



2021 TAHP 03
Decision issued: September 27, 2021
Citation issued: February 13, 2020
File No.: [REDACTED]

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

AND

A HEARING CONCERNING

ALEKSANDR VLADIMIROVICH PLEHANOV

(a former Authorized Member under the *Teachers Act*)

REASONS FOR DECISION ON CONSEQUENCES, COSTS AND PUBLICATION

Written submissions filed: April 29, 2021 by the Commissioner; no submissions from the Respondent
Panel: Teresa Mitchell-Banks, QC, Ralf St. Clair and Alice Kedves
Counsel for the Commissioner: Michael Oland, Ministry of the Attorney General
Counsel for the Respondent: none

INTRODUCTION

[1] In a decision issued on March 17, 2021 (the “Findings Decision”), the panel found the Respondent guilty of conduct unbecoming a teacher under section 63(1) (b) of the *Teachers Act*, S.B.C. 2011, c. 19 (the “Act”).

[2] Once a panel makes a finding under section 63(1)(b) of the Act, the panel is empowered to make an order imposing any of the consequences set out under section 64 of the Act. In the Findings Decision, the panel directed the parties to file written submissions on appropriate penalty, and costs. A schedule for submissions was established for this purpose and the hearing coordinator communicated the schedule to the parties on April 7, 2021.

[3] In accordance with the schedule, the Commissioner filed written submissions on April 29, 2021.

[4] The Respondent did not participate in the findings hearing and the Findings Decision was sent to him in accordance with the Commissioner's Rules. The Respondent did not file any submissions on consequences by the deadline of May 28, 2021. The Act does not require the Respondent's participation in the panel's determination of consequences.

CONSEQUENCES

[5] The Commissioner seeks an order pursuant to section 64(g) of the Act that the director of certification not issue to the Respondent a certificate of qualification, an independent school teaching certificate or a letter of permission for a fixed period of 25 years.

[6] The Respondent has not held a teaching certificate since May 5th, 2014, when his certificate was cancelled as a term of a Consent Resolution. Although the Respondent has been eligible to apply for a new certificate since May, 2017, he has not done so.

[7] On October 31st, 2017, the Respondent was sentenced to six months in jail and probation for the sexual assault of a child. The court further prohibited him for a period of five years following his release from incarceration from seeking, obtaining, or continuing any employment or volunteer work that involves being in a position of trust or authority over persons under the age of 16 years.

[8] At the time of writing these reasons, the Respondent is still prohibited by a term of his sentence from teaching children under 16 years. The court and the Teachers Regulation Branch operate independently, with entirely different mandates. The disciplinary process under the *Teachers Act* must proceed to do its duty to regulate the profession and impose consequences following its finding of professional misconduct for the same behaviour.

[9] The penalties available to a panel are set out in section 64 of the *Act*. Most of them involve suspending or placing conditions on the teacher's certificate. As the Respondent no longer has a teaching certificate, the Commissioner says the only consequences available to the panel are either or both:

- (a) a reprimand of the authorized person;
- (g) 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.

- [10] Section 1 of the Act defines terms within the Act. An “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].
- [11] The Respondent is not a certificate holder nor does he hold a letter of permission under section 35. Therefore, section 64 (a), the option of giving a reprimand, is not available to us.
- [12] If we are wrong in this, the Commissioner does not seek a reprimand, nor does the panel find that it would be appropriate, given the seriousness of the Respondent’s misconduct. The Courts and this panel have already made it clear that the Respondent’s conduct is extremely serious. A reprimand will have lesser deterrent effect than that which has already been imposed on him. Given his previous history (discussed below) we find a reprimand would be ineffective in impressing upon the Respondent the seriousness of his misconduct.
- [13] Therefore, the question for the panel is the duration of the prohibition on the issuance of a teaching certificate or a letter of permission.
- [14] The function of the Teachers Regulation Branch, like many other regulators of professions, is to carry out their oversight in the public interest. The public interest is served by the disciplinary process under the *Teachers Act* ensuring that all children are taught by qualified and competent teachers so that the public can have confidence their children are being properly taught, and, by regulating and supervising the conduct of teachers so that the public can be certain that their children are being protected from misconduct, and should misconduct occur, it will be dealt with appropriately.
- [15] A fair penalty is one that is proportional to the gravity of the offence. Ideally people who commit the same offence should be treated the same way. However, no two cases are ever exactly alike on their facts and no two offenders are ever the same either. A fair sentence must not only be proportional to the offence, have some parity to other similar offences and offenders, but must also take into account the unique facts of the offence and the offender.
- [16] Clearly, the calculation of an appropriate penalty is not an arithmetic process. There are no formulas and no tariffs associated with offences. However, there are well established guiding principles to guide the decision makers.ⁱ

[17] A non-exhaustive list of relevant factors to be considered in determining an appropriate penalty include:

- a. the nature and gravity of the allegations;
- b. the impact of the conduct on the victim and students;
- c. the presence or absence of prior misconduct;
- d. the extent to which the teacher has already suffered consequences;
- e. the role of the teacher in acknowledging the gravity of the conduct;
- f. the need to promote specific and general deterrence;
- g. the need to maintain public confidence in the teaching profession as a whole; and
- h. denunciation of the conduct¹.

[18] In determining a fair consequence, both aggravating and mitigating factors are to be considered. Aggravating factors are those which require a more severe consequence in order to protect students through the principles of both specific and general deterrence. A non-exhaustive list includes:

- a. a history of prior misconduct (including its nature, frequency, and duration);
- b. whether remedial efforts have been made and failed;
- c. the offenders attitude towards the offence;
- d. efforts to hide the misconduct and whether they lied about it or tried to deceive;
- e. the age of the student(s) affected (if children were involved);
- f. and, as each offender is unique as is each offence, other relevant factors specific to the offender and the facts.

¹ See for example, *In Matter of the Teachers Act and McGeough* (January 7th, 20130). In some cases, rehabilitation through additional training, restrictions on practice, and so on, are also relevant factors in considering a penalty. Rehabilitation is not a relevant factor in this case for the reasons contained within our decision herein.

[19] Mitigating factors are those that may persuade the panel that a lesser consequence will be sufficient to deter the offender and others and still satisfy the public interest. A non-exhaustive list of factors may include:

- a. an exemplary prior history or at least no prior misconduct;
- b. a prompt admission of misconduct thus sparing a hearing and witnesses being called;
- c. true contrition and remorse because of their conduct and its effect on others;
- d. a voluntary apology to the people affected;
- e. voluntary restitution if there has been damage or loss as a result of their conduct;
- f. steps taken by the teacher to address their misconduct through counselling, re-education, etc.;
- g. offences involving a momentary loss of control;
- h. extenuating circumstances;
- i. relevant personal circumstances; and
- j. the extent to which the Respondent has suffered other consequences arising from his misconduct.

The nature and gravity of the offence

[21] The Respondent sexually violated a child of six years of age placed in his care by her father, a friend of his. The child was only with him for a few minutes and younger children were present. He has been found guilty of a criminal sexual assault of such a serious nature he was sentenced to a term of imprisonment with probation to follow with numerous conditions. He is now a Registered Sex Offender.

[22] The Respondent's sexual conduct is at the far end of the spectrum of professional misconduct.

The Impact of His Conduct on the Victim and Students

[23] Sexual assault harms all victims to varying extents. The effects to this little child of the sexual assault and having to testify to the experience at a trial, are not yet fully known and will not be for years to come.

The Presence or Absence of Prior Misconduct

[24] The Respondent has a prior history of inappropriate behaviour with young children in his care. In our Decision (at paragraph 42) we summarized his prior disciplinary history as follows:

The Respondent was disciplined in 2014 for failing to maintain appropriate physical boundaries with female students in Grades two and three. This misconduct resulted in a Consent Resolution Agreement where the Respondent agreed that his conduct constituted professional misconduct and conduct unbecoming, and ultimately agreed to the cancellation of his Certificate of Qualification. The respondent further agreed that he would not apply for, nor would the Director of Certification grant him, a Certificate of Qualification, and Independent School Teaching Certificate or a Letter of Permission for a period of three years from May 5, 2014.

[25] A prior history of this frequency and type of behaviour is clearly an aggravating factor. This is particularly so as it shows that the Respondent has a demonstrated propensity for violating physical boundaries with young school age children.

[26] The behaviour in this case was not deterred by his prior discipline. As submitted by the Commissioner:

“...it is an aggravating factor that the misconduct in this case occurred in 2016, after he had been disciplined in 2014 and after he had been charged, but acquitted, of sexual interference, sexual assault and sexual exploitation in 2010 and 2011. This Panel can draw an inference that when this misconduct occurred in 2016, the Respondent was aware of the appropriate boundaries of physical contact with minors from both a criminal and professional perspective.”

The Extent to which the Respondent has Suffered other Consequences

[27] The Respondent has offered no evidence of suffering consequences. The Respondent has lost his job and a serious criminal conviction and sentence (which is still in effect) will have had some effect on him. No doubt he has already suffered some alienation resulting from media coverage. All these consequences are directly the inevitable and natural result of his own behaviour. To reduce a penalty in these circumstance is like the old story of the man who kills his parents and then asks the court to have mercy on him as he is an orphan. In any event, the penalty we must impose, is primarily to protect children, maintain the integrity of the teaching profession the public trust. If indeed they are mitigating factors, which is questionable, they have little to no effect in reducing a penalty for such serious professional misconduct.

The Role of the Teacher in Acknowledging the Gravity of the Conduct

[28] Where Respondents have admitted guilt and therefore saved everyone the trouble and expense of a hearing, this is generally considered to be a mitigating factor. If a Respondent goes to a hearing, this is a neutral factor as they have a right to hear the evidence and argue their case. Insisting on your right to a hearing is not an aggravating factor.

The Need to Promote Specific and General Deterrence

[29] It is clear from the prior history of misconduct that this Respondent has not been deterred by previous disciplinary measures. Thus, the consequence imposed by the panel must be more severe than those previously administered if he is to be deterred.

[30] General deterrence to other members of the teaching profession and those seeking certification is of critical importance. By dissuading others from engaging in similar conduct, the sexual assault of a child, children are protected and the public may have confidence that the profession is being properly regulated.

The Need to Maintain Public Confidence in the Teaching Profession as a Whole

[31] The Respondent's conduct is of such a nature as to soil the reputation of the teaching profession and fracture the trust of the public in the profession:

[32] This Panel has already said of the Respondent's conduct that

... sexual assault of a child completely undermines the public's trust in the school system. No reasonable person who was informed of the Respondents conduct would ever wish to leave a child in his care. Certainly, no fellow teacher would trust him. Nor would parents and children. The nature of the Respondent's conduct could erode the public trust in teachers and the school system. (Decision, para. 37)

[33] We agree with the Commissioner that the maintenance of the reputation of the teaching profession and the importance of the public interest requires that any consequence imposed by the panel must unequivocally articulate that sexual misconduct towards children, let alone criminal sexual conduct is career ending.

[34] While taking into account the unique facts of the offence and the offender, a fair sentence is also within the range of those received by other Respondents for professional misconduct arising within a sexual context. A review of cases makes it clear that very lengthy bans have been administered even where the conduct falls short of sexual contact.

[35] In *McGeough*² the teacher was found to have entered into an inappropriate relationship with a 17 year old by sending her engaging in intimate email conversations, kissing her hand, rubbing her head, bestowing gifts upon her, taking her out for meals, and encouraging her to keep their relationship secret. The hearing panel found his conduct was a serious breach of the duty to value and care for students, act in their best interests, and also to act ethically and honestly (para. 19). It imposed a reprimand and a 15 year ban on issuance, which it felt was necessary to “assure the public that behaviour such as that exhibited by Mr. McGeough will not be tolerated” (para. 19).

[36] *Obert*³ was found guilty of conduct unbecoming a teacher relating to off duty conduct. Obert was an elementary school principal who exchanged texts of a sexual nature with two young girls who he believed to be 14 and 15 years of age and arranged to meet with him. The ‘girls’ were actually a member of Creep Catchers. The panel banned him for 15 years.

[37] Where actual sexual conduct is involved, the penalties imposed have been higher. *Robertson*⁴ had engaged in sexual activity with three female students aged 15 - 16 years of age, forty years prior to the hearing. The panel was rightly scathing in its description of his behaviour and imposed a lifetime ban.

[38] A number of cases have been resolved by consent resolution agreements. In a consent resolution the Respondents have admitted their misconduct and have agreed to a penalty – which by extension means they consider the penalty to be fit and appropriate. The following cases were considered in *Obert*:

- (a) *Robin James Wait* (June 2016): a lifetime ban was imposed for using his district laptop to engage in sexually explicit online “chat”, to store pornography, and to write and access pornographic stories (often during instructional time). He was convicted of sexual assault for touching the buttocks of a female minor and admitted to touching the upper back thigh of a woman on an escalator.
- (b) *Christopher Daniel Nelson* (September 2015): a lifetime ban was imposed on a teacher convicted of sexual assault of a former student at a party at his home.
- (c) *Francesco Gabriel Canacari* (September 2016): a lifetime ban was imposed. Canacari was convicted of two counts of unlawfully being in a dwelling house, one count of criminal harassment, two counts of forgery, and one count of causing a person to use a forged document. The criminal harassment involved asking a student

² Ibid

³ *In the Matter of the Teachers Act and Jason Allan Obert* (Dec. 3, 2020)

⁴ *In the Matter of the Teachers Act and Robert John Robertson* (February 3, 2016)

in his class to use her cellphone to send a text to the victim, and then erase the number and text.

[39] The victim in this case was not a student but was ‘student’ aged. We wish to make it clear that this is not a mitigating factor. No minor of any age should be sexually assaulted. The younger the child, the more vulnerable they are to adults as they are defenseless in their hands. Similarly, it is not a mitigating factor if the conduct occurred while on duty or off, or whether the teacher held a current certificate or not.

[40] The Commissioner seeks a ban of issuance of 25 years, which for this Respondent amounts to a lifetime ban. This would satisfy the principle of specific deterrence, as the Respondent would not likely ever gain certification again. However, in our view, the principle of general deterrence requires that younger members of the profession or those seeking certification, realize that the sexual assault of a child will have lifetime consequences. This is true even if it is a panel that finds a Respondent has committed a sexual assault of a child.

[41] Those who sexually assault children pose a clear danger to other children. No child, teacher, parent, or member of the general public, would feel that our school system is safe if such people were permitted to have any kind of teaching certificate.

[42] Barring exceptional circumstances, the message must be, you will never teach again. There is no other penalty that the disciplinary process under the *Teachers Act* can impose that will protect children from such behaviour in our school system and maintain the public interest.

COSTS

[43] The Commissioner has not sought costs and none are awarded.

PUBLICATION

[44] There is a publication ban under s. 486.4(2) of the *Criminal Code of Canada* restricting publication, broadcast or transmission in any way of evidence that could identify the Victim. That ban is sufficient to protect the identity of the victim. She is not identified in either our Decision on Findings or on Consequence. Section 66 of the Act requires that the panel’s reasons for making an orders should be published (subject to some exceptions), none of which are applicable here. The panel directs publication of its Findings Decision and also directs publication of these reasons.

ORDER

[45] The panel orders, that under section 64(g) of the Act, the director of certification will never re-issue to the Respondent a Certificate of Qualification, or an Independent School Teaching Certificate or a Letter of Permission. To be absolutely clear, the ban is for the lifetime of the Respondent.

For the Panel

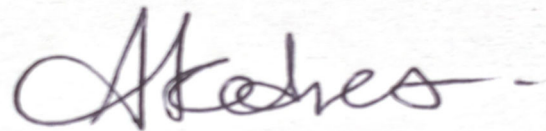
Date: September 27, 2021

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Teresa Mitchell-Banks, QC, Panel Chair

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Ralf St. Clair, Panel Member

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Alice Kedves, Panel Member