

Important Lessons from Lethbridge College

By TUCFA

Cases Considered:

[*Lethbridge College Board of Governors v. Lethbridge College Faculty*, 2008 ABQB 316](#)

A recent matter at Lethbridge College carries some important lessons. A psychology professor with 12 years of service was fired after the College discovered he had sexual relationships with three of his undergraduate students. In each case, the relationship had begun shortly after the students had taken his course, although the flirtation had begun during the term. Each of the relationships was consensual, two of the students were relatively close in age to the professor, and he had known two of the women prior to their becoming his students. These relationships were discovered by College administration when the third relationship ended unhappily and the student filed a complaint with the dean. In her complaint, she alleged that the professor had taken advantage of his position as her instructor to inveigle his way into her affections. Based on the complaint, the College searched the professor's emails and discovered the previous two relationships. In both those cases, the (now former) students remained on friendly terms with the professor and had taken subsequent courses from the professor, without disclosure of the previous relationship either by the professor or the students.

The arbitration board ordered reinstatement of the professor (*Lethbridge College and Lethbridge College Faculty Association*, (2007) 166 L.A.C. (4th) 289 (Ponak, Franklin, Sway)), a decision upheld by Madam Justice C.S. Phillips of the Alberta Court of Queen's Bench. In its decision, the Board concluded that there were grounds for discipline, finding that the professor had taken advantage of his position to pursue relationships with the students. The Board commented that a classroom cannot become a potential dating pool into which the instructor can cast his or her net. The Board also found that the professor was in a conflict of interest when he taught and evaluated, without any disclosure, two of the students soon after their sexual relationship with him ended. The Board concluded as well that sexual relationships between faculty and students, even if consensual, carry the risk of interfering with the education of the students, constituting a potential breach of trust.

In ordering reinstatement, the Board considered the absence of College rules or policies or anything in the collective agreement about student-faculty relationships or protocols for disclosure. Even though agreeing that the professor's conduct was not appropriate, it concluded that "employees should not lose their jobs for breaking unwritten rules in areas where

the line between right and wrong can be ambiguous” (cited in 2008 ABQB 316 at para. 13). However, the reinstatement was made without any backpay; given the elapsed time between the dismissal and award, the professor was out of his job for more than two years. Conditions for the reinstatement included prohibiting the professor from ever again dating or having a sexual relationship with any of his students. At the Court of Queen’s Bench, Justice Phillips held that the appropriate standard of review was reasonableness, concluded that the arbitration decision was indeed reasonable, and dismissed the College’s application for judicial review.

What are the lessons for university and college professors from this case? One lesson is that behaviour that once might have been seen as acceptable (dating students) can lead to trouble. A second lesson is to learn what rules exist about faculty-student relationships and adhere to them. If there are disclosure requirements, professors should be sure to disclose. Third, what professors write in emails, if they use the university email system or a university computer, can be searched and used as a basis for discipline. While professors may strongly believe that they have a right to privacy, courts and arbitrators have tended to allow searches of employer provided email systems and computers, especially when probable cause for the search exists, such as a serious student complaint. If professors want to keep their emails beyond the reach of university administrators, they should use their own computers and their own non-university email providers.

This comment was originally published in TUCFA’s Fall 2008 Newsletter.