



2017 TAHP 02  
Decision issued: November 9, 2017  
Citation issued: January 26, 2017  
Citation amended: August 16, 2017  
File No.: [REDACTED]

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

**REASONS FOR DECISION ON FINDINGS AND DETERMINATION**

Date(s) and location(s): September 26, 2017 at the Teacher Regulation Branch  
Panel: Meg Gaily, Chair, Matthew Cooke, Peter Van Huizen  
Counsel for the Commissioner: Maureen Boyd, Ministry of Attorney General  
Counsel for the Respondent: Self-represented – did not attend the hearing

**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 January 26, 2017<sup>1</sup> and amended under section 56(4) of the Act on August 16, 2017<sup>2</sup> (the “Citation”).
- [2] The British Columbia College of Teachers granted the Respondent an interim professional certificate on December 1, 1999, under the former *Teaching Profession Act*. The BC College of Teachers issued the Respondent a certificate of qualification on April 1, 2008, valid from May 1, 2008.

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<sup>1</sup> Exhibit #7, Citation dated January 26, 2017.

<sup>2</sup> Exhibit #8, Amended Citation dated August 16, 2017.

[3] School District No. 36 (Surrey) (the “District”) employs Mykola Misiak (the “Respondent”) at Earl Marriott Secondary School (the “School”). During the 2013-2014 school year, the classes the Respondent taught included a Mechanics 9/10 class. The Respondent was also coach of the School’s football team and the sponsor teacher for the junior boys’ rugby team.

[4] The Citation provides as follows:

1. During the 2013-2014 school year, [the Respondent], an authorized person under the *Teachers Act* ... while employed as a teacher by School District No. 36 (Surrey) at [the School], engaged in conduct towards students that was unprofessional, disrespectful and/or inappropriate when:
  - a. He frequently spoke to students saying “don’t be a dumb ass” and/or “don’t be a dumb idiot”.
  - b. In the autumn of 2013, at the beginning of a Mechanics 9/10 class, [the Respondent]:
    - i. used the first five to ten minutes of class time to speak about a personal matter on the telephone, during which he became upset,
    - ii. loudly told students in the class to be quiet while he was on the phone,
    - iii. after this phone call, he picked up a video cassette player and threw it to the floor two or three times,
    - iv. in the course of walking past his desk, knocked off or kicked off a cupboard door on his desk,
    - v. left the room for approximately five minutes because he was emotional, and
    - vi. when he returned, using a raised voice, he sent a student and then two more students to the office.
  - c. In May 2014, when a student [“Student A”] on the junior boys’ rugby team asked him for some tape, [the Respondent] responded to Student A by saying words to the effect of, “what am I, your nigger?”

This conduct is contrary to one or more of Standards #1 and 2 and 6 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 under section 63(1) of the *Teachers Act*.

2. In the autumn of 2013-2014 school year, when [the Respondent] was the coach of the boys’ football team, he distributed a written notice to students on the football team who were also in his Mechanics 9/10 class to give to their parents, which included personal and/or confidential information about a student [“Student B”], about his

parents, and about their requirement that Student B complete his class work or he would not be permitted to play in school games.

This conduct is contrary to one or more of Standards #1 and 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 under section 63(1) of the *Teachers Act*.

## PROCEDURE

- [5] The Respondent did not attend the hearing and was not represented by legal counsel at the hearing.
- [6] At the beginning of the hearing on September 26, 2017, counsel for the Commissioner provided the panel with a faxed letter from the Respondent, which he faxed to her from the School at 1:03 p.m. on September 25, 2017 (the day before the hearing).<sup>3</sup> The Respondent wrote that he is “making this request to adjourn, again” the hearing because he “would like to be prepared in this matter” and that he had a list of witnesses that he would like to have at the hearing. He also wrote that “this is also complicated with my current health issues that are under doctor’s supervision at this moment.” The Respondent did not attach a list of witnesses or a doctor’s note to his letter.
- [7] Counsel for the Commissioner provided the panel with a copy of an email she sent to the Respondent at 2:46 p.m. on September 25, 2017<sup>4</sup> in response to his faxed letter, advising him to attend the hearing in order to make submissions to the panel. She also told the Respondent that the panel may proceed with the hearing in his absence.
- [8] Counsel for the Commissioner opposed the Respondent’s request to adjourn the hearing and asked the panel to proceed with the hearing in the Respondent’s absence.
- [9] Section 62 of the *Teachers 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.
- [10] Section 56(3)(a) of the Act sets out that if the Commissioner issues a citation, the Commissioner must deliver a copy of the citation to the last known address of the authorized person who is the subject of the citation.

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<sup>3</sup> Exhibit #1, letter from Respondent to Maureen Boyd and to the Commissioner dated September 24, 2017, faxed from Earl Marriott Secondary School September 25, 2017 at 1:03 p.m.

<sup>4</sup> Exhibit #2, email from Maureen Boyd to Respondent dated September 25, 2017 at 2:46 p.m.

- [11] 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"). The Rules apply to both counsel for the Commissioner (referred to as "discipline counsel" in the Rules), as well as to persons under citation, which includes the Respondent.
- [12] 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:
- 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.
- [13] Rule 43 provides that, upon request of a person under citation, discipline counsel will, within a reasonable period of time, 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 of Rules 42 and 43 described above on persons under citation.
- [14] Rule 46 imposes a continuing obligation on discipline counsel and a person under citation to make disclosure, consistent with the obligations in Rules 42-45, up to and during the hearing of the citation.
- [15] 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.
- [16] Counsel for the Commissioner tendered evidence to prove that she (discipline counsel) had complied with the delivery and disclosure obligations under the Act and Rules, and to support her argument that the panel should deny the Respondent's request to adjourn the hearing. The Commissioner's evidence was set out in the following affidavits, with attached exhibits (documents):
- Affidavit of Anonkumar Oogur,<sup>5</sup> process server;
  - Affidavit of Stephen Hardy,<sup>6</sup> principal of the School;
  - Affidavit of Vicki Wayne,<sup>7</sup> hearing coordinator at the Teacher Regulation Branch ("TRB"); and

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<sup>5</sup> Exhibit #3, Affidavit of Anonkumar Oogur, sworn February 23, 2017.

<sup>6</sup> Exhibit #4, Affidavit of Stephen Hardy, sworn July 6, 2017.

<sup>7</sup> Exhibit #5, Affidavit of Vicki Wayne, affirmed September 21, 2017.

- Affidavit of Megan Sollis<sup>8</sup>, legal assistant to Maureen Boyd, counsel for the Commissioner (discipline counsel).

[17] After Ms. Boyd's submissions, the panel adjourned to review the evidence and determine whether to continue the hearing in the Respondent's absence. The panel concluded that it was not unfair in the circumstances to deny the Respondent's request to adjourn the hearing, and continued the hearing in his absence. The panel's reasons denying the Respondent's request are set out below.

[18] The following chart summarizes the evidence the panel considers relevant to this issue.

DATE	EVIDENCE
January 26, 2017	The Commissioner issues the Citation, which is addressed to the Respondent at his home address, and to Stefanie Quelch, counsel for the Respondent, at the BC Teachers' Federation. <sup>9</sup>
February 2, 2017	Ms. Quelch emails Ms. Boyd (counsel for the Commissioner) advising that she does not have instructions to accept delivery on the Respondent's behalf. <sup>10</sup>
February 6, 2017	Ms. Boyd sends a letter by both regular and registered mail to the Respondent at his home address, enclosing a copy of the Citation. <sup>11</sup>
February 18, 2017	Mr. Oogur, a process server, attends at the Respondent's home address to serve the Citation. A man matching the Respondent's description answers the door, but denies that he is the Respondent, and shuts the door before Mr. Oogur can give him the Citation. <sup>12</sup>
February 19, 2017	Keith Norris, a process server, attempts to serve the Citation at the Respondent's home address at 10:01 a.m., but there is no answer. A neighbour confirms that the Respondent resides at the home. <sup>13</sup>
February 20, 2017	John Kalanzi, a process server, attempts to serve the Citation at the Respondent's home address at 6:30 p.m. From a second-floor window, an adult man advises Mr. Kalanzi that the Respondent works at the School and that documents should be delivered to the Respondent at the School. <sup>14</sup>

<sup>8</sup> Exhibit #6, Affidavit of Megan Sollis, sworn September 22, 2017.

<sup>9</sup> Exhibit #7.

<sup>10</sup> Exhibit #6, para. 3, and Exhibit A.

<sup>11</sup> Exhibit #6, para. 4, and Exhibit B.

<sup>12</sup> Exhibit #3, para. 3 and Exhibit B.

<sup>13</sup> Exhibit #3, para. 4.

<sup>14</sup> Exhibit #3, para. 5.

February 21, 2017	<p>Mr. Oogur attempts to serve the Citation on the Respondent at the Respondent's home address at 2:10 p.m. and again at 8:20 p.m., but there is no answer. Mr. Oogur posts the Citation to the door of the Respondent's home address.<sup>15</sup></p> <p>The February 6, 2017 letter from Ms. Boyd that was sent by registered mail to the Respondent is returned with the notation "RTS returned".<sup>16</sup></p>
February 23, 2017	Ms. Sollis, Ms. Boyd's legal assistant, emails Ms. Quelch a letter from Ms. Boyd, together with a copy of the Citation. <sup>17</sup>
March 3, 2017	Ms. Sollis emails Ms. Quelch a letter from Ms. Boyd, with a copy of the document disclosure index attached. <sup>18</sup>
March 9, 2017	Ms. Wayne, TRB hearing coordinator, emails a letter to Ms. Quelch and Ms. Boyd proposing dates for a pre-hearing conference and asking counsel to advise of their availability. <sup>19</sup>
March 16, 2017	Ms. Quelch emails both Ms. Boyd and Ms. Wayne and advises that she is no longer representing the Respondent on his TRB matter. Ms. Quelch writes that she has "passed along the communication regarding the pre-hearing conference" to the Respondent. <sup>20</sup> In a further email exchange with Ms. Wayne, Ms. Quelch confirms that the Respondent's home address and email address used by the TRB are his correct home and email addresses. <sup>21</sup>
March 16, 2017	Ms. Wayne emails the Respondent a letter asking about his availability for a pre-hearing conference. Ms. Wayne did not receive any email notification of delivery failure. Ms. Wayne also mails this letter to the Respondent at his home address. <sup>22</sup>
March 23, 2017	Ms. Wayne emails a letter to the Respondent and to Ms. Boyd advising that a pre-hearing conference is set for April 5, 2017, and attaching an agenda. Ms. Wayne did not receive any email

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<sup>15</sup> Exhibit #3, paras. 6, 7 and 8.

<sup>16</sup> Exhibit #6, para. 4 and Exhibit C.

<sup>17</sup> Exhibit #6, para. 5 and Exhibit D.

<sup>18</sup> Exhibit #6, para. 6 and Exhibit E.

<sup>19</sup> Exhibit #5, para. 2 and Exhibit A.

<sup>20</sup> Exhibit #6, para. 8 and Exhibit G; Exhibit #5, para. 3 and Exhibit B.

<sup>21</sup> Exhibit #5, para. 3 and Exhibit B.

<sup>22</sup> Exhibit #5, para. 4 and Exhibit C.

	notification of a delivery failure. Ms. Wayne also mails the Respondent this letter and attachment to his home address. <sup>23</sup>
March 31, 2017	Ms. Wayne emails a confirmation and reminder of the April 5, 2017 pre-hearing conference to both the Respondent and Ms. Boyd. <sup>24</sup> She did not receive any email notification of delivery failure.
April 5, 2017	The Respondent does not attend the pre-hearing conference with the Commissioner, Ms. Boyd and Ms. Wayne. After waiting approximately 25 minutes, the Commissioner continued with the pre-hearing conference. Ms. Wayne sends a letter to the Respondent by mail and registered mail, as well as by email, advising of the orders made by the Commissioner at the pre-hearing conference. <sup>25</sup>
April 18, 2017	The letter sent by Ms. Wayne on March 16, 2017 to the Respondent by mail is returned to the TRB. <sup>26</sup>
April 25, 2017	The letter sent by Ms. Wayne on April 5 by registered mail to the Respondent is returned to the TRB. <sup>27</sup>
April 26, 2017	Ms. Sollis sends a letter from Ms. Boyd to the Respondent enclosing the second disclosure index by email, as well as by mail to the Respondent's home address and to the School. <sup>28</sup>
May 11, 2017	Ms. Wayne sends a letter to Ms. Boyd and to the Respondent by email and by mail to the Respondent's home address proposing hearing dates and asking them to respond to her by May 18. <sup>29</sup>
May 15, 2017	The Respondent contacts Ms. Sollis by telephone and tells her he has "not received anything." Ms. Boyd then speaks with the Respondent and advises Ms. Sollis that the Respondent advised her to deliver correspondence to the School. <sup>30</sup>
May 15, 2017	Ms. Sollis, on Ms. Boyd's behalf, mails a letter to the Respondent to the School to which she attached the following documents: letter dated March 16, 2017 from Ms. Wayne regarding pre-hearing conference dates; letter dated March 23, 2017 from Ms. Wayne

<sup>23</sup> Exhibit #5, para. 5 and Exhibit D

<sup>24</sup> Exhibit #5, para. 6 and Exhibit G.

<sup>25</sup> Exhibit #5, paras. 7 and 8, Exhibit H.

<sup>26</sup> Exhibit #5, para. 4 and Exhibit D.

<sup>27</sup> Exhibit #5, para. 8 and Exhibit I.

<sup>28</sup> Exhibit #6, para. 9 and Exhibit H.

<sup>29</sup> Exhibit #5, para. 9 and Exhibit J.

<sup>30</sup> Exhibit #6, para. 10.

	setting the pre-hearing conference for April 5, 2017; letter dated April 5, 2017 from Ms. Wayne regarding orders made at April 5, 2017 pre-hearing conference; letter dated April 26, 2017 from Ms. Boyd enclosing Disclosure Index #2; letter dated May 11, 2017 from Ms. Wayne regarding dates for the hearing; and email dated May 11, 2017 from Ms. Boyd to Ms. Wayne and the Respondent regarding dates for the hearing. <sup>31</sup>
May 31, 2017	Ms. Wayne sets the hearing dates for September 26-29, 2017, and sends a copy of the Notice of Hearing to the Respondent by mail to the School. <sup>32</sup>
June 15, 2017	Ms. Boyd contacts Mr. Hardy, principal of the School, and advises Mr. Hardy that the Respondent has requested that she deliver documents to him at the School. Mr. Hardy advises Ms. Boyd that he would personally deliver any communication from Ms. Boyd or the TRB to the Respondent in a private location at the School. <sup>33</sup>
June 21, 2017	Mr. Hardy meets with the Respondent in a counselling office at the School and gives him a copy of a letter dated June 20, 2017 from Ms. Boyd, together with 5 attachments – the Notice of Hearing dated May 31, 2017, the affidavit of Maine McEachern, the affidavit of Student B’s mother, the will-say statement of Judy Maranda, and a copy of the Commissioner’s Rules of Procedure. <sup>34</sup>
June 22, 2017	The Respondent faxes a letter to Ms. Boyd and to the Commissioner in which he writes “Friday June 16, 2017 I received the citation for the first time. No other documentation was received from the TRB.” The Respondent indicates that he wants documents to be sent to the School, but says that he is “currently unable to attend the hearing dated for September 26 to September 29” as he has “only started to receive the documentation pertaining to the hearing that has been delivered to” the School. The Respondent states that he did not receive information of the April 5, 2017 pre-hearing conference, but that he “would like to attend a conference at your [convenience]”. <sup>35</sup>
June 22, 2017	Ms. Sollis sends a letter from Ms. Boyd to the Respondent by email and mail to him at the School. <sup>36</sup> In the letter, Ms. Boyd lists the documents she has sent to him to date and advises that if he is not

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<sup>31</sup> Exhibit #6, para. 11 and Exhibit I.

<sup>32</sup> Exhibit #5, para. 11 and Exhibit K.

<sup>33</sup> Exhibit #4, paras. 2, 3 and 4.

<sup>34</sup> Exhibit #4, para. 5 and Exhibit A.

<sup>35</sup> Exhibit #5, para. 12 and Exhibit L; Exhibit #6, para. 12 and Exhibit J.

<sup>36</sup> Exhibit #6, para. 13 and Exhibit K

	receiving correspondence from her (or the TRB) to please provide an alternate secure address for delivery. Ms. Boyd also advises that she will oppose his request to adjourn the hearing as he has not set out a reason why he is unable to attend, as required by Rule 63.
July 6, 2017	Ms. Wayne sends a letter to Ms. Boyd and to the Respondent (by email and in hard copy to the School) advising that the Commissioner scheduled a pre-hearing conference for July 27, 2017 in response to the Respondent's request, and attaching an agenda. <sup>37</sup>
July 7, 2017	The Respondent sends a letter by fax to the Commissioner and Ms. Boyd <sup>38</sup> asking them to send documents to him at the School.
July 19, 2017	Ms. Sollis sends a letter from Ms. Boyd to the Respondent by email and to him at the School. <sup>39</sup>
July 26, 2017	The Commissioner asks Ms. Wayne to adjourn the pre-hearing conference for personal reasons and to reschedule it to August 16, 2017. Ms. Wayne sends a letter to the Respondent (by email and hard copy to the School) and Ms. Boyd, advising the pre-hearing conference is rescheduled to August 16, 2017. <sup>40</sup>
July 28, 2017	The Respondent sends a letter by fax to the Commissioner and to Ms. Boyd dated July 26, 2017, but which was faxed from the School on July 28, 2017 at 8:40 a.m. <sup>41</sup> The Respondent again asks that documents be sent to the School and states, "I am unable to attend any meetings while I am under doctor's supervision in managing my health issues at this time." No doctor's note is attached.
August 16, 2017	The Respondent does not attend the pre-hearing conference. After waiting fifteen minutes, the Commissioner held the pre-hearing conference. <sup>42</sup>
August 17, 2017	Ms. Wayne sends a letter to Ms. Boyd and to the Respondent (by email and hard copy to the School) setting out the orders made at the August 16, 2017 pre-hearing conference. The Commissioner ordered that correspondence to the Respondent be delivered to the School address and to the Respondent's personal email supplied to the TRB. The Commissioner denied the Respondent's request to

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<sup>37</sup> Exhibit #5, para. 15 and Exhibit M.

<sup>38</sup> Exhibit #5, para. 16 and Exhibit N; Exhibit #6, para. 14 and Exhibit L.

<sup>39</sup> Exhibit #6, para. 15 and Exhibit M.

<sup>40</sup> Exhibit #5, para. 17 and Exhibit O.

<sup>41</sup> Exhibit #5, para. 19 and Exhibit P; Exhibit #6, paras. 17 and 19, and Exhibits N and P.

<sup>42</sup> Exhibit #5, para. 20 and Exhibit Q.

	adjourn the hearing. The Commissioner amended the Citation. The Commissioner also noted that the Respondent had been provided with the Commissioner's witness list and will-say statement and that all of the Commissioner's document disclosure was completed in June 2017.
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- [19] In order to proceed with a hearing in the absence of a party, s. 62 of the Act only requires compliance with s. 56(3)(a) of the Act – that is, that the Commissioner prove that a copy of the citation was delivered to the authorized person's last known address.
- [20] In his faxed correspondence to the Commissioner and Ms. Boyd dated June 22, 2017, the Respondent states that he received a copy of the Citation on June 16, 2017. On this evidence alone, the Commissioner has established that the Respondent received a copy of the Citation in compliance with the Act. However, the panel is also satisfied that the Commissioner delivered the Citation to the Respondent's home address in February 2017. The panel accepts the evidence of the process server, Mr. Oogur, which was that he recognized the Respondent from a photo he had been provided by the TRB staff, that the Respondent answered the door of this home at least once, and that Mr. Oogur posted the Citation to the door of the Respondent's home on or about February 21, 2017.
- [21] The Respondent stated in the correspondence faxed to the Commissioner and Ms. Boyd on June 22, 2017 that he had "not received any documents" from the TRB before June 16, 2017.
- [22] Ms. Sollis's evidence contradicts the Respondent's statement, in particular, her evidence that the Respondent telephoned her directly on May 15, 2017. The Respondent could only have obtained the contact information of Ms. Boyd and/or Ms. Sollis from Ms. Boyd's correspondence. Ms. Boyd's first disclosure list was provided to Ms. Quelch prior to March 16, 2017, when Ms. Quelch advised that she was no longer representing the Respondent (but that she had forwarded all correspondence to him). Ms. Boyd's second disclosure list was mailed to the Respondent on or about April 26, 2017, some two weeks prior to his first contact with Ms. Sollis and Ms. Boyd.
- [23] Mr. Hardy's evidence is that he provided the Respondent with five documents on June 21, 2017, which included the affidavits of Maine McEachern and Student B's mother, as well as the will-say statement of Judy Maranda.
- [24] Based on the evidence of Ms. Sollis and Mr. Hardy, the panel is satisfied that the Commissioner's counsel complied with the provisions of Rules 42 and 43, and that the Respondent had received a copy of the will-say statement of Ms. Maranda, as well as copies of the affidavits of Maine McEachern and Student B's mother, at least 28 days prior to the start of the hearing.
- [25] A professional conduct hearing can have serious consequences if a discipline panel finds the 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.

- [26] The Respondent has known the case against him for several months.
- [27] The Respondent refused to accept service of documents at his home and insisted that relevant documents be delivered to the School. Ms. Boyd, counsel for the Commissioner (as well as Ms. Wayne, the TRB hearing coordinator) accommodated the Respondent's request to deliver documents to him at the School, and took steps to ensure that she complied with the disclosure requirements under the Rules.
- [28] The same cannot be said for the Respondent. Despite indicating that he had witnesses he wanted to call at the hearing, the Respondent did not comply with the Rules (that is, he did not provide Ms. Boyd with a list of witnesses, or a summary of the evidence he anticipated calling at the hearing, even in a very cursory form).
- [29] The Respondent indicated that he was trying to retain legal counsel and for this reason needed to adjourn the hearing. Ms. Quelch had stopped representing the Respondent by March 16, 2017, when she notified Ms. Boyd and Ms. Wayne. However, the Respondent did not provide any evidence to the Commissioner, or to Ms. Boyd, or to the panel to explain why he could not retain counsel between March 16, 2017, and at any time prior to the start of the hearing on September 26, 2017.
- [30] The Respondent did not attend the pre-hearing conferences scheduled by the Commissioner, even after the Commissioner accommodated the Respondent's request and scheduled a second pre-hearing conference to address issues the Respondent raised. The Respondent did not explain to the Commissioner why he did not attend the pre-hearing conference scheduled on August 16, 2017 and did not communicate with the TRB or Ms. Boyd between August 16, 2017 and September 25, 2017.
- [31] Although the Respondent indicated that he has a medical condition, which affects his ability to attend the hearing on the scheduled dates, the Respondent did not provide any documentation from a doctor to confirm the nature of his medical condition explaining why it impaired his ability to attend at any time between the issuance of the Citation and the commencement of the hearing to either the Commissioner, or to Ms. Boyd.
- [32] The Act and the Rules establish a comprehensive scheme for disciplinary matters. The Respondent has been teaching since 2008 (obtaining his interim certificate earlier in 1999). As a teacher in British Columbia, the Respondent knows the Standards and the conduct expected of teachers in this province, and that he could be subjected to a discipline hearing before the TRB if he were to breach the Standards. While the allegations in the Citation are serious, the panel must also consider the interests of the public in proceeding with the hearing. The events described in the Citation occurred during the 2013-2014 school year, three years ago. The panel was advised that the Respondent is still teaching at the School.
- [33] The Respondent has had several months to prepare for the hearing and, at the very least, to provide compelling reasons with supporting evidence why the hearing should be adjourned. The Respondent has not done so. The panel finds that by seeking an

adjournment, the Respondent is simply attempting to avoid the discipline hearing. The panel finds that it is not unfair in the circumstances to deny the Respondent's request to adjourn the hearing.

[34] Accordingly, as the panel was satisfied that the Commissioner complied with the requirements of section 56(3)(a) of the Act and with the provisions set out in the Rules, the panel proceeded with the hearing in the Respondent's absence in accordance with section 62 of the Act.

[35] Immediately after the hearing concluded, the panel withdrew to deliberate and make its decision. The next day, September 27, 2017, the TRB Hearing Coordinator provided the panel with a letter respecting the Respondent's attendance at the hearing, as well as an additional submission and affidavit about that letter from Ms. Boyd. As these materials were received after the hearing had concluded, and after the panel had made its decision to continue the hearing in the Respondent's absence, and as neither the Respondent nor Ms. Boyd applied to reopen the hearing to adduce fresh evidence, the panel did not consider these documents.

## ISSUES

[36] In any conduct hearing before a discipline panel constituted under s. 57(1) of the Act, the panel must make the following three determinations:

1. Has the Commissioner proved on a balance of probabilities that the conduct set out in the Citation occurred?
2. If so, does the proven conduct breach any of the Standards (in particular, in this case, Standards #1, #2 and #6)?
3. If so, does the conduct amount to professional misconduct such that the Respondent is guilty of professional misconduct under s. 63(1)(b) of the Act?

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

[37] The legislative scheme provides that under subs. 16(2) and (3) of the *School Act*, R.S.B.C. 1996, c. 412, if a Superintendent or school board suspends a teacher, a report of the suspension must be sent to the Commissioner. Under s. 44 of the *Teachers Act*, upon receipt of a report, the Commissioner may conduct an investigation, or issue a citation, or may decide to take no further action (if certain criteria set out in s. 45 of the *Teachers Act* are met, which does not apply in this case).

[38] The Commissioner led evidence through the witness, Judy Maranda (formerly Judy Connor), who conducted the District's investigation into allegations of professional misconduct against the Respondent in 2014.

- [39] In 2013-2014, Ms. Maranda was District Principal in Human Resources, and was responsible for conducting investigations into allegations of professional misconduct. Ms. Maranda said that through a letter dated March 6, 2014,<sup>43</sup> she notified the Respondent that she was conducting an investigation into allegations that he had behaved inappropriately towards his students. Ms. Maranda confirmed that her investigation related to the allegations set out in the Citation.
- [40] Ms. Maranda interviewed the Respondent three times and at each interview, the Respondent was accompanied at all times by Sue Heuman, a Surrey Teachers' Association representative. Ms. Maranda took notes of her interviews, and in her testimony, she identified these notes as an accurate reflection of the questions she asked the Respondent during the interviews, and the responses he provided.
- [41] The Commissioner also led evidence through the affidavit of Maine McEachern, an investigator with the TRB. Mr. McEachern was assigned to conduct the TRB investigation into the Respondent's conduct after the Commissioner directed this matter to an investigation in August 2015. Attached to Mr. McEachern's affidavit as an exhibit is a copy of the transcription of Mr. McEachern's interview of the Respondent, which he conducted at the TRB on October 20, 2016.<sup>44</sup> During the interview with Mr. McEachern, the Respondent was accompanied at all times by his then legal counsel, Ms. Quelch.
- [42] As set out below, during the District and TRB investigation interviews, the Respondent admitted the conduct alleged in the Citation. The Commissioner has tendered the statements the Respondent made to Ms. Maranda and Mr. McEachern during their investigation interviews as evidence against him, a party to this professional conduct hearing. The panel accepts that the Respondent's admissions are reliable evidence because it is improbable that he would make a false statement against his own interest.
- [43] Counsel for the Commissioner also tendered an affidavit of the mother of Student B,<sup>45</sup> the subject of the allegations set out in paragraph 2 of the Citation.<sup>46</sup> Attached to the affidavit of Student B's mother is a copy of the letter Student B brought home from school, which is an email from the Respondent addressed to "Mechanics Block 4", the content of which is discussed further below.

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<sup>43</sup> Exhibit #9, letter dated March 6, 2014 from Judy Connor (Maranda) to the Respondent.

<sup>44</sup> Exhibit #20, Affidavit of Maine McEachern, affirmed June 13, 2017, and Exhibit 3 to this affidavit.

<sup>45</sup> The name of Student B is set out in the Citation. A copy of the affidavit of Student B's mother was provided to the Respondent. Student B was a minor at the time of the conduct alleged in the Citation. Accordingly, to protect the anonymity of Student B, the panel will refer to his mother as "Student B's mother", as opposed to her real name.

<sup>46</sup> Exhibit #21, Affidavit of Student B's mother, sworn June 20, 2017.

Allegation 1(a)

[44] In paragraph 1(a) of the Citation, the Commissioner alleges that during the 2013-2014 school year, the Respondent frequently spoke to his students saying “don’t be a dumb ass” and/or “don’t be a dumb idiot.”<sup>47</sup>

[45] In the March 11, 2014 District interview, Ms. Maranda asked the Respondent how he responded to the allegation that he called students “dumb ass” in class regularly. Ms. Maranda’s notes indicate that the Respondent replied: “Dumb ass or I call them dumb idiot – at the machine not wearing their safety glasses. You dumb ass you should know better.”<sup>48</sup>

[46] In further response to Ms. Maranda’s questions whether he did this regularly and whether he thought this was appropriate, the Respondent replied as follows:

“No not on a regular basis. Once a week I may call them a dumb ass. They can say it back to me. Misiak you are being a dumb ass. It’s around safety procedures.” ...

“If somebody isn’t following safety procedures it is appropriate. I can change it to dumb idiot.” ...

“... you are saying that it is inappropriate so I need to come up with something else.”<sup>49</sup>

[47] Later in the March 11, 2014 interview, while responding to Ms. Maranda’s questions about other allegations, the Respondent stated, “... I get that dumb ass is inappropriate. I have to figure out another word because you are saying it is inappropriate.”<sup>50</sup>

[48] In the interview with Mr. McEachern in October 2016, the Respondent confirmed the responses he provided to Ms. Maranda in the earlier interview.

Maine McEachern [MM]: ... when in the district interview with Ms. Connor, and she asked you about the allegations you called the students dumbass regularly, you responded by saying words to the effect of, dumbass, dumb idiot, at the machine not wearing his safety glasses, “you dumbass, you should know better,” just as you were describing to me now --

[Respondent]: So the context of the district made it sound was --

..

.. that I’m yelling at them, and it’s more of private conversation that I’m having.

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<sup>47</sup> Exhibits #7 and #8, para. 1(a).

<sup>48</sup> Exhibit #11.

<sup>49</sup> Exhibit #11.

<sup>50</sup> Exhibit #11.

... “I don’t want you to get hurt.” And when they go, “Yeah, you know what” -- and a lot of times, “Yeah, I’m being a dumb idiot.”

....

MM: ... So when you gave that response to Ms. Connor it was true when you said it, right?

[Respondent]: Yes.<sup>51</sup>

[49] The Respondent admitted to both Ms. Maranda and to Mr. McEachern during the investigation interviews, that he called students “dumb ass” or “dumb idiot” on a regular basis (*i.e.*, once a week). The panel finds that the Commissioner has proven that the conduct alleged in paragraph 1(a) of the Citation occurred.

#### Allegation 1(b)

[50] In paragraph 1(b) of the Citation, the Commissioner alleges that in the autumn of 2013, at the beginning of his Mechanics 9/10 class, the Respondent engaged in the following conduct:

- Used the first 5-10 minutes of class time to speak about a personal matter on the telephone, during which time he became upset;
- Loudly told students in the class to be quiet while he was on the phone;
- After this phone call, he picked up a video cassette player (“VCR”) and threw it to the floor two or three times;
- In the course of walking past his desk, knocked off or kicked off a cupboard door on his desk;
- Left the room for approximately five minutes because he was emotional; and
- When he returned, using a raised voice, he sent a student and then two more students to the office.<sup>52</sup>

[51] In the March 11, 2014 interview, Ms. Maranda asked the Respondent whether he recalled an incident in October 2013 when he “picked up a VCR and threw it down three times out of anger.” The Respondent stated,

“I threw my own cassette deck on the floor. It wasn’t out of anger. I was trying to find out what force it would take to dislodge the form of the case.”

...

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<sup>51</sup> Exhibit #20, Exhibit #3 at pp. 76-77

<sup>52</sup> Exhibits #7 and #8, para. 1(b).

“I did throw down the audio cassette (tape deck) player. I did throw it down. I don’t typically get angry. As far as the desk is concerned I can’t recall kicking it. It must have fallen off.”

“I don’t recall kicking the desk drawer and it was already on its hinges. ...”<sup>53</sup>

[52] Mr. McEachern also questioned the Respondent about the allegations set out in paragraph 1(b) of the Citation during his October 2016 interview.

MM: Okay. Now, in the fall of 2013 there was a day when you threw a video cassette recorder to the floor. Do you remember that incident?

[Respondent]: I remember it like it was yesterday. ...

....

The kids were coming in for class. The phone was sitting out, but there’s no office for me to go into or anything like that. And I said – I don’t know if the class had started yet or not, because we’ve had five years or six years now – five years now where the bell schedule has changed on us. So I don’t even remember when the start time or when the finish time of classes are. Sometimes I forget. I got up, I had a VHS player that I brought from home. I picked it up and I threw it onto the ground like this. I picked it up again and I threw it down again because I was frustrated --

...

-- with what was going on at home. I did mention it in the interview with the school district that I was testing how the structure of that case was because we were doing an assignment on it afterwards. ....

...

After I threw that stuff down there was a couple of students that were acting up in the class. I asked them to leave the classroom. I politely asked them to leave. And I said it was nothing personal and that. They left. I wanted them to leave and stand outside, because I was going to get to them. At that time, because I was getting emotional, I left and went into the prep room that we have where we have lunch. As soon as I came back I explained the whole situation to the class ... A teachable moment.

...

MM: ... I just want to clarify a couple of things, a couple of concrete details.

[Respondent]: Sure.

MM: So you said that you threw your own video cassette recorder down; is that right?

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<sup>53</sup> Exhibit #11.

[Respondent]: Yes.

MM: And was that twice or three times that you threw it down?

[Respondent]: I picked it up twice and threw it down.

...

MM: Okay, so you picked it up once, threw it twice. And you intentionally threw it from a height of about three or four feet; is that right?

[Respondent]: Yeah.

...

MM: ... why did you tell the district that you were trying to find out the force it would take to dislodge the case from the recorder?

[Respondent]: That's what I could think of at that time.

...

MM: Okay. Was the case dislodged, or the video cassette otherwise damaged by your throwing it on the ground twice?

[Respondent]: No.

MM: No. And did this incident occur in the Mechanics 9 and 10 class?

[Respondent]: Yeah ...

...

MM: Okay. And were students present?

[Respondent]: Yes.

...

MM: Okay. And I understand that you were on the phone when the students started to come into the class; is that right?

[Respondent]: Yes.

MM: Okay. And then you continued to talk after the students sat themselves in the classroom; is that right?

[Respondent]: Yes.

MM: Okay. And that you were on the phone after the second bell went off; is that right?

[Respondent]: I can't recall if there was a bell.

MM: Okay, fair enough. How long was the conversation approximately on the phone?

[Respondent]: If I was to – seven minutes, ten minutes.

...

MM: Okay. And during the phone conversation, you told students to be quiet, is that right?

[Respondent]: Yes.

...

MM: ... So to confirm, after you hung up the phone you threw the video cassette onto the floor, and then your body made contact with the door on your desk, is that right?

[Respondent]: The door on my desk that was already broken, that it made it look like – well, there was two actually broken before.

...

So it was just hanging there, so when I walked by it, it just fell off the hinges.

MM: Okay. So you walked by your desk and your body contacted the desk?

[Respondent]: yes.

MM: And then the door was ---

[Respondent]: The door was already broken.

MM: It was already broken. And so then the door fell off?

[Respondent]: Yes.

MM: And did you then, did you kick the door away from you?

[Respondent]: If it was on the ground I might have picked it up and put it over to the side.

MM: Mm hmm. So did you kick the door?

[Respondent]: When I walked by it, yes. That's the reason why – I walked by it, I kicked, because it rubbed up against the side of me. I kicked it and it fell off.

...

But it was off the hinges and that, so as I walked by it fell off as I went by it, because it hit my leg. So if people assumed that oh, I kicked it and it fell down, well, okay if that's what they were assuming. But as I walked by it fell off and it was laying on the ground.

...

MM: ... you mentioned that after you kicked the door or it fell off your desk you went out of the room for a couple of minutes?

[Respondent]: Yeah.

... I got quite emotional.

...

MM: And you sent [names of three students] to the office, is that right?

[Respondent]: Yeah, I sent them to the office.

MM: And you spoke to [student] in a loud voice, is that right?

[Respondent]: Yeah.

...

... his dad approached me afterwards and he says, "You got a little bit upset at school." I go, "Oh, yea." "Because they were acting like idiots?" I go "Yeah" ... He goes, "When you threw the VCR?" I says, "Yeah, I threw the VCR and I shouldn't have."

...

MM: ... you did not call the office to explain why you sent the students down; is that right?

[Respondent]: I can't recall what ... what happened with that.

...

I know I sent them out, and then if I contacted anyone else, I can't remember.

MM: ... you've acknowledged your behaviour after the phone call, so throwing the video cassette down and kicking the cupboard – a cupboard door may have appeared to the students as a display of anger, and that it – yeah.

[Respondent]: I answered that already. It's the same matter here.

MM: Okay, and that it would not be acceptable behaviour from a student.

...

[Respondent]: No, it wouldn't be acceptable.

...

MM: do you understand that this sort of conduct could be intimidating or scary for students, especially if students had experienced violence or abuse?

[Respondent]: Yeah.<sup>54</sup>

[53] The Respondent admitted to both Ms. Maranda and to Mr. McEachern, during the investigation interviews, that he was speaking on a personal telephone call at the start of a Mechanics 9/10 class for 5-10 minutes, that he asked some of the students to be quiet while he was talking, that he became upset during the telephone call and threw a VCR to the floor two or three times, and that he knocked off and kicked to the side a door from his desk. The Respondent also admitted to Mr. McEachern that he had to leave the room because he was emotional, and that he sent a few students to the office when he returned to the class.

[54] The panel finds that the Commissioner has proven that the conduct alleged in paragraph 1(b) of the Citation occurred.

Allegation 1(c)

[55] In paragraph 1(c) of the Citation, the Commissioner alleges that in May 2014, when Student A on the junior boys' rugby team asked the Respondent for some athletic tape, the Respondent responded to Student A by saying words to the effect of "what am I, your nigger?"<sup>55</sup>

[56] Ms. Maranda interviewed the Respondent about the conduct alleged in paragraph 1(c) of the Citation on October 16, 2014. According to Ms. Maranda's testimony, and as reflected in her notes of the interview, the Respondent did not deny that he made the comment, but explained that he made the comment because he was frustrated.

"I was frustrated with how my good nature has been taken advantage of. I wasn't trying to be funny. I wasn't mad. I was frustrated. .... Asking me to do that I thought was inappropriate. Frustratingly, I used those comments and I shouldn't have. As soon as I said it, I apologized."<sup>56</sup>

[57] In the interview with Mr. McEachern, the Respondent admitted he made the comment alleged in paragraph 1(c) of the Citation and that it was one of the worst things he'd ever done in his teaching career.

[Respondent]: ... At the time [Student A] comes running over, sits down, takes off his cleats and his socks and then he says, "Misiak, give me some" –

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<sup>54</sup> Exhibit #20, Exhibit #3, pp. 60-73.

<sup>55</sup> Exhibits #7 and #8, para. 1(c).

<sup>56</sup> Exhibit #15.

I said, “Okay.” He’s about 46 metres away from the first aid kit and I’m about 38 metres away from the first aid kit, and I’m – I’m going to say that this is one of the worst things that I’ve ever done or said in my career as a teacher, and the one thing that I regret the most is what I said at that time. I could have handled it in a different way or manner. And all the other stuff that was – it just came to a head and I had enough. And I blurted out, “What am I, am I your N word?”

...

And that’s what I said. And that’s the one – I regret saying that. I shouldn’t have said it. I did. It’s one of my – the lowest point in my teaching career is when I said that.<sup>57</sup>

- [58] The Respondent admitted to both Ms. Maranda and to Mr. McEachern, during the investigation interviews, that he made the comment to Student A as alleged in paragraph 1(c) of the Citation.
- [59] The panel finds that the Commissioner has proven that the conduct alleged in paragraph 1(c) of the Citation occurred.

#### Allegation 2

- [60] The Commissioner alleges in paragraph 2 of the Citation that in the autumn of the 2013-2014 school year, when the Respondent was coach of the boys’ football team, he distributed a written notice to students on the football team who were also in his Mechanics 9/10 class to give to their parents (the “Note”), which included personal and/or confidential information about Student B, about his parents, and about their requirement that Student B complete his class work or he would not be permitted to play in school games.<sup>58</sup>
- [61] In her affidavit, Student B’s mother stated that she had a conversation with the Respondent about her son, that she was concerned about the grade that her son had received and she discussed her son’s progress in class with the Respondent. Student B’s mother indicated that the conversation, although it occurred at the side of the football field, was a private conversation, which she assumed would be kept confidential.
- [62] In her affidavit, Student B’s mother said that sometime after her conversation with the Respondent, her son came home from school and handed her a copy of a notice, which was an email that the Respondent had given to the football students in his class, which was attached as an exhibit to her affidavit. The Note is an email from the Respondent, addressed to “Mechanics Block 4”, which states:

I had a conversation with [Student B’s] mom at last week’s game. She stated that [Student B’s] Father wanted to know how [Student B] was doing in class? If [Student B] was getting an “N” he would not be able to participate in football. Currently with [Student B] I have stated to him he had to get certain work completed to participate in

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<sup>57</sup> Exhibit #20, Exhibit #3, pp. 46-47.

<sup>58</sup> Exhibits #7 and #8, paragraph 2.

today's game, also others in the class had to complete assigned work. Students to include [Student B], [the names of three other students]. The listed students told me the work would be completed. Before the game I will communicate who has completed the missing work. I will also give a copy of this email to the students this morning. Thanks.<sup>59</sup>

[63] Ms. Maranda asked the Respondent about the conduct alleged in paragraph 2 during her first interview with him on March 11, 2014, but he could not recall anything about the incident at the time. After she had received a copy of the Note, Ms. Maranda interviewed the Respondent again about this incident. Ms. Maranda could not remember the exact date of this second interview and her notes are not dated. In her notes of this interview, Ms. Maranda indicates that the Respondent said he should not have used Student B's name in the Note.<sup>60</sup>

[64] During the TRB investigation interview, Mr. McEachern asked the Respondent about the Note, and the Respondent admitted that he had distributed the Note to the students.

MM: Okay. So ... in the autumn of 2013 you sent an email to parents of students on the Earl Marriott football team, right?

...

[Respondent]: Yeah. I didn't send it to them, I actually gave it to the kids.

MM: Hand delivered?

[Respondent]: Yeah, I handed it out to the kids.

...

MM: ... is it fair to say that the letter was your idea to draft and print out and give to – to the student so give to their parents?

[Respondent]: Yes. And I didn't give it to all the students in the class, just the football players.

...

MM: ... did you discuss the content of your letter with any administrator ... before you sent it?

[Respondent]: No.

MM: Okay. And generally speaking, you understand that many aspects of these students' education are private and confidential, right?

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<sup>59</sup> Exhibit #21, Exhibit "A".

<sup>60</sup> Exhibit #12.

[Respondent]: Yes.

MM: Do you understand that students' grades are confidential? That they can only really be disclosed to their parents and the students, but not generally to other parents or students?

[Respondent]: Yes.

MM: Okay. And are you aware that discussions with parents about their children's education are confidential and you are not supposed to disclose that information to other students or their parents?

[Respondent]: Yeah.

...

MM: ... At the time you knew it was not appropriate conduct to expose personal information what the students and their parents told their students or parent. I think we've covered that, unless you –

[Respondent]: No, I'm sure ... I shouldn't have done what I did.

... I shouldn't have made the assumption. So I was wrong for putting names on the letter. I could have – I could have done it without the names.<sup>61</sup>

[65] The Respondent admitted to both Ms. Maranda and to Mr. McEachern during the investigation interviews that he wrote and distributed the Note.

[66] The panel finds that the Commissioner has proven that the conduct alleged in paragraph 2 of the Citation occurred.

## ANALYSIS AND DECISION

[67] There is no dispute that the applicable standard of proof is the balance of probabilities. As noted above, the panel finds that the Commissioner has proven that it is more likely than not that the conduct alleged in the Citation occurred.

### **Does the proven conduct breach the Standards?**

[68] The relevant Standards provide as follows:

1. Educators value and care for all students and act in their best interests.

Educators are responsible for fostering the emotional, esthetic, intellectual, physical, social and vocational development of students. They are responsible for the emotional and physical safety of students. Educators treat students with respect and

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<sup>61</sup> Exhibit #20, Exhibit 3, pp. 31-43.

dignity. Educators respect the diversity in their classrooms, schools and communities. Educators have a privileged position of power and trust. They respect confidentiality unless disclosure is required by law. Educators do not abuse or exploit students or minors for personal, sexual, ideological, materials or other advantage.

2. Educators are role models who act ethically and honestly.

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.

.....

6. Educators have a broad knowledge base and understand the subject areas they teach.

Educators ... convey the values, beliefs and knowledge of our democratic society.

[69] The Commissioner submits that all of the Respondent's conduct breaches Standards #1 and #2, and that the conduct in paragraph 1(c) of the Citation also breaches Standard #6.

[70] The panel agrees with the Commissioner that, in respect of allegation 1(a), telling a student that he or she is being a "dumb ass" or a "dumb idiot", breaches Standard #1 as it does not treat students with respect and dignity. The panel finds that using these terms is belittling to students as it is a statement of the student's character, rather than their conduct. The panel finds that the repeated, regular use of the phrase "dumb ass" or "dumb idiot" also breaches Standard #2 as by using it, the Respondent is not acting as a role model to his students.

[71] The panel finds that the Respondent's conduct with respect to allegation 1(b) breached Standards #1 and #2. In particular, in front of his class, the Respondent displayed violent emotion in response to a personal telephone call by throwing a VCR to the ground and kicking a desk door to the side. The panel finds this conduct breaches Standard #1 – in engaging in this conduct, the Respondent was not acting in the best interests of the students, and was creating an unsafe environment for them. The conduct also breaches Standard #2 – by losing control of his emotions and destroying property (whether his own or the School's) the Respondent did not act as a role model.

[72] The panel finds that the Respondent's use of the phrase, "What am I, your n\*\*\*\*r?" breaches Standards #1, #2, and #6. The Respondent knew he was using a racially offensive word in a derogatory phrase. Whether he apologized to Student A at the time is irrelevant. The use of the phrase breaches Standard #1 as it displays a lack of respect for the diversity in the classroom, school and community. The use of the phrase breaches Standard #2 as it is not something a role model would ever say, and undermines the dignity and credibility of the teaching profession. Further, the use of this phrase expressly breaches Standard #6 as it does not convey the beliefs and values of our democratic society.

- [73] The panel finds that the Respondent's conduct as alleged in paragraph 2 of the Citation expressly violates Standard #1 as there was no legal requirement that the Respondent identify Student B, his parents, or the other students mentioned by name in the Note. The Respondent did not treat the communication from Student B's mother about Student B as confidential.
- [74] Accordingly, the panel finds that the Commissioner has established that the Respondent's conduct set out in the Citation breaches one, or more, of Standards #1, #2 and #6.

**Does the breach of the Standards amount to professional misconduct under the Act?**

- [75] Under subs. 63(1)(b) of the Act, this panel may find the Respondent guilty of professional misconduct. The Act does not define professional misconduct and a breach of the Standards does not necessarily result in a finding of professional misconduct.
- [76] In this province, discipline panels have determined that the appropriate test for determining whether conduct constitutes professional misconduct under s. 63(1)(b) of the Act is whether the conduct is a marked departure from the standard expected of teachers in this province.<sup>62</sup>
- [77] The Commissioner submits that the use of language towards students which is profane or demeaning is professional misconduct, and cites as authority decisions in which other TRB discipline panels found that the use of the word "stupid" or "retarded" amounted to professional misconduct, and consent resolution decisions in which the teachers agreed that calling students "idiots" or "dumb asses" was professional misconduct.<sup>63</sup> The Commissioner also submits that the use of racial slurs, particularly in the phrase, "What am I, your 'N word'?", falls below the standard for civilized behaviour in our society and constitutes professional misconduct.
- [78] The Commissioner submits that the Respondent's behaviour in allegation 1(b) is a marked departure from the Standards amounting to professional misconduct. The Respondent used instructional time for a personal call, which was followed by a physical venting of his emotions and withdrawing from the classroom for a time. The Respondent lost control and through the destruction of property, created a safety risk to his students that was both physical and emotional.
- [79] The Commissioner submits that the conduct in paragraph 2 is professional misconduct. While acknowledging that the Respondent's breach of the confidentiality of Student B

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<sup>62</sup> *In the Matter of the Teachers Act and Kiteley* (June 9, 2014) at para. 37; *In the Matter of the Teachers Act and Gosse* (May 28, 2015); *In the Matter of the Teachers Act and Robertson*, 2015 TAHP 16; *In the Matter of the Teachers Act and Nielsen*, 2015 TAHP 17; *In the Matter of the Teachers Act and Hankey*, 2016 TAHP 03; and *In the Matter of the Teachers Act and Ammon*, 2016 TAHP 07.

<sup>63</sup> *In the Matter of the Teachers Act and Brisebois* (January 22, 2014) at paras. 88 and 89; *In the Matter of the Teachers Act and Kiteley* (June 9, 2014) at para. 42; Consent Resolution in Justin Dean; and Consent Resolution in David John MacDonald.

was minor, it included disclosure of family discussions about Student B's grades and its impact on Student B's ability to continue to play on the football team.

- [80] Teachers must respect the dignity and diversity of their students, and must convey the values, beliefs and knowledge of our democratic society. It is completely unacceptable for a teacher to make the racist, derogatory comment, "What am I, your n\*\*\*\*r?" in response to a request from a student in any context. Teachers are role models – they hold positions of trust and confidence, and their conduct bears upon the community's confidence in the public school system as a whole: *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825 at paras. 42-45. Although made on a single occasion, the use of this comment is a marked departure from the standards expected of teachers and amounts to professional misconduct.
- [81] The Respondent's emotional response to a personal telephone call, in which he vented his frustration at a personal situation in front of his students by dropping a VCR on the floor two or three times, and then kicking aside a desk door, and leaving the classroom unattended (notably, a mechanics shop with dangerous equipment) amounts to a marked departure from the standards expected of teachers in this province and constitutes professional misconduct. A teacher cannot create an unsafe atmosphere by losing control of his emotions in such a manner.
- [82] The Respondent's conduct in regularly telling students that they are "dumb asses" or "dumb idiots" for apparently not following appropriate safety procedures was demeaning of the students and does not meet the standards expected of teachers. It is professional misconduct.
- [83] The Respondent's failure to treat the communication from Student B's mother confidentially also amounts to a marked departure from the standards and constitutes professional misconduct. There was no need for the Respondent to single out Student B and reveal the contents of his conversation with Student B's mother.
- [84] The panel finds that the Respondent's conduct in breach of the Standards amounts to a marked departure from the standards of conduct expected of teachers, and constitutes professional misconduct under s. 63(1)(b) of the Act.

## **ORDER**

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

## **CONSEQUENCES & COSTS**

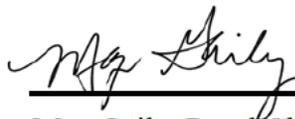
Having found the Respondent guilty of professional misconduct under section 63(1)(b) of the Act, this panel is empowered to impose a penalty on the Respondent. The Commissioner has requested that the submissions on appropriate penalty be submitted in writing by both parties. Accordingly, the panel directs 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 November 27, 2017.

For the Panel

Date: November 9, 2017



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Meg Gaily, Panel Chair



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Matthew Cooke, Panel Member



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Peter Van Huizen, Panel Member