



2016 TAHP 02
Decision issued: February 3, 2016
Citation issued: November 17, 2011
File No. [REDACTED]

IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011, c. 19
AND
A HEARING CONCERNING
ROBERT JOHN ROBERTSON
(An Authorized Person under the *Teachers Act*)

REASONS FOR DECISION ON CONSEQUENCES, COSTS AND PUBLICATION

Date(s) and locations(s): December 14, 2015 at the Teacher Regulation Branch
Panel: Michel Bourassa, Chair, John Hall, Teresa Rezansoff
Counsel for the Commissioner: Karen Horsman & Eva Ross, Ministry of Justice
Counsel for the Respondent: Self-represented, not present at hearing

INTRODUCTION

- [1] On the 2nd of November 2015 the Hearing Panel issued its *Reasons for Decision on Findings and Determination* (the “Reasons”) following a hearing into the conduct of the Respondent contained in the citation issued by the BC College of Teachers (the “BCCT”). The Panel found the Respondent guilty of professional misconduct within the meaning of section 63 of the *Teachers Act* by engaging in sexual activities with three female students, 15 and 16 years of age, as described in the Reasons, and for the misrepresentations he made while seeking further employment within the school system.
- [2] The Respondent, properly served with notice of this consequence hearing, did not appear in person or by counsel. Before the hearing opened, he had sent correspondence to counsel for the Commissioner which was placed before the Panel as exhibit #1 in this

hearing. No motions or requests were filed or presented to the Panel following that correspondence.

CONSEQUENCES

- [3] The Respondent having been found guilty of Professional Misconduct under section 63(1) (b) of the *Teachers Act*, the Panel must now determine the appropriate consequences.
- [4] The scale of Consequences available is set out in section 64 of the *Teachers Act* and consists of the following:
- a) a reprimand of the authorized person;*
 - b) a requirement for the director of certification to suspend the certificate of qualification, independent school teaching certificate or letter of permission of the authorized person for a fixed period;*
 - c) a requirement for the director of certification to suspend the certificate of qualification, independent school teaching certificate or letter of permission of the authorized person until the authorized person has fulfilled conditions imposed by the panel;*
 - d) a requirement for the director of certification to suspend the certificate of qualification, independent school teaching certificate or letter of permission of the authorized person until the authorized person satisfies the director of certification that the authorized person is able to carry out the professional duties and responsibilities of an authorized person;*
 - e) a requirement for the director of certification to cancel the certificate of qualification, independent school teaching certificate or letter of permission of the authorized person;*
 - f) a requirement for the director of certification to suspend or cancel the certificate of qualification, independent school teaching certificate or letter of permission of the authorized person unless the authorized person has fulfilled conditions by a fixed date imposed by the Panel;*
 - g) a requirement for the director of certification not to issue a certificate of qualification, independent school teaching certificate or letter of permission of the authorized person for a fixed or indeterminate period;*

h) a requirement for the director of certification to place limitations and conditions on the certificate of qualification, independent school teaching certificate or letter of permission of the authorized person.

- [5] Every case is unique in its own way and the circumstances involved are never identical. With that in mind, the Panel has reviewed all material evidence and sought to balance all relevant factors, both aggravating and mitigating, as best as possible and taking into account the law, the evidence, the circumstances involved, the interests of the students, the public, and the Respondent.

Aggravating Factors

- [6] The misconduct the Respondent has been found guilty of is egregious. In his position as a teacher he exploited the vulnerability of three 15-16 year old female students. He carried on his sexual activities with them for a lengthy period of time, continuing with one even in the face of this employer's, Richmond School Board (RSB), disciplinary actions. His liaisons were not secret. He used his popularity and position to attract girls, going so far as to have sex with one in his school office. As a teacher, role model, chaperone on a school trip, as someone entrusted by the public, the school board, the school, and the parents with the care of these young girls, he failed. He used that trust to feed his ego and for his own sexual gratification.
- [7] His conduct is the antithesis of acting in the best interests of his students.
- [8] His conduct was unethical and dishonest by any standard.
- [9] His conduct satisfied his needs without regard to his students' growth and developmental needs. The Respondent has never expressed any remorse whatsoever.
- [10] The two students who testified, now mature women, stated that they have lived productively, and, to their credit have not let their experiences with the Respondent entirely hijack their lives. However, they both made it clear that their memories of those days remain painful and their experiences at the hands of the Respondent did not serve them well as they matured.
- [11] The legislation allows for the Panel to consider the effect of misconduct upon a victim; however, that is not to say that something less than a severe effect is a mitigating factor.
- [12] Further aggravation is found in offering misleading reasons for leaving RSB on application for employment with Vancouver School Board (VSB) undoubtedly knowing that employment would not have been available had he been truthful.

- [13] A troubling aspect of this case is that the Respondent's sexual liaisons were quite public. Student B became the first involved in sexual activity—including intercourse—which occurred aboard ship on a school sponsored Mediterranean cruise. The relationship with the 15 year old student was openly conducted with the obvious knowledge of other teenaged students on the cruise and it continued in and out of school upon their return to British Columbia. In fact, during this period in 1976 the evidence is that many teenaged girls actually vied for his attentions and that he relished that. In two of the three cases on which we have heard evidence, the parents of the girls knew what was going on. Indeed, the parents of Student B were concerned enough to discuss the matter with the police. It is reasonable to conclude that there must have been a degree of soul searching and consideration of the interests of their daughter by the parents before concluding to resist the invitation to endorse criminal charges against the respondent, undoubtedly knowing what would be in store for their daughter in the courts given the state of the laws at that time. One can reasonably expect discussions and dismay surrounding the difficult decisions that had to be made.
- [14] The evidence also is clear that at all material times, other teachers knew or suspected what was going on between the Respondent and the teenaged girls under his supervision. At least one had in fact confronted the Respondent but with no effect on his misconduct. We can reasonably expect that teachers who knew spoke to some of their colleagues of those events.
- [15] The conduct of the Respondent involving many people would to the reasonable person be an affront to the status and reputation of the profession, the administrators and the process to discipline teachers. The panel finds that the Respondent's public misconduct is highly aggravating. It is reasonable for the Panel to conclude that with so many people aware in one way or another, there must have been talk, gossip, rumour and comment in and among students, staff and parents about the Respondent's sexual activities with the students. It could not be otherwise. As stated, the actions of the Respondent did not occur in secret they occurred unabashedly in an open, public way.
- [16] In his correspondence to counsel for the Commissioner (Ex. 1) in the hearing on consequences, the Respondent states that after he was hired by the VSB his "indiscretions", as he terms his conduct, were known to some members of VSB management. He states that his "indiscretions" were referred to by some staff members that he met for the first time during an interview in 1984. Further on in his correspondence, he relates that his "indiscretions" arose again a number of times during promotion, assignment discussions, and interviews, but were always dismissed as

unimportant according to the Respondent. To the Panel, it is clear, the Respondent had a reputation.

Mitigation

- [17] Mitigation is a principle applied to reduce the effect of a sanction given the presence of certain factors often variously enumerated. It is impossible to compose a complete list as every case is unique in its own right. However, some major factors have been recognized and may be considered including prompt acceptance of responsibility, extenuating circumstances, offences involving a momentary loss of control, blameless history, extent of consequences already suffered, relevant personal circumstances, justification, provocation, mercy, fairness, and proportionality.
- [18] After due consideration in this case, the Panel is unable to find a basis to apply any of the common iterations of mitigation. There are two possible mitigating factors in this case that have required careful consideration by the Panel.
- [19] One possible mitigating factor in this case is the apparent 40-year period between the date of the first misconduct and this disposition today. Does the elapsed time since the end of his sexual activities with the students, during which the Respondent has had an apparently successful teaching career, act in mitigation of consequences of his misconduct?
- [20] In assessing this issue the Panel examined the chronology of what has transpired from the hearing evidence.
- [21] The RSB began its investigation of the Respondent's activities in August 1976 and then everything seemingly went away. Student B assumed that some form of disciplinary action had taken place. In fact, the Respondent had resigned from the RSB and secured new employment with the VSB effectively circumventing the disciplinary process begun at the RSB.
- [22] The panel can understand the surprise and dismay of Student B in November 2005 when she saw a photograph of the Respondent in a newspaper taken while participating in a teachers strike action. She had thought he had been disciplined by the RSB and that that period in her life was over and done with. She became distressed discovering that no disciplinary action had taken place at all. Rightly so, she pursued the matter with the VSB where the Respondent was then employed. She made inquiries of the VSB and following that a new investigation was commenced by the VSB and subsequently referred to the

BCCT for action. Thus the whole matter was revived and a new disciplinary process began in 2006 by the BCCT.

- [23] In 2011, the Respondent at first agreed to a consent dispute resolution process but then withdrew his consent. Subsequently, the BCCT suspended the Respondent's teaching certificate and issued a citation in November 2011.
- [24] In January of 2012, the law governing teacher discipline was completely changed and a new regime put in place under the *Teachers Act*.
- [25] When the disciplinary action under the BCCT was reinstated under the *Teachers Act*, the Respondent applied to the BC Supreme Court to stay the proceedings. Ultimately, in the B.C. Court of Appeal this application failed. *Robertson v. British Columbia (Teachers Act Commissioner) 2014 BCCA 331*.
- [26] All of the above resulted in many delays in terms of processing complaints.
- [27] In light of the above, it is clear to the Panel that there is no basis in fact for the Respondent to innocently or honestly believe that the passage of time itself somehow indicated that he was not going to be held accountable for his actions as he advances in his various statements.
- [28] True regret and remorse can also be a mitigating factor, as found in *Mitchell v British Columbia College of Teachers [2005 B.C.J. No 209]*. In this case, unlike the Mitchell case, there has never been any sign of remorse, regret or concern for the young girls involved at any time before, during or after the events, and throughout a number of hearings and the lengthy passage of time. Rather the Respondent describes himself as "not the same man I was" and a "victim" who has "atoned" for his behaviour and gone on to be a "stellar teacher".
- [29] Other than using the term "indiscretions" from time to time, there is no recognition even at the shallowest level that what he did was wrong morally and by the Standards for the Professional Conduct of Educators in BC. Moreover, the passage of time features the efforts the Respondent made to evade, or at the least avoid, consequences for his conduct, the antithesis of remorse. He resigned from the RSB before a hearing could be completed. He later resigned from the VSB before a hearing could be completed and has never participated in any of the informal dispute resolution process opportunities.
- [30] It has always been within the power of the Respondent to settle these consequences at any time beginning from RSB efforts in 1976 onwards. He cannot now be heard to say that the lapse of time generated by him makes it too late for any consequences.

- [31] It may very well be that today the Respondent is not a threat to students, but that is a by-product of time accumulated by him to avoid consequences for his conduct, not by any apparent rehabilitation or remorse.
- [32] The Respondent has stated that his career as a teacher without further incident constitutes atonement for his “indiscretions” in 1976-1977. Atonement means *inter alia* reparation for a wrong or injury, or reconciliation. The passage of time has not generated any reparation or even acknowledgement of wrong to the women involved. There is no factual base to advance atonement in mitigation as conceived by the Respondent.
- [33] The Panel concludes that the passage of time under all the circumstances before us cannot be considered in mitigation. It is our view that the passage of time from misconduct to consequence was for the most part generated by the Respondent’s wilful blindness, lack of remorse, or acceptance of what he did as being wrong and his actions to avoid consequences. He should not derive an advantage from that.

Summary

- [34] For the above reasons, the Panel concludes that the Respondent’s professional misconduct at all material times represents one of the worst examples of professional misconduct and that there are no facts applicable in mitigation of consequence.
- [35] With respect to consequences, the Panel has examined each of the consequences provided for by the legislation in order of increasing severity and has assessed the suitability of each on the facts before us. The Panel finds that the Respondent’s professional misconduct merits the severest consequence provided for.

ORDER

- [36] Accordingly, pursuant to section 64 of the *Teachers Act*, the Panel orders:
- 1) Pursuant to section 64(e) that the director of certification shall cancel the Respondent's certificate of qualification, an independent school teaching certificate or a letter of permission forthwith;
 - 2) Pursuant to section 64(g) the director of certification not to issue a certificate of qualification, an independent school teaching certificate or a letter of permission to the Respondent for an indefinite period.

COSTS

[37] The Commissioner is not asking for costs and accordingly no order shall be made.

PUBLICATION

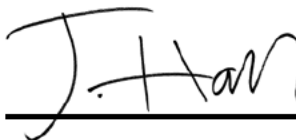
[38] These reasons will be made public in accordance with section 66 of the *Teachers Act* unless an application is made to the panel under section 66(4) for non-publication or publication of a summary. If either party intends to make an application under section 66(4) regarding publication, they should either submit their written submissions, or provide written notice of their intent to make such an application, to the hearing coordinator by February 17, 2016.

For the Panel

Date: February 3, 2016



Michel Bourassa, Panel Chair



John Hall, Panel Member



Teresa Rezansoff, Panel Member