



**BC College
of Teachers**

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**THE MATTER OF
THE BRITISH COLUMBIA COLLEGE OF TEACHERS
AND
A CITATION ISSUED
UNDER THE *TEACHING PROFESSION ACT***

BETWEEN: **THE BRITISH COLUMBIA COLLEGE OF
TEACHERS**

(the “College”)

AND: **James Seymour Sutherland**
[REDACTED]

(the “Member”)

REASONS FOR DECISION ON VERDICT, PENALTY, COSTS AND PUBLICATION

DATE and PLACE of HEARING:

**October 18, 2010
British Columbia College of Teachers
Vancouver, BC**

PRESENT:

Ian B. Hayward, Counsel for the College

MEMBERS of the DISCIPLINE HEARING SUB-COMMITTEE (the “Panel”):

**Louise Burgart, Chair
John Grain
Laurence Greeff**

INTRODUCTION

- [1] James Seymour Sutherland (the "Member") holds British Columbia College of Teachers Professional Certificate [REDACTED], issued May 19, 1998 and valid from January 1, 1998.
- [2] On October 20, 2009 a Citation was issued against the Member alleging that in or about the period of November 2007 to February 2008, the Member accessed adult pornography websites from his classroom computer during instructional time. A copy of the Citation Schedule, setting out the allegations, is attached.
- [3] At the time the alleged conduct occurred, the Member was teaching elementary school children at [REDACTED]. The Member holds a current certificate and now teaches at the [REDACTED].
- [4] The Citation was properly served on the Member in accordance with s. 30 of the *Teaching Profession Act*, R.S.B.C. 1996, c. 449. The Member refused to accept service of the Citation; however, the Panel finds that the Citation was properly served. The Member did not appear at the hearing nor was he represented by counsel.

ISSUE

- [5] The issues before the Panel is whether the Member engaged in the conduct alleged in the Citation and is guilty of professional misconduct. If yes, the Panel must make appropriate orders on penalty, publication and costs.

EVIDENCE

- [6] The College presented its evidence through the *viva voce* evidence of [REDACTED], the Principal of [REDACTED] School at the time of the alleged misconduct and the Member's immediate supervisor, and [REDACTED], the [REDACTED] Manager at [REDACTED].
- [7] Documentary evidence was also introduced, which were marked as exhibits, the list of which is attached to this report as Schedule "A".
- [8] Mr. [REDACTED] testified that he was responsible for the oversight of the computers owned by the [REDACTED], which included [REDACTED] School's network. He explained that in 2007 to 2008, the [REDACTED] was using an Internet filter program called "WebSense Reporter". This program provides a number of services, including a summary of destinations accessed by time of day and computer user. The program runs continuously and categorizes all "hits". It identifies the top five users and breaks down the sites into various categories. Mr. [REDACTED] testified that the WebSense Reporter also includes the time of access and, when a time is recorded, it includes the preceding hour - for example, a time noted at 2:00 p.m. means that there was activity between 1:00 p.m. to 2:00 p.m., although not necessarily for that entire period.

- [9] Some time in early 2008, Mr. [REDACTED] received information from his assistant, [REDACTED], that the Member had accessed websites classified as "criminally liable" by WebSense Reporter.
- [10] Mr. [REDACTED] testified that the computer used by the Member was located on a table at the back of the classroom facing the class and in full view of the students sitting in the class. He testified that the computer used by the Member belonged to the school and that the adult sites had been accessed through the Member's Internet Protocol address [REDACTED] (Exhibit 4).
- [11] Mr. [REDACTED] stated that he accessed the reporting function on WebSense Reporter and reviewed the sites to see what was contained in them and to ensure the sites were not just "pop-ups" when accessing other sites. Mr. [REDACTED] confirmed the internet sites visited by the Member were not "pop-ups", but were adult pornography sites (Exhibit 4). Mr. [REDACTED] testified that he printed the WebSense report and provided it to Ms. [REDACTED] and the [REDACTED].
- [12] A timetable applicable to the 2007 to 2008 school year (Exhibit 5) was introduced into evidence by the College and authenticated by Ms. [REDACTED]. Ms. [REDACTED] testified that the name "James" on the timetable referred to the Member. Ms. [REDACTED] testified that the timetable was accurate, with the exception that the 3:50 in the last segment of the timetable should in fact read 3:00. This timetable would show the times that the Member was in the classroom with the subject computer.
- [13] Ms. [REDACTED] also confirmed that the Websense report (Exhibit 4) was the report she had received from Mr. [REDACTED]. She testified that after receiving the report she met with the [REDACTED] and legal counsel to determine the appropriate course of action.
- [14] Ms. [REDACTED] testified that she met with the Member and presented him with the Websense report. She said that he refused to look at it and denied that he had accessed adult pornography websites at school with the computer in the classroom.
- [15] None of the testimony of the College's two witnesses was challenged.

DECISION ON MISCONDUCT

- [16] The evidence of Mr. [REDACTED], coupled with the WebSense report, makes it clear that the websites were accessed from the computer located in the Member's classroom at times when the Member was scheduled to teach in that classroom. The computer was password-protected and there was no evidence to suggest that the access to the adult pornography sites was made by someone other than the member.
- [17] The Panel therefore finds that the only reasonable inference to be drawn from the evidence provided is that it was the Member who accessed and viewed adult pornography websites on his school computer in his classroom during instructional time.

- [18] Standard 2 of the Standards for the Education, Competence and Professional Conduct for Educators in British Columbia makes clear that educators are role models who must behave honestly and ethically and with the integrity and dignity befitting the profession.
- [19] The Member has not behaved as an appropriate role model or with the integrity and dignity befitting the profession. Viewing pornography during time that a teacher ought to be instructing his class is wrong and repugnant. Although there is no evidence that any of the students in the classroom witnessed the Member accessing adult websites or viewing the images or sites, that possibility was always present. The Member risked exposing the children under his care to pornographic material and to the accompanying risk of emotional or psychological harm as a result of accidental exposure to pornographic material. Furthermore, it would itself cause a separate harm to the children if they were to see their teacher viewing pornography in the classroom, eroding the children's trust and confidence in their teachers.
- [20] The Member used school equipment to access pornographic material at a time when he was supposed to have been instructing children in the classroom. He has exposed the profession to disrepute by his actions.
- [21] The Panel finds that the Member is guilty of professional misconduct.

DECISION ON PENALTY

- [22] The Panel notes that the websites accessed by the Member varied in their content and in the degree of offensiveness of the pornographic material, from mild to extreme. The Panel also considered the number of times that the Member accessed the sites over the course of the school year. The report of the WebSense Reporter identified that the Member accessed pornographic websites over 80 times over the course of the school year.
- [23] In considering the appropriate penalty, the Panel gave consideration to two cases referred to by College counsel: *Van Vloten*, a decision of the BCCT Conduct Review Sub-Committee, and a 2002 *Ontario College of Teachers* decision in which the member is not identified.
- [24] In the 2008 *Van Vloten* matter, the member used the Internet to access pornographic images of adult women during classroom hours. In that case, some students had seen some of the images on the teacher's computer screen. The member was also found to have referred to female students with pet names such as, "Babe" and "Sweetheart" which made these students feel uncomfortable. He had also made an inappropriate joke about sex education class. The panel imposed a one-year suspension as the penalty in that case.
- [25] In the *Ontario College of Teachers* decision, a teacher was observed by colleagues to have visited numerous adult pornographic websites during and after school hours using school computers. No child pornography was accessed and students were not involved in any way. The teacher accepted full responsibility for his actions and took a sick leave to seek medical assistance for a sex addiction. The member and the College entered into an agreement which restricted the teacher from teaching until such time as he had been

assessed by a specified medical practitioner acceptable to the Registrar, had complied with any prescribed treatment regime and was found by the medical practitioner to be fit to teach.

- [26] The Panel finds that this case raises similar facts and concerns as the *Van Vloten* case. The Member's conduct is serious in that he viewed adult websites on school equipment during school hours and in the presence of his students, which risked the possibility that children in the classroom might have inadvertently viewed the images and detected that their teacher was viewing such images. Unlike the Ontario case, there was no evidence presented regarding the existence of a sex addiction.
- [27] The Panel holds that the appropriate penalty in this case is a one-year suspension of the Member's teaching certificate, commencing January 1, 2011.

DECISION ON COSTS

- [28] With respect to costs, the Member declined to attend the hearing and engaged in obstructive actions leading up to the hearing. The College's counsel advised that the Member refused to cooperate in scheduling a date for the hearing, and when contacted by College counsel to arrange a hearing date, stated that he wanted a date two years in the future in order to be able to conduct his own "investigations". Although the Member initially agreed to attend the hearing once set, he then emailed, after the hearing commenced, to inform that he would not attend. As a result of these actions, the College incurred additional and unnecessary costs.
- [29] College Bylaw 6.R.02 provides the Panel with discretion to order a member against whom an adverse finding is made "to pay all or a portion of the costs of a proceeding". The By-Law sets out a non-exhaustive list of the expenses which may be included in such an order. College legal fees are set at a per diem rate of \$2,000 per day and College hearing panel costs are set at a per diem rate of \$2,500 per day.
- [30] The hearing in this case took one day. It is the view of the Panel that the Member's obstructive actions justify an award of costs against him. The Panel in its discretion determines that the Member should pay \$4,500 in costs, representing the full tariff amount for the College's legal fees and hearing panel costs.
- [31] The costs amount of \$4,500 is to be paid by the Member before the conclusion of the period of suspension.

DECISION ON PUBLICATION

- [32] Publication will be made in accordance with sections 27.2 and 27.3 of the *Teaching Profession Act*.

For the Discipline Hearing Panel.

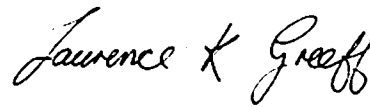
Date: December 17, 2010

A handwritten signature in cursive script, appearing to read "LBurgart".

Louise Burgart, Chair

A handwritten signature in cursive script, appearing to read "J. Grain".

John Grain

A handwritten signature in cursive script, appearing to read "Laurence X Greeff".

Laurence Greeff

**IN THE MATTER OF THE *TEACHING PROFESSION ACT*
AND
IN THE MATTER OF A CITATION CONCERNING
JAMES SEYMOUR SUTHERLAND**

[REDACTED]

TO: James Seymour Sutherland

[REDACTED]

[REDACTED]

TAKE NOTICE that pursuant to Sections 28 and 30 of the *Teaching Profession Act*, a Hearing Panel of the British Columbia College of Teachers will conduct a Hearing to inquire into your conduct (competency), the circumstances of which are stated in the attached schedule, to determine whether you have been guilty of:

- (a) Professional misconduct;
- (b) Other conduct unbecoming a member of the College; or
- (c) Incompetence

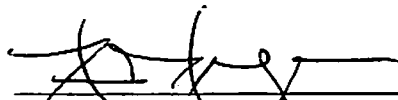
AND FURTHER TAKE NOTICE that the Hearing will be at a place and time to be agreed between the College counsel and you (or your counsel), failing which it will be set by the Registrar.

AND FURTHER TAKE NOTICE that subsection 6.1.01 of the Discipline Committee Bylaw entitles you to particulars of the complaint upon a written demand to the College counsel. Your rights relating to the hearing can be found in the *Teaching Profession Act* and also the Bylaws of the British Columbia College of Teachers.

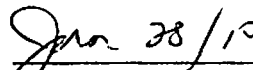
AND FURTHER TAKE NOTICE that at the hearing, legal counsel on behalf of the British Columbia College of Teachers will make submissions with respect to the appropriate action to be taken regarding your certificate of qualification. The action that can be taken includes the cancellation of your certificate of qualification.

SIGNED on the date and at the place as noted below.

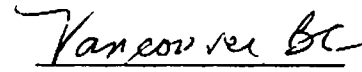
In accordance with Bylaw 6.E.03:



Kit Krieger, Registrar



Date



Place

You should note that the *Teaching Profession Act* provides as follows:

Section 32(1) Conduct of Hearing. Where an inquiry is made pursuant to section 28 or 29 respecting a member, the member may appear personally or with counsel at the hearing.

Section 33: Failure to Attend. If the member fails to attend at the hearing, the council or the discipline committee may, on proof of service of the citation, proceed with the hearing and may, without further notice to the person cited, make a report of its findings or take other action it is authorized to take under the *Act*.

Bylaw 6.H.01 provides that the date, time and place of hearing:

- (a) shall be fixed by agreement between the College counsel and the respondent, or
- (b) failing agreement, by the Registrar.

SCHEDULE

In or about the period of November, 2007 to February, 2008, while employed as a teacher at the [REDACTED] School in [REDACTED], James Seymour Sutherland did access adult pornography websites from his classroom computer during instructional time.