the Commissioner tendered evidence in two affidavits to prove compliance with the delivery and disclosure obligations under the Act and Rules, in support of her argument that the hearing should proceed in the Respondent’s absence.
- [16] The affidavit of Doug Loepp, a Kelowna process server, sworn March 3, 2021<sup>5</sup> (the “Loepp Affidavit”) confirms that the Respondent was personally served with a copy of the Citation and the Rules, at 7:36 a.m. on March 2, 2021, at 182 Applebrooke Crescent, Kelowna, British Columbia (the “Home Address”).
- [17] Counsel for the Commissioner tendered evidence showing that the Home Address was the address provided by the Respondent on her application for a teacher’s certificate of qualification submitted to the Ministry on August 1, 2012.<sup>6</sup>

---

<sup>3</sup> Exhibit #4, email from Respondent to Jayme L’Hirondelle dated February 14, 2022, 11:32 p.m., with attachments.

<sup>4</sup> Exhibit #5, affidavit of Hassan Wahla, affirmed January 12, 2022, Exhibit D.

<sup>5</sup> Exhibit #2, affidavit of Doug Loepp, sworn March 3, 2021.

<sup>6</sup> Exhibit #5, affidavit of Hassan Wahla, affirmed January 12, 2022, Exhibit D.

- [18] Mr. Loepp further swears that at the time of service, “the person whom I served admitted to being [the Respondent] and the proper person to be served in this matter.”<sup>7</sup>
- [19] Counsel for the Commissioner also tendered the affidavit of Samantha Charvet, legal assistant to counsel for the Commissioner, affirmed February 8, 2022<sup>8</sup> (the “Charvet Affidavit”). Ms. Charvet’s evidence is that all documents were sent to the Respondent by regular or registered mail to the Home Address, and documents that were emailed to the Respondent were emailed to the Yahoo Email.<sup>9</sup>
- [20] Ms. Charvet also attests that some documents were sent to the Respondent using the Government of BC Secure File Transfer System (“SFTS”) and that notifications of SFTS transfers to the Respondent were sent to the Yahoo Email.<sup>10</sup> Files sent using SFTS expire after 35 days (they cannot be viewed after 35 days). The SFTS will notify the sender whether the package sent by SFTS has been viewed, or whether it was deleted before being viewed.
- [21] The following chart summarizes the evidence in the Charvet Affidavit, which the panel considers relevant to this issue.

DATE	EVIDENCE
December 7, 9, 11 and 24, 2020	<p>Counsel for the Commissioner sends a letter attaching a copy of the Citation and the Rules to the Respondent by mail and registered mail on December 7, 2020; the same letter and documents are sent to the Respondent by email and through SFTS on December 9, 2020.<sup>11</sup></p> <p>Canada Post confirms that the letter sent by registered mail was delivered to the Respondent on December 11, 2020.<sup>12</sup></p> <p>On December 24, 2020, SFTS notifies that the package was deleted before being viewed<sup>13</sup> (which is before the expiry period).</p>
March 30 and April 14, 2021	<p>On March 30, 2021, counsel for the Commissioner sends a letter enclosing the first disclosure index to the Respondent through SFTS and by email to the Yahoo Email.<sup>14</sup></p>

---

<sup>7</sup> Loepp Affidavit, para. 2.

<sup>8</sup> Exhibit #3, affidavit of Samantha Charvet, affirmed February 8, 2022.

<sup>9</sup> Charvet Affidavit, para. 5.

<sup>10</sup> Charvet Affidavit, para. 5.

<sup>11</sup> Charvet Affidavit, para. 6 and Exhibit A.

<sup>12</sup> Charvet Affidavit, para. 6 and Exhibit B.

<sup>13</sup> Charvet Affidavit, para. 6 and Exhibit C.

<sup>14</sup> Charvet Affidavit, para. 7 and Exhibit D.

	On April 14, 2021, SFTS notifies that the package was deleted before being viewed <sup>15</sup> (which is before the expiry period).
April 27 and 28, 2021	Counsel for the Commissioner and Ms. L’Hirondelle email letters to the Respondent using the Yahoo Email requesting a pre-hearing conference and seeking available dates from the Respondent. <sup>16</sup>
May 17, 2021	Ms. L’Hirondelle emails a letter to the Yahoo Email advising that the pre-hearing conference is set for June 17, 2021. <sup>17</sup>
June 4, 2021	The Respondent emails Ms. L’Hirondelle from the Yahoo Email advising, “I am unable to join the pre-hearing conference as I am returning to Australia due to medical circumstances.” <sup>18</sup>
June 24, 2021	Ms. L’Hirondelle emails the Respondent a letter to the Yahoo Email advising that the pre-hearing conference originally set for June 17, 2021 has been adjourned to a later date. <sup>19</sup>
July 12, 2021	Ms. L’Hirondelle emails a letter to the Yahoo Email advising that the pre-hearing conference is re-set for July 29, 2021. <sup>20</sup>
July 27 and August 3, 2021	On July 27, 2021, counsel for the Commissioner sends a letter enclosing the second disclosure index to the Respondent by mail, email and through SFTS. <sup>21</sup>  On August 3, 2021, SFTS notifies that the package was viewed and downloaded. <sup>22</sup>
July 28, 2021	The Respondent emails Ms. L’Hirondelle from the Yahoo Email advising, “I am unable to attend the pre-hearing conference still due to medical circumstances.” <sup>23</sup>
July 28 and 29, 2021	The Respondent and counsel for the Commissioner exchange emails in which Commissioner’s counsel advises that she is opposed to further adjournment of the pre-hearing conference and the Respondent advises, “I have requested medical certificates and waiting patiently for them.” Commissioner’s counsel advises that she will be asking the Commissioner to proceed with the pre-hearing

---

<sup>15</sup> Charvet Affidavit, para. 7 and Exhibit E.

<sup>16</sup> Charvet Affidavit, paras. 8 and 9, and Exhibits F and G.

<sup>17</sup> Charvet Affidavit, para. 10 and Exhibit H.

<sup>18</sup> Charvet Affidavit, para. 11 and Exhibit I.

<sup>19</sup> Charvet Affidavit, para. 13 and Exhibit K.

<sup>20</sup> Charvet Affidavit, para. 14 and Exhibit L.

<sup>21</sup> Charvet Affidavit, para. 17 and Exhibit O.

<sup>22</sup> Charvet Affidavit, para. 17 and Exhibit P.

<sup>23</sup> Charvet Affidavit, para. 15 and Exhibit M.

	<p>conference in the Respondent's absence and will ask the Commissioner to set dates for the hearing and make orders regarding the manner of hearing.<sup>24</sup></p> <p>The Commissioner orders the pre-hearing conference to go ahead on July 29, 2021 in the Respondent's absence.</p>
August 3 and 9, 2021	<p>Counsel for the Commissioner sends a letter to the Respondent by mail, email and through SFTS advising that the Respondent may be subject to an order for costs for the hearing.</p> <p>SFTS notifies that the file sent by SFTS was viewed and downloaded on August 3, 2021,<sup>25</sup> and was viewed and downloaded again on August 9, 2021.<sup>26</sup></p>
November 4 and 7, 2021	<p>Counsel for the Commissioner sends a letter to the Respondent by registered mail and through SFTS confirming the orders made by the Commissioner at the July 29, 2021 pre-hearing conference. The Commissioner ordered the Respondent to provide disclosure to the Commissioner's counsel on or before November 30, 2021.</p> <p>Canada Post confirms the letter sent by registered mail was delivered to the Respondent.<sup>27</sup></p> <p>SFTS notifies that the package sent through SFTS was viewed on November 7, 2021.<sup>28</sup></p>
December 15, 16 and 24, 2021	<p>On December 15, 2021, counsel for the Commissioner sends a letter to the Respondent through SFTS; the SFTS notifies that the Respondent viewed the letter through the SFTS twice that same day.<sup>29</sup> In the letter, Commissioner's counsel advises that the Respondent has not provided any disclosure (as ordered by the Commissioner at the pre-hearing conference) or notice of any application for another pre-hearing conference seeking to vary or alter the Commissioner's orders.</p> <p>The letter is also sent to the Respondent by registered mail on December 16, 2021 and Canada Post confirmed that the Respondent picked the letter up from the Kelowna post office on December 24, 2021.<sup>30</sup></p>

<sup>24</sup> Charvet Affidavit, para. 16 and Exhibit N.

<sup>25</sup> Charvet Affidavit, para. 18 and Exhibits Q and R.

<sup>26</sup> Charvet Affidavit, para. 19 and Exhibit S.

<sup>27</sup> Charvet Affidavit, para. 20, Exhibits T and V.

<sup>28</sup> Charvet Affidavit, para. 20, Exhibit U.

<sup>29</sup> Charvet Affidavit, para. 21, Exhibits W and X.

<sup>30</sup> Charvet Affidavit, para. 21, Exhibit Y.

	<p>On December 23, 2021, the Respondent emails Ms. Charvet from the Yahoo Email regarding the letter sent December 15, 2021 through SFTS advising “unable to open”.<sup>31</sup></p>
<p>January 4, 11 and February 3, 2022</p>	<p>On January 4, 2022, counsel for the Commissioner sends a letter to the Respondent by email, registered mail and through SFTS in response to the Respondent’s December 23, 2021 email “unable to open.”<sup>32</sup> In the letter, Commissioner’s counsel advises that the SFTS indicates that the Respondent viewed the letter twice the same day and that Canada Post confirmed the Respondent had picked up the letter sent by registered mail.</p> <p>On January 11, 2022, Canada Post confirms that the Respondent had picked up the registered letter from the post office in Kelowna.<sup>33</sup></p> <p>On February 3, 2022, SFTS notifies that the package sent by SFTS was deleted before it was viewed<sup>34</sup> (which is before the expiry period).</p>
<p>January 5, 14 and February 3, 2022</p>	<p>On January 5, 2022, counsel for the Commissioner sends a letter to the Respondent enclosing the third disclosure index by email, registered mail and through the SFTS.<sup>35</sup></p> <p>Canada Post confirms that the Respondent picked up the letter enclosing the third disclosure index from the Kelowna post office on January 14, 2021.<sup>36</sup></p> <p>On February 3, 2022, SFTS notifies that the package was deleted before it was viewed<sup>37</sup> (which is before the expiry period).</p>
<p>January 11, 21 and February 3, 2022</p>	<p>On January 11, 2022, counsel for the Commissioner sends a letter to the Respondent requesting another pre-hearing conference by email, registered mail and through SFTS.<sup>38</sup></p> <p>On January 21, 2022, Canada Post confirms that the Respondent had picked up the letter from the Kelowna post office.<sup>39</sup></p>

---

<sup>31</sup> Charvet Affidavit, para. 22, Exhibit Z.

<sup>32</sup> Charvet Affidavit, para. 23, Exhibit AA.

<sup>33</sup> Charvet Affidavit, para. 23, Exhibit CC.

<sup>34</sup> Charvet Affidavit, para. 23, Exhibit BB.

<sup>35</sup> Charvet Affidavit, para. 24, Exhibit DD.

<sup>36</sup> Charvet Affidavit, para. 24, Exhibit EE.

<sup>37</sup> Charvet Affidavit, para. 24, Exhibit FF.

<sup>38</sup> Charvet Affidavit, para. 25, Exhibit GG.

<sup>39</sup> Charvet Affidavit, para. 25, Exhibit HH.

	On February 3, 2022, SFTS notifies that the package was deleted before it was viewed <sup>40</sup> (which is before the expiry period).
January 12 and February 3, 2022	On January 12, 2022, counsel for the Commissioner sends the Respondent a letter enclosing six affidavits through the SFTS. The package is also sent to the Respondent using regular mail. <sup>41</sup>  On February 3, 2022, SFTS notifies that the package was deleted before it was viewed <sup>42</sup> (which is before the expiry period).
January 12, 21 and February 3, 2022	On January 12, 2022, counsel for the Commissioner sends a letter to the Respondent enclosing the fourth disclosure index by email, registered mail and through SFTS. <sup>43</sup>  On January 21, 2022, Canada Post confirms that the Respondent picked up the letter from the post office in Kelowna. <sup>44</sup>  On February 3, 2022, SFTS notifies that the package was deleted before it was viewed <sup>45</sup> (which is before the expiry period).

- [22] Based on its review of the evidence, the panel concluded that the Commissioner has complied with s. 56(3)(a) of the Act and it would not be unfair in the circumstances to continue the hearing in the Respondent's absence for the reasons that follow.
- [23] The panel finds that the Respondent received a copy of the Citation in compliance with the Act, based on the evidence of the process server who served it personally on the Respondent at the Home Address on March 20, 2021, as well as the evidence that the Citation was delivered by registered mail to the Respondent in December 2020.
- [24] The panel finds that the Commissioner's counsel provided the document indexes and affidavits to the Respondent at least 28 days before the commencement of the hearing.
- [25] The Commissioner's counsel sent the first disclosure index to the Respondent by email to the Yahoo Email. The Respondent deleted the first disclosure index sent on March 30, 2021 through SFTS without viewing it before the expiry period, as the SFTS system notified on April 24, 2021. The Respondent received the second, third and fourth disclosure indexes through the SFTS system (the evidence is that the second disclosure index sent July 27, 2021 was viewed and downloaded on August 3, 2021), and registered mail (the evidence is that the Respondent picked up the third and fourth disclosure indexes sent by registered mail from the Kelowna post office on January 14 and 21, 2022 respectively).

---

<sup>40</sup> Charvet Affidavit, para. 25, Exhibit II.

<sup>41</sup> Charvet Affidavit, para. 26, Exhibit JJ.

<sup>42</sup> Charvet Affidavit, para. 26, Exhibit KK.

<sup>43</sup> Charvet Affidavit, para. 27, Exhibit LL.

<sup>44</sup> Charvet Affidavit, para. 27, Exhibit MM.

<sup>45</sup> Charvet Affidavit, para. 27, Exhibit NN.



- [26] At the first pre-hearing conference on July 29, 2021, the Commissioner ordered Commissioner's counsel to provide the Respondent affidavits of the Commissioner's witnesses by January 12, 2022. Commissioner's counsel sent the affidavits to the Respondent's Home Address on January 12, 2022. The Commissioner's counsel also sent the affidavits to the Respondent through SFTS on January 12, 2022, but on February 3, 2022, SFTS notified that the package was deleted before it was viewed, prior to the date at which the file would expire.
- [27] The evidence before the panel confirms that the Respondent used the Yahoo Email up to the night before the hearing, and that materials sent by registered mail were picked up by the Respondent. The evidence further confirms that the Respondent viewed and downloaded some materials sent through SFTS, although others were deleted without being viewed. There is no evidence indicating that the Respondent was unable to or had difficulty accessing the SFTS files.
- [28] At the hearing, Commissioner's counsel also advised the panel that a second pre-hearing conference was held on January 19, 2022 which the Respondent did not attend although she received notice of it.
- [29] Based on the evidence summarized above, the panel is satisfied that the Commissioner's counsel complied with the disclosure provisions of Rules 42 and 43, requiring discipline counsel to provide the Respondent with the various documents. The Rules do not stipulate that the Commissioner's counsel must prove that the Respondent reviewed the documents.
- [30] A professional conduct hearing can have serious consequences if a discipline panel finds the authorized person (or former authorized person) guilty of professional misconduct. There is no provision in the Act governing an application to adjourn the hearing, but the hearing panel has discretion to grant an adjournment of a hearing in the interests of fairness.
- [31] The Commissioner accommodated the Respondent's request for an adjournment and rescheduled the first pre-hearing conference from June to July 29, 2021. However, the Respondent sought a further adjournment of the pre-hearing conference on July 28, 2021, the day before it was rescheduled, although the Respondent had known the new date for several weeks. The Respondent did not attend the pre-hearing conferences scheduled by the Commissioner on July 29, 2021 or January 19, 2022.
- [32] As noted above, counsel for the Commissioner provided the panel with the Feb 14 Email, which was sent by the Respondent to Ms. L'Hirondelle at 11:32 p.m. the evening before the hearing was scheduled to commence.
- [33] The Feb 14 Email responds to the email Ms. L'Hirondelle sent the Respondent earlier on February 14, 2022 at 10:02 a.m., advising that the hearing was scheduled to take place virtually starting February 15, 2022 and providing the Respondent with the information necessary to participate in the virtual hearing.
- [34] In the Feb 14 Email, the Respondent did not seek an adjournment of the hearing.
- [35] In the Feb 14 Email, the Respondent referenced two "Medical Certificates" without elaborating on their purpose. The two documents are letters from Dr. Wendy Markwell

addressed “to whom it may concern” dated May 31, 2010 and February 10, 2022 respectively.

- [36] The May 31, 2010 letter indicates that Dr. Markwell is associated with Townsville Family Medical Centre, in Australia. Dr. Markwell states that she has been the Respondent’s general practitioner since 1987 and that the Respondent has suffered from migraines since eight years of age. The letter does not provide any information that addresses the Respondent’s ability to participate in the discipline hearing.
- [37] The February 10, 2022 letter states that the Respondent “has chronic pain syndrome and chronic fatigue syndrome” and “is currently undergoing testing for Early Onset Alzheimer’s.” The letter from Dr. Markwell does not indicate if the doctor is currently treating the Respondent or provide information regarding the extent of the Respondent’s conditions or how they may affect her ability to participate in the discipline hearing.
- [38] The panel is satisfied that the Respondent was properly served with the Citation and has had notice of the hearing for several months but has not engaged with the process. The Respondent did not participate in the pre-hearing conferences, although the Respondent knew they were taking place.
- [39] The Respondent has had several months to prepare for the hearing and has not applied for an adjournment. The “medical certificates” provided by the Respondent are vaguely worded and, in the absence of an adjournment application, do not provide a sufficient basis for delaying this hearing.
- [40] As the panel is satisfied that the Commissioner has complied with the requirements of section 56(3)(a) of the Act and with the Rules and in the absence of an adjournment application, the panel proceeded with the hearing in the Respondent’s absence in accordance with section 62 of the Act.

## CITATION AND JURISDICTION

- [41] The Citation provides in part as follows:
1. [The Respondent], a former authorized person under the *Teachers Act*, who was issued a Conditional Certificate of Qualification No. L190045 on September 4, 2012, initially valid to June 30, 2017 and extended for one year to June 30, 2018 (her “Valid Conditional Certificate”) when it expired, falsely represented that she held a Professional Certificate of Qualification in order to gain personal benefit, on some or all of the following occasions, when:
    - a. In or about May 2018, [the Respondent] submitted an application to the Teacher Qualification Service and included with it a false Professional Certificate of Qualification, purportedly issued on January 18, 2018 by Andrew Crawford, Director of Certification (the “False Professional Certificate”).
    - b. In or about June 2018, when [the Respondent] applied for employment as a teacher with Lakeside School, an independent school in Kelowna, she falsely

represented to its administrators, verbally or in writing or both, that she held a Professional Certificate of Qualification.

- c. Further, on or about June 19, 2018, [the Respondent] gave to Lakeside School the False Professional Certificate.
- d. ....

This conduct is contrary to Standard #2 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, 4<sup>th</sup> Edition, January 2012. [The Respondent] is guilty of professional misconduct, or alternatively, conduct unbecoming a teacher, under section 63(1) of the *Teachers Act*.

- 2. [The Respondent] falsely represented to employees of the Ministry of Education carrying out duties under the *Teachers Act* that she held a valid Professional Certificate of Qualification on some or all of the following occasions, when:
  - a. On June 29, 2018, [the Respondent] emailed Certificate Services of the Certification Unit of the Ministry of Education (the “Certification Unit”), writing that she was “having difficulty paying my 2018-2019 Annual Practice Fee for my Professional BC Teaching Certificate.”
  - b. On September 11, 2019, [the Respondent] emailed an employee of the Certification Unit, writing that she had mailed to the Certification Unit “my Professional certificate signed by D. Crawford Director of Certification.”
  - c. On September 18, 2019, [the Respondent] emailed an employee of the Certification Unit, writing that “My tracking number indicates that my original conditional and professional certificates arrived at the Teacher Regulation Branch.”
  - d. On September 25, 2019, [the Respondent] emailed an employee of the Certification Unit, writing that “I submitted information over 2 years ago and received my Professional certificate.”
  - e. On November 1, 2019, [the Respondent] mailed to an employee of the Professional Conduct Unit of the Ministry of Education (the “PCU”) a copy of the False Professional Certificate.
  - f. On November 1, 2019, [the Respondent] emailed an employee of the Certification Unit, writing that she had disposed of letter correspondence with the Ministry of Education “when I received my Professional certificate.”
  - g. On November 27, 2019, [the Respondent] emailed an employee of the PCU, writing “In my letter to you I wrote that I updated my information and education background and I received my Professional Certificate.”
  - h. On December 6, 2019, [the Respondent] emailed an employee of the PCU, writing that “I then received my Professional Certificate in 2018.”

- i. On May 31, 2020, [the Respondent] emailed an employee of the PCU, writing that “I gave my Professional Certificate of Qualification (signed by Crawford) to Lakeside School.”

This conduct is contrary to Standard #2 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, 4<sup>th</sup> Edition, January 2012 and, as applicable, to Standard #2 of the Professional Standards for BC Educators, June 2019. [The Respondent] is guilty of professional misconduct, or alternatively, conduct unbecoming a teacher, under section 63(1) of the *Teachers Act*.

3. On February 15, 2020, when [the Respondent] was interviewed by a PCU employee during an investigation under the *Teachers Act*, she made some or all of the following untrue statements, which she knew were not true when she made them:
  - a. She submitted an application for a professional certificate of qualification in July 2017;
  - b. She spoke with four staff in the Certification Unit regarding this application;
  - c. She was told by Certification Unit staff that she no longer needed to complete any additional coursework to be issued a professional certificate of qualification;
  - d. She was issued a professional certificate of qualification in January 2018; and
  - e. She mailed to the Certification Unit her original Valid Conditional Certificate and the professional certificate of qualification that she claimed was issued to her and that she was informed by Canada Post tracking that this package was delivered to the Certification Unit.

This conduct is contrary to Standard #2 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, 4<sup>th</sup> Edition, January 2012 and, as applicable, to Standard #2 of the Professional Standards for BC Educators, June 2019. [The Respondent] is guilty of professional misconduct, or alternatively, conduct unbecoming a teacher, under section 63(1) of the *Teachers Act*.

[42] At the hearing, Commissioner’s counsel advised that they would not be proceeding with the allegation set out in para. 1(d) and the panel has not considered it.

[43] The panel has jurisdiction over the allegations set out in paragraph 1(a)-(c) and 2(a) of the Citation as the conduct is alleged to have occurred when the Respondent held the Conditional Certificate and was an authorized person under the Act.

[44] However, the allegations set out in paragraphs 2(b)-(i) and 3(a)-(d) of the Citation describe conduct that is alleged to have occurred *after* the Respondent was no longer an authorized person. The Commissioner submits that the conduct in those allegations directly arises as part of a pattern of continuing conduct, which started while the Respondent held the Conditional Certificate.

[45] The Commissioner asks this panel to consider the scope of the disciplinary jurisdiction afforded to discipline panels under the Act and to find that in these circumstances, the panel’s jurisdiction extends to conduct that continued after the Respondent’s status as an authorized person ended.

[46] As a “creature of statute,” the panel only has the jurisdiction granted expressly or by necessary implication by the Act. The issue is whether the Act confers jurisdiction on discipline panels to discipline a former “authorized person” for conduct that occurred *after* the person ceased to hold certification.

[47] Section 1 of the Act contains the following relevant definitions:

“authorized person” means

(a) a certificate holder, or

(b) a person who holds a letter of permission issued under section 35 [issuance of letter of permission]

“certificate holder” means a person who holds a certificate of qualification or an independent school teaching certificate;

“certificate of qualification” means a certificate of qualification issued under this Act by the director of certification;

[48] Part 6 of the Act governs disciplinary and professional conduct inquiries (among other things). Section 39 of Part 6 defines “complaint” as a written complaint about an “authorized person” signed by the person making the complaint. Although not relevant to these proceedings, section 39 also defines “report” as a report about an “authorized person” under section 16 or section 16.1 of the *School Act*,<sup>46</sup> section 7 or 7.2 of the *Independent School Act*,<sup>47</sup> or under section 38 of the Act.

[49] Section 43 of the Act speaks to former “authorized persons” and former “members” as follows:

43(1) In this section, “former member” means a person who was a member of the College of Teachers under the *Teaching Profession Act*, R.S.B.C. 1996, cc. 449.

(2) For the purposes of determining whether a former authorized person or a former member has been guilty of professional misconduct or conduct unbecoming a teacher, section 38 [*duty to report professional misconduct*] of this Act and this Part apply to

- (a) the former authorized person as if the former authorized person were a certificate holder or a person holding a letter of permission, as applicable, and
- (b) the former member as if the former member were a certificate holder.

---

<sup>46</sup> *School Act*, CITE, s. 16, “report of dismissal, suspension and discipline regarding authorized persons”, s. 16.1, “report of dismissal, suspension and discipline regarding superintendents.”

<sup>47</sup> *Independent School Act*, CITE, s. 7, “report of dismissal, suspension and discipline regarding authorized persons”, s. 7.2, “report of dismissal, suspension and discipline regarding principals”

- [50] The question is whether section 43 of the Act confers jurisdiction on the panel to discipline a person for conduct that took place after the expiration of their certificate after they ceased to be a regulated professional.
- [51] The modern approach to statutory interpretation requires the panel to consider the entire context of a provision to determine whether it is reasonably capable of different interpretations. The interpretation of a specific provision, such as section 43 of the Act, cannot be separated from the purposes and objects of the legislation, the scheme of the Act and broader contextual considerations.<sup>48</sup>
- [52] The purpose and objects of the Act are to establish a process for the certification of teachers (“authorized persons”) and to regulate their conduct and competence through the investigation of complaints and through disciplinary and professional conduct inquiry processes. The provisions are designed to protect the public by ensuring that authorized persons comply with standards of conduct and practice and face regulatory action when they fail to meet those requirements.
- [53] On a plain reading, section 43 extends the meaning of “authorized person” for the limited purpose of determining whether they have been guilty of professional misconduct or conduct unbecoming a teacher. Subsection 43(2) provides that section 38 and Part 6 of the Act apply to the former authorized person as if the former authorized person were a certificate holder (or a person holding a letter of permission, as applicable) and to a former member as if the former member were a certificate holder. Section 43 extends the definition of a certified teacher to include those who were previously certified for the limited purposes of investigations and discipline.
- [54] The legislative purpose of extending the definition of “authorized person” to include “former” authorized persons or former members is to prevent such individuals from avoiding investigation and discipline by terminating their registration or letting it lapse before the regulatory proceedings are commenced or completed.
- [55] Enabling an authorized person or member to insulate themselves from the complaints investigation and discipline process by resigning their membership would clearly frustrate the legislative purpose of regulating professionals in the public interest. The Alberta Court of Appeal recognized this in *Ho v. Alberta Association of Architects (Ho)*:
- [39] As noted, the appellant vigorously argued that he became immune to the prosecution and sanction process of the Association with his de-registration. This also was and is incorrect. If correct, it would seriously injure the ability of the Association to regulate the professionals under its surveillance.<sup>49</sup>
- [56] Viewed in isolation and in the context of Part 6 and the Act as a whole, the purpose of section 43 is to enable the Commissioner and disciplinary and professional conduct panels

---

<sup>48</sup> *Re Rizzo and Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27.

<sup>49</sup> *Ho v. Alberta Association of Architects*, 2015 ABCA 68, at para. 39, leave to appeal refused, [2015] S.C.C.A. No. 147 (SCC).

to exercise their powers and duties in relation to former authorized persons who held certificates at the time of the alleged misconduct.

- [57] This was the situation in *Plehanov*,<sup>50</sup> in which a discipline panel appointed in 2021 determined that it had jurisdiction to make an adverse finding against a respondent whose certificate had been cancelled in May 2014.<sup>51</sup> As part of the consent resolution, Mr. Plehanov had agreed not to apply for a certificate for a period of three years (to May 5, 2017). In January 2016, the BC Supreme Court found Mr. Plehanov guilty of the sexual assault of a child, which assault had occurred in March 2013, at the time Mr. Plehanov held a certificate.
- [58] The *Plehanov* panel determined that it had jurisdiction under ss. 43(2) of the Act to determine if the sexual assault conviction and the facts contained in the Court’s judgment constituted conduct unbecoming a teacher under subsection 63(1)(b) of the Act. Although the conviction occurred after Mr. Plehanov’s certificate had been cancelled, the conduct on which it was based occurred while Mr. Plehanov was an authorized person. That is distinct from the situation in this case.
- [59] If the Legislature had intended to confer unlimited jurisdiction on the Commissioner or discipline hearing panels to act in relation to post-certification conduct, much clearer statutory language would be required for such a “reach”.
- [60] The panel is reinforced in this view by the cases cited by Commissioner’s counsel in which courts have held that discipline panels of professional regulators do not have the jurisdiction to discipline members for professional misconduct which occurred before they become members of the profession.
- [61] In *Association of Professional Engineers of Ontario v. Leung*<sup>52</sup> (*Leung*), for example, the Ontario Divisional Court dismissed the Association’s appeal from the decision of a discipline committee panel. The panel had dismissed all the allegations made by the Association against Mr. Leung’s professional corporation, JIT Professional Services Inc. (“JIT”), because JIT had not been a holder of a certificate of authorization from the Association at the time the alleged conduct occurred (it acquired the certificate after the alleged conduct occurred).<sup>53</sup>
- [62] In *Leung*, the Court found that the panel’s decision that it did not have jurisdiction over JIT’s pre-licensing conduct was both reasonable and correct, and concluded that the words of the relevant statute could not be broadly interpreted to extend to pre-licensing conduct.<sup>54</sup> The Court stated the following:

... the proper and contextual construction of the statute supports the view that the Discipline Committee does not have jurisdiction over the actions of persons

---

<sup>50</sup> *In the Matter of the Teachers Act – and – Plehanov*, 2021 TAHP 01 at

<sup>51</sup> The certificate was cancelled pursuant to a consent resolution agreement relating to professional misconduct and conduct unbecoming a teacher.

<sup>52</sup> *Association of Professional Engineers of Ontario v. Leung*, 2018 ONSC 4527 (Div. Ct.).

<sup>53</sup> *Leung*, paras. 1, 18 and 37

<sup>54</sup> *Leung*, paras. 46 and 49.

before they were members or holders of certificates. The Discipline Committee's jurisdiction is entirely statutory, and the statute is clear that it has jurisdiction in respect of allegations of the misconduct or incompetence of members or holders. As discussed above, the use of broader language of the provisions addressing the assessment of applicants' fitness to be members, and the offences and penalties provisions provide the context for the interpretation that the Discipline Committee's jurisdiction does not extend to pre-licensing conduct.<sup>55</sup>

- [63] Similarly, in *Keppel v. Assn. of Professional Engineers, Geologists, and Geophysicists of the Northwest Territories*<sup>56</sup> (*Keppel*), the NWT Supreme Court determined that the Association did not have jurisdiction to proceed with a discipline hearing for conduct alleged to have occurred before Mr. Keppel became a member of the Association, based on the relevant provisions of the governing statute:

The sections of the Act that I have quoted above clearly indicate that the process of investigation is initiated by and founded on the receipt of a complaint against a registrant. Section 1(1) of the Act defines registrant as "a member, licensee, student or person in training." The applicant was none of these at the time the complaint was received.

A review of other cases indicates that, absent statutory jurisdiction, it is only in certain circumstances that a professional body will have jurisdiction to deal with events occurring prior to an individual becoming a member.

...

In this case the issue is not continuing conduct or fitness. The Association was well aware of the allegations against the applicant when it admitted him to membership. The Association is not bringing the proceedings complained of in order to determine whether the applicant is fit to practise as an engineer; rather, they are brought in order to discipline him for the specific acts complained about should it be established that they do amount to conduct unbecoming a registrant.

I would adopt the following words from the High Court decision in *Harcourt [and Association of Professional Engineers of the Province of Ontario]* (1930), 38 O.W.N. 275] concerning the interpretation of discipline provisions:

One of the purposes of the Act was, no doubt, to afford protection to the public against ignorant, unqualified, and unworthy practitioners of the engineering profession. Another purpose, undoubtedly, was to protect the engineering profession against the intrusion of unqualified and undesirable persons, and the Act ought to have a liberal construction. But, when it comes

---

<sup>55</sup> *Leung*, para. 59.

<sup>56</sup> *Keppel v. Assn. of Professional Engineers, Geologists, and Geophysicists of the Northwest Territories*, [1996] N.W.T.J. No. 68 (SC).



to the enforcement of penalties by disciplinary proceedings, the Court must see to it that the proceedings are in strict conformity with the statute. That is the purpose of the section which gives the right of appeal.<sup>57</sup>

[64] Although the present case involves conduct that is alleged to have occurred after the Respondent's certification expired – not conduct that pre-dated the Respondent's Conditional Certificate – the same considerations described by the Courts in *Leung* and *Keppel* apply. In paragraphs 2(b)-(i) and 3 of the Citation, the Respondent is being cited for contravening standards of conduct that ceased to be applicable to her after she no longer held a Certificate.

[65] Commissioner's counsel cited *Ho* as authority that this panel has jurisdiction to consider "continuing misconduct". In *Ho*, the architect was not a member of the professional association at the time the first allegation occurred but was a member by the time the later allegation occurred (it was the third allegation in the citation, as the second allegation was dismissed and not appealed). The Court found the facts between the first and third allegations were "intertwined," such that the architect could be professionally disciplined for the earlier pre-registration conduct:

... here the allegations in the first and third counts are intertwined. The counts can be read together. The appellant's conduct carried forward from the period before registration when he practised without proper authority from the Association into the period when he was registered. ... This conduct in the first count, therefore, put a contemporaneous colouration and character to his position as a registered member. Indeed, the misconduct as described in the first count was braided with the conduct in the third case.<sup>58</sup>

[66] The facts of *Ho* are distinct from the present case. Indeed, the Court was careful to emphasize that the case should be limited to its facts:

It is important to point out, therefore, that this decision should not be taken beyond the factual confines of the present case, nor beyond the obligation of this Court to show deference to a reasonable interpretation by a tribunal of its governing and authorizing statute.<sup>59</sup>

[67] The allegations in the Citation do not involve misconduct pre-dating certification that carried over into the certification period in which the Respondent was an "authorized person". Rather, the allegations in paragraphs 2(b)-(i) and 3 of the Citation relate to conduct that post-dates the expiration of the Respondent's Conditional Certificate. The issue of continuing misconduct is not relevant for this discipline hearing as the Respondent was no longer subject to the standards of practice as she was no longer certified to practice.

[68] Commissioner's counsel points out that there are no provisions in the Act governing the unauthorized or illegal practice of teachers (unlike the statutory schemes considered in *Ho*,

---

<sup>57</sup> *Keppel*, paras. 22, 23, 27 and 28

<sup>58</sup> *Ho*, para. 35.

<sup>59</sup> *Ho*, para 36.

*Leung, and Keppel*). The Commissioner submits that the absence of an unauthorized practice provision is material as there is “no effective way at the regulatory level to address the situation where a person who was authorized, continues to hold themselves out as being authorized” under the Act and no way to communicate this “relevant misconduct” to potential employers.

- [69] Other statutory schemes empower a professional regulator to seek injunctive relief through the courts to enjoin persons from engaging in the unauthorized practice of the profession or the unauthorized use of a reserved title.<sup>60</sup> In those circumstances, the court determines whether the person engaged in unauthorized practice or the improper use of a reserved title rather than the professional regulator.
- [70] The absence of similar provisions in the Act does not confer jurisdiction on the panel where it otherwise does not exist.
- [71] The panel therefore finds that it does not have jurisdiction to determine the allegations set out in paragraphs 2(b)-(i) and 3 of the Citation because these allegations involve conduct that occurred after the Respondent’s Conditional Certificate expired.

## ISSUE

The issue before the Panel is whether it has been proven that the Respondent engaged in the alleged conduct set out in paragraphs 1(a) to (c) and 2(a) of the Citation and, if so, whether that conduct constituted professional misconduct or, alternatively, conduct unbecoming a teacher, under subs. 63(1) of the Act.

## REVIEW OF EVIDENCE AND PANEL’S FINDINGS OF FACT

- [72] The evidence before the panel was tendered through the affidavits of the following individuals:
- Hassan Wahla, who was formerly employed with the PCU and conducted the investigation into this case (the “Wahla Affidavit”)<sup>61</sup>;
  - Evelyn Debusschere, who was the school principal at the Lakeside School in Kelowna between November 2016 and July 2021 (the “Debusschere Affidavit”)<sup>62</sup>;
  - Joseph Méthot, who was employed as an evaluation technician in the Teacher Certification Unit from January 14, 2018 until October 1, 2021 (the “Méthot Affidavit”)<sup>63</sup>;
  - Christina Pelcher, an administrative assistant at the TRB (the “Pelcher Affidavit”)<sup>64</sup>;

<sup>60</sup> See, for example, Professional Governance Act, S.B.C. 2018, c. 47, s. 107, “Injunction to restrain contravention”.

<sup>61</sup> Exhibit #5, Affidavit of Hassan Wahla affirmed January 12, 2022.

<sup>62</sup> Exhibit #6, Affidavit of Evelyn Debusschere affirmed January 5, 2022.

<sup>63</sup> Exhibit #7, Affidavit of Josef Méthot affirmed January 10, 2022.

<sup>64</sup> Exhibit #8, Affidavit of Christina Pelcher affirmed January 10, 2022.

- Carl Post, the Director of Evaluation at the Teacher Qualification Service (the “Post Affidavit”)<sup>65</sup>; and
- Boris Wu, software engineer with the Ministry of Education (the “Wu Affidavit”).<sup>66</sup>

- [73] The evidence establishes that the Respondent first applied to the former College of Teachers (the “College”) for a certificate of qualification on July 1, 2010. The College advised the Respondent that she was eligible for a conditional certificate of qualification but was required to complete three credit or semester hours of academic coursework at an approved post-secondary institution in each of English, Canadian Studies, Math, and Science (for a total of 12 credit/semester hours) to obtain a professional certificate. The College did not issue the Respondent a conditional certificate.<sup>67</sup>
- [74] The Respondent reapplied for a certificate of qualification to the Teacher Regulation Branch (“TRB”) on August 1, 2012; she also submitted to the TRB a course approval form proposing that she would complete courses in English, History, Math, and Earth Sciences at the University of British Columbia.<sup>68</sup>
- [75] On September 4, 2012, the TRB issued the Conditional Certificate.<sup>69</sup> The panel notes that the word “Conditional” appears directly above the words “Certificate of Qualification”. The Conditional Certificate also states on its face that it was valid from “2012/09/04 – 2017/06/30” and it is signed by “S.T. McMullin”, the Director of Certification.
- [76] The TRB sent the Conditional Certificate to the Respondent under cover of a letter advising her that “[y]ou will need to complete coursework requirements and upgrade to a Professional Certificate” before June 30, 2017, the date on which the Conditional Certificate expired.<sup>70</sup>
- [77] The Commissioner’s counsel provided a copy of the template for professional certificates of qualification issued by the TRB (the “Certificate Template”).<sup>71</sup> The Certificate Template indicates that the “Type” of certificate is to be filled in over the words “Certificate of Qualification.” The Certificate Template also indicates the issue date and the “valid from” date and is signed by the Director of Certification. On the Certificate Template attached as an exhibit to the Wu Affidavit, it is signed by “A Crawford”, the Director of Certification at the time.
- [78] At the relevant time, the TRB used an electronic system called “ProApp” to manage records and information related to the TRB’s functions under the Act.<sup>72</sup> ProApp includes modules, which maintain a record of all relevant matters related to each current and former certificate holder, and to each applicant for a certificate, including information about the type and

---

<sup>65</sup> Exhibit #9, Affidavit of Carl Post affirmed January 10, 2022.

<sup>66</sup> Exhibit #10, Affidavit of Boris Wu affirmed January 10, 2022.

<sup>67</sup> Wahla Affidavit, paras. 5-7, Exhibits A and B.

<sup>68</sup> Wahla Affidavit, paras. 8-9, Exhibits C and D.

<sup>69</sup> Wahla Affidavit, para. 10, Exhibit E.

<sup>70</sup> Wahla Affidavit, paras. 10 and 11.

<sup>71</sup> Wu Affidavit, para. 18, Exhibit A.

<sup>72</sup> Wu Affidavit, para. 3.

status of any certificate or other authorization.<sup>73</sup> When an applicant or certificate holder contacts the TRB for information related to their file, the TRB staff member searches ProApp for the person's record and, at the same time, ProApp automatically logs searches of ProApp, when file information is updated, and/or a certificate is issued.<sup>74</sup>

- [79] The Teacher Qualification Service (“TQS”) is a service provided jointly by the BC School Trustees Association and the BC Teachers’ Federation to evaluate the educational credentials of teachers solely for salary purposes for those wanting to teach in the public school system.<sup>75</sup> The TQS does not authorize people to teach in the K-12 system.<sup>76</sup> The TQS and the TRB are separate entities, and a teacher must apply to the TQS for an evaluation to obtain a TQS category card. The TQS issues “expiring” and “non-expiring” cards, depending on the type of certificate issued by the TRB. The TQS issues an expiring card to applicants who hold conditional certificates, which expires when the conditional certificate expires, and it issues non-expiring cards to applicants who hold professional certificates.<sup>77</sup>
- [80] In its September 4, 2012 cover letter to the Respondent enclosing the Conditional Certificate, the TRB advised it had sent a copy of the Conditional Certificate to the TQS.<sup>78</sup>
- [81] Between 2013 and August 2018, the Respondent worked at the Sylvan Learning Centre in Kelowna, BC (“Sylvan”), an after-school tutoring facility. Through Sylvan’s private training program, “Sylvan University”, the Respondent completed several certifications related to her work with Sylvan.<sup>79</sup>
- [82] When contacted by the TRB investigator in November 2019, Sylvan’s representative advised that Sylvan does not require an independent criminal record check from those applicants who submit a certificate of qualification as a teacher. The Sylvan representative advised that when Sylvan hired the Respondent in 2013, it “used the [Respondent’s] teaching certificate in lieu of a criminal record check.”<sup>80</sup>
- [83] Sylvan provided the TRB with a copy of the certificate of qualification the Respondent had provided when applying to Sylvan (the “Sylvan Copy”).<sup>81</sup> The Sylvan Copy indicates that it is a “Certificate of Qualification”, but it does not include the words “Professional” or “Conditional” where the type of certificate is to be indicated on the Certificate Template. The Sylvan Copy indicates that it was issued on September 4, 2012, but it does not include the “valid from” date shown on the Certificate Template. The Sylvan Copy is signed by “S.T. McMullin”.

---

<sup>73</sup> Wu Affidavit, para. 4; Méthot Affidavit, paras. 15-19.

<sup>74</sup> Wu Affidavit, paras. 10-14; Méthot Affidavit, para. 15-19.

<sup>75</sup> Post Affidavit, para. 3.

<sup>76</sup> Post Affidavit, para. 7.

<sup>77</sup> Post Affidavit, paras. 5-6.

<sup>78</sup> Wahla Affidavit, paras. 10-11, Exhibits E and F.

<sup>79</sup> Wahla Affidavit, Exhibits Q and AA.

<sup>80</sup> Wahla Affidavit, para. 25.

<sup>81</sup> Wahla Affidavit, paras. 24 and 25 and Exhibit R.

- [84] Sylvan also provided the TRB a copy of the Respondent's resumé from its files. In the resumé, the Respondent lists under "education" a "Certificate of Qualification" issued by the BC "Ministry of Education" in 2012.<sup>82</sup>
- [85] The Respondent requested an extension to the Conditional Certificate in March 2017 and the Acting Director of Certification granted a one-year extension of the Conditional Certificate to June 30, 2018. In the letter confirming the extension, the Acting Director of Certification advised the Respondent that "within the one year extension it will be necessary for you to complete all outstanding coursework requirements." On April 10, 2017, a TRB evaluator sent a further letter to the Respondent advising that the 12 credits/semester hours of coursework would be required to complete to obtain a professional certificate.<sup>83</sup>
- [86] There are no entries in the TRB's ProApp system relating to the Respondent from April 2017, when she was granted the extension of her Conditional Certificate, until late June 2018.<sup>84</sup>
- [87] The Respondent first applied to the TQS for an evaluation on May 30, 2017. On June 20, 2017, the Respondent confirmed in an email to the TQS evaluator that the Conditional Certificate had been extended to June 30, 2018. The Respondent advised the TQS evaluator, "I will not receive my Non-expiring Professional Teaching Certificate until I have completed my coursework requirements."<sup>85</sup> The TQS issued the Respondent an expiring category card effective May 1, 2017, expiring on June 30, 2018.<sup>86</sup>
- [88] On May 4, 2018, the Respondent applied to the TQS for a second evaluation.<sup>87</sup> With this application, the Respondent submitted a photocopy of a professional certificate of qualification (the "TQS Copy").<sup>88</sup> The TQS Copy has the word "Professional" above the words "Certificate of Qualification" and indicates that it was issued "2018/01/18" and valid from "2018/01/18". The TQS Copy is signed by "A. Crawford, Director of Certification."
- [89] The TQS relied on the TQS Copy as authentic evidence the Respondent had obtained a professional certificate. The TQS changed the Respondent's TQS category card from "expiring" to "non-expiring" on or about May 11, 2018.<sup>89</sup>
- [90] When contacted by the TRB investigator in November 2019, the TQS reviewed the Respondent's file and could not locate a copy of a professional certificate forwarded to the TQS by the TRB, which is inconsistent with the TRB's standard practice.<sup>90</sup> However, Carl Post's evidence is that if the TQS were missing a certificate of qualification, it would be

---

<sup>82</sup> Wahla Affidavit, para. 26 and Exhibit S.

<sup>83</sup> Wahla Affidavit, paras. 12-13, Exhibits G, H and I.

<sup>84</sup> Wu Affidavit, paras. 24 and 25, Exhibit D; Wahla Affidavit, Exhibit CC, p. 178.

<sup>85</sup> Post Affidavit, para. 13(d) and Exhibit C.

<sup>86</sup> Post Affidavit, para. 13(f) and Exhibit B.

<sup>87</sup> Post Affidavit, para. 13(g) and Exhibit B.

<sup>88</sup> Post Affidavit, para. 13(h) and Exhibit A.

<sup>89</sup> Post Affidavit, para. 13(j) and Exhibit B.

<sup>90</sup> Post Affidavit, para. 14.

the applicant's responsibility to provide it and the TQS does not request a certificate from the TRB on an applicant's behalf.<sup>91</sup>

- [91] The TRB investigator's evidence is that the Respondent applied for positions with a public school district in 2018 through an education sector job board and that in an application dated February 21, 2018, the Respondent wrote "Professional Certificate" in the provincial certificates section on the first page of the application.<sup>92</sup>
- [92] On June 5, 2018, the Respondent applied for a position as a teacher at the Lakeside School Kelowna ("Lakeside"), a non-profit, independent Waldorf school in Kelowna BC.<sup>93</sup> During an interview on June 19, 2018 with Lakeside's former principal, the Respondent provided a copy of a professional certificate of qualification (the "Lakeside Copy").<sup>94</sup> The Lakeside Copy has the word "Professional" above the words "Certificate of Qualification" and indicates that it was issued "2018/01/18" and valid from "2018/01/18". The Lakeside Copy is signed by "A. Crawford, Director of Certification."
- [93] The former principal of Lakeside's evidence is that they relied on the Lakeside Copy as an authentic professional certificate.<sup>95</sup>
- [94] On June 29, 2018, the Respondent emailed the TRB Certificate Services stating, "I am still having difficulty paying my 2018-2019 Annual Practice Fee for my Professional BC Teaching Certificate. ... I am emailing as it is due by June 30, 2018."<sup>96</sup>
- [95] The Respondent's Conditional Certificate expired June 30, 2018.
- [96] The evidence of several of the Commissioner's witnesses is that there is no entry in the TRB ProApp system indicating that a professional certificate was issued for the Respondent, or that the Respondent met the course requirement conditions to upgrade to a professional certificate.<sup>97</sup>
- [97] Annual practice fees are due and payable to the TRB by June 30 of each year. Under the Act, certificate holders can remit the fee to an independent school authority, which will then pay the fee directly to the TRB.<sup>98</sup>
- [98] On July 3, 2018, after the Conditional Certificate expired, the TRB received the Respondent's annual practice fee payment for the 2018/2019 year, plus a late fee. The TRB emailed the Respondent confirming receipt of this payment. Ms. Pelcher's evidence is that she did not notice that the Respondent's Conditional Certificate had expired at the time of confirming receipt of payment.<sup>99</sup> Mr. Wu's evidence is that the payment was applied to the

---

<sup>91</sup> Post Affidavit, para. 15

<sup>92</sup> Wahla Affidavit, para. 20, Exhibit O.

<sup>93</sup> Debusschere Affidavit, para. 11, Exhibit D.

<sup>94</sup> Debusschere Affidavit, para. 14, Exhibit B.

<sup>95</sup> Debusschere Affidavit, para. 15.

<sup>96</sup> Wahla Affidavit, para. 35, Exhibit Z.

<sup>97</sup> Wu Affidavit, para. 20; Méthot Affidavit, para. 31; and Wahla Affidavit, paras. 42 and 43.

<sup>98</sup> Wu Affidavit, para. 20.

<sup>99</sup> Pelcher Affidavit, para. 8, Exhibit C.

Respondent's account after the Conditional Certificate had expired, but before the ProApp system had been updated to reflect the Respondent's certification status.<sup>100</sup>

- [99] On or about July 11, 2018, the TRB's ProApp system was updated to reflect that the Respondent's Conditional Certificate had expired.<sup>101</sup>
- [100] On August 20, 2018, Lakeside offered the Respondent a full-time position effective that date. The Respondent accepted the offer and returned a signed offer letter to Lakeside on August 20, 2018 and then commenced work at Lakeside as a teacher.<sup>102</sup>
- [101] The evidence of Lakeside's former principal is that the Respondent did not advise Lakeside during the hiring, interview or subsequent employment with Lakeside that she did not have a professional certificate of qualification, that she was not authorized to teach in the K-12 education system, or that she had not completed coursework required by the TRB to upgrade from the Conditional Certificate.<sup>103</sup>
- [102] On October 2, 2018, the Respondent emailed the TRB about the annual fee stating, "I have still not received my annual fee." The TRB responded by advising the Respondent that a refund of the fee was being processed.
- [103] On October 4, 2018, the Respondent emailed the TRB stating, "I do not want a refund. I need my annual fee verification for my BC certificate license for my school administrator."<sup>104</sup>
- [104] That day, the TRB emailed the Respondent to advise her that the Conditional Certificate expired June 30, 2018. The TRB clearly stated, "You do not hold a valid certificate at this time and are not able to teach. In order for you to teach, you will need to re-apply to be certified again in British Columbia."<sup>105</sup>
- [105] The evidence of the former Lakeside principal is that Lakeside paid the annual certification fees of its teachers directly to the TRB through an automated payroll deduction system. Lakeside paid the Respondent's fee for the 2019-2020 school year.<sup>106</sup>
- [106] On August 12, 2019, Lakeside received a letter from a TRB financial officer advising that the TRB had refunded the Respondent's 2019-2020 fee to Lakeside because the Respondent's Conditional Certificate had expired.<sup>107</sup> Lakeside's Director of Operations emailed the Respondent on August 13, 2019, asking "Did you find out anything about your teaching certificate?"<sup>108</sup>

---

<sup>100</sup> Wu Affidavit, para. 22.

<sup>101</sup> Wu Affidavit, Exhibit D, pp. 41-44.

<sup>102</sup> Debusschere Affidavit, para. 16, Exhibit B.

<sup>103</sup> Debusschere Affidavit, para. 24.

<sup>104</sup> Wahla Affidavit, Exhibit J.

<sup>105</sup> Wahla Affidavit, para. 15, Exhibit J.

<sup>106</sup> Debusschere Affidavit, para. 17, Exhibit B, p. 55.

<sup>107</sup> Debusschere Affidavit, para. 18, Exhibit B.

<sup>108</sup> Debusschere Affidavit, Exhibit B, p. 17.

[107] In the summer of 2019, Lakeside was undergoing an inspection by the Ministry of Education, which required Lakeside to provide copies of the school's teachers' certificates of qualification to the inspection team to verify that the Lakeside teachers were properly qualified.<sup>109</sup>

[108] On September 11, 2019, Lakeside's Director of Operations emailed the Respondent to request a copy of the email she had sent to the TRB with respect to the certificate. The Director of Operations stated, "with the inspection we need to send proof of the status of our teachers who are not licensed but waiting."<sup>110</sup> That same day, the Lakeside Director of Operations also emailed both the former principal and the Respondent the following message:

[The Respondent] had an interim conditional certificate that expired June 30, 2018. All this time she doesn't have an active certificate even though she paid her 2018/2019 certificate fees. She needs to contact the TRB to find out [what] the next step is to be recertified.

Now with that being said her Certificate of Qualification that was issued on Jan. 18, 2018 said it was valid and there is no condition. With that said, [the TRB] have a record of the payment for the 2018-2019 school year but it has to do with this Interim Conditional certificate and needing to be recertified.

Not sure if this helps with the matter but that is what was communicated last Fall to the school.<sup>111</sup>

[109] On September 11, 2019, the Director of Operations sent an additional email to TRB with the following message:

I am inquiring about teaching certificate [number of the Respondent]. She has a Certificate of Qualifications issued Jan 18, 2018 and paid her 2018-2019 fees and 2019-2020 however we have been told that her license is expired due to an interim conditional certificate. Her Certificate of Qualifications does not mention this which was issued on Jan. 18, 2018. We are trying to figure out how she got a valid license and where the error has occurred.<sup>112</sup>

[110] On September 11, 2019, the Respondent emailed the TRB administrative assistant, Ms. Pelcher, stating, "I have mailed you my original copies of my Conditional certificate signed by S.T. McMillan Director of Certification and my Professional certificate signed by D. Crawford Director of Certification."<sup>113</sup>

[111] On September 13, 2019, the TRB evaluation technician, Mr. Méthot, advised the Director of Operations that he would have to see a copy of the Respondent's certificate and the

---

<sup>109</sup>Debusschere Affidavit, para. 21.

<sup>110</sup> Debusschere Affidavit, para. 23(a), Exhibit B, p. 16.

<sup>111</sup> Debusschere Affidavit, para. 22, Exhibit B, p. 15.

<sup>112</sup> Debusschere Affidavit, para. 23(b), Exhibit E, p. 68; Méthot Affidavit, para. 20, Exhibit C, p. 9.

<sup>113</sup> Pelcher Affidavit, para. 9, Exhibit A.



documentation that she had provided to Lakeside.<sup>114</sup> That same day, Lakeside’s Director of Operations provided the Lakeside Copy to Mr. Méthot.<sup>115</sup>

- [112] On September 13, 2019, in response to an email the Respondent had sent stating that she had previously mailed her original conditional certificate and professional certificate to the TRB, Mr. Méthot emailed the Respondent advising that the TRB had not received a copy of the certificates.<sup>116</sup> That same day, Mr. Méthot checked the Respondent’s file on ProApp and discovered that the Conditional Certificate issued to the Respondent had expired.<sup>117</sup>
- [113] On September 18, 2019, the Respondent emailed Mr. Méthot indicating that her “tracking number indicates that my original conditional and professional certificates arrived at the [TRB]”; the Respondent attached to this email a copy of the Conditional Certificate, as well as a professional certificate of qualification issued January 18, 2018 (the “TRB Copy”).<sup>118</sup> The TRB Copy appears to be the same as the Lakeside Copy described above.
- [114] Between 2017 and 2019, the TRB systems tracked all incoming mail; all registered and couriered mail was logged in a digital Excel spreadsheet and other mail was recorded in a person’s file.<sup>119</sup> Ms. Pelcher’s evidence is that she did not receive any mail at any time from the Respondent enclosing original certificates. When Ms. Pelcher searched the TRB logs and Excel spreadsheets for any communications from the Respondent in 2017, 2018 and 2019 (including under her former names), she was unable to locate any record of such communications.<sup>120</sup>
- [115] On October 29, 2019, Mr. Wahla notified the Respondent in a letter sent by email that the Commissioner had directed an investigation into an allegation that the Respondent submitted a Ministry of Education Certificate of Qualification to Lakeside, which was not issued by the Ministry.<sup>121</sup> Mr. Wahla asked the Respondent to provide the original certificates of qualification and all correspondence with the TRB in her possession since 2017, including annual tax receipts.<sup>122</sup>
- [116] In a letter dated November 1, 2019 to Mr. Wahla, the Respondent wrote, “I mailed my original copies of my Ministry of Education Conditional Certificate signed by Shawn T. McMullin and my Professional certificate signed by Andrew Crawford on September 11, 2019 to Christina Pelcher.” The Respondent also wrote that she had disposed of correspondence from the TRB when “I received my professional certificate” and that she had updated her application with the TRB at some point after July 2017.<sup>123</sup> With the letter

---

<sup>114</sup> Debusschere Affidavit, para. 23(b), Exhibit E, p. 67; Méthot Affidavit, para. 20, Exhibit C, p.8.

<sup>115</sup> Debusschere Affidavit, para. 23(b), Exhibit E, pp. 69-70; Méthot Affidavit, para. 20, Exhibit C, pp. 11-12.

<sup>116</sup> Méthot Affidavit, para. 21.

<sup>117</sup> Méthot Affidavit, para. 22.

<sup>118</sup> Méthot Affidavit, para. 24, Exhibit E.

<sup>119</sup> Pelcher Affidavit, para. 6.

<sup>120</sup> Pelcher Affidavit, paras. 10 and 11, Exhibit D.

<sup>121</sup> Wahla Affidavit, para. 16, Exhibit K.

<sup>122</sup> Wahla Affidavit, para. 28.

<sup>123</sup> Wahla Affidavit, para. 28, Exhibit U.

to Mr. Wahla, the Respondent attached copies of documents, including a copy of the Conditional Certificate and the TRB Copy.<sup>124</sup>

- [117] As part of his investigation, Mr. Wahla interviewed the Respondent on February 15, 2020. The interview was recorded and transcribed. A certified copy of the interview transcript is attached to the Wahla Affidavit (the “Investigation Transcript”).
- [118] The Respondent did not attend the hearing. As a result, the only evidence from the Respondent of her explanation for what occurred is in the Investigation Transcript.
- [119] In the Investigation Transcript, the Respondent admitted that she did not take the coursework required to upgrade from the Conditional Certificate to a professional certificate before the Conditional Certificate expired on June 30, 2018.<sup>125</sup>
- [120] The Respondent’s explanation for the Sylvan Copy was that someone at Sylvan must have altered the Conditional Certificate.<sup>126</sup>
- [121] The Respondent said that she provided a copy of her “Professional Certificate” to Lakeside’s former principal at the interview in June 2018.<sup>127</sup>
- [122] The Respondent repeated that she had “resubmitted” or “updated” her education information with the TRB in 2017 and had “received” a professional certificate in 2018.<sup>128</sup>
- [123] The Respondent’s explanation to Mr. Wahla for her lack of original documentation was that she “pretty much got rid of everything [emails and written correspondence] when I got my Professional Certificate.”<sup>129</sup>

## ANALYSIS AND DECISION

- [124] There is no dispute that the applicable standard of proof in this case is the balance of probabilities.<sup>130</sup> To satisfy the balance of probabilities test, the evidence must be sufficiently clear, convincing, and cogent.<sup>131</sup>
- [125] The panel finds that the evidence tendered by the Commissioner meets that standard and discharges the burden of proof. The panel accepts that the evidence of TRB employees about the recording of entries on the TRB’s ProApp system and the recording of incoming mail is reliable and credible.
- [126] The panel finds that the evidence establishes that the Respondent did not hold a professional certificate of qualification issued by the TRB in or about January 2018, or at

---

<sup>124</sup> Wahla Affidavit, Exhibit U, pp. 74 and 75.

<sup>125</sup> Wahla Affidavit, Exhibit CC, p. 197.

<sup>126</sup> Wahla Affidavit, Exhibit CC, pp. 180-184.

<sup>127</sup> Wahla Affidavit, Exhibit CC, p. 192.

<sup>128</sup> Wahla Affidavit, para. 31, Exhibit V, Exhibit CC, pp. 169, 172

<sup>129</sup> Wahla Affidavit, Exhibit CC, p. 194.

<sup>130</sup> *F.H. v. McDougall*, 2008 SCC 53 at para. 49.

<sup>131</sup> *F.H. v. McDougall*, *supra*, at para. 46.

all. The panel finds that the evidence establishes that the Respondent did not complete the post-secondary courses required to upgrade from the Conditional Certificate to a professional certificate prior to June 30, 2018. The Respondent admitted she did not complete the required courses in her interview with Mr. Wahla. There is no contrary evidence on that point.

- [127] The panel finds that the evidence in the Post Affidavit clearly establishes that in or about May 2018, the Respondent submitted an application to the TQS and included with it a false professional certificate of qualification, purportedly issued on January 18, 2018, as alleged in para. 1(a) of the Citation.
- [128] The panel finds that the evidence in the Debusschere Affidavit also clearly establishes that in June 2018, when applying for a position as a teacher at Lakeside, the Respondent represented to Ms. Debusschere that she held a Professional Certificate of Qualification, as alleged in para. 1(b) of the Citation. The panel finds that the evidence establishes that, on June 19, 2018 during her interview for a teaching position at Lakeside, the Respondent provided Ms. Debusschere a copy of a professional certificate, purportedly issued on January 18, 2018, as alleged in para. 1(c) of the Citation. In her interview with Mr. Wahla, the Respondent admitted she provided Lakeside a copy of her professional certificate.
- [129] The evidence also clearly establishes that on June 29, 2018, the Respondent emailed the Certification Unit, stating that she was “having difficulty paying my 2018-2019 Annual Practice Fee for my Professional BC Teaching Certificate”, as alleged in para. 2(a) of the Citation.
- [130] Based on the totality of the evidence, the panel does not accept the Respondent’s explanation to the TRB investigator that she sent the original copies of her correspondence with the TRB pertaining to her professional certificate, together with a copy of the professional certificate she obtained in January 2018, to the TRB in September 2019 and did not retain any relevant correspondence with the TRB. The panel prefers the evidence of the Commissioner’s witnesses that the TRB has no record of the Respondent completing the post-secondary courses required to obtain a professional certificate, that the TRB did not receive the correspondence containing the original copies of a professional certificate as she alleged, and no professional certificate was issued to the Respondent.

**Does the proven conduct breach the Standards and constitute professional misconduct?**

- [131] The Commissioner submits that the appropriate test for determining whether conduct constitutes professional misconduct is whether the conduct is a marked departure from the standards expected of teachers in this province.<sup>132</sup>
- [132] The Commissioner submits that the Respondent’s conduct breaches Standard #2. At the time the Respondent was an authorized person, Standard #2 provided as follows:

Educators are role models who act ethically and honestly.

---

<sup>132</sup> See, for example, *In the Matter of the Teachers Act – and – Kiteley* (June 9, 2014) at para. 37.

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.

- [133] The Commissioner submits that the Respondent’s conduct in misrepresenting that she held a professional certificate of qualification when, in fact, she held a Conditional Certificate, constitutes professional misconduct because it relates directly to the Respondent’s status as an authorized person.
- [134] The Commissioner submits that deceptive conduct, particularly in relation to a person’s certification status and authorization to work as a teacher, is unethical and violates Standard #2.
- [135] The Commissioner referred the panel to cases demonstrating that dishonesty by a teacher constitutes misconduct. In *Ontario College of Teachers v. Callaghan*, 2013 LNONCTD 13, a discipline panel of the College determined that a teacher who forged the signature of a school principal on a reference letter as part of an application for employment as a teacher in Bermuda was guilty of professional misconduct.
- [136] In *Ontario College of Teachers v. Racicot*, 2001 LNONCTD 22, a teacher misrepresented that she had a B.Ed. in French Literature on an employment application and was offered the job based on the false credentials. A panel of the Ontario College found that this misrepresentation to obtain employment amounted to professional misconduct. The panel observed that falsifying credentials was “reprehensible behaviour that 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>133</sup>
- [137] In *Ontario College of Teachers v. Wakeford*, 2006 LNONCTD 44, the teacher used a falsified teaching evaluation to obtain employment. The College’s panel found this conduct to be professional misconduct.
- [138] Teachers are held to a high standard of conduct because of their position of trust, confidence, and influence.<sup>134</sup>
- [139] The panel has found that the evidence establishes that the Respondent was not issued a professional certificate by the TRB and only held a Conditional Certificate from 2012 through June 30, 2018.
- [140] The evidence establishes that while holding a Conditional Certificate and without completing the required courses for a professional certificate in June 2018, the Respondent held out to her prospective (and eventual) employer, Lakeside, that she held a professional

---

<sup>133</sup> *Racicot*, para. 16.

<sup>134</sup> *Ross v. New Brunswick School District No. 15*, [1996] S.C.J. No. 40 at para. 45; *In the Matter of the Teachers Act – and – Obert*, 2020 TAHP 01 at para. 117.

certificate. In doing so, the Respondent provided a falsified copy of a professional certificate to Lakeside's principal during an interview in June 2018.

- [141] While holding a Conditional Certificate and without completing the required courses for a professional certificate, the Respondent also misrepresented to the TQS in May 2018 that she had obtained a professional certificate and she provided a falsified copy of a professional certificate to the TQS at that time.
- [142] The panel finds that the Respondent's false representation of her credentials to Lakeside to secure employment, and to the TQS for salary purposes, amounts to a clear breach of Standard #2. It is dishonest conduct, which undermines the integrity of the profession and resulted in the Respondent obtaining a teaching position for which she was not authorized. The panel finds the Respondent's conduct constitutes professional misconduct.
- [143] Although the Citation alleges that, alternatively, the Respondent's conduct amounts to conduct unbecoming a teacher, in submissions at the hearing, the Commissioner submitted that the appropriate finding in respect of the proven allegations is professional misconduct, rather than conduct unbecoming. The panel agrees. "Conduct unbecoming" generally relates to off-duty conduct that does not take place during the practice of the profession.<sup>135</sup>
- [144] 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 finds that this conduct is directly related to the Respondent's engagement in the teaching profession and is professional misconduct.
- [145] As set out above, the panel has found it does not have jurisdiction to find the Respondent guilty of professional misconduct for the conduct that occurred after the Conditional Certificate expired (that is, after June 30, 2018). However, this conduct may be a relevant consideration if the Respondent seeks reinstatement of a certificate in the future. As such, the panel observes that if it had found it had statutory jurisdiction over the alleged conduct after June 30, 2018 (which it does not), it would have had no difficulty in finding that such conduct would have also warranted regulatory action.

## **ORDER**

The panel finds the Respondent guilty of professional misconduct under s. 63(1)(b) of the Act.

## **CONSEQUENCES & COSTS**

Having found the Respondent guilty of professional misconduct under section 63(1)(b) of the Act, this panel is empowered to impose a penalty on the Respondent. The Commissioner has requested that the submissions on appropriate penalty be submitted in writing by both parties.

---

<sup>135</sup> James T. Casey, *The Regulation of Professionals in Canada*, loose-leaf (Toronto: Carswell, 1994) at p. 13-1 (2014 – Rel. 3).

Accordingly, the panel directs that submissions on penalty be made in writing and that any submissions on costs be submitted in writing. The deadlines for these submissions shall be set by the Hearing Coordinator of the Teacher Regulation Branch.

### **PUBLICATION**

These reasons will be made public in accordance with section 66 of the *Teachers Act* unless an application is made to the panel under section 66(4) for non-publication or publication of a summary. If either party intends to make an application under section 66(4) regarding publication, they should either submit their written submissions, or provide written notice of their intent to make such an application, to the hearing coordinator by May 5, 2022.

For the Panel

Date: April 7, 2022



---

Meg Gaily, Panel Chair



---

Terence Berting, Panel Member



---

Lisa Kishkan, Panel Member