



2016 TAHP 07
Decision issued: October 27, 2016
Citation issued: July 7, 2015
Citation amended: February 9, 2016
File No.: [REDACTED]

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

NOTICE OF REASONS FOR DECISION ON FINDINGS AND DETERMINATION

Date(s) and location(s): April 19-22 and May 4, 2016 at the Teacher Regulation Branch
Panel: Sarah Levine, Chair, Rebecca Blair, Teresa Rezansoff
Counsel for the Commissioner: Maureen Boyd, Ministry of Justice
Counsel for the Respondent: Claire Hatcher, Bolton Hatcher Dance

INTRODUCTION

- [1] A Panel was appointed by the Commissioner of the Teacher Regulation Branch of the Ministry of Education of British Columbia (the “Commissioner”) to conduct a hearing into allegations contained in a citation issued under section 56(1) of the *Teachers Act*, S.B.C. 2011, c. 19 (the “Act”) on July 7, 2015 as amended on February 9, 2016 under section 56(4) of the Act (the “Amended Citation”).
- [2] The allegations concern Robert Ammon (the “Respondent”) who taught mathematics and physical education at the [REDACTED] in School District No. 61 (Greater Victoria).
- [3] The Respondent holds Professional Certificate No. [REDACTED], issued by the B.C. College of Teachers (the “College”) on May 13, 2005 and continuing under the *Teachers Act* as of January 9, 2012.

[4] The Respondent admits that on July 22, 2015, he was served through his counsel with the citation and waived the requirements of section 56(3) of the Act. He was served through counsel with the Amended Citation on February 9, 2016.

[5] The Amended Citation alleges as follows:

1. In 2013, Robert Darwin Ammon (“Ammon”), an authorized person under the *Teachers Act* (Professional Certificate No. [REDACTED]), while employed as a teacher by School District No. 61 (“Greater Victoria”) at [REDACTED] (the “School”) engaged in an unprofessional and inappropriately personal relationship with a student [...] (the “Student”) when:
 - a. Ammon provided coaching regarding fitness to the Student outside of school hours. Ammon picked the Student up very early in the morning and drove him to the School for the purpose of exercising.
 - b. Ammon lent the Student a bicycle.
 - c. Ammon gave the Student a number of gifts, including some or all of a pair of running shoes, a pair of basketball shoes, a gift certificate, a cross with a chain, a self-help book and one or more books with religious content.
 - d. Ammon spent time alone with the Student listening to music and talking to the Student about the Student’s personal matters. On a couple of occasions, Ammon drove the Student in his car.
 - e. Ammon communicated by email with the Student at night and on weekends regarding personal topics, including the Student’s exercise program, schoolwork, and home and social life. Ammon also sent the Student motivational emails, which included religious content.
 - f. Ammon did not advise the Student’s parents of the nature and extent of his relationship with the Student, or of other matters material to the Student’s emotional and physical health and safety.

[6] The Amended Citation alleges that this conduct is contrary to one or more of Standards #1, 2 and 4 of the Standards for the Education, Competence and Professional Conduct of Educators in British Columbia, 4th Edition, January 2012 (the “Standards”) and that Ammon is guilty of professional misconduct or, alternatively, conduct unbecoming a teacher under section 63(1) of the *Teachers Act*.

ISSUES

[7] The issues before the Panel at this stage of the hearing are:

- (a) whether the Respondent engaged in the conduct alleged in para. 1(a) to (f) of the Amended Citation; and

- (b) if so, whether that conduct constitutes professional misconduct or, in the alternative, conduct unbecoming.

EVIDENCE

AGREED STATEMENT OF FACTS

[8] **The parties filed an Agreed Statement of Facts which provides as follows:**

The Agreed Statement of Facts provided agreement as to the authenticity and admissibility of five documents, one of which is a large collection of e-mails. The parties also provided a list of specific agreed facts. The list of specific agreed facts is the following:

1. Robert Ammon (the “Respondent”) holds a Professional Certificate, No. [REDACTED], issued by the B.C. College of Teachers (the “College”) under the Teaching Profession Act on May 13, 2005, valid from May 5, 2005 and continuing under the *Teachers Act* as of January 9, 2012.
2. At all material times, the Respondent was employed as a high school teacher by School District No. 61 (“Greater Victoria”) at [REDACTED] (the “School”) where he taught mathematics and physical education.
3. The citation in this matter was issued on July 7, 2015. It was amended on February 9, 2016.
4. The Respondent admits that on July 22, 2015 he was served through his counsel with the citation and waived the requirements of section 56(3)(a) of the *Teachers Act*. He was served through counsel with the amended citation on February 9, 2016.
5. The documents attached to the Agreed Statement of Facts were agreed to be authentic, created on the date and for the purpose that they purported to be, and were accepted as admissible into the evidentiary record for the truth of the matters recorded therein.
6. The School is a high school located in Victoria and enrolls approximately 800 students in grades 9 to 12. The School operates on a semester system, so students take four courses in the first half of the school year and then four different courses in the last half of the school year.
7. The Respondent was issued a professional certificate of qualification by the British Columbia College of Teachers on May 13, 2005.
8. The Respondent started teaching at the School in 2006. The Respondent primarily taught mathematics and from time to time also taught physical education.

9. In September, 2012, the Student started grade 9 at the School. The Respondent taught the Student Mathematics 9 Honours in the first semester. The Student received a final grade of C-.
10. In the 2012-2013 school year, the Student was in grade 10. The Respondent taught the Student Foundations of Math and Pre-Calculus 10 in the first semester. The Student received a final grade of C-.
11. The Student was 15 [years old] in the 2012-2013 school year and turned 16 on [REDACTED].
12. The Student lived with his parents [...]. He was placed with [his mother] in a foster placement in or about April 2006, when the Student was eight [years old]. When he was 13, [his parents] started the process to adopt the Student. The adoption was completed in June 2013.
13. In or about May 2013, the Respondent decided to mentor the Student. This mentoring was not part of any School-sponsored program, including any sports team. It involved the Student coming to the School early in the morning to complete a workout set by the Respondent, which consisted of running for thirty minutes to one hour, basketball drills and skill development, and fitness activities (sit-ups and push-ups). The Student would sometimes come into the Respondent's classroom in the morning to finish the sit-ups and push-ups that were part of the workout. In May and June 2013, the Respondent met the Student at the School, usually between 6:00 and 6:30 a.m.
14. Starting about May 3, 2013, the Respondent and the Student began to exchange emails using the Respondent's District email account. The last email exchange occurred on October 6, 2013 (collectively, the "Emails").
15. In late June, the Student decided to complete Social Studies 11 over the summer through "LINK", a distributed learning centre operated by the District. In mid-June 2013, the Student and the Respondent met with Emily Kirzinger, a teacher at LINK. After this meeting, Ms. Kirzinger sent an email to the Respondent on June 21, 2013, to which the Respondent replied on June 26, 2013. [This email exchange is part of the Emails.]
16. In the period between May and August 2013, the Respondent gave the Student the following gifts:
 - a. A pair of basketball shoes worth approximately \$120.00,
 - b. A pair of running shoes worth approximately \$120.00
 - c. A gift certificate worth \$50.00,
 - d. A gold-coloured cross and chain worth approximately \$20.00, as a present for the Student's birthday, and

- e. Two books – Conversations with God and The Four Agreements – worth a total of approximately \$30.00
17. The Respondent bought the Student the running shoes and the basketball shoes after the Student told the Respondent that his parents would not buy new shoes for him. The Respondent attempted to access funds through a program to purchase shoes for student[s] in need, but the Student did not qualify. The Respondent believed that the Student needed the shoes to continue his training.
 18. In May and June 2016, the Respondent also lent the Student a bicycle and a watch.
 19. The Student's mother called the Respondent and spoke with him by phone after he loaned the bicycle to the Student.
 20. The Student returned the bicycle in June 2013 at the direction of his parents.
 21. In or about late June 2013, the Respondent drove the Student to S.J. Willis Education Centre so the Student could enrol in Social Studies 11 through distance education.
 22. The Student continued to work out during the summer at the School. On July 3, 2013, the Respondent offered by email to pick the Student up in the morning. From time to time in July and August 2013, the Respondent picked the Student up outside his home at approximately 5:50 to 6:00 a.m. and drove him to the School, where the Student completed the workout.
 23. On July 16, 2013, the Respondent picked up the Student at his home and after his workout, drove the Student to the ICBC driver's licencing office to take a test to obtain a learner's motor vehicle licence. The Student met his father at ICBC.
 24. In the 2013-2014 school year, the Student was initially enrolled in the Respondent's Mathematics and Pre-Calculus 11 class, but he withdrew in early October 2013.
 25. It was also arranged that the Student would be the teaching assistant for one of the Respondent's Physical Education classes in the 2013-2014 school year. Student teaching assistants receive four credits (the equivalent of one course).
 26. The Student did not regularly attend school in the 2013-2014 school year.
 27. In or about late September or early October, the Respondent spoke with the Student about his absence from class and lack of commitment as a teaching assistant.

Shortly after, the Student ceased to be the teaching assistant for the Respondent.

- [9] The following documents were appended to the Agreed Statement of Facts: (a) The Citation issued July 7, 2015 and amended February 9, 2016; (b) Final Grade 9 Report Card for Student; (c) final Grade 10 Report Card for Student; (d) emails between Respondent and Student; and (e) email exchange between Emily Kirzinger and Respondent.

VIVA VOCE EVIDENCE

- [10] The Commissioner called a number of witnesses, including the Student, the Student's mother, Randi Falls who was the School Principal at the material time, Dr. Sheila Marshall, an associate professor in the School of Social Work, Division of Adolescent Health and Medicine at University of British Columbia, Lisa Roy, a family and youth counsellor at [REDACTED] at the material time, and Joann Long, an academic counsellor who was assigned to the Student for the years 2012 – 2014.
- [11] The Respondent gave evidence and called John Gaipman, the Superintendent in the Greater Victoria School District from 2002 to early 2014, and Dr. Carolyn Crippen, an associate professor emerita in the Department of Educational Psychology and Leadership Students at University of Victoria.
- [12] The factual evidence in this case is largely not in dispute. The evidence of the Student's mother provides a useful starting point as she described her son's early childhood and family history. She testified that the Student's birth parents struggled with addiction issues throughout his early childhood. The Student had been placed into several different foster homes before his birth mother died when he was eight years of age. The Student lost contact with his birth father at that time and began living as a foster child with his (now) adoptive mother. He has two biological siblings who were initially fostered with him, but they later moved to other living arrangements. When the Student first lived with his (now) adoptive mother, she recalls that he struggled emotionally and academically, despite being a very intelligent child. The Student performed adequately at school through his early high school years, but continued to struggle emotionally. At the time that he began his relationship with the Respondent, his adoptive family was completing his adoption process. He was almost sixteen years old at the time of the alleged conduct, and was experiencing emotional turmoil.

Paragraph 1(a) of the Amended Citation alleges that the Respondent engaged in an unprofessional and inappropriately personal relationship by providing coaching fitness to the student outside of school hours, and picking the Student up very early in the morning and driving him to the School for the purpose of exercising.

- [13] The Agreed Statement of Facts states that the Student was starting grade 9 in September 2012. The Respondent taught him Mathematics 9 Honours and Pre-Calculus 10 in the first semester of that school year, for which the Student received a final grade of C-. The Student was 15 years old. He turned 16 [REDACTED].
- [14] In or about May 2013, the Respondent decided to mentor the Student. The mentoring was not part of a School-sponsored program, or sports team. It involved the Student attending the School early in the morning to complete a workout set by the Respondent,

which consisted of running for 30 minutes to one hour, basketball drills and skill development, and other fitness activities (sit-ups and push-ups). The Student would sometimes finish his workout in the Respondent's classroom. Between May and June 2013, the Respondent met the Student at the School usually between 6:00 – 6:30 a.m.

- [15] The Student continued to work out during the summer. By email dated July 3, 2013, the Respondent offered to pick the Student up in the morning. From time to time in July and August 2013, the Respondent picked up the Student from outside his home at approximately 5:50 to 6:00 a.m. and drove him to the School to complete his workout.
- [16] The Student testified that the fitness coaching commenced in approximately May 2013. Although he knew the Respondent from his math classes, the Student indicated that the subject of fitness coaching did not come up until after February 2013, when both of the math classes had ended and he was no longer a student in the Respondent's class.
- [17] The Student recalled that the discussion of fitness coaching came up in conversations that he had had with the Respondent in his classroom after school. The Student had been spending time with other students in the Respondent's classroom after school several days a week.
- [18] The Student explained that one of the original goals of the workouts was to prepare him to run a ten-kilometre race and/or to get him ready for the school basketball team in the fall. He confirmed that the fitness training took place at 6:00 or 6:30 a.m. prior to the commencement of the school day.
- [19] The Student explained that the fitness training sessions consisted of two parts. First, he would run around on the school track while the Respondent remained in his classroom. After his run, the Student would go to the Respondent's classroom to complete his workouts there. While the Student completed his workout in the classroom, the Respondent would work and play quiet music. The Student recalled that the Respondent initially played music of the Student's choice that the Respondent reported he was okay with. During later workouts, the Student testified that the Respondent would play Christian music.
- [20] The Student recalled that he and the Respondent did not talk very much while he was completing his workouts in the classroom. He indicated that when he expressed a desire to stop exercising, the Respondent would encourage him to continue.
- [21] The Student testified that on one occasion, he was lying on the floor during his workout when the song "Courageous" began to play on the Respondent's radio. The song was about God and fathers; he began to cry. The Student found the incident emotionally overwhelming although he did not discuss it very much with the Respondent.
- [22] The Student testified that the early morning workouts continued after the school year ended. He would either meet the Respondent at school, or the Respondent would pick the Student up and drive him to the School.

- [23] The Student said that he missed many workouts during the summer. When he did so, he felt disappointed in himself and felt that he had let the Respondent down and wasted his [the Respondent's] time. The Student recalled that the Respondent was calm when he missed his workouts, but he told the Student that he was disappointed and hurt that he had wasted his time because his time was precious and he had put things on hold in his life so that he could meet the Student.
- [24] The Respondent also gave evidence about the workouts. His testimony was consistent with the Student's testimony about the nature and timing of the workouts. The Respondent also referred to the many other communications (including the extensive emails) and activities with the Student as providing "support" for the Student to be able to maintain his workout schedule.
- [25] During his evidence, the Respondent did not refer to the fitness training as "coaching" except in response to questions that used that term. The Respondent referred to the sessions as a "fitness regime" or "training" or "conditioning"; he sometimes referred to his relationship with the Student as "mentoring". The Respondent repeatedly described the fitness sessions as part of an overall program for the Student that involved commitment, for which the Respondent provided considerable support.
- [26] The Respondent stated that his intention in offering the "fitness regime" was to challenge the Student to continue to attend the training sessions according to the schedule that they agreed to in advance. The Respondent believed that the fitness regime could contribute to the Student's self-discipline and success in areas other than fitness. The Respondent described the fitness training sessions collectively as a "mentorship" of the Student although he confirmed that the nature of the relationship had not been formally defined, nor did it have formal terms between himself and the Student or the school. The Respondent testified that he was holding himself out as a model for the Student, by demonstrating a disciplined approach to the Respondent's own commitments which all seemed to relate to the fitness workouts.
- [27] The Respondent testified that he supported the Student's workouts in several ways: (a) he picked up the Student at his house in the early mornings and drove him to the School; (b) he bought the Student two pairs of athletic shoes; (c) he gave the Student two books with motivational content; (d) he lent the Student a bicycle and a watch; (e) he emailed the Student frequently with messages regarding arrangements for the time and place of workouts; and (f) he emailed messages with motivational messages of encouragement that he described as providing emotional support for the Student's participation in the fitness regime.
- [28] The Respondent testified that he had never offered a similar fitness regime or fitness training to any other student. Although he described mentoring a former student, there was no fitness regime involved in that mentorship.
- [29] Some of the communications between the Student and Respondent concerning the fitness coaching are also documented in emails, which began on May 3, 2013. Those emails are appended to the Agreed Statement of Facts and a few examples are reproduced below. As indicated above, the Respondent stated that many of the emails

were sent to support the Student in his fitness regime, even in cases where this intention is not apparent from the face of the emails themselves.

[30] The following are examples of excerpts from the emails between the Respondent and the Student on the subject of the workouts between May and August 2013:

- (1) On May 3, 2013, the Respondent sent an email to the Student that stated that he was “really proud” of the Student and his commitment to working on himself.
- (2) On June 1, 2013, the Respondent wrote, “With regards to running tomorrow, if you can do 60 minutes total, that would be excellent. ...Have a good comfortable run and use the time to reflect on anything that is on your mind at present.”
- (3) On June 10, 2013, the Respondent wrote, “Well done young man. I am extremely proud of you and your commitment to working on yourself.”
- (4) On June 17, 2013, the Respondent wrote, “Well done! You continue to demonstrate to yourself that you are fully committed to your success and it is amazing to be a part of it. I thank you for allowing me to have influence in your life and in the choices that your [sic] making. I will continue to let you know that I am extremely proud of you.”
- (5) On June 24, 2013, the Student emailed the Respondent that, “I would first like to apologize for my absence this morning... I do feel extremely terrible for wasting your time as I have... Being able to come in the mornings, not only to work out, but also to spend the time with you is something very important to me...”
- (6) On June 26, 2013, the Respondent emailed the Student, “Hopefully you have already completed your run. ... Again, [...] let me tell you that overall you have made some major progress and I am extremely proud of you. Remember that every journey begins with just a single step... Today’s words to ponder: “The credit belong to the man who is actually in the arena...” ... Remember that the Lord does not give you more than you can handle.”
- (7) On June 26, 2013, the Student emailed the Respondent, “...I do know that I am subconsciously sabotaging myself, there are things that I know I do such as thinking.” “At some point I will stop this anyway, I mind [sic] as well just stay in bed so I am finished now.”
- (8) On June 29, 2013, the Respondent wrote to the Student, “Remember what I have talked to you about with regards to keeping yourself balanced and your enthusiasm and emotions neutral. There will always be hills and valleys in this journey of yours and it requires patience and perseverance, two qualities you possess; however, you must be prepared for the many obstacles that will be place on your path to deter you. [sic]”
- (9) On July 1, 2013, the Student emailed the Respondent, “I do apologize for this morning. This will not be a re-occurring event. I feel terrible for once again taking your time this morning. I hope to see you tomorrow morning.”

(10) On July 3, 2013, the Respondent offered to pick up the Student in the mornings to cut down on his travel time to the school.

(11) On July 4, 2013, the Respondent wrote to the Student that he was thankful to “continue to have an opportunity to impact [the Student’s] continued success throughout the summer.”

[31] The Respondent and the Student exchanged more emails further into the summer that contained encouragement from the Respondent to the Student. Some are considered below in relation to Citation 1(e).

Paragraph 1(b) of the Amended Citation alleges that the Respondent engaged in an unprofessional and inappropriately personal relationship with the Student by lending him a bicycle.

[32] This allegation is addressed in paragraphs 18 - 20 of the Agreed Statement of Facts. These paragraphs confirm the Respondent lent the Student a bicycle and a watch in May and June 2016, that the Student’s mother spoke to the Respondent about loaning her son the bicycle, and that the Student subsequently returned it at the direction of his parents in June 2013. The Student’s mother gave evidence about the bicycle. She testified that in May or June 2013, the Student’s own bicycle had become damaged. His father had brought some parts home to repair the bike; however, the Student decided to repair the bike on his own without waiting for help from his father and ruined it beyond repair. The Student’s parents talked to him about earning money to purchase a new bike by doing chores or working at his father’s automotive shop. They were upset when their son subsequently arrived home with a bicycle and claimed that the Respondent had given or lent it to him.

[33] The Student’s father told him that he had to call the Respondent to tell him to stop giving him gifts. The Student’s mother explained that they felt the Respondent had destroyed a lesson that they were trying to teach their son; she felt that their role as parents was being usurped by the Respondent. They felt that the Respondent had crossed a boundary.

[34] The Student’s mother telephoned the Respondent to express her concern regarding the gifts that he was giving to her son. She described the situation with the Student’s own bike. She testified that the Respondent apologized, indicating that he was unaware of the situation with the Student’s own bike and did not intend to overstep any boundaries. She told the Respondent that the gifts could be construed as “grooming” the Student. While the parents did not believe that the Respondent was grooming their son, she asked the Respondent not to give any further gifts without their prior permission. The Respondent and the Student’s mother testified that they understood that the term grooming to mean a pattern of behaviour where an adult creates a relationship with a younger person that makes it easier for the adult to enter into a sexual relationship with the younger person.

[35] The Respondent testified that he loaned a bicycle to the Student in order to make it easier for him to get to school early in the morning. The Respondent explained that he

was trying “to help the Student eliminate for himself any opportunities to not follow through”. The Respondent acknowledged sending the Student an email in which he stated that he could use the bike “until your parents said otherwise”. He did not check with the Student’s parents before lending the Student the bike.

- [36] The Respondent testified that the Student’s mother contacted him several weeks after he loaned the bicycle to the student. He understood that the mother’s call was precipitated by an incident in which the Student took the bike out with his friends, which she did not approve of.
- [37] The Respondent denied that his conduct was ever designed to “groom” the Student for a sexual relationship.

Paragraph 1(c) of the Amended Citation alleges that the Respondent gave the Student a number of gifts, including some or all of a pair of running shoes, a pair of basketball shoes, a gift certificate, a cross with a chain, a self-help book and one or more books with religious content.

- [38] Paragraph 1(c) of the Amended Petition alleges that the Respondent engaged in an unprofessional and inappropriately personal relationship with the Student by giving him a number of gifts, including a pair of running shoes, a pair of basketball shoes, a gift certificate, a cross with a chain, a self-help book and one or more books with religious content.
- [39] This allegation is addressed in paragraphs 16 - 17 of the Agreed Statement of Facts which state:

16. In the period between May and August 2013, the Respondent gave the Student the following gifts:

- (a) A pair of basketball shoes worth approximately \$120.00,
- (b) A pair of running shoes worth approximately \$120.00,
- (c) A gift certificate worth \$50.00,
- (d) A gold-coloured cross and chain worth approximately \$20.00, as a present for the Student’s birthday, and
- (e) Two books – Conversations with God and The Four Agreements – worth a total of approximately \$30.00

17. The Respondent bought the Student the running shoes and the basketball shoes after the Student told the Respondent that his parents would not buy new shoes for him. The Respondent attempted to access funds through a program to purchase shoes for student[s] in need, but the Student did not qualify. The Respondent believed that the Student needed the shoes to continue his training.

- [40] The Student testified that he needed new running shoes and basketball shoes shortly after he started the fitness training with the Respondent. His parents were not able to purchase the shoes that he wanted. He recalled that the Respondent told him that there might be a school fund for new shoes. The Respondent subsequently drove him to a shopping mall near the School to purchase two pairs of shoes for him.
- [41] The Student testified that he told his parents that the Respondent had purchased the shoes for him. He recalled that his parents were pleased that he was committed to the fitness program but they were “wary” about the fact that he was getting things purchased for him.
- [42] The Student testified that the Respondent subsequently gave him a gift card, a necklace with a cross on it, two self-help books, and a Bible.
- [43] The Student’s mother also gave evidence about the shoes. Her son had told her that he needed new shoes. She told him that he would have to wait until the middle of the month. It was shortly after that that her son came home with new shoes. He told her that the Respondent had got them through a fund at the school. Sometime after that, she recalled that her son came home with a watch that he told her he was using for training, and around the same time, the bicycle.
- [44] After the bicycle incident, the Student’s mother telephoned the Respondent to advise him that all future gifts must go through either the Student’s father or herself. She recalled that the Respondent apologized, said that he had not intended to overstep any boundaries, and stated that he was just trying to help the Student.
- [45] After the school year ended, the Student’s mother recalled that her son came home with birthday gifts from the Respondent, including a cross necklace and a Bible. She said that she and her husband decided to let it go because it was their son’s birthday.
- [46] The Respondent acknowledges purchasing the shoes for the Student. He testified that he tried to access a program through the school that would provide shoes for needy students but was told that the Student’s family did not qualify. He then decided to purchase the shoes for the Student himself although he did not tell the Student that he had paid for the shoes himself.
- [47] The Respondent acknowledges that he gave the Student a \$50 gift card on his birthday. He told the Student to use the gift for whatever purpose he wanted, but challenged him to use it to help someone else instead of spending it on himself.
- [48] The Respondent testified that he also gave the Student a cross on his birthday, because the cross that he had received as a gift from his sister was broken.
- [49] The Respondent testified that he gave the Student two books with Christian themes but that he had not read either of them. He said that the first book, entitled “The Four Agreements”, had been given to him by another teacher, and he simply passed it on to the Student. He said that Student had been in the Respondent’s classroom when the other teacher walked in and offered the book; the Respondent simply passed it from the other teacher to the Student. The Respondent denied giving the Student a Bible.

- [50] The only documentary reference to the gifts is an email exchange between the Student and the Respondent on July 5, 2013. The Student stated, “I am also now ready to finish “The Four Agreements”. The Respondent replied, “Excellent, with regards to your readiness to complete “The Four Agreements”. Ironically, I also have another book for you, which I will give you on Monday”.
- [51] The Respondent called Mr. Gaipman as a witness because he investigated the allegations against the Respondent in the context of the Respondent’s employment by the Greater Victoria District. The Respondent submitted that Mr. Gaipman’s evidence was relevant to the question of whether the gifts that the Respondent gave to the Student were indications of an inappropriately personal relationship. The gist of Mr. Gaipman’s evidence was that he did not believe that the gifts that the Respondent provided to the Student evidenced an inappropriate relationship. The Panel concluded that the outcome of Mr. Gaipman’s investigation, and his opinions, were not determinative for the purposes of this hearing.

Allegation 1(d) of the Amended Citation alleges that the Respondent spent time alone with the Student listening to music and talking to the Student about the Student’s personal matters. On a couple of occasions, Ammon drove the Student in his car.

- [52] Paragraphs 21 to 23 of the Agreed Statement of Facts provides:
21. In or about late June 2013, the Respondent drove the Student to S.J. Willis Education Centre so the Student could enrol in Social Studies 11 through distance education.
 22. The Student continued to work out during the summer at the School. On July 3, 2013, the Respondent offered by email to pick the Student up in the morning. From time to time in July and August 2013, the Respondent picked the Student up outside his home at approximately 5:50 to 6:00 a.m. and drove him to the School, where the Student completed the workout.
 23. On July 16, 2013, the Respondent picked up the Student at his home and after his workout, drove the Student to the ICBC driver’s licencing office to take a test to obtain a learner’s motor vehicle licence. The Student met his father at ICBC.
- [53] As outlined above, the Student gave evidence that he would complete his early morning workouts in the Respondent’s classroom and that the Respondent would play music. He also testified that the Respondent would sometimes pick him up in his car from home and drive him to school.
- [54] The Respondent testified that he had conversations with the Student and generally when other students were not present. He said that the door to his classroom would have been open, so other students may have come in to check on things during his conversations with the Student. He stated that a student would sometimes come in to get specific help and would stay; other times, the Respondent would tell the other student, “I’m going to chat with the Student now; I’ll see you later,” and the other student would then leave the room.

- [55] The Respondent testified that his own routine included playing Christian music at a low volume in his classroom in the mornings when he was working at his desk before class. He said that when someone entered the room, he would turn the music off. During the first few early morning workouts, the Respondent turned the music off when the Student entered the classroom. After a few workouts, the Respondent said that he was about to turn the music off when the Student indicated to him that he also listened to Christian music and the Respondent did not need to turn it off.
- [56] The Respondent testified that the Christian music prompted a discussion about Christianity. He said that he made a conscious decision to engage with the Student in conversation about Christianity, despite the fact that he usually refrains from discussing his religious beliefs with students.
- [57] The Respondent testified that he generally does not share any details about his personal life with his students because he understands his role as a teacher, and he takes it very seriously. He stated that his students comment about not knowing very much about him; however, he believes that it must be this way in order to interact with them.
- [58] The Respondent testified that at least until the summer of 2013, his email exchanges with the Student were providing support for the Student's workouts. He testified that he was talking to the Student during the school week (Monday to Friday), and that they would be "chatting about a number of different things; again continuing the theme of how things were going with his personal life, that sort of thing." He explained that the emails, at least before the summer, were picking up on in-person discussions that they had previously had.
- [59] The Respondent testified that the Student spoke to him about his eating habits, his fitness level, and his goals for the future. The Student also talked to him about his personal issues and shared his frustrations about how his life was going; he talked about different areas of his life, and his family life. The Respondent confirmed that he gave the Student advice about dealing with his parents. The Respondent testified that he also consulted Ms. Roy so that she would be informed about the personal nature of the Student's conversations with him.
- [60] Ms. Roy testified that the Respondent spoke to her about his mentoring relationship with the Student several times. She recalled that he expressed frustration with the Student's inability to fully participate in his fitness-training program. She testified that the Respondent also told her that he was speaking to the Principal on a regular basis and keeping the Principal up to date on the situation. Ms. Roy said that she was not aware that the Respondent was emailing the Student.

Allegation 1(e) of the Amended Citation alleges that the Respondent engaged in an unprofessional and inappropriately personal relationship with the Student by communicating by email with the Student at night and on weekends regarding personal topics, including the Student's exercise program, school work, and home and social life, and that he also sent motivational emails which included religious content.

[61] Paragraph 14 of the Agreed Statement of Facts states:

14. Starting about May 3, 2013, the Respondent and the Student began to exchange emails using the Respondent's District email account. The last email exchange occurred on October 6, 2013 (collectively, the "Emails").

[62] The Agreed Statement of Facts also provides that the emails are true representations of what they purport to be, in that the stated author of the emails is the true author; the emails were sent by the author of the email to the recipient on the date that appears on the face of the email, and the recipient is assumed to have received the email on the date it purports to have been received.

[63] The following excerpts are reproduced from the extensive email exchange that occurred between the Respondent and the Student in 2013:

1. On Monday, June 24, at 7:55 am, the Student emailed the Respondent and apologized for his absence in the morning. The Student said, "Being able to come in the mornings, not only to work out, but also to spend the time with you is something very important to me."
2. The Respondent replied at 8:40 am the same day, stating: "You can call me at the school to discuss as needed."
3. The Student responded the same day at 10:27 am, "... I heard my mom on the phone discussing the possibility of me not coming anymore throughout the summer. I also HAVE to now return the bike, which I found out yesterday I was just going to tell you this morning. ... I know how big of an opportunity this is for me, I can not lose this..."
4. On Thursday, June 27, at 9:59 pm, the Student wrote:

Well before we ever started talking about the power of the Lord, I had not known truly what I believed and I had numerous times asked, well at the time I didn't know what I was doing. ... I wanted something incredible to happen. The day you told me the story of the man trapped in the middle of the ocean and asking god to help me, that night was the first time I really reflected. Everything for me began to come together. I realized that my prayers WERE answered, I was ensured that the reason you opened up to me about "the universe" was because of my prayers. You were the answer for me, you were my connection with God, he was speaking to me through you.

I am grateful for everything you do for me, no matter how many mistakes I make you continue to support me and sacrifice parts of your own life to facilitate my success.

5. The Respondent replied the same day with an email that included the quote: "Trust in the Lord, lean not on your own understanding, and he will make your path straight."

6. On Friday, June 28, at 9:35 pm, the Student referred in an email to having said in the past that he had no friends.
7. In the evening of Friday, June 28, at 11:26 pm, the email refers to a face-to-face interaction between the Respondent and the Student, which the Respondent characterized as, “without question, being in the presence of the Lord”; the Respondent continues, “I thank you for allowing me to be a part of your life, it has been my privilege and a great gift to me”.
8. On Tuesday, July 2, at 2:05 pm, the Student wrote, “Having people who enjoy my company is something very new for me, and balancing it is posing to be difficult [sic]”.
9. On Wednesday, July 3, at 8:54 am, the Student wrote, “Thank you for still being here, and working through”. The Respondent replied: “As always, I am only an email away” and offered to pick the Student up in the mornings to cut down on his travel time.
10. On Thursday, July 4, at 10:38 am, the Respondent wrote to the Student that he was thankful to “...continue to have an opportunity to impact [the Student’s] continued success throughout the summer”.
11. On Monday, July 8, at 8:25 am, the Respondent wrote to the Student, “No, that I will never stop being a support to you, you do know that right! There is absolutely nothing you can do to change this fact.” [sic]
12. On Thursday, July 11, at 8:15 pm, the Student emailed the Respondent that, “I have just been thinking of a few things lately that I would like to talk to you about tomorrow, if you could remind me so I do not forget...” and then listed the following as things to be reminded of - “talking to you about “Feels So Close” and his routine to the song, “Turbulence””.
13. On Monday, July 15, at 10:11 am, the Respondent wrote, “I will pick you up tomorrow. I will also drop you off at ICBC for 9:30 a.m., absolutely. Keep reading [Conversations With God] and reflecting. I am very proud of you young man. “
14. And later the same day, the Respondent wrote, “If you need to chat, just email me.”
15. On [REDACTED] at 11:55 am, the Respondent wrote: [REDACTED]
[REDACTED] I cannot tell you enough how very proud of you I am. Thank you for the privilege of witnessing and being part of your accepting Jesus Christ as your Lord and Saviour. This is a profound decision and you will see for yourself how significant an impact it will have in your life. Of course, I am always here for any questions or support you may need in this area.”

16. On Wednesday, July 17 at 9:05 pm, the Student emailed the Respondent: “After praying with you yesterday, I have not felt a dramatic change. Although, I have felt an enormous ‘weight off my shoulders’. And have had an overwhelming sense of self-control. For example, yesterday ... I was able to take full control of myself, ... I stayed calm ... and just kept thanking God for being in my life and laying his hand upon me.”
17. The Respondent replied at 11:24 pm: “With regards to your prayer, you do not have to feel anything; however, you will see a difference in your outlook and the way you conduct yourself. I am proud of you for making such a decision. This single act is without a doubt the most significant decision you will ever make in your life. I look forward to catching up tomorrow.”
18. On Thursday, July 18, at 10:18 pm, the Respondent wrote, “Try to get to bed earlier tonight young man. See you tomorrow.”
19. On Friday, July 19, at 6:26 pm, the Respondent wrote “... I am, as always, in your corner young man and that will never change, know that!”
20. On Sunday, July 21, at 12:11 pm, and Monday, July 30, at 9:14 pm, the Respondent offered to pick up the Student.
21. On Monday, July 22, at 7:31 am, the Respondent wrote to the Student,

... you have had a lifetime of broken promises and unsustained commitment. As a result, you have learned this behaviour in your interactions with others.

Over these last weeks, I have tried to model an example of kept promises and sustained commitment to you. However, to change your learned behaviour will take time and most of all, it will take a desire and commitment on your part to realize the changes you seek.

As I will continue to say, how you treat others is a reflection of how you want to be treated. You have treated your commitment to yourself and to me, with regards to your exercise, basketball, and schoolwork, very poorly as of late. Please reflect on why.

As I have told you many times, I am fully committed to you and your success, please know that. [sic]
22. On Tuesday, July 23, at 6:12 am, 3:42 pm and 4:03 pm, the Respondent sent the Student three emails, to which the Student did not respond. These emails included, “You know how I feel about you. There is absolutely nothing that you can do to change this fact. Remember that!”
23. After no response from the Student, the Respondent followed with another email to the Student on Wednesday, July 24, at 12:30 am. The Respondent

wrote, "Please let me know what's going on in your world, if you chose to, and if you want me to no longer send you these emails." [sic]

24. The Student responded in a brief email Wednesday, July 24 at 9:15 pm. The Respondent sent additional emails to the Student on Wednesday, July 24, at 11:05 pm, two on Friday, July 26, at 2:41 pm and 8:08 pm, and one on Saturday, July 27 at 12:44 pm with no reply from the Student.

25. On Tuesday, July 30, at 8:35 pm, the Student wrote to the Respondent:

I have been thinking for days of what to say. ... I am going to say I immensely apologize. ... I am fairly nervous because I am getting easily over frustrated with things and some days ... I feel like I am ready to tear into someone. I am able to control it although I still do not like the feeling. ... If you are willing, I would like to come in tomorrow morning.

26. In the email on Tuesday, July 30, at 9:14 pm, the Respondent wrote:

I want you to know directly, I love you young man. I prayed about you today and as you may not be surprised, I expected to hear from you today. I will definitely see you tomorrow, if you'd like. Stay calm and pray the following prayer until tomorrow and before bed tonight.

I plead the blood of Jesus Christ over every aspect of my life and I know that he will cover a multitude of sins.

27. On Friday, August 2, at 8:37 pm, the Student wrote:

...I am on a roller coaster and the drops on this roller coaster feel like they are getting steeper every time.

I continue to thank the Lord and believe that he will never give me more than I can handle. Although I am falling back into old habits, I am being very critical again, I am sleeping late into the days, being late for things, being rude and disrespectful...

I believe my current environment is not benefitting me in anyway either.

....

Thank you for everything and continuing to stay with me through all of my adventures. I also apologize for not getting in contact with you sooner.[sic]

28. The Respondent replied at 9:39 pm in a very long email the same day:

I will say again to begin, God loves you and so do I. I really do mean this. I am 100% connected to you and will not leave your side, unless this is your wish.

What you are going through these last few weeks is a battle for your very soul. When you made your declaration to accept Jesus as your Lord and saviour, all the angels in Heaven were rejoicing and the enemy and his demons were angered.

You are so very special young man and the Lord has great plans for you...

This is spiritual warfare and you will triumph, but it will take a strong will and a desire in your heart to “trust in the Lord”. As you know, I have been charged with being by your side throughout this entire process... All you have to do is ask and you know I will be there with and for you.

I really want you to pray this prayer over the next few days ...

Dear Lord Jesus, please come and heal my wounded and troubled heart. I beg you to heal the torments that are causing anxiety in my life. I beg you, in a particular way, to heal the underlying source of my sinfulness. I beg you to come into my life and heal the psychological harms that struck me in my childhood and from the injuries they have caused throughout my life.

[additional prayer]

Also, there is absolutely no need to apologize, but know that I understand and accept your apology. **YOU ARE NOT TO BLAME FOR WHAT IS GOING ON IN YOUR WORLD RIGHT NOW!** Others are failing you, you are not failing yourself. We will talk about all your concerns and perhaps some alternatives to your current situation when we meet next week.

PLEASE PLEASE TRY WITH ALL THE WILL POWER YOU POSSESS TO GET UP TO MEET ON MONDAY.

Please email me everyday this weekend and I will do the same. **DO NOT EVER FEEL THAT YOU CANNOT CONTACT ME NO MATTER HOW MUCH TIME AS GONE BY AND I WILL PROVIDE OTHER WAYS TO CONTACT ME IF NEEDED. I AM ALWAYS AVAILABLE FOR YOU.”** [sic; all caps in original]

29. The Respondent told the Student that he loved him again in emails dated Friday, August 2, at 9:39 pm, Tuesday, August 6, at 11:47 pm, Saturday, August 17, at 11:24 pm and Tuesday, August 20, at 4:15 pm.
30. On Monday, August 5, at 9:11 pm, the Respondent wrote, “**YOU HAVE NOT AND WILL NOT EVER DISAPPOINT ME**”.
31. On Tuesday, August 6, the Student emailed the Respondent at 11:16 pm:

I have finally broken down. I am in tears right now. There is just so much going on right now and I just feel like I can't handle it all. Like I can't fight through and stay together. I don't know what to do. I continue to ask God for answers ... I have never had this feeling before of utter uselessness and a feeling like I can't control anything. I don't know what to do. I don't know what to say. ... Everything seems to be falling apart...

32. The Respondent responded that night at 11:47 pm:

I will meet you tomorrow morning if you'd like. Everything will be OK. God loves you and so do I. He will not leave your side, nor will I.

33. On Friday, August 9, at 5:00 pm, the Student wrote:

Instead of getting up and going to work for 11 this morning, I stayed in bed and slept all day. ... My mom came home just after 4 and woke me up ... I haven't said a word since she woke me up. She thinks I am mad at myself because I did not get up, I can not tell her the true reason I am upset. I am upset because I know why I have been unable to get up in the mornings. Not being able to control what effects me right now is increasingly painful... I honestly, do not know what to do right now. I feel helpless. I feel like I have no control over what's going on in my life right now. Most people may think that no one is there for them, although I feel more like I can not be here for myself. I have a sense that I am lost, a feeling I have never experienced before. [sic]

34. On Friday, August 9, at 8:29 pm, the Respondent wrote:

If only we could meet face to face so that I tell you what it is I have to say. ... I feel that my words must be inspired by the Lord at this point.

...

In the mean while, just keep talking about how you feel with me. Say what every comes to mind no matter what it is and keep trying to reflect on why you feel the way you do. Of course, if you need anything, please let me know, as always I am here for you.

35. On Sunday, August 11, at 3:47 pm, the Respondent wrote to the Student, "Please confirm that you have received this message and email me each day to let me know how you are doing, if you wish."
36. On Saturday, August 17, at 11:24 pm, the Respondent wrote a very lengthy email to the Student including: "I will remind you that God loves you and so do I and neither he nor I will give up on you" and "I will continue to reassure you that I am here for you young man".

37. On Saturday, August 17, at 11:41 pm, the Student wrote that he was “overwhelmed” and felt “even at the highest of times useless and helpless” adding:

I need help and I know that bell will come from you. I more ways then one. I would like to meet. After over a month on Monday. [sic]

Thank you for ... EVERYTHING! [sic]

38. In a further email later the same night (Sunday, August 18, at 12:01 am), the Student wrote:

... what does he want from me? I have been trying to figure it out... I have been trying to communicate with God, although I have had a hard time deciphering what is an answer, what is an “event on earth” and what is interference from the enemy.

... I would love to meet tomorrow, although to my parents the weekends are “not a day we meet” so I do not think it would be a wise choice on my part to try to meet tomorrow. My apologies!

39. The Respondent replied Sunday, August 18, at 8:03 am:

No worries, you have to keep everything on the home front quiet, so I will see you on Monday. Am I picking you up at the normal time, 5:50 a.m.?

...

The Lord wants for you, what you want for yourself. You have to determine that, and then he will offer guidance on the path that YOU chose. That is the hardest thing to understand. ...

40. The Respondent emailed the Student on Monday, August 19th at 8:43 am and 20th. On Tuesday, August 20th, at 4:15 pm, he wrote:

I am so very proud of you for all that you have endured throughout your short life and how you have still managed to maintain such an even keel and a positive outlook in life. ... You honour me by choosing to sign of with the words “Your son” and I am humbled by this action. I do truly love you young man and I am always here for you in any and all circumstances.

41. On Monday, August 26, at 10:22 pm, the Respondent sent the Student two emails, one very lengthy. He wrote in part:

I look forward to playing my part on your journey and I thankful to have the opportunity to do so. [sic].

42. On Tuesday, August 27, at 1:19 pm, the Respondent offered to pick the Student up at 5:50 am to discuss his grade 11 schedule. On Wednesday, August 28, the Respondent emailed the Student at 5:05 am:

I will be at school this morning, you come in you can see me in my room.
Please do so before talking to Ms. Long.

- [64] Although there are some short emails exchanged after that, there are no more lengthy emails discussing personal matters.
- [65] The Student testified that the emails from the Respondent made him feel very loved, very hopeful and very cared for. He felt that there was somebody who was putting him ahead of himself and that he had not had anyone do that for him before in his life. He felt that the Respondent had committed to be there for him, and to care about him in an unconditional way, regardless of whether he was in the Respondent's class or not. The Student testified that the Respondent was the most important person in his life during this period of time.
- [66] The Student also testified that, during this period, he thought about running away from home. He believed that the Respondent had implied that he would always be there to help the Student and that the Student would never be homeless because the Respondent would "be there" for him. The Student understood that to mean at the time and for years to come after that time. He indicated that part of his understanding that the Respondent would be there for him came from the sentiments expressed by the Respondent in the emails.
- [67] The Respondent testified that the emails were designed to support the Student and that he consciously used his School District email account for this purpose. He testified that he had been talking to the Student on a Monday-to-Friday basis during the school year about how things were going in the Student's personal life, and that the emails were a way to continue to provide support for the Student after the school year ended.
- [68] The Respondent testified that he and the Student both understood that their email exchange would be confidential. He said that the Student had initially been using an email address that was open to his father's business, and he intentionally gave the Respondent a different email address so that he could have privacy; the Respondent acknowledged that he (the Respondent) facilitated that.
- [69] The Respondent said that it was important to him that he establish and reinforce that his support was there for the Student because "he did not want to be another person in the script of [the Student's] life that had let him down".
- [70] The Respondent acknowledged during his testimony that he told the Student that he supported him unconditionally in many of the emails. He agreed that it was possible for the Student to feel that he was making promises that in reality, he would not be able to deliver on. The Respondent denied that he intended to offer unconditional support, but agreed that it was possible for the Student to have understood his emails that way. The Respondent testified that when he said, "...you are not to blame for what is going on in

your world right now; others are failing you, you are not failing yourself”, he was referring to the Student’s parents.

[71] In relation to the emails, the Respondent explained that:

... I acted in a number of roles that were outside of the scope of my role as a teacher, and clearly that was not going to be something that would continue once the setting had changed because now we were back in school.

Paragraph 1(f) of the Amended Citation alleges that the Respondent did not advise the Student’s parents of then nature and extent of his relationship with the Student, or of other matters material to the Student’s emotional and physical health and safety

[72] Paragraph 1(f) of the Amended Citation alleges that the Respondent engaged in an unprofessional and inappropriately personal relationship with the Student when he did not advise the Student’s parents of the nature and extent of his relationship with the Student, or of other matters material to the Student’s emotional and physical health and safety. This matter is not addressed in the Agreed Statement of Facts.

[73] The Respondent stated that he did not have any contact with the Student’s father. His only contact with the Student’s parents was through the mother.

[74] The Respondent conceded in his evidence that he did not check with the Student’s mother before purchasing athletic shoes for the Student or lending him the bicycle. He acknowledged that he also did not advise the Student’s mother that he was buying the Student birthday gifts despite the fact that the Student’s mother advised him by telephone in June 2013 that it was not acceptable for him to give her son any gifts without their permission. The Respondent testified that it was his understanding after that telephone call that the Student’s mother expected that he would not give the Student any more gifts or loan him things without first confirming that it was acceptable to her.

[75] The Respondent testified that he picked the Student up at his house in the summer but did not ask the Student’s parents for permission to do that.

[76] The Respondent testified that he did not advise the Student’s mother that he exchanged emails with the Student in the summer. He also did not advise the Student’s parents of any of the content of the emails, nor did he advise the Student’s parents of the emotional pain that the Student indicated that he was in over the summer.

[77] The Respondent testified that the Student had several absences beginning in the first week of school in 2013 while enrolled in his math class. The Respondent acknowledged that he did not notify the Student’s mother of those absences from his class in the first weeks of school. The Respondent acknowledged that another teacher did bring the Student’s absences to his mother’s attention.

[78] The Respondent testified that he spoke to the school principal, the school academic counsellor, and the school’s youth and family counsellor about the Student’s emotional health.

- [79] The Respondent testified that he discussed the Student's situation with the Principal in September 2013. He brought the Student's absences from class to her attention, and indicated that the Student did not speak to him and avoided looking at him when they were in proximity to one another. He did not inform the Principal that he exchanged emails with the Student in the spring or summer of 2013 nor did he inform her of the content of the emails.
- [80] The Respondent testified that he spoke to Ms. Roy regarding the Student in the spring of 2013, but did not tell her that he had exchanged emails with the Student, nor did he tell her about the content of the emails.
- [81] The Respondent spoke to Ms. Long in September 2013, but he did not tell her that he exchanged emails with the Student, nor did he tell her about the content of the emails.
- [82] The evidence of Ms. Falls, Ms. Roy and Ms. Long was consistent with the Respondent's testimony on this point.
- [83] The Student's mother testified that at the end of September, the Student went to bed and refused to get up. He refused to talk to anyone, and she said that the Student claimed "[the Respondent] was an asshole". The Student fell far behind in schoolwork. When his physics teacher contacted her, she tried to arrange a meeting for the Student, but he refused to go. By October, her son had stopped attending his academic courses and only attended the afternoon classes. By the spring of 2014, the Student began using drugs and alcohol and dropped out of school.
- [84] The Student's mother stated that he has since completed substance abuse treatment, graduated from high school, and is currently employed. His mother testified that he seems to be stable.
- [85] The Student confirmed in his evidence that he stopped attending his academic classes shortly into the school year in September, 2013.

Evidence on other matters

- [86] The Commissioner referred to additional evidence of alleged professional misconduct which does not relate specifically to any of the particulars in paragraphs 1(a) to (f) of the Amended Citation. The Commissioner maintains that the evidence relates in general to the allegation that the Respondent engaged in an inappropriately personal relationship with the Student.
- [87] Ms. Falls, the School principal testified that the Respondent had told her that he and the Student were working together, both on fitness training and on math, in the spring of 2013. Ms. Falls testified that she spoke to the Respondent about the Student in the fall of 2013, when he expressed concern to her about the Student not performing adequately as a teaching assistant for his physical education class. The Respondent told her that he believed that perhaps his family schedule was making it difficult for the Student to get up in the morning. Ms. Falls was not aware of the emails exchanged between the Respondent and the Student until the Student's parents made a complaint in November 2013.

- [88] Ms. Long testified that she was aware that the Respondent had helped the Student choose some of his classes in the late summer of 2013. She observed that the Respondent and the Student spent quite a bit of time together. In the fall of 2013, the Student's physics teacher approached her because he was concerned about the Student's poor attendance and poor academic performance. The Respondent had not spoken to Ms. Long about the Student's attendance at that time. Ms. Long testified that she had attempted to have conversations with the Respondent about his time spent with the Student. She was surprised to learn that that the Respondent and Student had been exchanging emails. She said that she spoke to Ms. Falls about her concern about the Respondent and the Student but Ms. Falls reassured her that she was not concerned.
- [89] Ms. Roy testified that the Respondent spoke to her about his mentoring relationship with the Student several times. He expressed his frustration with the Student's inability to fully participate in his fitness-training program. She testified that the Respondent told her that the Student was talking to him about his personal matters. He also told her that he was speaking to the Principal on a regular basis and keeping her up to date on the situation. Ms. Roy said that she was not aware that the Respondent was emailing the Student.
- [90] Dr. Crippen testified that the Respondent spoke to her about his relationship with the Student in June or July 2013. She said that the Respondent described his relationship with the Student as a "mentoring" relationship and expressed concern for the Student. Dr. Crippen said she was unaware of emails exchanged between the Respondent and the Student.

End of the Respondent's relationship with the Student

- [91] The evidence concerning the termination of the Respondent's relationship with the Student is not entirely clear and conflicts in certain minor respects but nothing turns on that conflict.
- [92] The Respondent and the Student both testified that the relationship ended sometime in September or October 2013. Both of them recalled an incident in the school gym during class time when the Student was acting as a teacher assistant and was picking up a number of balls above the school gym. All of the balls fell, and the Respondent spoke to the Student in a critical manner. Although the Student recalled that as the last contact between them and the Respondent recalled a later discussion, nothing turns on the date of the final conversation. Their testimony was consistent that the incident with the balls in the gym was at or very close to the last contact that they had, and that the intensity of the relationship through the emails and the fitness coaching had come to an end several weeks earlier. The evidence is clear that since the incident at the gym or one subsequent conversation, the Respondent never contacted the Student again.
- [93] The Respondent testified that he knew toward the end of August that the email relationship would have to change. He testified that he knew that he "...would have two different hats that [he] would have to wear." One of the "hats" would be the classroom teacher, and the other being in the supportive relationship that had grown throughout the summer. The Respondent testified that he knew that he would not be

sending the Student emails in the school year that were not school-related. He testified that he also knew that the tenor of his emails would change. He would not tell the Student "...anything to do with I love him or any of these sorts of things". He indicated that he did not think that it would hurt the Student to transition from their close supportive relationship during the summer to a different type of relationship at the start of the school year. As the Respondent explained during the hearing, "Quite frankly, if we were still going down that road of support, then now we're back in school, so we're kicking back into the resources of the school, the school counsellor, etc."

- [94] The Student testified that he was angry and felt betrayed by the Respondent in the fall of 2013. He felt let down because the Respondent had promised to always be there and support him. The Student testified that he began drinking alcohol during the school day in September or October 2013 and began smoking marijuana later that fall. He dropped out of school by the end of the term, began a period of substance abuse and ultimately became homeless. Sometime between 2014 and the date of the hearing, he had accessed rehabilitation for substance abuse, completed high school, and obtained employment. While the Student testified that he did not believe that the relationship with the Respondent was responsible for all of the things that went wrong in his life, he believed that the end of that relationship had been a contributing factor. He testified that his sense of betrayal and disappointment was particularly strong in the months following the end of their relationship.

THE EXPERT REPORT

- [95] The Commissioner tendered an expert report from Dr. Marshall to address: (a) the risk of negative outcomes resulting from the Respondent's conduct; and (b) the vulnerability of the Student arising from his status as an adolescent and his personal experience. The Respondent did not challenge the expert's qualifications to give evidence on either of these questions.
- [96] The expert report provided information on mentoring and on adolescent emotional development. Dr. Marshall provided information on effective mentoring relationships, and also on adolescent vulnerabilities and typical adolescent sensitivity and emotional responses.

SUMMARY OF FINDINGS

- [97] The Commissioner bears the onus of proving that the conduct alleged in the Citation occurred. The standard of proof is the balance of probabilities: the Commissioner must prove that the evidence establishes that it is more likely than not that the conduct occurred. The Supreme Court of Canada has said that the evidence as a whole "must always be sufficiently clear, convincing and cogent" in order to establish "whether it is more likely than not that an alleged event occurred." (*F.H. v. McDougall*¹ at 46)

¹ 2008 SCC 53

[98] The evidence for the most part is not in dispute. The Panel makes the following findings of fact:

- the Respondent provided the Student with one-on-one fitness coaching early in the mornings before school hours commencing in May 2013 and throughout the summer after the school year ended;
- the Respondent spent time alone with the Student in his classroom during the early morning workouts while working and listening to music and speaking with the Student about personal matters;
- the Respondent offered to pick up, and did pick up, the Student on at least five occasions and drove him to school for his early morning work-outs;
- The Respondent drove the Student to a shopping mall on one occasion to purchase running shoes for the Student; the Respondent lent the Student a bicycle in May or June 2013, which the Student returned at the direction of his parents;
- the Respondent gave the Student a number of gifts which included a pair of new basketball shoes worth approximately \$120.00, a new pair of running shoes worth approximately \$120.00, a gift certificate worth \$50.00, a gold-coloured cross and chain worth approximately \$20.00, and two books with religious themes worth approximately \$30.00;
- the Respondent engaged in email communications with the Student during evenings and on weekends regarding personal topics, including the Student's exercise program, school work, home and social life;
- the Respondent's emails to the Student encouraged the development of an intimate emotional relationship that was important to the Student (who was emotionally vulnerable because of his family history) and at a time when the Student was experiencing emotional distress;
- the Respondent repeatedly encouraged the Student to continue to communicate with him;
- the Respondent told the Student that he "loved" him in five emails;
- the Respondent repeatedly assured the Student that he would always be there for him or words to that effect;
- The Respondent sent the Student motivational emails and emails containing significant religious content; and
- the Respondent did not advise the Student's parents of the nature and extent of his relationship with the Student or of other matters pertaining to the Student's health and safety.

[99] The Panel did not rely on the expert evidence of Dr. Marshall. It concluded that the question of whether the Respondent was in an effective mentoring relationship with the Student was not the question before it. The focus of the Panel's decision is on whether the Respondent engaged in professional misconduct by departing from proper standards of practice and the professional conduct required of a teacher. That issue is not dependent on establishing that a student suffered a negative outcome. The Panel also concluded that the opinion evidence concerning the emotional vulnerability of adolescents did not meet the necessity threshold for admission of expert evidence.

ANALYSIS AND DECISION

Statutory Framework

[100] Section 63(1)(b) of the Act provides:

A Panel, after a hearing, may make any of the following findings:

determine that an authorized person has been or is guilty of professional misconduct or conduct unbecoming a teacher; ...

[101] The Commissioner submitted that the conduct in issue was not conduct unbecoming a teacher in that the allegation arose out of a relationship that took place arising out of the Respondent's role as a teacher. The Panel agrees and will consider whether the conduct in question constitutes professional misconduct.

Professional Misconduct

[102] The Act does not define "professional misconduct"; however, there is a large body of jurisprudence arising in the teaching context and other professional regulatory contexts, which guide the application of that test. Other cases considered under the *Teachers Act* have adopted the test for professional misconduct set out in the Law Society of British Columbia's decision in *Re Martin*² ("Martin"), namely whether the conduct at issue represents a "marked departure" from the norms expected of the professional. See, for example, *In the Matter of the Teacher Act and Hankey*,³ ("Hankey"). In that case, the Panel observed:

The Act does not define professional misconduct and, as noted by the Commissioner in his submissions, a breach of the Standards does not necessarily result in a finding of professional misconduct. The panel finds that the test for whether a breach of the Standards amounts to professional misconduct under the Act is whether the Respondent's conduct was a "marked departure" from the norms expected of a teacher in this province. This test was adopted by the Law Society of British Columbia in disciplinary proceedings in *Martin* ...

The Standards

[103] The norms expected of a teacher in this province must be considered in reference to the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, 4th edition, January, 2012 (the "Standards"). All certificate holders in British Columbia are required to adhere to the Standards. The Standards are described at 2-3 as:

² *Re Martin*, 2005 LSBC 16

³ 2016 TAHP 03

... the knowledge, skills and attitudes that educators shall possess as well as the responsibilities that accrue to them as certified educators who hold the public trust.

and

... a way of communicating to certificate holders and the public the description of the work of educators – what they know, what they are able to do, and how they comport themselves as they serve the public. [page 3]

[104] The Commissioner submits that the Respondent has breached Standards 1, 2 and/or 4. These are reproduced for convenient reference:

#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 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, material 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.

#4. Educators value the involvement and support of parents, guardians, families and communities in schools.

Educators understand, respect and support the role of parents and the community in the education of students. Educators communicate effectively and in a timely manner with parents and consider their advice on matters pertaining to their children.

[105] Professional misconduct arising out of a relationship with a student must be considered in the context of Standard #1, and with the recognition that educators are responsible for the emotional and physical safety of students; that educators have a privileged position of power and trust, and that educators do not abuse or exploit students or minors for personal, sexual, ideological, material or other advantage. There have been several court and tribunal decisions that have considered the question of professional misconduct in the context of a teacher's relationship with a student.

[106] The responsibilities articulated in Standard #1 encompass the obligation on a teacher to maintain appropriate professional boundaries in order to protect students from harm,

whether physical, emotional or sexual. The case law underscores that teachers are in a direct position of “trust and authority” over their students (*R. v. Audet*⁴, “*Audet*”). The cases in this area clearly establish that the failure to maintain appropriate and professional boundaries by entering into personal relationships with students constitutes professional misconduct. (See *Re: In the Matter of the Teachers Act – and – McGeough*⁵ (“*McGeough*”), *Ontario College of Teachers v. McCuaig*⁶ (“*McCuaig*”), *Ontario College of Teachers v. De Marchi*⁷ (“*De Marchi*”), *Ontario College of Teachers v. Karrow*⁸ (“*Karrow*”).

- [107] While a sexual relationship between a teacher and a student is a clearly breach of the obligation to maintain appropriate boundaries and professional misconduct (*Audet*), it is not always as straightforward to identify the appropriate boundary in a teacher-student relationship where there is no element of sexual misconduct.
- [108] The challenge in identifying the appropriate boundaries stem from the recognition that the teacher-student relationship can be an extremely positive influence in a student’s life. Many dedicated teachers will connect meaningfully with some individual students and form close but proper relationships with them. These close relationships cannot be expected to be the same for all students; as in all relationships, sometimes there is a special bond that forms between a teacher and a student. Many adults describe close relationships with a teacher as having positively altered the course of their lives. The public interest is not served by overly rigid standards for educators that pre-empt the possibility of these kinds of positive relationships between teacher and student.
- [109] However, it is also clear that when a teacher exceeds the boundaries of a professional teacher-student relationship by intruding into the personal affairs of the student, even in a non-sexual context, that is professional misconduct.
- [110] The Commissioner cited the following cases that have addressed the issue of inappropriate non-sexual relationship with a student.
- [111] In *McGeough*, the tribunal found that the teacher had an improper relationship with the student when the teacher, through his email exchanges with a student, placed emotional pressure on her, shared personal information with her, sent unsolicited emails to her, and encouraged her to keep their relationship a secret. The tribunal found that the teacher’s relationship with the student was designed to satisfy his own emotional needs and improper behaviour.
- [112] In *De Marchi*, the panel found that a teacher had an inappropriate relationship with two students constituting professional misconduct when he made personal comments to them such as, “If there is anything you need, I’m here” and “you will always be

⁴ [1996] 2 S.C.R. 171)

⁵ October 12, 2012

⁶ 2008 LNONCTD 44

⁷ 2011 LNONCTD 5

⁸ 2012 LNONCTD 33

special”. He gave them each small gifts, and became over-protective of them. The panel described the relationship as a “close friendship” and found that “...[he] took on a role that should have been the responsibility of the parents.”

[113] In *Karrow* and in *Ontario College of Teachers v. Kelley*⁹, the panel accepted admissions of professional misconduct from teachers who had engaged in inappropriate, but non-sexual, relationships with students. In *Karrow*, the teacher loaned the student a computer, he sent her personal emails calling her “sweetie” and telling her that she was “special, safe at school, and very much cared for”. He gave her gifts, took her for dinner with permission of her mother, spent time alone with her in his car and his office, and invited the student and her mother to stay overnight at his home. The respondent had been offering assistance to the student in relation to bullying that she had been experiencing. The panel found that his actions were transgressions of a serious nature. In *Kelley*, the teacher had given the student his home phone number and permitted her to call him, during which time they discussed her personal and family-related issues and he gave her advice. She also visited him at his apartment.

[114] In *McCuaig*, a teacher had an unprofessional relationship with a student who suffered from an eating disorder. The relationship included encouraging the student to confide in him and depend on him prior to encouraging her to seek other help, meeting her at a mall and after the end of school to discuss her illness, inviting her to go to Toronto with him and his wife (with full knowledge of her parents), and kissing her on the head and hugging her in the presence of other adults and in public places. The panel commented at paragraph 6 that:

Through these inappropriate contacts, the Member encouraged the student to confide in him and to depend on him. This resulted in the Member attempting to counsel the student beyond the scope of his responsibilities as a teacher.

[115] The following principles can be distilled from the cases that have addressed the boundaries of professional relationships between teachers and students:

- (1) A teacher-student relationship may be professional misconduct even where there is no sexual element to the relationship.
- (2) Various types of activity may provide indicia of an overly personal relationship such as:
 - (i) Sharing personal information with a student (*McGeough*)
 - (ii) Using a relationship with a student to fulfill the teacher’s own emotional needs (*McGeough*);
 - (iii) Sending unsolicited communications to a student on matters not related to school (*McGeough*);

⁹ 2015 LNONCTD 71

(iv) Encouraging a student to keep communication with the teacher a secret from others; or encouraging a student to confide in the teacher and depend on the teacher (*McCuaig, Kelley*);

(v) Assuming an important role in the student's life including, for example, protector or counsellor (*McCuaig, Karrow, De Marchi*);

These indicia are intended to be illustrative rather than providing a comprehensive list. They illustrate the kind of behaviour that may “cross the line” from an appropriate, professional teacher-student relationship to an inappropriate and overly personal relationship.

Application to the present case

[116] The parties disagree on the approach to be taken to the allegations contained in the Amended Citation. The Commissioner submits that the Panel should consider the allegation of whether the Respondent engaged in an “unprofessional and inappropriately personal relationship” with the Student having regard to the totality of the evidence concerning that relationship, and that the particular allegations contained in paragraphs 1(a) to (f) of the Amended Citation reflect behaviour that demonstrates an overly personal relationship. The Commissioner submits that the conduct, taken as a whole and in the context surrounding the conduct, establishes that the Respondent entered into an inappropriately personal relationship with the Student.

[117] In contrast, the Respondent submits that the Panel should take a more compartmentalized approach by considering each of the allegations described in paragraph 1(a) to (f) separately and decide whether each of those enumerated types of conduct, viewed independently of one another, establish a breach of the Standards.

[118] The Panel accepts the approach outlined by the Commissioner. The Amended Citation alleges that the Respondent engaged in an unprofessional and inappropriately personal relationship with the Student. The manner in which the Respondent did so is particularized in the specific allegations contained in paragraphs 1(a) to (f) of the Amended Citation. However, the totality of the evidence concerning the interactions between the Respondent and Student must be considered in assessing whether he engaged in professional misconduct.

[119] Considering the totality of the evidence, the Panel concludes that the Respondent did engage in an unprofessional and inappropriately personal relationship with the Student in contravention of Standard #1. Coaching the Student for a fitness program in a one-on-one basis in the early mornings before school started was not, in itself, sufficient to establish a breach of the Standards. However, the Respondent's conduct went much farther than that. The Respondent talked to the Student about the Student's personal life during those sessions. He talked to the Student about Christianity, he continued to meet with the Student for coaching sessions during the summer months while school was not in session, he drove him to school on occasion, and did so all the while engaging in extensive confidential email communications that concerned deeply personal, emotional and religious topics. He encouraged the Student, whom he knew was vulnerable and emotionally distressed, to talk about the Student's personal issues and emotions. In

response to this encouragement, the Student revealed deep fears, emotional insights, and his desire to leave his parents' home.

- [120] In addition, the Respondent expressed his affection for the Student. He wrote, "I love you" to the Student in multiple emails. He repeatedly told the Student that he was proud of him and that he would always be there for him unconditionally. He expressed his own desire or wish to hear from the Student on a regular basis, outside of school hours, on weekends and late at night. Through these communications, the Respondent allowed and encouraged the Student to believe that he would be there for the Student, and would provide care for him during this period and into the future.
- [121] The Respondent also lent a bicycle to the student and gave him gifts of new shoes, and a gift card. The Student would otherwise have had to wait for the new athletic shoes and his parents had wanted him to earn the money to replace his bicycle. He also provided gifts of a more meaningful and personal nature such as the cross necklace and the books with religious content. His offers of assistance and demonstration of concern and caring for the Student were apart from and, at times, in preference to the need of other students in his classes.
- [122] The Respondent was aware of the Student's vulnerability due to his early childhood background of instability and a family history of serious addiction problems; yet, the Respondent failed to take steps to ensure that he was not exploiting the Student's emotional vulnerability by his unconditional promises of care and affection to meet his own emotional needs.
- [123] The Respondent provided religious guidance to the Student, and he assumed the role of a spiritual leader or mentor for the Student's religious experiences.
- [124] The Respondent allowed himself to become the most important person in the Student's life, and allowed the Student to come to depend on him for guidance through an emotionally difficult time in his personal life.
- [125] The Respondent did not advise the Student's parents about the nature and extent of his relationship with the Student. He did not advise his parents about the Student's emotional state at a time that the Student expressed great pain. He gave the Student gifts in contravention of the parent's direct and explicit instruction not to give the Student gifts without obtaining the parents' permission in advance.
- [126] He did not advise the Student's parents about the Student's poor attendance record in his class in September 2013.
- [127] The Respondent concealed important information about his relationship with the Student from members of the School Administration who would have had a responsibility and/or an opportunity to intervene and provide assistance to the Student when he needed it.

- [128] The Respondent positively reassured members of the school administration of the Student's well-being, at a time when the Student's emotional condition and school performance would have warranted intervention by those individuals or by others.
- [129] The Student's physics teacher contacted the Student's parents when the Student's attendance was very poor in the first two weeks of classes. On the evidence, it is reasonable to infer that the Respondent declined to contact the Student's parents about his absenteeism because he did not wish to interact with them and to possibly raise questions about his relationship with the Student. This illustrates the importance of maintaining proper professional boundaries – the Respondent failed to fulfil his responsibility as a teacher of keeping the Student's parents informed because of the inappropriate relationship he had developed with the Student.
- [130] The failure of the Respondent to inform the school administration and the Student's parents about these matters is a serious breach of his duty and may have contributed to the Student's subsequent difficulties.
- [131] Having regard to the totality of the evidence, the Panel finds that the Respondent's conduct constitutes a marked departure from the Standards. Specifically, the Respondent's conduct failed to meet his obligations under Standards #1. He failed to act in the best interest of the Student in regard to his emotional well-being and safety.
- [132] The Panel finds that the Respondent failed to respect the role of the Student's parents, and to communicate with them effectively in contravention of Standard #4. The Respondent's breaches of Standard #4 extend to his failure to communicate with the Student's parents, as well as to his provision of inappropriate reassurance to the school administration about the Student's emotional condition, which, it is reasonable to infer, also hindered the administration's ability to keep the Student's parents accurately informed. In choosing to maintain secrecy over the nature of his relationship with the Student, rather than seeking support from school and family resources for the Student, he advanced his own interests over the Student's best interests.
- [133] The Commissioner submits that the Respondent breached Standard #2 by introducing religious content into his relationship with the Student. The Respondent's conduct with respect to religious content consisted of private discussions with the Student about religious themes, invoking religious sources for inspiration for the Student, encouraging the Student to pray with him, and at times asserting that he was providing spiritual leadership or acting as a spiritual conduit for the Student.
- [134] The Panel accepts that these religious activities heightened the Student's dependence on the Respondent and his devotion to the Respondent. These religious-themed messages and exhortations were a critical component of the inappropriate closeness of the relationship between the Respondent and the Student. The Respondent magnified the power imbalance between himself and the Student by casting himself as a religious authoritative figure.
- [135] The Panel accepts that the Respondent breached Standard #2 by failing to act ethically and failing to recognize the secular nature of public education while he was discussing

religious matters with the Student in-person and in emails and providing him with religious themed books to read.

- [136] Collectively and individually, these violations of the Standards constitute professional misconduct.

Summary and Conclusion

- [137] The Panel has found that the Respondent's conduct constituted marked departures from Standards #1, 2 and 4 and constituted professional misconduct.

CONSEQUENCES & COSTS

- [138] Having found that the Respondent's conduct resulted in professional misconduct under section 63(1)(b) of the Act, this panel is empowered to impose a penalty on the Respondent. The panel asks that counsel for the Commissioner and the Respondent advise the Hearing Coordinator of the Teacher Regulation Branch whether submissions on appropriate penalty should be submitted in writing or through an oral hearing. The panel directs that any submissions on costs be submitted in writing. The Hearing Coordinator of the Teacher Regulation Branch shall set the deadlines for submissions.

PUBLICATION

- [139] This panel questions whether section 66(4) of the *Teachers Act* would cause significant hardship to a person who was harmed, abused or exploited by the certificate holder. In light of this concern, the panel invites counsel to make submissions on whether these reasons ought to be published in full on the Branch website, or whether this panel ought to make an order under section 66(4) for non-publication or publication of a summary. Counsel should provide this panel with their submissions by November 17, 2016.

This Notice is published by the Acting Director of Certification pursuant to section 66(3) of the *Teachers Act*.