

IN THE MATTER OF *The Registered Teachers Act, 2015* and
Rhett Lundgren, Registered Teachers Certificate No. [REDACTED]

**DECISION OF THE DISCIPLINE COMMITTEE FOR THE
SASKATCHEWAN PROFESSIONAL TEACHERS REGULATORY BOARD (SPTRB)**

Counsel: Marcus R. Davies
for the Professional Conduct Committee

Nicholas M. Cann, Q.C.
for the Discipline Committee

Hearing Date and Location: June 20, 2019
Regina, Saskatchewan

INTRODUCTION

1. By a Notice of Hearing of Formal Complaint, dated May 6, 2019, it is alleged that Mr. Rhett Lundgren is guilty of professional misconduct arising out of his conviction for the following offences under the *Criminal Code*:
 1. Between the dates of May 10, 2009 and July 1, 2009, at or near [XXXX], being in a position of trust or authority toward a young person, did communicate with that person for the purpose of facilitating the commission of an offence under subsection 153(1), Section 155 or 163.1, subsection 212(1) or (4) or Section 271, 272 or 273, contrary to Section 172.1(1)(A) of the *Criminal Code (Canada)*.
 2. On or about November 29, 2016, at or near [XXXX], did attempt to access child pornography, contrary to sections 463 and 163.1(4.1) of the *Criminal Code (Canada)*.
 3. Between the dates of November 29, 2016 and December 8, 2016, at or near [XXXX], did communicate by computer system to make arrangements to commit a sexual offence against a child under section 173(2) of the *Criminal Code (Canada)*, contrary to section 172.2(1)(b) of the *Criminal Code (Canada)*.
 4. On or about December 8, 2016, at or near [XXXX], did commit the offence of possession of child pornography, contrary to section 163.1(4) of the *Criminal Code (Canada)*.
2. The Notice of Hearing was served on Mr. Lundgren by registered mail between May 6, 2019 and May 13, 2019 at [REDACTED].

3. The Discipline Committee of the Saskatchewan Professional Teachers Regulatory Board (the “Discipline Committee”), convened as scheduled on June 20, 2019 to hear the complaint. Mr. Lundgren did not appear at the hearing nor was he represented by counsel. No objection was taken to the composition of the Discipline Committee.
4. Laura Weisgarber (Executive Coordinator for the SPTRB), gave evidence that she spoke directly to Mr. Lundgren on May 13, 2019 and the Discipline Committee accepts that Mr. Lundgren confirmed for her that he had received and read the Notice of Hearing. The Discipline Committee accepts that Ms. Weisgarber informed Mr. Lundgren that the Discipline Committee hearing would proceed on June 20, 2019 and asked whether he intended to send legal representation. The Discipline Committee further accepts that Mr. Lundgren advised Ms. Weisgarber that he would not send legal representation to the hearing and that he wished to avoid further public attention.
5. Section 39 of *The Registered Teachers Act* (the “Act”) gives the Discipline Committee the discretion to proceed in the absence of the teacher. The Discipline Committee is satisfied that Mr. Lundgren was properly personally served and that he chose not to attend or participate in the hearing. As such, the Discipline Committee ordered that the hearing would proceed in Mr. Lundgren’s absence.

FACTS

6. Legal counsel for the Professional Conduct Committee tendered the following documents into evidence at the June 20, 2019 hearing:
 - (a) Notice of Hearing of Formal Complaint, dated May 6, 2019 (P-1);
 - (b) Affidavit of Laura Weisgarber, sworn June 20, 2019 (P-2);
 - (c) Affidavit of Trevor Smith (Registrar for SPTRB), sworn June 20, 2019 (P-3);
 - (d) Affidavit of Jacquie Messer-Lepage (Chair of the Professional Conduct Committee), sworn May 3, 2019 (P-4); and
 - (e) Supplementary Affidavit of Laura Weisgarber, sworn June 20, 2019 (P-5).
7. Following the hearing, the Professional Conduct Committee provided the Sentencing Transcript from Mr. Lundgren’s January 21, 2019 sentencing in the Court of Queen’s

Bench, Judicial Centre of Saskatoon, in order to confirm the specifics of the conduct giving rise to the criminal conviction.

8. On October 2, 2019, Ms. Weisgarber swore an Affidavit advising that she sent a copy of the Sentencing Transcript to Mr. Lundgren's father by registered mail on or about September 5, 2019, that being the address for document service Mr. Lundgren provided to SPTRB. In her October 2, 2019 Affidavit, Ms. Weisgarber states that the Canada Post registered letter was confirmed to have been delivered to that address on September 6, 2019. The Discipline Committee is satisfied that service of the Sentencing Transcript properly occurred in accordance with the SPTRB Regulatory Bylaw 1.07(1).
9. Based on the evidence filed, these are the basic facts:
 - (a) Mr. Lundgren has been a registered teacher pursuant to Certificate No. [REDACTED] issued January 31, 2005.
 - (b) Mr. Lundgren was registered with the SPTRB for the 2016-2017 school year from September 1, 2016 to August 31, 2017.
 - (c) On December 9, 2016, Mr. Lundgren was charged with three counts under the *Criminal Code* relating to procuring child pornography and seeking to commit a sexual offence against a child.
 - (d) On December 14, 2016, Mr. Lundgren was suspended without pay by his employer, the [REDACTED] School Division.
 - (e) Mr. Lundgren was subsequently charged with a further offence, that being communicating with a person under 18 years for the purpose of committing an offence while he was working as a teacher in [REDACTED]
 - (f) On January 10, 2017, the SPTRB received information from Mr. Lundgren's employer outlining concerns that Mr. Lundgren was alleged to have attempted to access child pornography and for twice arranging to commit a sexual offence against a child. The Professional Conduct Committee thereafter began an investigation.

- (g) On January 27, 2017, the Professional Conduct Committee advised Mr. Lundgren that it would postpone its investigation pending the outcome of the criminal proceedings.
- (h) On or about March 6, 2017, Mr. Lundgren signed and submitted a Voluntary Cessation of Activities Agreement in which he agreed to cease any and all teaching or coaching activities involving participants under the age of 18 related to a school or non-school activity anywhere in Canada.
- (i) On January 21, 2019, Mr. Lundgren appeared in the Court of Queen's Bench and pled guilty to the following with respect to the Saskatchewan indictment:
 - 1. On or about November 29, 2016, at or near [REDACTED], committed the offence of attempting to access child pornography, contrary to Sections 463 and 163.1(4.1) of the *Criminal Code*.
 - 2. Between November 29, 2016 and December 8, 2016, at or near [REDACTED], committed the offence of arranging to commit a sexual offence against a child, to wit: by means of a computer system communicate and make arrangements with a person to commit an offence under Section 173(2) of the *Criminal Code*, contrary to Section 172.2(1)(b) of the *Criminal Code*.
 - 3. On or about December 8, 2016, at or near [REDACTED], did commit the offence of possession of child pornography, contrary to Section 163.1(4) of the *Criminal Code*.
- (j) On January 21, 2019, Mr. Lundgren also pled guilty to the following offences with respect to the Alberta indictment:
 - 1. Between May 10, 2009 and July 1, 2009, at or near [REDACTED], did, by means of a computer system within the meaning of Subsection 342.1(2) communicate with a person who was, or who the accused believed was, under the age of 18 years for the purpose of facilitating the commission of an offence under Subsection 153(1), Section 155 or 163.1, Subsection 212(1) or (4), or Section 271, 272, or 273 with respect to that person, contrary to Section 172.1(1)(a) of the *Criminal Code of Canada*.

2. Between December 29, 2016 and January 19, 2017, at or near [REDACTED], did, being at large on his undertaking given to a Justice or a Judge and being bound to comply with a condition thereof, to wit: live at [REDACTED] Saskatchewan, and not change that address without the prior permission of the Court, fail without lawful excuse to comply with that condition, contrary to Section 145(3) of the *Criminal Code*.
- (k) Mr. Lundgren, by his counsel, had entered into Agreed Statements of Fact with the Crown with respect to both the Saskatchewan and the Alberta indictments. Mr. Lundgren confirmed for the Court that he understood that, by entering a plea of guilty, he admitted to the essential elements of the offence and to the facts as alleged against him by the Crown.
- (l) A Joint Submission on Sentence was presented by way of agreement between Crown counsel and Mr. Lundgren's counsel as to the appropriate sentence. On January 21, 2019, The Honourable Mr. Justice R.C. Mills of the Court of Queen's Bench for Saskatchewan sentenced Mr. Lundgren for a total term of imprisonment of three years with respect to his guilty pleas on the Saskatchewan and Alberta indictments.
- (m) The Court also imposed the following:
1. A no-contact order pursuant to Section 743.21 of the *Criminal Code* with respect to the Alberta-based person under 18 years for the period of his incarceration.
 2. That pursuant to Section 487.051 of the *Criminal Code*, he provided samples of bodily substances suitable for the purpose of forensic DNA analysis.
 3. That pursuant to Section 490.013(2.1) of the *Criminal Code*, he be registered on the Sex Offender Registry, and a prohibition order pursuant to Section 161 of the *Criminal Code* was made for a period of 6 years following his release from custody. The relevant provisions of Section 161(1) of the *Criminal Code* are as follows:

161(1) When an offender is convicted, or is discharged on the conditions prescribed in a probation order under section 730, of

an offence referred to in subsection (1.1) in respect of a person who is under the age of 16 years, the court that sentences the offender or directs that the accused be discharged, as the case may be, in addition to any other punishment that may be imposed for that offence or any other condition prescribed in the order of discharge, shall consider making and may make, subject to the conditions or exemptions that the court directs, an order prohibiting the offender from

(a) attending a public park or public swimming area where persons under the age of 16 years are present or can reasonably be expected to be present, or a daycare centre, schoolground, playground or community centre;

(a.1) being within two kilometres, or any other distance specified in the order, of any dwelling-house where the victim identified in the order ordinarily resides or of any other place specified in the order;

(b) seeking, obtaining or continuing any employment, whether or not the employment is remunerated, or becoming or being a volunteer in a capacity, that involves being in a position of trust or authority towards persons under the age of 16 years;

(c) having any contact – including communicating by any means – with a person who is under the age of 16 years, unless the offender does so under the supervision of a person whom the court considers appropriate; or

(d) using the Internet or other digital network, unless the offender does so in accordance with conditions set by the court.

LEGISLATION

10. The Notice of Hearing of Formal Complaint alleges that Mr. Lundgren is guilty of professional misconduct contrary to the *Act* and the Regulatory Bylaws. The relevant provisions of section 33 of the *Act* are as follows:

33 Professional misconduct is a question of fact, but any matter, conduct or thing, whether or not disgraceful or dishonourable, constitutes professional misconduct within the meaning of this Act if:

- (a) it is harmful to the best interests of students or other members of the public;
- (b) it tends to harm the standing of the profession;
- (c) it is a breach of this Act or the bylaws;

...

11. Section 2.01 of the Regulatory Bylaws sets out examples of professional misconduct and the relevant provisions are as follows:

2.01 Without restricting the generality of section 33 of the Act, the following conduct on the part of a registered teacher is misconduct:

(a) conduct which is harmful to the best interest of pupils or affects the ability of a registered teacher to teach;

(b) any intentional act or omission designed to humiliate or cause distress or loss of dignity to any person in school or out of school which may include verbal or non-verbal behavior;

...

(d) sexually abusive conduct that violates a person's sexual integrity, whether consensual or not which includes sexual exploitation;

(e) an act or omission that, in the circumstances, would reasonably be regarded by the profession as disgraceful, dishonourable or unprofessional;

(f) being in violation of a law if the violation is relevant to the registered teacher's suitability to hold a certificate of qualification or if the violation would reasonably be regarded as placing one or more pupils in danger;

12. The Discipline Committee finds that Mr. Lundgren engaged in professional misconduct as defined by section 33 of the *Act* and that he breached the provisions of section 2.01 of the Regulatory Bylaws set out above. Mr. Lundgren's conduct is unquestionably disgraceful and dishonourable.

SANCTION

13. Having found Mr. Lundgren guilty of professional misconduct, the next task for the Discipline Committee is the imposition of appropriate sanctions.
14. Mr. Lundgren's conviction of offences under the *Criminal Code* triggers section 42 of the *Act* as follows:

42 The discipline committee may make any order pursuant to section 40 if:

(a) the registered teacher has been convicted of an offence pursuant to the *Criminal Code*, the *Controlled Drugs and Substances Act* (Canada) or the *Food and Drugs Act* (Canada);

(b) a report of the professional conduct committee is made to the discipline committee respecting the conviction mentioned in clause (a);

(c) the discipline committee has given the registered teacher mentioned in clause (a) an opportunity to be heard; and

(d) the discipline committee finds that the conduct of the registered teacher giving rise to the conviction is professional misconduct.

15. The Discipline Committee finds that all components of section 42 of the *Act* have been met in this case.

16. The available sanctions set out in section 40 of the *Act* include cancellation of a teacher's certificate (40(1)(a)), suspension of a teacher's certificate (40(1)(b)), imposition of practice conditions (40(1)(d)), and/or any other order the Discipline Committee considers just (40(1)(f)).

17. The Professional Conduct Committee recommended the Discipline Committee order that Mr. Lundgren be prohibited from holding a teaching permit or certificate now and in the future pursuant to section 40(1)(f) of the *Act*.

18. The Discipline Committee notes that the SPTRB Discipline Committee in the matter of Troy Ruzicka made the same order regarding similar circumstances in its March 26, 2018 Decision.

19. The Discipline Committee accepts the Professional Conduct Committee's recommendation, noting the statement of the Discipline Committee in *Ontario College of Teachers v Maheux*, 2013 ONOCT 99, relating to a teacher convicted criminally of sexually assaulting a student:

Removing this Member from the teaching profession protects students and restores public confidence in the profession. Any penalty short of revocation for such an egregious act would bring the College into disrepute.

20. Section 40(2) of the *Act* allows the Discipline Committee to make orders providing for payment of a fine and/or costs of the investigation and hearing.

21. Legal counsel for the Discipline Committee has advised that the Professional Conduct Committee takes no position on costs and leaves the issue to the discretion of the Discipline Committee.
22. In past decisions of this Discipline Committee, the Discipline Committee has stated that “in professional misconduct cases and barring exceptional circumstances, costs should be ordered”.
23. The Discipline Committee sees this case as one presenting those exceptional circumstances. Mr. Lundgren is currently incarcerated and this order will prevent him from obtaining a permit or teacher’s certificate at any time. If costs were imposed and not paid by an imposed deadline date, the remedy under Section 40(2)(b) of the *Act* is that the teacher’s certificate would be suspended. In this case, the Discipline Committee considers an order for costs to be futile.
24. Legal counsel for the Discipline Committee has also advised that the Professional Conduct Committee takes no position on imposing a fine and leaves the issue to the discretion of the Discipline Committee. For the reasons set out above, the Discipline Committee declines to order that Mr. Lundgren pay a fine.

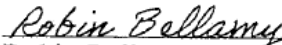
ORDER

25. The Discipline Committee therefore makes the following order:
 - (a) Pursuant to Section 40(1)(a) of the *Act*, Rhett Lundgren’s teaching certificate be cancelled;
 - (b) Pursuant to Section 40(1)(f) of the *Act*, Rhett Lundgren shall be prohibited from holding a temporary teaching permit or any certificate described in the *Act* and Regulatory Bylaws at any time now or in the future;

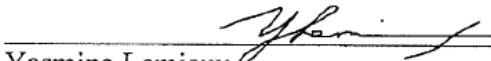
(c) Pursuant to Section 40(5) of the *Act* and upon expiry of the appeal period, the Discipline Committee directs the Chief Operating Officer of the SPTRB to notify the following of this decision and order against Mr. Lundgren:

- (i) All “employers” as that term is defined in the *Act*;
- (ii) The Saskatchewan Teachers’ Federation; and
- (iii) The Registrars of teacher registration bodies in other jurisdictions.

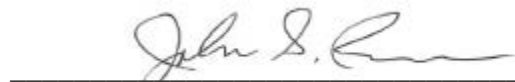
Dated at the City of Saskatoon, Saskatchewan, this 22nd day of October, 2019.


Robin Bellamy, Chair


Dated at the City of Regina, Saskatchewan, this 22nd day of October, 2019.


Yasmina Lemieux

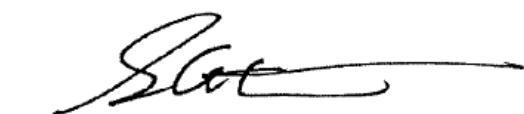
Dated at the City of Assiniboia, Saskatchewan, this 13th day of November 2019.


John Bumbac

Dated at the City of Regina, Saskatchewan, this 22nd day of October, 2019.


Don Lee

Dated at the City of Saskatoon, Saskatchewan, this 22nd day of October, 2019.


Sandy Antonini