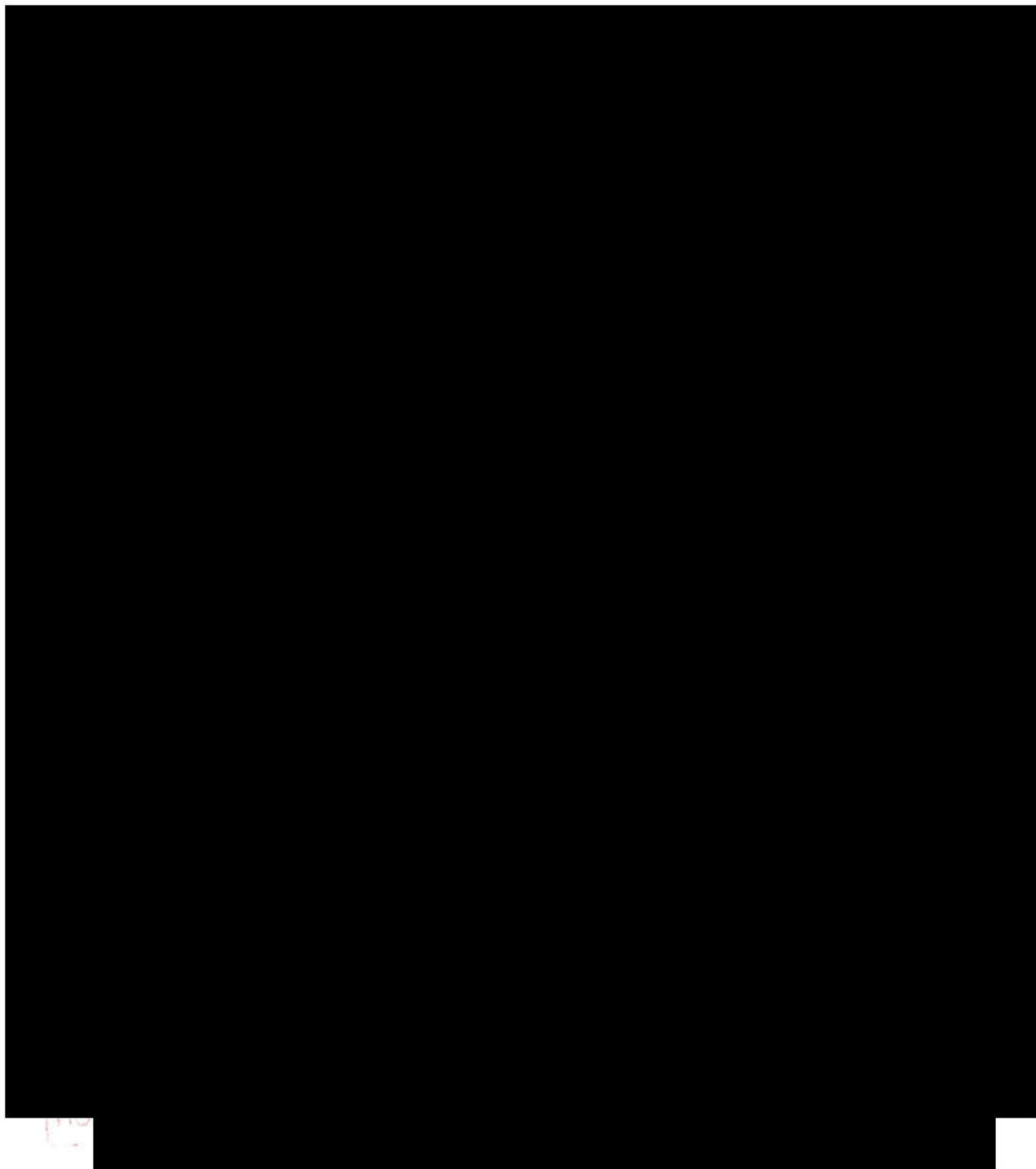




The Alberta Teachers' Association

11010 142 Street NW, Edmonton, Alberta T5N 2R1



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 ROBERTO CIOFFI

The Professional Conduct Appeal Committee reports that the 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 Roberto Cioffi was heard in accordance with the *Teaching Profession Act*. The appeal hearing was held at Barnett House, 11010 142 Street NW, Edmonton, Alberta, Canada on Thursday, May 15, 2014.

Professional Conduct Appeal Committee members present were [REDACTED]
[REDACTED]
represented Provincial Executive Council. The appellant was not present and was represented, via telephone, by legal counsel, [REDACTED]

COMPOSITION AND JURISDICTION

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

SUBMISSION OF THE APPELLANT

By way of written submission, Provincial Executive Council appealed the penalty ordered by the hearing committee of the Professional Conduct Committee on the grounds that it is too lenient, does not fit the nature of the offences and does not address the Association's responsibility of ensuring students are treated with dignity and respect by their teachers. The penalties ordered by the Professional Conduct Committee were: (1) declaration of ineligibility for membership in the Alberta Teachers' Association for one year and (2) recommendation to the minister of education for a one-year suspension of his teaching certificate.

[REDACTED] submitted two key arguments in support of the appeal.

1. The hearing committee erred when it did not defer to the original joint submission on penalty which asked for a declaration of ineligibility of membership in the Association, and a recommendation to the minister of education to suspend Cioffi's teaching certificate, both for a period of three years. [REDACTED] said that this penalty is the remedy he is seeking from the appeal committee.

██████ argued that the facts in evidence showed that the conduct in question was not strictly an inappropriate electronic relationship of friendship or mentorship but one that went beyond that to an abuse of trust. The hearing committee's characterization of the relationship between Cioffi and Student A as merely an inappropriate electronic relationship led to a failure to recognize the amorous content of the communication and thus the egregious nature of the relationship.

██████ submitted that adolescents can misinterpret relationships and this places a high standard on teachers who have a responsibility to appropriately guide these students. Cioffi had an opportunity to guide the student into an appropriate relationship and failed to do so.

2. The presenting officer cited 14 precedent cases and during its deliberation, the hearing committee referred to two additional cases from the precedent library. The precedent cases represented a wide variance in both the circumstances of the conduct and the resulting penalty. The hearing committee was burdened in two ways: (a) there were few precedent cases characterized by inappropriate electronic communication with no sexually explicit commentary or elements and (b) the range of precedents provided poor direction. The appeal committee must consider the degree to which Cioffi's amorous comments led to the inappropriate relationship.

██████ asked the appeal committee to consider three of the precedent cases, two of which are recent (2011) and one which is a bit dated (2003). These three precedents are relevant because they are about nonsexual relationships which were deemed inappropriate because they were excessively familiar, involved grooming behaviour or transgressed professional teacher-student boundaries. Hadden argued that the penalty recommended in the original joint submission was a more appropriate penalty that fit the facts of this case.

SUBMISSION OF THE RESPONDENT

██████ submitted it is not appropriate for Provincial Executive Council to appeal the decision because the penalty was considered appropriate by the Association's presenting officer at the hearing before the hearing committee and that she and the presenting officer essentially entered into a new joint submission on penalty involving a one-year suspension of membership in the Alberta Teachers' Association and a recommendation for a one-year suspension of teaching certificate. ██████ argued that the presenting officer was free to defend the initial joint submission notwithstanding the hearing committee's hesitance to defer to the joint submission. However, she chose instead to enter into the revised joint submission for the one-year ineligibility of membership and one-year suspension of teaching certificate.

██████ submitted that the penalty the hearing committee arrived at was reasonable, because it was based on the admitted facts and precedents and it considered the mitigating factors that she identified during the hearing before the hearing committee. ██████ submitted that the hearing

committee did a commendable job of narrowing down the precedent cases presented and focusing on the ones that were relevant to the fact scenario before the committee in this case. [REDACTED] noted that the hearing committee did focus on three cases that it considered appropriate.

[REDACTED] further submitted that the appeal committee ought not to substitute its own view for the appropriate penalties in this case and that it ought to defer to the findings of the hearing committee.

REPLY SUBMISSION

In response to [REDACTED] submission that Council shouldn't be able to appeal a penalty put forth by the Association's own presenting officer before the hearing committee, [REDACTED] pointed out that section 49 of the *Teaching Profession Act* outlines the jurisdiction for appeal.

DECISION OF THE COMMITTEE

Based on the standard of review of reasonableness, the decision of the appeal committee is that the appeal is upheld.

The penalty is varied to increase

1. the period of Cioffi's ineligibility for membership in the Alberta Teachers' Association from one year to three years and
2. the recommended suspension of Cioffi's teaching certificate from one year to three years.

REASONS FOR DECISION

1. In considering the penalty ordered by the hearing committee, the appeal committee applied a standard of review of reasonableness. A standard of review 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.
2. In reviewing the reasons for decision of the hearing committee, the appeal committee could not find evidence that the hearing committee had considered or placed appropriate weight on the amorous content of the e-mails that Cioffi sent to the student when determining the reasons for penalty.
3. The appeal committee did not find it reasonable for the hearing committee to overlook the grooming nature of the messages from Cioffi to Student A in determining the penalty.

4. Specifically, the appeal committee considered it unreasonable for the hearing committee not to reference in its reasons for penalty, Cioffi's declarations of love to Student A, his references to his desire to kiss and hold the hands of Student A, and his confession [REDACTED]
[REDACTED]
5. The appeal committee was unable to see a reasonable line of analysis from the evidence regarding the amorous and grooming nature of the e-mail communications to the penalty which was ultimately reached by the hearing committee. There is nothing in the hearing committee's reasons which addresses what weight, if any, was placed on the specific nature and content of the e-mail communications and how the nature and content of the e-mails should impact on the orders for penalty.
6. The appeal committee considered the length and progression of the e-mail communication, which progressed from Cioffi being friendly and complimentary to his declarations of love. The appeal committee felt the hearing committee's decision was unreasonable as it did not take into account the duration and progression of the electronic communication and the effect on the relationship in its consideration of penalty.
7. The appeal committee noted the hearing committee's explanation, "After reviewing the precedent cases submitted by Malner-Charest, the hearing committee was concerned the penalty was inconsistent with prior decisions where the allegations related solely to inappropriate electronic communication, as opposed to allegations concerning an inappropriate sexual relationship." This identified only the upper and lower ranges of misconduct and did not take into consideration a continuum of behaviour. The appeal committee determined that the conduct, with its increasingly amorous overtones, constituted behaviour closer to the more severe end of the continuum.
8. The appeal committee felt the hearing committee was unreasonable in its decision on penalty because it did not appear to consider, or sufficiently address in the reasons for penalty, that the student had expressed concern about the relationship and attempted to effect closure, but Cioffi did not take the opportunity to appropriately close the relationship. The evidence demonstrated that the student recognized the inappropriateness of the relationship before the teacher, who resisted the ending of the relationship. This failing on Cioffi's part compounded the harm to the student, requiring a more severe penalty.
9. The appeal committee noted, in the hearing committee's reasons for decision and for penalty, that the hearing committee recognized that Student A "... suffered personal anguish and misery..." and "Cioffi's behaviour had a damaging effect on Student A..." who was "...vulnerable and impressionable..." The penalty was too lenient given these findings by the hearing committee, and was unreasonable, given the harm to the student.

10. The appeal committee reviewed the six specific precedents referred to by the appellant and the respondent. The appeal committee identified two specific precedents that were most similar to this case. The appeal committee determined that the penalties ordered by the hearing committee fell outside the range of reasonable penalties for the unprofessional conduct in question and the penalties were therefore unreasonable. Further, the range of penalties in precedent cases is only one of the factors relevant to penalty. In reaching the conclusions it did on penalty, the hearing committee put undue weight on the precedent cases without considering how the nature and content of the electronic communication should also affect the penalties.
11. The appeal committee considered that the penalties ordered by the hearing committee arose as a result of what was essentially a revised joint submission on penalty. However, for the reasons articulated above, the revised joint submission on penalty was not reasonable or consistent with the public interest.

Dated at the City of Edmonton in the Province of Alberta, Wednesday, June 11, 2014.

THE PROFESSIONAL CONDUCT APPEAL COMMITTEE
OF THE ALBERTA TEACHERS' ASSOCIATION

