

PRACTICE REVIEW HEARING COMMITTEE

HEARING DECISION IN THE MATTER OF MARK JUSTIN ANDERSON

**HEARING HELD ON SEPTEMBER 26, 2019
EDMONTON, ALBERTA**

The Practice Review Hearing Committee (the “Committee”), established in accordance with section 7 of the former *Practice Review of Teachers Regulation*, Alberta Regulation 11/2010 (the “*Regulation*”), convened to hear a complaint about the alleged unprofessional conduct of Mark Justin Anderson (the “Teacher”).

Pursuant to s. 35(8) of the *Practice Review of Teachers and Teacher Leaders Regulation*, AR 92/2019 (“new Regulation”):

35(8) A complaint under the former regulation that is not disposed of before the coming into force of this Regulation must be continued under and dealt with in accordance with this Regulation.

References to the sections of the Regulation in this decision are to the new Regulation, given that these were the sections referenced by the Registrar’s Representative and the Committee in the hearing.

Although section numbers have changed between the former Regulation and the new Regulation, the provisions are substantively the same and the change in Regulation does not affect the decision of the Committee or outcome of this matter.

The following were Members of the Committee:

- [REDACTED]

The hearing was held on Thursday, September 26, 2019 commencing at 9:15 a.m. at the 44 Capital Boulevard Building, 10044 108 Street, Edmonton, Alberta.

In addition to the Committee, the following individuals were present at the hearing:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

PRELIMINARY MATTERS

The Chair introduced the Members of the Committee, all individuals party to the hearing and all those in attendance. There was no objection to the composition of the panel by the Registrar’s Representative.

The Members of the Committee stated they did not have any knowledge of the Teacher or the allegations, apart from the materials that were provided to them in advance of the hearing.

The Teacher is currently incarcerated at [Location Redacted]. He submitted a letter to the Chair of the Committee dated September 3, 2019 and advised that he will not be participating in the hearing or have representation acting on his behalf.

The Chair confirmed the dates of the Registrar's Notice of Decision of July 26, 2019, Notice of Hearing of August 29, 2019 and the materials disclosed by the Office of the Registrar of September 16, 2019. All dates were verified and no objections were raised from the Registrar's Representative.

Before the hearing proceeded on the merits of the allegations, the Committee heard submissions in regard to two preliminary matters:

- (a) An application under section 21(2) of the Regulation to close the hearing to the public;
- (b) An application under section 24 of the Regulation to proceed in the Teacher's absence.

(a) Application under section 21(2)

The Registrar's Representative made submissions in support of her request to close the hearing to the public, in accordance with section 21(2) of the Regulation, given the nature of the charges and conviction. In this instance, there is a court document contained within the Registrar's materials indicating a court ordered publication ban. A copy of that publication ban dated January 30, 2018 was provided by the Registrar's Representative (Exhibit #4 page 46).

The Committee granted the request to close the hearing to the public and proceed in private given the publication ban. Section 21(2) of the Regulation states:

- (2) A hearing before a practice review hearing committee must be open to the public unless
 - (a) the complainant requests that the hearing be held in private because of the confidential nature of the matters to be heard, or
 - (b) in the opinion of the practice review hearing committee, the interests of any person other than the teacher or teacher leader who is the subject of the hearing may be detrimentally affected if the hearing is not held in private.

In the Committee's opinion, the publication ban put in place by the court should be honored and closing the hearing will protect the interest of the underage victim directly impacted in this case, which interest could otherwise be detrimentally affected if the hearing is not held in private. It is further noted no members of the public were present at the hearing.

(b) Application under section 24

The Secretariat advised the Committee that the Teacher had received the Notice of Hearing of August 29, 2019 and a copy of the Registrar's Notice of Decision of July 26, 2019 in addition to supporting hearing materials (a copy of the Practice Review Hearing Committee Processes and Procedures Rules and a copy of the Regulation). She presented a Statutory Declaration completed by [REDACTED], a process server with Lormit Personal Services to show that he served the Teacher with these

documents on August 30, 2019 (Exhibit #1).

In addition, the Teacher received a physical copy of the Registrar's materials (134 page binder) on September 18, 2019. The Secretariat submitted a Statutory Declaration completed by the same process server with Lormit Personal Services to show he served the Teacher with a copy of the Registrar's materials, in addition to a letter from the Secretariat dated September 17, 2019 (Exhibit #2). The Secretariat advised the Teacher that she would ensure a copy of his letter dated September 3, 2019 would be provided to both the Registrar and the panel members in his absence.

The Registrar's Representative made submissions in support of the hearing proceeding in the Teacher's absence. Section 24 of the Regulation permits a hearing to proceed in the absence of a teacher where there is evidence of service.

The Committee finds that the legal requirements for service have been met in this instance. Section 24 of the Regulation states:

- 24 The practice review hearing committee may, on proof of service of the notice of hearing on the teacher or teacher leader who is the subject of the hearing,
- (a) proceed with the hearing in the absence of the teacher or teacher leader, and
 - (b) act, decide and report on the matter being heard in the same way as if the teacher or teacher leader were in attendance.

The Committee reviewed the evidence of service and concluded that the Teacher had been properly served with the Notice of Hearing. In addition, his awareness of the proceedings is further evident in his letter dated September 3, 2019 (Exhibit #3). The Committee concluded that the hearing should proceed in the Teacher's absence.

ALLEGATIONS

The allegations in the Registrar's Notice of Decision dated July 26, 2019 were referred to at the hearing (Exhibit #4 page 52):

- (a) The Teacher's criminal convictions of indictable offences under the *Criminal Code of Canada* related to sections:
 - i. 163.1(2) making child pornography; and,
 - ii. 163.1(4) possession of child pornography.

EXHIBITS

The following were entered as Exhibits in the hearing:

Exhibit #1 – Statutory Declaration dated September 3, 2019

Exhibit #2 – Statutory Declaration dated September 18, 2019

Exhibit #3 – Letter from Mark Anderson dated September 3, 2019

Exhibit #4 – Registrar's Binder (134 pages)

MANDATE OF THE COMMITTEE

The mandate of the Committee is to hear the evidence presented with respect to the complaint about the alleged unprofessional conduct of the Teacher, to determine whether the Teacher's actions constitute unprofessional conduct, as defined under section 26 of the Regulation and, if so, to make recommendations under section 27 of the Regulation, as noted below.

The Regulation provides:

Finding - unprofessional conduct

26(1) The practice review hearing committee

- (a) may find the conduct of the teacher or teacher leader who is the subject of the hearing to constitute unprofessional conduct if, in the opinion of the practice review hearing committee, the teacher's or teacher leader's conduct
 - (i) is detrimental to the best interests of students, the public, teachers or teacher leaders generally, or
 - (ii) does not meet the professional conduct requirements,
- (b) must find the conduct of the teacher or teacher leader who is the subject of the hearing to constitute unprofessional conduct if the teacher's or teacher leader's conduct is the basis for a conviction for an indictable offence, or
- (c) if clauses (a) and (b) do not apply, may find that the conduct of the teacher or teacher leader who is the subject of the hearing does not constitute unprofessional conduct.

(2) If a teacher or teacher leader has been convicted of an indictable offence, a practice review hearing committee must make a recommendation to the Minister under section 27(3) and has no authority to investigate the conduct of the teacher or teacher leader on which the conviction is based except for the purpose of making a recommendation to the Minister.

Recommendations of practice review hearing committee

27(1) The practice review hearing committee may recommend that the Minister dismiss the complaint if the practice review hearing committee does not find

- (a) that the teacher or teacher leader who is the subject of the hearing is
 - (i) unskilled or incompetent in teaching,
 - (ii) unskilled or incompetent in carrying out the leadership duties related to a leadership certificate, or
 - (iii) unskilled or incompetent in carrying out the leadership duties related to a superintendent leadership certificate,
- or
- (b) that the conduct of the teacher or teacher leader constitutes unprofessional conduct.

(2) The practice review hearing committee may make a recommendation to the Minister under subsection (3) if the practice review hearing committee finds

(a) that the teacher or teacher leader who is the subject of the hearing is unskilled or incompetent in teaching,

(i) unskilled or incompetent in carrying out the leadership duties related to a leadership certificate, or

(ii) unskilled or incompetent in carrying out the leadership duties related to a superintendent leadership certificate,

or

(b) that the conduct of the teacher or teacher leader constitutes unprofessional conduct.

(3) The practice review hearing committee may recommend that the Minister do one or more of the following:

(a) serve a letter of reprimand on the teacher or teacher leader;

(b) suspend one or more of the certificates of the teacher or teacher leader, with or without conditions;

(c) cancel one or more of the certificates of the teacher or teacher leader or cancel the certificate and issue a certificate of a different class, with or without conditions;

(d) order that the teacher or teacher leader be ineligible for one or more certificates for a definite or indefinite period of time, with or without conditions.

(4) If the decision of a practice review hearing committee

(a) relates to a teacher or teacher leader who has been convicted of an indictable offence,

and

(b) does not contain a recommendation that the Minister cancel or suspend the certificate of the teacher or teacher leader,

the decision must include reasons why such a recommendation has not been made.

BACKGROUND

The Teacher holds a valid Permanent Professional Certificate [Number redacted] which was issued to him on February 5, 2013 in the Province of Alberta.

On January 12, 2018, the Teacher was arrested on four charges related to child pornography in the Province of Alberta.

The Teacher pled guilty and was convicted of two indictable offences, specifically sections 163.1(2) and 163.1(4) under the *Criminal Code of Canada*. These offences are in relation to making and possessing child pornography.

On January 21, 2019, the Teacher was sentenced [Duration Redacted].

POSITIONS OF THE PARTIES

Registrar's Representative:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Unprofessional conduct includes conduct that is the basis of an indictable offence in accordance with section 2(c) of the Regulation:

2 Conduct that

- (a) is detrimental to the best interests of students, the public or teachers generally,
 - (b) does not meet the professional conduct requirements, or
 - (c) is the basis for a conviction for an indictable offence
- constitutes unprofessional conduct.

The Registrar's Representative reviewed the two charges of 163.1(2) and 163.1(4) under the *Criminal Code of Canada* against the Teacher of which he was convicted by indictment. These offences are in relation to making and possessing child pornography. [REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

The Registrar's Representative is of the opinion that the Teacher's convictions, which were entered by guilty plea, are on the serious end of the spectrum and casts serious doubt on his suitability to hold teaching authority. She referred to the Teacher's letter (Exhibit #3) in which he expresses shame for his actions and guilt of the charges, acknowledging his serious unprofessional conduct.

The Registrar's Representative noted that the Committee is required to make a finding of

unprofessional conduct by the Teacher in this circumstance according to section 26(1)(b) of the Regulation. The Registrar's Representative requested that the Committee recommend to the Minister of Education that the Teacher's permanent professional teaching certificate be cancelled in accordance with section 27(3)(c) of the Regulation and that he be ineligible for a certificate for an indefinite period of time in accordance with section 27(3)(d) of the Regulation.

Teacher:

The Teacher was not present and no submissions were made on behalf of the Teacher. The Committee reviewed the Teacher's letter (Exhibit #3).

COMMITTEE'S FINDINGS

After careful deliberation and consideration of the evidence and submissions before it, and in accordance with section 26(1)(b) of the Regulation, the Committee finds that Mark Justin Anderson's conduct constitutes unprofessional conduct: Mr. Anderson's conduct resulted in him being convicted of two indictable offences under sections 163.1(2) and 163.1(4) of the *Criminal Code of Canada*.

In coming to this conclusion, the Committee is mindful of section 26(1)(b) of the Regulation, which states that the Committee "must find the conduct of a teacher or teacher leader who is the subject of the hearing to constitute unprofessional conduct if the teacher's or teacher leader's conduct is the basis for a conviction for an indictable offence". [REDACTED]

In this case, the Committee heard uncontested evidence from the Registrar's Representative that the Teacher was convicted of two indictable offences under the *Criminal Code of Canada* which related to the making and possessing of child pornography.

This conduct alone is sufficient for the Committee to find unprofessional conduct in accordance with section 26(1)(b) of the Regulation. However the Committee stresses that this conduct is especially severe and deserving of sanction given that the Teacher was in a position of trust. Although there is no evidence that his criminal acts were in relation to his students, his conduct is still a severe breach of this trust.

DECISION AND RECOMMENDATION

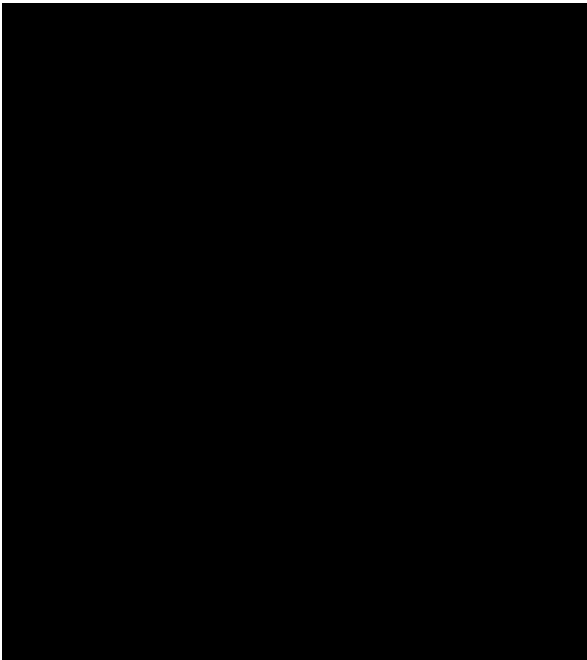
After due deliberation and consideration of the evidence before it, and in accordance with section 26(1)(b) of the Regulation, the Committee finds that Mr. Mark Justin Anderson's actions constitute unprofessional conduct on the very serious end of the spectrum. The Committee acknowledges that the Teacher has expressed remorse about his actions in his letter (Exhibit #3). However, teachers are in a position of trust and are entrusted to care for and deal with minors, who are vulnerable individuals. Although not related to students in his care, the conduct by the Teacher is a serious breach of the trust placed in teachers.

Based on this finding, the Committee recommends to the Minister of Education that Mr. Anderson's Alberta Permanent Professional Certificate be cancelled and that he be ineligible for a certificate for an indefinite period of time in accordance with section 27(3)(c) and (d) of the Regulation.

The Teacher in this hearing engaged in conduct which was the subject of serious criminal proceedings, resulting in two convictions of indictable offences which related to making and processing child pornography. Cancellation and ineligibility for an indefinite period of time is appropriate in this case.

Sections 27(4)(a) and (b) of the Regulation states that if the decision of the Committee relates to a teacher or teacher leader who has been convicted of an indictable offence and the Committee does not recommend that the certificate of the teacher or teacher leader be cancelled, reasons must be included as to why cancellation was not recommended. In this instance, as cancellation has been recommended, those additional reasons are not required.

Dated at the City of Edmonton in the Province of Alberta on this 7 day of November 2019.



OPTION TO APPEAL – NOTICE TO MARK JUSTIN ANDERSON

Please note that the *Practice Review of Teachers Regulation* AR 11/2010 was repealed and replaced by the *Practice Review of Teachers and Teacher Leaders Regulation* AR 92/2019 which came into effect on September 1, 2019.

You have fifteen (15) days of receipt of this decision to submit an appeal to the Practice Review Appeal Committee, in accordance with section 29(2)(a) of the new Regulation.

The appeal must be in writing and must describe the finding or recommendation, or both, being appealed and state the reasons for the appeal. The appeal must be addressed to:

The Chair, Practice Review Appeal Committee



44 Capital Blvd., 10044 – 108 Street
Edmonton, Alberta T5J 5E6