



2016 TAHP 06
Decision issued: June 16, 2016
Citation issued: February 26, 2015
File No.: [REDACTED]

IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011, c. 19
AND
A HEARING CONCERNING
DARREN LEA HANKEY
(a Former Authorized Person under the *Teachers Act*)

REASONS FOR DECISION ON PENALTY, COSTS AND PUBLICATION

Written submissions on penalty filed March 14, 2016

Panel: Karen F. Nordlinger, Q.C., Chair, Ted Riecken, Fred Robertson

Counsel for the Commissioner: Maureen Boyd, Ministry of Justice

Counsel for the Respondent: Self-represented, not in attendance

INTRODUCTION

[1] A disciplinary hearing panel (the “Panel”) was appointed to conduct a hearing with respect to allegations set out in the Citation issued against Darren Lea Hankey on or about February 26, 2015, in which eight allegations were made. One allegation was withdrawn and the remaining seven allegations were the subject of a hearing held November 24 and 25, 2015. Mr. Hankey did not appear at the hearing and was not represented by counsel.

PENALTY AND PUBLICATION

- [2] The Panel released its decision on verdict (the “Reasons”) on February 16, 2016. The Panel found that Mr. Hankey’s conduct in relation to six of the remaining seven allegations in the Citation constituted professional misconduct pursuant to s. 63(1)(b) of the *Teachers Act* (the “Act”). It dismissed one allegation with regard to the maintaining of necessary records for students.
- [3] The Panel directed that submissions regarding penalty, publication and costs be made in writing. Written submissions were provided to the Panel by counsel for the Commissioner March 14, 2016. The Respondent was given till April 1, 2016 to file his submissions. No submissions were received from the Respondent.
- [4] The Panel convened a telephone conference on May 4, 2016 to determine the consequences for the finding of professional misconduct by the Respondent.
- [5] The findings of professional misconduct were as follows:
- (a) The Respondent forged the signature of the School principal on four report cards.
 - (b) The Respondent dishonestly represented to the District that he was unable to work due to illness and claimed sick leave pay on four days (January 31, 2011 for ½ day, February 22, 2011, March 10, 2011 for a ½ day and June 22, 2011), when he was not sick but absent from work to attend court on matters related to a charge against him under section 810(1) of the *Criminal Code of Canada*.
 - (c) In December, 2012, the Respondent took a laptop, owned by the District and issued to another teacher, from a locked cupboard in her classroom at the School, without her knowledge or permission, and then used that laptop during the winter break to access inappropriate websites with sexual content.
 - (d) On approximately 15 occasions between September 2011 and March 2013, the Respondent entered the School late at night to make phone calls to sexual “chat lines” and on some of those occasions used the School phone to make these calls.
 - (e) In the 2012-2013 school year, the Respondent inappropriately used the laptop, that was owned by the District and issued to him to use for work, to store and access approximately 200 explicit sexual images of himself and others.
 - (f) In January and February 2013, during the District investigation, the Respondent lied to Harry Dhillon and to the Skagit Police Department when he said that the laptop had been stolen from his car, when it was in his possession
- [6] The Commissioner submits that the Orders a Panel may make under s. 64 of the Act are either or both of a reprimand under s. 64 (a) or a requirement that the Director of Certification not issue a Certificate of Qualification, an Independent School Teaching Certificate or a Letter of Permission for a fixed or indeterminate period under s. 64(g) of

the *Act*. The period suggested by the Commissioner is two years pursuant to s. 64(g) of the *Act*. The Respondent ceased to hold a Certificate of Qualification on November 1, 2014, and is no longer eligible to teach in British Columbia. The Commissioner submits that the relevant factors to be considered when imposing penalty are those set out “*In the matter of the Teachers Act –and- McGeough*, January 17, 2013 and are as follows:

- (a) the nature and gravity of the allegations;
- (b) the impact of the conduct on the 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 deterrents; and
- (g) the need to maintain public confidence in the teaching profession as a whole.

[7] The Commissioner submits that the most important factors in this case are:

- (a) the need for general deterrence; and
- (b) the need to maintain public confidence in the teaching profession as a whole.

[8] Of those factors, the Panel finds that the most important are:

- (a) the need for general deterrence; and
- (b) the need to maintain public confidence in the teaching profession as a whole.

[9] The Panel agrees with the submission of the Commissioner that

“The other factors, and in particular specific deterrence and factors related to the probability of remediation, are of less importance because the Respondent is no longer qualified to teach in the K-12 system in British Columbia.”

[10] The overarching principle is that the regulation of the teaching profession is to be done in the public interest.

[11] In the instant case, there were several aspects to the misconduct of the Respondent. Those aspects went on at various times for a significant period of time. The conduct was grave, but perhaps not the most egregious of conduct seen in discipline cases. It would not have impacted the students, save and except for the forged signature of the School Principal on four report cards, which could be remedied. The Respondent suffered dire consequences

for his misconduct in that he was fired from his position. He has, one must think, suffered humiliation due to the publication of the decision.

- [12] The Respondent acknowledged and admitted his conduct in an employment investigation. He offered no real explanation, and said he had none. It became clear in that investigation that the Respondent was suffering matrimonial difficulties and those too were perhaps related to his misconduct, although that is not clear, given his non-involvement in the proceedings. While he acknowledged the facts of the misconduct and that he knew it was wrong, there was no significant expression of remorse.
- [13] The evidence of his Principal, Ms. Pace, was that the Respondent was a good teacher, with a clean record. The Respondent, in the investigation, did express his remorse that he had let Ms. Pace down.
- [14] The Commissioner relies on several decisions in similar circumstances. In many of those cases, agreements were reached as to penalty. However, in *Ontario College of Teachers v. Callaghan* (April 29, 2013), the panel imposed a reprimand, a two-month suspension, and a condition that the Respondent complete a course in ethics at his expense. In that case, the Respondent had provided a forged letter of reference when he applied for a teaching position in Bermuda.
- [15] In *British Columbia College of Teachers v. Sutherland* (December 17, 2010), a panel imposed a one-year suspension on a Respondent who had accessed adult pornography websites on his school computer during school hours.
- [16] In *McGeough* (January 17, 2013), a 15-year prohibition on the issuance of a Certificate was imposed on a Respondent who had an inappropriate relationship with a female student through email communications and inappropriate touching. He was also reprimanded.
- [17] The Commissioner submits that if the Respondent held a Teaching Certificate, he would likely be seeking a suspension. He submits that the length of suspension is not necessarily correlated to a period of time during which the Respondent is not allowed to apply for recertification, as there is no loss of income in the latter.
- [18] The Panel has carefully considered the authorities referred to it and to the submissions of Counsel for the Commissioner. It agrees with the submissions of the Commissioner that a two-year suspension and a reprimand are warranted in this matter.
- [19] The Respondent's admission as to the nature of the conduct, the consequences that have been visited upon him personally as a result of the conduct, and his previously clear record are mitigating factors that the Panel accepts. The Panel has no evidence from the Respondent as to any steps he may have taken to address personal issues that resulted in

the misconduct, and to hopefully avoid it in the future. However, if he were to apply for a Certificate in the future, Counsel for the Commissioner submits that “He will be required to prove that he is ‘of good moral character and otherwise fit and proper to be issued a Certificate of Qualification under s. 30 of the *Act*. At that time, his remorse, insight into his actions, and remediation of his character would be central concerns.” The Panel is mindful that the misconduct took place over a significant period of time and was of a varied character coloured by dishonesty. However, given the mitigating factors and the condition that he must prove he is of “good moral character” upon any reapplication for a Certificate, the Panel accepts and agrees with the Commissioner’s submission that penalty should be:

- (a) a reprimand; and
 - (b) a two-year prohibition on application for a Certificate or a Letter of Permission pursuant to s. 64(g).
- [20] No submissions were made on costs or publication. The Panel makes no orders for costs or the restriction of publication.

For the Panel

Date: June 16, 2016



Karen Nordlinger, Q.C., Panel Chair



Ted Riecken, Panel Member



Fred Robertson, Panel Member