

THE ALBERTA TEACHERS' ASSOCIATION

REPORT OF THE PROFESSIONAL CONDUCT APPEAL COMMITTEE

IN THE MATTER OF AN APPEAL BY PROVINCIAL EXECUTIVE COUNCIL  
OF THE DECISION OF THE HEARING COMMITTEE  
OF THE PROFESSIONAL CONDUCT COMMITTEE  
WITH RESPECT TO CHARGES OF UNPROFESSIONAL CONDUCT  
AGAINST AMY BELINDA WAGNER

The Professional Conduct Appeal Committee reports that the appeal by Provincial Executive Council (PEC) of the decision of the hearing committee of the Professional Conduct Committee with respect to charges of unprofessional conduct against Amy Belinda Wagner was heard in accordance with the *Teaching Profession Act* (TPA). The appeal hearing was held at Barnett House, 11010 142 Street NW, Edmonton, Alberta, Canada on Friday, December 16, 2011 at 0900.

Professional Conduct Appeal Committee members present were [REDACTED]  
[REDACTED]  
[REDACTED] represented Provincial Executive Council. The respondent, Wagner, was not present but was represented, by way of written submission, by [REDACTED] Professional Corporation.

CONSTITUTION/JURISDICTION

By written submission [REDACTED] argued that the request for appeal by PEC was outside of the 30-day deadline for appeal in section 49 of the *Teaching Profession Act*. [REDACTED] assumed that PEC received the report at the same time as [REDACTED] client, ie, June 29, 2011; therefore, [REDACTED] letter dated September 26 appealing the decision was out of time.

The record before the appeal committee confirmed that the decision was received by Wagner on June 29, 2011. [REDACTED] letter of appeal stated that the hearing committee's report was read at the meeting of PEC on September 22-23, 2011. However, there was no information in the record that confirmed the date when the decision was forwarded to PEC.

As a result, the appeal committee asked [REDACTED] if there was any information to confirm the date the decision was forwarded to PEC. [REDACTED] explained that the written decision of the hearing committee was not forwarded to PEC at the same time that it was served on Wagner, rather it was forwarded to PEC at its next regularly scheduled meeting, September 22-23, 2011; therefore, the appeal was filed within the 30-day timeline.

The appeal committee finds that the decision was forwarded to PEC on September 22-23, 2011. PEC filed its notice of appeal on September 26, 2011. Therefore, the appeal committee ruled that the appeal was received on time and that it did have jurisdiction to deal with the matter.

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

#### SUBMISSION OF THE APPELLANT

[REDACTED] clarified that PEC was appealing the penalty and had no other issues with the decision.

The penalty, in PEC's view, was inadequate and too lenient to serve as a deterrent. The penalty, a one-year suspension of membership, does not fit the nature of the offences. Wagner was found guilty of failing to treat a student with dignity and respect and with consideration of her circumstances, failing to act in a manner that maintained the honour and dignity of the profession and engaging in activities which adversely affected the quality of her professional service. Wagner admitted to having an inappropriate relationship with a minor [Gender Redacted] student over a 12-month period. These charges, egregious enough to warrant suspension of membership, must also warrant the suspension of certificate.

A one-year suspension of membership in the Association does not address the Association's responsibility to the public and to all current and future students, as required under section 23 of the TP A. A suspension of certificate is also necessary because of the detrimental effect of Wagner's conduct on students, the public and the teaching profession. The category of students includes those enrolled in private and federal schools and schools in other provinces.

The penalty sets a potentially dangerous precedent because, by not including suspension of certificate, the penalty does not align with the penalties in other similar cases.

#### SUBMISSION OF THE RESPONDENT

[REDACTED], on behalf of Wagner, did not provide a submission on penalty.

### DECISION OF THE COMMITTEE

The appeal committee allowed the appeal. The penalty is varied to include, in addition to the declaration of ineligibility for membership for a period of one year as of June 9, 2011, a recommendation to the minister of education to suspend Wagner's teaching certificate until such time as Wagner's one-year suspension of membership ends.

### REASONS FOR DECISION

1. Using the standard of reasonableness means that the appeal committee must exercise deference in relation to the decision of the hearing committee. Using this standard of review, a decision is unreasonable if, given the evidence before the hearing committee, the decision falls outside the range of possible acceptable outcomes. In this case, the penalty was too lenient and falls outside of the range of established precedent. While precedent is not binding on the appeal committee, the committee believes that hearing committees should strive for consistency in their decisions. The hearing committee did not address, in its reasons, why the penalty it imposed was significantly different than that imposed in other cases.
2. The Association has an obligation under section 23 of the TPA, not only to protect the interests of the profession but also to protect students and the public. The public has the right to expect that teachers will act in a manner that establishes a trust relationship between them and their students. The withdrawal of membership without recommending equivalent action on the teaching certificate does not meet the Association's obligation.
3. The suspension of certification is necessary to protect all students whereas the suspension of membership alone does not fulfil this obligation. This is because teachers who continue to hold a certificate are still eligible to teach in private and federal schools and schools in other provinces.
4. In the hearing committee's reasons for penalty, emphasis is placed on the necessity of protecting students from teachers who exceed appropriate professional boundaries. While those reasons were found to be correct, the corresponding penalty fell short of the expected consequences.

