



2015 TAHP 16
Decision issued: November 2, 2015
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
(A Former Authorized Person under the *Teachers Act*)

REASONS FOR DECISION ON FINDINGS AND DETERMINATION

Date(s) and location(s): August 10 – 11, 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] This Panel was appointed by the Commissioner of the Teacher Regulation Branch to conduct a hearing into allegations set out in a citation (the “Citation”) issued by the former British Columbia College of Teachers (“BCCT”) and signed by the Registrar of the former BCCT on November 17, 2011 naming Robert John Robertson, Certificate No. [REDACTED] (the “Respondent”), alleging: a) professional misconduct; b) other conduct unbecoming of a member of the College or c) incompetence, all pursuant to Section 88 of the *Teachers Act* SBC 2011 (the “Act”).
- [2] The Respondent holds a professional certificate of qualification (Certificate No. [REDACTED]) issued in its original form on September 1, 1974 and later reissued under the BCCT on 1991 06 03 and valid from 1988 onwards. This certificate was suspended on December 1, 2011, following a review by the Preliminary Investigation Sub-Committee of the Discipline Committee of the BCCT pending the conclusion of a hearing into the matters

of the Citation. The Hearing was held pursuant to the Act and conducted according to the Commissioner's Rules made under the Act and began on August 10, 2015.

- [3] The Citation and allegations of fact upon which the Commissioner relies were properly served on the Respondent in accordance with section 56(3) of the Act.

PRELIMINARY MATTERS

- [4] Counsel for the Commissioner requested a limited publication ban with respect to the names of three former students involved in the factual underpinnings of this case. After due consideration, it is clear that such a proposed ban would have no impact on the fairness of the process or prejudice the Respondent in any way. The Respondent has demonstrated that he knows who they are and thus there can be no surprise or ambush involved with regards to his interests. Moreover, public disclosure of the students' names together with the personal and undoubtedly distressing facts involved may well unfairly compromise them now and in the future.
- [5] Accordingly, and on the basis of section 59 of the Teachers Act and pursuant to Commissioner's Rules 49(i) and (j), the Panel hereby issues a ban on publication of the names of the three students identified in the evidence.
- [6] The Respondent was duly served with the Notice of Hearing on May 21, 2015. A pre-hearing conference was scheduled for June 1 at 4 PM, with notice to the Respondent who did not appear. Furthermore, various dates set for the exchange of documents, summaries of anticipated evidence, and names of witnesses to be called and opening statements were set and communicated to the Respondent. The Respondent remained silent and the dates passed without his appearance or participation.
- [7] Upon the opening of this Hearing the Respondent's name was called to which there was no reply. Counsel advised the panel that previous counsel for the Respondent had withdrawn and been removed from the record and further, that no communication had been received from the Respondent with respect to attending the hearing.
- [8] The Panel therefore determined to proceed in his absence pursuant to Section 62 of the Act.

ISSUES

- [9] The Citation alleges that as a result of certain conduct detailed in the Schedule attached to the Citation, namely sexual relations with students and the misrepresentation of facts in a job application, the Respondent is guilty of 1) professional misconduct, 2) other conduct unbecoming a member of the college or 3) incompetence under s 63(1)(b) of the Act. These allegations must be proven on the balance of probabilities.

EVIDENCE

- [10] The Respondent, although repeatedly informed of the date of the hearing, was not present and presented no witnesses or testimony to the panel.

- [11] The Respondent's professional certification, if not livelihood, is at risk in these proceedings. Clearly with that in mind and in the best interests of justice and fairness to the Respondent, Counsel for the Commissioner has introduced by way of exhibits its complete file with respect to the Respondent which includes both inculpatory and exculpatory statements made by the Respondent and found in the various investigations conducted by the Vancouver School Board (VSB), as well as in his own documents submitted in a different, but related, hearing before the Court of Appeal of British Columbia.
- [12] That appeal was from an order of the Supreme Court of British Columbia, dated September 16, 2013 (*Robertson v. British Columbia (Teachers Act, Commissioner)*, 2013 BCSC 1699 (CanLII), Vancouver Docket S132270) and is summarized as follows:
- [13] "Mr. Robertson applied to have the proceeding stayed on several grounds, including abuse of process by delay. The allegations of sexual misconduct had been reported in 1976 to the body that then had the authority to cancel a teacher's certificate of qualification; however, for unknown reasons, the complaint was not adjudicated. Mr. Robertson argued that allowing the hearing to proceed was an abuse of process on account of the prejudice attendant to the thirty-five year delay between the time the allegations were first made and the citation being issued. The panel did not agree and dismissed his application. Mr. Robertson applied for judicial review."
- [14] The Respondent's application was dismissed as was the appeal.
- [15] In keeping with the Panel's duty of fairness, the Respondent's prior statements, explanations and arguments in his defense have been carefully weighed and assessed by the Panel despite his absence from the hearing. As noted, regardless of whether a respondent participates, the Commissioner must prove every element of the Citation on the balance of probabilities.
- [16] The documentary evidence was presented to the Panel by counsel through a number of binders marked as exhibits as follows:
- Ex 1: Affidavit of Respondent filed in earlier proceedings in the Supreme Court of British Columbia and related to these matters.
- Ex 2: Affidavits, investigative reports and other documentation surrounding investigations into the Respondent's conduct and documents from an earlier proceeding in the Supreme Court of British Columbia and directly related to the events before the panel.
- Ex 3: Vol. 1 Book of Documents of Teacher Regulation Branch containing extensive correspondence between the parties.
- Ex 4: Vol. 2 Book of Documents of Teacher Regulation Branch consisting of additional correspondence between all parties.
- Ex 5: "Statement never before asked for!" A document originating from the Respondent including various attachments dated April 18 2015.

Ex 6: Email from the Respondent dated August 11 2015, the second day of the Hearing.

- [17] Additionally, the Panel heard the evidence of four witnesses in person.
- [18] All written materials and a list of witnesses were provided to the Respondent before the hearing as required.

REVIEW OF EVIDENCE

I Commissioner's Evidence

- [19] On the first allegation of professional misconduct namely sexual relations with several students: the Respondent denies any sexual relations with students but for one, Student A. However, the investigations demonstrate and the witnesses present testified to the Respondent's sexual relations with not only Student A, but also with a second student, Student C, and a third student, Student B. Student B could not be located in order to testify at this hearing, however, her name and details of her relations with the Respondent arise repeatedly throughout the investigations as well as in the evidence of one witness's oral testimony.
- [20] Student A testified of her sexual relations with the Respondent beginning on an overseas school trip and continuing for approximately 8 months following. Student C testified and gave evidence of the Respondent's sexual relations with her. She too was a credible witness directly contradicting the Respondent's protestations of only one relationship, that with Student A. This witness related that the Respondent had sex with her on his office floor, and fixed the exact date remembering that it was on the night of his birthday. As well, she knew at that time that he was also engaging in sexual relations with a third student, Student B. The panel accepts her evidence in that regard. While Student B did not testify, it is clear from the evidence of Students A and C and particularly in the Respondent's own statements to the police and during the Cotter Investigation, that he was engaging in sexual activity with her as well.
- [21] In light of this evidence, the Panel is unable to give much credence to the Respondent's constant refrain that he had no sexual relations with any other students but Student A.
- [22] With respect to the second allegation of professional misconduct namely that of the withholding of information while applying for a new position with a different school board the following evidence was presented.
- [23] Ms. Fosbrooke, a former personnel officer responsible for secondary school staffing with the VSB, testified that at the time, 1976-77, she was responsible for receiving, interviewing and processing job applications by teachers for the VSB; that on the day following his resignation from the Richmond School Board (RSB) the Respondent attended her offices and submitted a request for employment as a part time teacher with the VSB. The form involved (Exhibit 2, p 161-2) is primitive and basic and the interview short and cursory by today's standards. However, in both her evidence and the Respondent's statements he was asked why he had left the RSB to which, according to Ms. Fosbrooke, he responded "difficult staff—cliques apparently" and "a change was due" all of which Ms. Fosbrooke recorded on the form concerned. These proffered

reasons have been quoted consistently in every statement she has made throughout the investigations.

- [24] When investigations of his conduct began, the Respondent stated repeatedly that he advised Ms. Fosbrooke that he had been involved in "indiscretions", a murder investigation, and that he had hidden nothing from her.
- [25] Ms. Fosbrooke presented as a business-like and competent woman, well aware of the duties of her position as a Personnel Officer for the VSB. In that position she kept a running record of the Respondent's time with the VSB, writing notes on the same admission form from time to time. (Exhibit 2, p 161-2) In response to questions by Counsel, she testified firmly and without hesitation that if the Respondent had even so much as alluded to "indiscretions" or referred in any way, directly or indirectly, to sexual relations with students, she would have "thanked him for his application and sent him out the door". Or, more colourfully in a statement given to VSB investigators in the Cotter Report, "Had I known, I wouldn't have touched him with a 10' pole."

II The Respondent's Evidence

- [26] Throughout the exhibit documents that contain investigative interviews with the Respondent, and in his own "Statement never before asked for!" the Respondent did not deny the sexual relations with Student A but termed it a "Boyfriend- Girlfriend" relationship. The other alleged sexual relations with students were repeatedly denied. However the panel notes that the Respondent admitted to police officers during an interview that he in fact had had sexual relations with Student B – a statement he later retracted while being interviewed by an investigator, Mr. William Cotter. (Cotter Report, exhibit 2 p 33). We find that his denials of being involved in sexual relations with more than one student are incompatible with the testimony of Student A and Student C, two of the students actually involved, and are not persuasive given their evidence before us.
- [27] The Respondent repeatedly emphasized that at all the times in question he was a severe alcoholic and a drug user and often blacked out or was otherwise unaware of what was happening about him when with students because of his alcohol consumption. He stated more than once that essentially he was a victim of sexual aggression by teenage girls usually while incapacitated by alcohol or drugs.
- [28] The problem for the Respondent with respect to this approach is found in the extensive Cotter Investigation as well as in the professional and personal references filed by the Respondent himself in which there is not a scintilla of independent evidence or the least suggestion that alcohol or drugs were an issue in his life while he was employed by the RSB, the time in question. The praise he received from various colleagues as a successful, dynamic teacher, supplied in his own filings – Exhibit 5 - seems somewhat at odds with the condition he claims to have been in at the time – an alcoholic and a drug user. Moreover, the two former students who testified before us seemed surprised when asked if he drank a lot and denied the same.
- [29] Almost all of the other protestations advanced by the Respondent throughout the investigations are essentially irrelevant to and do not address the fundamental issue on

the first allegation: Was he involved in sexual relations with three students? They are arguments of justification, non-responsibility due to alcohol abuse, descriptions of his relations with a 15 year old student as boyfriend/girlfriend, self-serving in claiming that different sexual standards applied at the time, and blaming the girls involved particularly in stating, "I'm a victim of a psycho-sexual predator," and further non-responsibility by advancing that he has subsequently atoned for his conduct through other unrelated actions.

- [30] With respect to the alleged misrepresentation, the Panel finds Ms. Fosbrooke to be credible and her evidence solid; it is reasonable and rings true and is confirmed in the exhibits' documentation. It is clear to the Panel that she was not told anything by the Respondent about his prior conduct that had led to his resignation from the RSB. Where conflicts arise between the Respondent's statements and that of Ms. Fosbrooke, her evidence is believed.
- [31] The Panel notes that throughout the hearing, all of the Commissioner's witnesses' evidence, the written exhibits and recorded statements in evidence are both internally consistent and consistent with that of others.
- [32] On the second day of the hearing, the Panel was presented with an email from the Respondent (using the same email address that has been consistently used by him throughout all these proceedings) asking that certain questions be put to the witnesses Ms. Fosbrooke and Student C. The witnesses in fact had covered both areas raised by the Respondent in their examinations-in-chief by Counsel and their answers do not assist his case in any way.

FINDINGS OF FACT

- [33] After careful consideration, hearing the witnesses, examining all the exhibits, weighing of all the evidence and discounting irrelevancies, the Panel concludes and finds that the Respondent had sexual relations with three young female students while employed by the RSB as a teacher and that sexual relations with Student A continued after he was employed by the VSB.
- [34] The Panel finds that when applying for a position with the VSB, the Respondent withheld the truth surrounding his resignation from the RSB thus misrepresenting himself to procure employment with the VSB.
- [35] The Panel is unable to place any faith in or give any credence to the Respondent's various statements and arguments as to his conduct at the time. They are simply not credible on the issues before us.

DECISION

- [36] Having determined the facts of the Respondent's conduct we must now consider the Standards for the Education, Competence and Professional Conduct of Educators in British Columbia, 4th Edition January 2012 (The Standards) as they apply to the Respondent's conduct and determine if the proven conduct constitutes professional

misconduct, conduct unbecoming a teacher or incompetence pursuant to s 63(1) of the Act.

- [37] The Standards include that: 1) Educators value and care for all students and act in their best interests, and 2) Educators are role models who act ethically and honestly.
- [38] The Panel states the obvious: sexual relations between a teacher and a student are prima facie conduct unbecoming and professional misconduct. There can be no mitigating factors, no reasons, no excuse, and no rationalizations. This kind of conduct attacks the very core of the Standards as well as societal and community values.
- [39] The Standards also set out that teachers are to be role models who act with integrity and represent the values and norms of society, and that they understand that their conduct contributes to the perception of the profession as a whole. The evidence is clear that more than the three students were affected, directly or indirectly, by his conduct. The Respondent's behaviour was the antithesis of a role model contemplated by the Standards as the knowledge of his sexual relations with these students was known or suspected by some other teachers, some parents and many students all of which constitute the community at large. His conduct constitutes a breach of Standard 2, as described, "that a teacher behaves according to societal values and models." The Respondent was unethical, and with respect to the three students involved he abandoned his professional duty to value and care for them and act in their best interests.
- [40] In order to gain an advantage, new employment, the Respondent was dishonest in deliberately misleading the VSB when applying for a position with them. As an educated man, knowing that an investigation at the RSB was implicitly condemning his conduct there, having resigned for those very same reasons the day before, there can be no question that he knew that if the truth had been offered to Ms. Fosbrooke he would not have been hired by the VSB. Thus the obfuscation about needing a change and alleged staff issues were offered as reasons for leaving the RSB. The Panel also concludes that to knowingly and deliberately withhold relevant and important information when applying for a position within the school system is misleading and is contrary to the words and intent of the Standards and constitutes Professional Misconduct.
- [41] In accordance with section 63(1) (b) of the Act the Panel concludes that in all, by the Respondent's proven conduct, both allegations of professional misconduct are made out.
- [42] Having determined guilt in that regard, it is unnecessary for the Panel to rule on the additional allegations of conduct unbecoming a teacher or incompetence.

PUBLICATION

- [43] 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 November 16, 2015.

CONSEQUENCES & COSTS

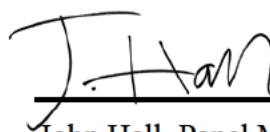
- [44] Having found the Respondent guilty of Professional Misconduct under section 63 (1) (b) of the Act, this Panel is now required to assess and impose an appropriate penalty on the Respondent, which may also include an order for costs. The Panel will accept oral submissions from Counsel for the Commissioner, and oral or written submissions from the Respondent on the appropriate penalty and costs at a hearing scheduled for that purpose. The Hearing Coordinator of the Teacher Regulation Branch shall set the date and time by December 22, 2015.

For the Panel

Date: November 2, 2015



Michel Bourassa, Panel Chair



John Hall, Panel Member



Teresa Rezansoff, Panel Member

CORRIGENDUM

The line in the style of cause which reads: (A Former Authorized Person under the *Teachers Act*), should read: (An Authorized Person under the *Teachers Act*).

For the Panel

Date: December 3, 2015



Michel Bourassa, Panel Chair



John Hall, Panel Member



Teresa Rezanoff, Panel Member