

THE ALBERTA TEACHERS' ASSOCIATION

REPORT OF THE HEARING COMMITTEE
OF THE PROFESSIONAL CONDUCT COMMITTEE

IN THE MATTER OF CHARGES OF UNPROFESSIONAL
CONDUCT AGAINST MARK AITCHESON

The hearing committee of the Professional Conduct Committee of the Alberta Teachers' Association reports that charges of unprofessional conduct laid against Mark Aitcheson of [Location Redacted] were duly investigated in accordance with the *Teaching Profession Act*. The hearing was held in Barnett House, 11010 142 Street NW, Edmonton, Alberta, Canada on Wednesday, December 12, 2018, commencing at 0900.

Professional Conduct Committee members present as the hearing committee were [REDACTED]

[REDACTED] The investigated member, Mark Aitcheson, was not present and was not represented by counsel.

COMPOSITION/JURISDICTION

There were no objections to the composition or the jurisdiction of the hearing committee.

PRELIMINARY MATTER

The committee heard an application by the presenting officer to close the hearing to the public. The presenting officer requested this out of primary concern for the witnesses because they or their family members could be detrimentally affected if the hearing was not held in private. The committee made a decision as per section 33(b) of the *Teaching Profession Act* to close the hearing to protect the identity and interests of the vulnerable parties. The committee determined that protecting the anonymity of the witnesses outweighed any public interest in an open hearing.

CHARGES AND PLEA

The following charges were read aloud by the secretary to the hearing committee:

1. Mark Aitcheson is charged with unprofessional conduct pursuant to the *Teaching Profession Act* in that he, while a member of the Alberta Teachers' Association, in or about the 2009/10 school year, did inappropriately touch a student, [Student A], contrary to section 23(1) of the *Teaching Profession Act*.

2. Mark Aitcheson is charged with unprofessional conduct pursuant to the *Teaching Profession Act* in that he, while a member of the Alberta Teachers' Association, in or about the 2008/09 school year, did inappropriately touch a student, [Student B], contrary to section 23(1) of the *Teaching Profession Act*.
3. Mark Aitcheson is charged with unprofessional conduct pursuant to the *Teaching Profession Act* in that he, while a member of the Alberta Teachers' Association, in or about the 2011/12 school year, did inappropriately touch a student, [Student C], contrary to section 23(1) of the *Teaching Profession Act*.
4. Mark Aitcheson is charged with unprofessional conduct pursuant to the *Teaching Profession Act* in that he, while a member of the Alberta Teachers' Association, in or about the 2011/12 school year, did inappropriately touch a student, [Student D], contrary to section 23(1) of the *Teaching Profession Act*.
5. Mark Aitcheson is charged with unprofessional conduct pursuant to the *Teaching Profession Act* in that he, while a member of the Alberta Teachers' Association, in or about the 2011/12 school year, did inappropriately touch a student, [Student E], contrary to section 23(1) of the *Teaching Profession Act*.

The chair directed a plea of not guilty to each of the charges on behalf of Aitcheson, in the absence of Aitcheson.

WITNESSES

There were nine witnesses called by the presenting officer:

[Name Redacted], area director, [School Division Redacted]

Student A, former student

Parent A, parent of Student A

Student B, former student

[Name Redacted], teacher

Student C, former student

Student D, former student

Student E, former student

Student F, former student

EXHIBITS FILED

Exhibit 1—Letter to Aitcheson from the executive secretary, advising that a hearing has been ordered

Exhibit 2—Notice of hearing and e-mailed confirmation of receipt by Aitcheson, dated November 8, 2018

Exhibit 3—Proof of Aitcheson's membership in the Association

Report of the Hearing Committee of PCC re Aitcheson, page 3

- Exhibit 4—Student A letter, undated
- Exhibit 5—Student record re Student A
- Exhibit 6—Notes of interview by [Name Redacted] and [Name Redacted] with Aitcheson
- Exhibit 7—E-mail from Aitcheson to [Name Redacted], dated November 8, 2016
- Exhibit 8—E-mail from Student B to [Name Redacted], dated January 19, 2017
- Exhibit 9—School district follow-up investigation, dated January 13, 2017
- Exhibit 10—Student record re Student B
- Exhibit 11—E-mail from Aitcheson to [Name Redacted], dated February 3, 2017
- Exhibit 12—Notes of interview by Human Resources personnel with [Name Redacted]
- Exhibit 13—School district investigation report re Aitcheson
- Exhibit 14—Termination of contract re Aitcheson
- Exhibit 15—Notes of interview by superintendent with Student C, dated March 14, 2018
- Exhibit 16—Student record re Student C
- Exhibit 17—Student record re Student D
- Exhibit 18—Notes of interview by [Name Redacted] and [Name Redacted] with Student D
- Exhibit 19—Notes of interview by [Name Redacted] and [Name Redacted] with Student F
- Exhibit 20—Student record re Student F
- Exhibit 21—Notes of interview by [Name Redacted] and [Name Redacted] with Student E
- Exhibit 22—Student record re Student E
- Exhibit 23—Student A's statement
- Exhibit 24—Student B's statement
- Exhibit 25—Student C's Snapchat
- Exhibit 26—Instagram direct message
- Exhibit 27—Student C's statement
- Exhibit 28—Instagram Aitcheson and Student F
- Exhibit 29—Instagram like
- Exhibit 30—Instagram like
- Exhibit 31—Instagram screenshot
- Exhibit 32—Instagram indicating that Aitcheson blocked Student F
- Exhibit 33—Student F's statement
- Exhibit 34—Student D's statement
- Exhibit 35—Aitcheson's opening statement (written)
- Exhibit 36—Aitcheson's response (rejected by committee)
- Exhibit 37—Aitcheson work history
- Exhibit 38—Board of Reference application (rejected by committee)
- Exhibit 39—Aitcheson closing statement

EVIDENCE ADDUCED AND EXHIBITS FILED INDICATED THAT:

Witness [Name Redacted]

1. [Name Redacted] is the area director for [School Division Redacted]. [Name Redacted] was tasked with conducting the district's investigation into allegations concerning Aitcheson.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Report of the Hearing Committee of PCC re Aitcheson, page 23

the testimony provided by the witnesses in person. The committee could assess the contents of the document only; it did not have the ability to observe sworn testimony being delivered under oath. The committee reviewed Aitcheson's unsworn testimony guardedly, noting that the presenting officer would not have the ability to cross examine and the committee would be unable to ask questions for clarification.

6. In his opening statement, Aitcheson stated that he has been working as a teacher for 29 years, having taught children from [REDACTED]
7. Aitcheson stated that he provides a safe and caring learning environment for students.
8. Aitcheson stated that he has received positive evaluations.
9. Aitcheson stated that he has been very effective at establishing positive relationships with students, co-workers, and parents.
10. Aitcheson stated that he uses positive and encouraging language.
11. Aitcheson stated that he has provided students with a pat on the back or a hand on the shoulder to show support and to celebrate achievements.
12. Aitcheson reiterated that in his 29 years as a teacher, he has received many notes of thanks from parents and students and has received many pieces of student art.
13. Aitcheson stated that in his 29 years as a teacher, there has never been any suggestion that he has behaved inappropriately in any way, until these allegations were made.
14. Aitcheson stated that it is unreasonable and unbelievable to imagine that he touched students inappropriately in a classroom full of students.
15. Aitcheson outlined his work history.
16. The work history document outlined the dates when Aitcheson taught at various schools.
17. The work history document outlined class composition along with generally identifying educational assistants (no names provided) and other adults who may have been in his classroom on various occasions.
18. Aitcheson provided a closing statement. He stated that he has maintained a level of professionalism that is not only expected but essential in an education setting.
19. Aitcheson stated that he has taken a series of steps to ensure appropriate professional boundaries are maintained at all times.

20. Aitcheson stated that he treats colleagues, students and parents with dignity, respect and consideration.
21. Aitcheson stated that he did not become emotionally involved with colleagues, students and parents.
22. Aitcheson stated that he is approachable and willing to listen to colleagues, students and parents without prejudgement.
23. Aitcheson stated that he has set and maintained professional boundaries.
24. Aitcheson stated that when he worked with students at their desks, at his desk or at the computer station, he would occasionally place a supportive hand on a shoulder or give an encouraging pat on the back.
25. Aitcheson acknowledged that, in hindsight, any kind of physical contact with students such as rubbing their backs or shoulders, was not a good idea.
26. Aitcheson acknowledged that he has stopped the practice of rubbing students on their backs and shoulders.

DECISION OF THE HEARING COMMITTEE

- Charge 1—Guilty
- Charge 2—Guilty
- Charge 3—Guilty
- Charge 4—Guilty
- Charge 5—Guilty

REASONS FOR DECISION

Charge 1

1. Aitcheson was employed as a teacher by [School Division Redacted] during the 2009/10 school year.
2. Aitcheson was an active member of the Alberta Teachers' Association during the 2009/10 school year.

3. [REDACTED]

[REDACTED]

[REDACTED]

Report of the Hearing Committee of PCC re Aitcheson, page 25

4. Aitcheson engaged in activity that was detrimental to the best interests of students, by initiating inappropriate touching with Student A.
5. Aitcheson engaged in activity that was detrimental to the best interests of the teaching profession. Aitcheson's actions tainted the profession in the eyes of the witnesses who were party to this matter and generally in the eyes of all who have become aware of his misconduct.
6. It is the responsibility of the teacher to maintain appropriate teacher-student boundaries. Aitcheson undermined this trust, and this was unprofessional.
7. The committee weighed heavily the testimony of Student A against Aitcheson's written submission. It also considered the testimony of Parent A and Student B. Parent A provided corroboration of the testimony of Student A. Student B provided similar-fact evidence of another incident. Similar-fact evidence provides evidence that advances elements which support the charge. With similar-fact evidence, the probative value must outweigh its prejudicial effect. The committee determined that the testimony of Student B, as similar-fact evidence, had sufficient probative value to outweigh any prejudicial effect because it augmented the plausibility of Student A's testimony.
8. The clarity of the recall during the testimony of Student A, corroborated by Parent A and supported by similar-fact evidence from Student B, provided the committee with confidence that the testimony of Student A was accurate and complete.
9. The testimony of Student A, Parent A and Student B established that the allegations are true on the balance of probabilities.

Charge 2

1. Aitcheson was employed as a teacher by [School Division Redacted] during the 2008/09 school year.
2. Aitcheson was an active member of the Alberta Teachers' Association during the 2008/09 school year.

3. [REDACTED]
4. [REDACTED]

Report of the Hearing Committee of PCC re Aitcheson, page 26

5. Aitcheson engaged in activity that was detrimental to the best interests of the teaching profession. Aitcheson's actions tainted the profession in the eyes of the witnesses who were party to this matter and generally in the eyes of all who have become aware of his misconduct.
6. It is the responsibility of the teacher to maintain appropriate teacher-student boundaries. Aitcheson undermined this trust and this was unprofessional.
7. The committee weighed heavily the testimony of Student B against Aitcheson's written submission. It also considered the testimony of Student A. Student A provided similar-fact evidence of another incident. Similar-fact evidence provides evidence that advances elements which support the charge. With similar-fact evidence, the probative value must outweigh its prejudicial effect. The committee determined that the testimony of Student A, as similar-fact evidence, had sufficient probative value to outweigh any prejudicial effect because it augmented the plausibility of Student B's testimony.
8. Student C, Student F, Student E and Student D spoke to different incidents, but their consistent testimony further establishes similar-fact evidence to support the finding.
9. The clarity of the recall during the testimony of Student B, supported by similar-fact evidence from Student A, provided the committee with confidence that the testimony of Student A was accurate and complete.
10. The testimony of Student B and Student A established that the allegations are true on the balance of probabilities.

Charge 3

1. Aitcheson was employed as a teacher by [School Division Redacted] during the 2011/12 school year.
2. Aitcheson was an active member of the Alberta Teachers' Association during the 2011/12 school year.
3. [REDACTED]
4. [REDACTED]
5. Aitcheson engaged in activity that was detrimental to the best interests of the teaching profession. Aitcheson's actions tainted the profession in the eyes of the witnesses who were

Report of the Hearing Committee of PCC re Aitcheson, page 27

party to this matter and generally in the eyes of all who have become aware of his misconduct.

6. It is the responsibility of the teacher to maintain appropriate teacher-student boundaries. Aitcheson undermined this trust, and this was unprofessional.
7. The committee weighed heavily the testimony of Student C against Aitcheson's written submission. It also considered the testimony of Student F, Student E, and Student D. These witnesses provided similar-fact evidence of other incidents. Similar-fact evidence provides evidence that advances elements which support the charge. With similar-fact evidence, the probative value must outweigh its prejudicial effect. The committee determined that the testimony of Student F, Student E and Student D, as similar-fact evidence, had sufficient probative value to outweigh any prejudicial effect because it augmented the plausibility of Student C's testimony and because it established a consistent pattern of misconduct
8. Student A and Student B spoke to different incidents, but their testimony further establishes similar-fact evidence to support the finding.
9. The clarity of the recall during the testimony of Student C, supported by similar-fact evidence from Student F, Student E, and Student D provided the committee with confidence that the testimony of Student C was accurate and complete.
10. The testimony of Student C, Student F, Student E, and Student D established that the allegations are true on the balance of probabilities.

Charge 4

1. Aitcheson was employed as a teacher by [School Division Redacted] during the 2011/12 school year.
2. Aitcheson was an active member of the Alberta Teachers' Association during the 2011/12 school year.
3. [REDACTED]
4. [REDACTED]
5. Aitcheson engaged in activity that was detrimental to the best interests of the teaching profession. Aitcheson's actions tainted the profession in the eyes of the witnesses who were

party to this matter and generally in the eyes of all who have become aware of his misconduct.

6. It is the responsibility of the teacher to maintain appropriate teacher-student boundaries. Aitcheson undermined this trust, and this was unprofessional.
7. The committee weighed heavily the testimony of Student D against Aitcheson's written submission. It also considered the testimony of Student C, Student F and Student E. These witnesses provided similar-fact evidence of other incidents. Similar-fact evidence provides evidence that advances elements which support the charge. With similar-fact evidence, the probative value must outweigh its prejudicial effect. The committee determined that the testimony of Student C, Student F and Student E, as similar-fact evidence, had sufficient probative value to outweigh any prejudicial effect because it augmented the plausibility of Student D's testimony and because it established a consistent pattern of misconduct.
8. Student A and Student C spoke to different incidents, but their testimony further establishes similar-fact evidence to support the finding.
9. The clarity of the recall during the testimony of Student D, supported by similar-fact evidence from Student C, Student F and Student E, provided the committee with confidence that the testimony of Student D was accurate and complete.
10. The testimony of Student C, Student F, Student E, and Student D established that the allegations are true on the balance of probabilities.

Charge 5

1. Aitcheson was employed as a teacher by [School Division Redacted] during the 2011/12 school year.
2. Aitcheson was an active member of the Alberta Teachers' Association during the 2011/12 school year.
3. [REDACTED]
4. [REDACTED]
5. Aitcheson engaged in activity that was detrimental to the best interests of the teaching profession. Aitcheson's actions tainted the profession in the eyes of the witnesses who were

party to this matter and generally in the eyes of all who have become aware of his misconduct.

6. It is the responsibility of the teacher to maintain appropriate teacher-student boundaries. Aitcheson undermined this trust, and this was unprofessional.
7. The committee weighed heavily the testimony of Student E against Aitcheson's written submission. It also considered the testimony of Student C, Student F and Student D. These witnesses provided similar-fact evidence of other incidents. Similar-fact evidence provides evidence that advances elements which support the charge. With similar-fact evidence, the probative value must outweigh its prejudicial effect. The committee determined that the testimony of Student C, Student F and Student D, as similar-fact evidence, had sufficient probative value to outweigh any prejudicial effect because it augmented the plausibility of Student E's testimony and because it established a consistent pattern of misconduct.
8. Student A and Student B spoke to different incidents, but their testimony further established similar-fact evidence to support the finding.
9. The clarity of the recall during the testimony of Student E, supported by similar-fact evidence from Student C, Student F and Student D, left the committee confident that the testimony of Student E was accurate and complete.
10. The testimony of Student C, Student F, Student E and Student D established that the allegations are true on the balance of probabilities.

SUBMISSION ON PENALTY

[Name Redacted] submitted to the committee that an appropriate penalty would be a declaration of ineligibility for membership in the Alberta Teachers' Association for two years, and a recommendation for suspension of certificate for two years to be made to the minister of education.

[Name Redacted] referred to precedent cases with somewhat similar facts to support his penalty recommendation. [Name Redacted] acknowledged that the precedent history did not align well with the facts of this case.

PENALTY

The hearing committee imposed the following penalty on Aitcheson:

1. A declaration of ineligibility for membership in the Alberta Teachers' Association for two years
2. A recommendation to the minister of education that Aitcheson's teaching certificate be suspended for two years

The penalty encompasses all five charges.

REASONS FOR PENALTY

1. Aitcheson engaged in a pattern of heinous actions that exploited the trust and innocence of multiple students.
2. Aitcheson betrayed the trust of students by his actions. This betrayal has caused lingering and long-term mental health impact for a number of his victims.
3. Aitcheson's actions undermine the interests of students and the teaching profession.
4. Teachers are in a position of power over students. Therefore, it is a teacher's fiduciary obligation to protect students, not to exploit their vulnerability through the teacher-student relationship. Aitcheson's actions constituted inappropriate behaviour which breached trust and necessitates suspension of membership and certificate.
5. There was no evidence of a criminal investigation or conviction in this matter.
6. The committee was unable to determine sexual intent.
7. The committee considered the recommendation of the presenting officer and deemed the recommendation to be appropriate and proportional in the circumstances.

Dated at the City of Edmonton in the Province of Alberta, Wednesday, February 6, 2019.

HEARING COMMITTEE OF THE PROFESSIONAL CONDUCT COMMITTEE OF
THE ALBERTA TEACHERS' ASSOCIATION

