

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

IN THE MATTER OF CHARGES OF UNPROFESSIONAL
CONDUCT AGAINST DONNA MARIE ROSS

The hearing committee of the Professional Conduct Committee of the Alberta Teachers' Association reports that charges of unprofessional conduct laid against Donna Marie Ross of [REDACTED], were duly investigated in accordance with the *Teaching Profession Act*. The hearing was held online via video conference on Monday, September 26, 2022, at 9:00 AM.

The participants were

1. Professional Conduct Committee members appointed as the hearing committee:
[REDACTED] (chair), [REDACTED] and [REDACTED];
2. counsel to the hearing committee, [REDACTED];
3. secretary to the hearing committee, [REDACTED];
4. administrative secretary to the hearing committee, [REDACTED]; and
5. presenting officer, [REDACTED]

The investigated member, Donna Ross, was not present and was not represented by counsel.

COMPOSITION/JURISDICTION

There was no objection to either the composition of the committee or its jurisdiction.

CHARGES AND PLEA

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

1. Donna Marie Ross is charged with unprofessional conduct pursuant to the *Teaching Profession Act* in that Ross, while a member of the Alberta Teachers' Association, on or about December 9, 2021, slapped a Grade [REDACTED] student on the cheek while in [REDACTED]. In doing so, Ross failed to treat a pupil with dignity and respect and failed to be considerate of the student's circumstances contrary to article 4 of the Code of Professional Conduct.
2. Donna Marie Ross is charged with unprofessional conduct pursuant to the *Teaching Profession Act* in that Ross, while a member of the Alberta Teachers' Association, on or about December 9, 2021, used the cultural values of [REDACTED] lifestyle to rationalize the striking of a Grade [REDACTED] student. In doing so, Ross failed as a teacher to act in a manner which maintains the honour and dignity of the profession contrary to article 18 of the Code of Professional Conduct.

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The investigated member entered a plea of guilty to the charges by written submission.

WITNESSES

No witnesses were called.

EXHIBITS FILED

- Exhibit 1—Declaration of awareness of rights, signed by Ross on September 19, 2022
- Exhibit 2—Notice of hearing, dated July 22, 2022, and Canada Post confirmation of delivery on August 8, 2022
- Exhibit 3—Confirmation of Ross's membership in the Association, dated September 1, 2022
- Exhibit 4—Submission on plea, signed by Ross, dated September 19, 2022
- Exhibit 5—Agreed statement of facts and acknowledgement of unprofessional conduct, signed by Ross and [REDACTED] on September 20, 2022
- Exhibit 6—Image of Student A's agenda page for Thursday, December 9, 2021, and Friday, December 10, 2021
- Exhibit 7—E-mail sent from Ross to [REDACTED] concerning language, dated February 10, 2022
- Exhibit 8—Joint submission on penalty, signed by Ross and [REDACTED] on September 20, 2022
- Exhibit 9—Statement by [REDACTED] to [REDACTED], signed January 11, 2022
- Exhibit 10—E-mail sent from Ross to [REDACTED] concerning penalty, dated September 26, 2022 at 1:18 pm
- Exhibit 11—E-mail sent from Ross to [REDACTED] concerning penalty, dated September 26, 2022 at 1:24 pm

EVIDENCE ADDUCED AND EXHIBITS FILED INDICATED

1. [REDACTED] presented a declaration affirming that Ross was aware of her rights to attend the hearing and to representation. (Exhibit 1)

Background

2. Ross was a member of the Alberta Teachers' Association at the time the incident that gave rise to the charges occurred. (Exhibit 3, Exhibit 5)
3. Ross retired in [REDACTED] after teaching for 40 years. Ross continued to work as a substitute teacher for [REDACTED] post-retirement. (Exhibit 5, p 1)

4. [REDACTED] is a two-room schoolhouse for Grades [REDACTED] located [REDACTED]. The total school population is [REDACTED] [REDACTED] (Exhibit 5, p 1)
5. [REDACTED]
6. Ross held a prior temporary contract with [REDACTED] from August 25, 2021, through November 15, 2021. (Exhibit 5, p 1)
7. Ross was engaged to sub at [REDACTED] November 25–26, 2021 and December 9–10, 2021 (Exhibit 5, p 2)
8. The incident that gave rise to the charges occurred while Ross was subbing at [REDACTED] on December 9, 2021. (Exhibit 5, pp 1–2)
9. On or about December 10, 2021, Ross called [REDACTED], associate superintendent, and asked to be removed from the division's substitute list. (Exhibit 5, p 2; Exhibit 11)
10. [REDACTED] conducted a short investigation consisting of a few phone calls. On December 10, 2021, [REDACTED] called Ross and, according to [REDACTED], they decided on a "mutual parting of ways." ([REDACTED] oral submission)
11. Effectively, Ross's last teaching day in [REDACTED] was December 9, 2021. (Exhibit 5, p 2)
12. According to [REDACTED], it is [REDACTED] and [REDACTED] understanding that Ross is no longer employed in any capacity by any school division. ([REDACTED] oral submission)

Charge 1

1. On the afternoon of December 9, 2021, students gathered to practice for the [REDACTED] [REDACTED] in the [REDACTED], as that is where the [REDACTED] were located. (Exhibit 5, p 3)
2. At some point in the class, Student A, a [REDACTED] student, was laughing behind their [REDACTED] Ross walked across the room toward Student A. Ross pulled down the [REDACTED] shook her finger at Student A and told Student A [REDACTED] were being very rude. (Exhibit 5, p 4)
3. Ross raised her right hand and slapped Student A on [REDACTED] left cheek. (Exhibit 5, p 4)

4. Student A reported the incident to [REDACTED] parents, including [REDACTED], Parent A, who is the [REDACTED] at [REDACTED] and who liaises between the school and the [REDACTED]. (Exhibit 5, p 1)
5. Parent A reported the incident to [REDACTED]. (Exhibit 5, p 4)
6. The incident is corroborated by Ross's entry in Student A's agenda for December 9, 2021. The entry from Ross to Student A's parents reads (Exhibit 6):

9 Thursday

[Student A] was rude today. I think [REDACTED] learned a valuable lesson. I slapped [REDACTED] because [REDACTED] laughed *[Strikethrough in original]* after I gave [REDACTED] trouble. I forgive [REDACTED]!

Mrs. Ross

7. The slap was witnessed by [REDACTED] an educational assistant at [REDACTED], as well as by other students. (Exhibit 5, p 4)
8. On December 16, 2021, the executive secretary received a complaint from [REDACTED]. The complaint stated (Exhibit 5, p 1):

During [REDACTED] class [Student A] was misbehaving and laughing behind [REDACTED]

Mrs. Ross walked over to [Student A] and pulled [REDACTED] down and shook her finger at [Student A] and told [REDACTED] being rude. Next thing I seen was Mrs. Ross raising her right hand and hit [Student A] on [REDACTED] left cheek.

9. [REDACTED] was assigned as the investigating officer on December 21, 2021, and the investigation commenced on January 7, 2022. [REDACTED] report was submitted to the executive secretary on April 25, 2022. A hearing was ordered by the executive secretary on June 2, 2022. (Exhibit 5, p 1)
10. In an e-mail to [REDACTED] on February 2, 2022 (Exhibit 7), Ross requested a change of terminology to the written statement she had provided. This e-mail reads in part:

I would like you to change the word brushed to slap. I was ashamed to call it that but I should be consistent and that is what it was. I certainly do not want to look like a liar. I'm embarrassed enough by this whole incident without making it worse. If you need me to edit my original statement and resend, I certainly will.

Charge 2

1. ██████ explained that throughout ██████ investigation, it was confirmed that physical punishment is still used in ██████ schools like ██████. He told the committee that at ██████, it was the role of the ██████, ██████ to enact physical discipline (such as using the strap) when necessary.
2. The committee heard no evidence that ██████ is a certificated teacher or member of the Association.
3. Following the slapping incident, Ross was sitting in the room after the students went outside. Ross looked up from her phone and said to ██████, "I watched a video on these students and it's okay to do that to a student." (Exhibit 5, p 4)
4. In Exhibit 7, Ross references a video that she had watched that made her assume the use of physical contact against Student A was ██████ appropriate, "I had watched a video, not long before this incident where a teacher had slapped a student and it had been effective in improving behaviour. I don't remember where I saw it."
5. Ross confirmed that it was her belief that "In this environment ██████ I really got to believe that a small amount of physical contact would not even raise an eyebrow." Ross believed that she needed to do something "to make the students realize they cannot run roughshod over the substitute teacher." (Exhibit 5, p 4)
6. Ross confirmed that she had told ██████, "I do not believe that talking in class warrants the strap, but if I did some small thing that possibly that would wake everyone up that Mrs Ross means business here. You can't just push her around." (Exhibit 5, p 4)
7. Ross stated, "I was acting 'In parentis' in this situation" (Exhibit 5, pp 4–5). Exhibit 5 clarifies that this comment by Ross referred to a teacher acting *in loco parentis*, ie, being in the place of the parent.
8. In Exhibit 5, Ross admits that she inferred that since physical and corporal punishment are used as disciplinary measures ██████ ██████, she could use physical force to discipline Student A. (Exhibit 5, p 4)
9. Ross's belief that there was inferred approval for her actions is captured in Exhibit 5, where Ross states her presumption that ██████ "would not do anything differently." (Exhibit 5, p 5)

DECISION OF THE HEARING COMMITTEE

Charge 1—Guilty

Charge 2—Guilty

REASONS FOR DECISION

Charge 1—Guilty

1. Without any lawful excuse or provocation, Ross initiated physical force with Student A by open-hand slapping Student A's left cheek in the presence of peers and other staff, thus failing to treat the student with dignity and respect and failing to be considerate of the student's circumstances, contrary to article 4 of the Code of Professional Conduct.
2. Ross believed that she needed to do something "to make the students realize they cannot run roughshod over the substitute teacher."
3. Ross's actions toward Student A caused [REDACTED] peers and the classroom EA to momentarily pause "in shock" about what they had witnessed.
4. Teachers are expected to provide an environment where students feel safe. Ross did not provide a safe environment for the students, nor did she consider Student A's circumstances, thus she failed to treat students with dignity and respect.
5. Ross pled guilty to the charge.

Charge 2—Guilty

1. Ross pled guilty to the charge.
2. Teachers are required to be mindful of the socio-educational contexts in which they teach. Ross's understanding that physical punishment is used at the [REDACTED] and [REDACTED] is likely accurate. This does not absolve Ross of her responsibilities under the TPA, *Education Act* or the Code of Professional Conduct to treat students with dignity and respect at all times and to be ever considerate of their circumstances.
3. Ross's decision to slap Student A was an unprofessional decision, regardless of the [REDACTED] [REDACTED] school.

SUBMISSION ON PENALTY

1. In Exhibit 8, Ross and [REDACTED] ask the committee to consider the following [REDACTED] factors when deliberating about sanctions for Ross's conduct:
 - a. *The nature and gravity of the charges*—The conduct of Ross is considered severe. Ross reported in several forms that she slapped a student. (Exhibit 8, p 1)
 - b. *The age and experience of the teacher*—Ross was [REDACTED] years old at the time of the incident. Ross has over 40 years' experience teaching in a variety of positions and roles. Ross retired in [REDACTED] and substitute taught until the [REDACTED] (Exhibit 8, p 1)
 - c. *The presence or absence of previous convictions of unprofessional conduct*—Ross has not been previously convicted of unprofessional conduct before the Professional Conduct Committee. (Exhibit 8, p 1)
 - d. *The age and condition of individual(s) affected by the unprofessional conduct*—The [REDACTED] student was affected by the conduct as were those that observed the conduct. (Exhibit 8, p 1)
 - e. *The impact on the individual(s) affected by the unprofessional conduct*—The [REDACTED] did not permit [REDACTED] to interview the students in the class. The educational assistant was "in shock" regarding what [REDACTED] observed. (Exhibit 8, p 1)
 - f. *Whether the member has already suffered other consequences*—[REDACTED] terminated Ross as a substitute teacher. (Exhibit 8, p 1)
 - g. *The presence or absence of mitigating or aggravating circumstances*—Ross agreed to the termination of her position with [REDACTED] and ceased work immediately effective December 10, 2021. Ross was cooperative with the investigations conducted by [REDACTED] and the Association. (Exhibit 8, p 2)
 - h. *Penalties in similar cases*—the following precedent cases were cited (Exhibit 8, p 2):
 - ND1417 – Abida
The teacher was found guilty of head-butting a student. The penalty was a one-year suspension of their Association membership and a recommendation to the minister that their certificate be suspended for one year.
 - ND1480 – MacKenzie
The teacher slapped a student in the face after the student spit in the teacher's face. The penalty was a letter of severe reprimand and a \$200 fine.

- i. *The need to promote deterrence*—When teachers physically contact students, the trust that parents place in school systems is severely jeopardized. (Exhibit 8, p 2)
 - j. *The need to maintain confidence in the profession*—Teachers have a duty to treat a pupil with dignity and respect in addition to maintaining the honour and dignity of the profession. (Exhibit 8, p 2)
2. Ross and [REDACTED], in Exhibit 8 (pp 2–3), recommended the following penalty for both charges:
 - a letter of reprimand,
 - suspension of membership in the Association for a period of one year and
 - a recommendation to the minister of education to suspend Ross’s teaching certificate for a period of one year.
 3. Through her signature on the joint submission on penalty (Exhibit 8, p 3), Ross
 - acknowledged that the committee is not bound by the penalty recommended by Ross and [REDACTED] and would make its own decision concerning sanctions and
 - was aware of her ability to make an oral presentation to the committee on penalty but declined to do so.

Clarification sought by the committee

1. While explaining the joint submission on penalty to the committee, [REDACTED] elaborated on the comment, “The educational assistant was in shock regarding what [REDACTED] observed” (Exhibit 8, p 1) and explained that this related to statements [REDACTED] made to [REDACTED] during [REDACTED] investigation.
 - a. The committee requested that documentary evidence be provided to corroborate this statement. [REDACTED] shared a signed written statement from [REDACTED], dated January 11, 2022, that [REDACTED] received from [REDACTED] prior to interviewing [REDACTED] (Exhibit 9).
 - b. This statement (Exhibit 9) included the following, which approximated what [REDACTED] had recounted in [REDACTED] oral presentation:

Next thing I [sic] that happened was Mrs. Donna Ross raising her right hand and striking [Student A] open handed on [Student A]’s left cheek. All the students and I stood there for a few moments in shock nobody moved.
 - c. Although [REDACTED] statement was signed and dated, [REDACTED] was not called as a witness so the committee cannot confirm that [REDACTED] statement was based on contemporaneous notes. Additionally, since Ross was not present at the hearing, the committee could not confirm

that [REDACTED] had knowledge of the information in [REDACTED] statement and whether this information would have altered [REDACTED] submissions on plea or penalty. Given these matters of procedural fairness, the committee chose to give [REDACTED] statement (Exhibit 9) little weight.

2. The committee sought clarification from [REDACTED] regarding a slight inconsistency in language between the agreed statement of facts (Exhibit 5) and the joint submission on penalty (Exhibit 9) concerning whether Ross had relinquished her substitute teaching position or had been terminated.
 - a. The agreed statement of facts states that Ross called [REDACTED] on December 10, 2021, to "remove herself from the substitute teacher list" and "[REDACTED] investigated and deactivated Ross's substitute teacher account." (Exhibit 5, p 2).
 - b. The joint submission on penalty indicates that "[REDACTED] terminated Ross's substitute teaching position" (Exhibit 8, p 1) as a consequence Ross has already faced but also indicates "Ross agreed to the termination of her position with the division" (Exhibit 8, p 2) as a mitigating factor.
 - c. The committee asked [REDACTED] to clarify whether Ross resigned or was terminated and to what extent they should consider her resignation/termination a consequence or mitigating factor.
 - d. [REDACTED] explained that, according to [REDACTED], it was a mutual parting of ways. For all intents and purposes, [REDACTED] explained, the division would have terminated Ross had she not relinquished her position.
3. The committee asked for clarification about whether Ross was employed by other school divisions. [REDACTED] explained that she had worked for other divisions previously, but it was [REDACTED] and [REDACTED] understanding that Ross is no longer employed in any capacity with any division.

PENALTY

Consultation with Ross

1. After a period of initial deliberation, the hearing committee recalled the parties. [REDACTED] explained that the committee had given significant deference to the joint submission on penalty but was leaning toward a penalty that was more severe than that which [REDACTED] and Ross had agreed to.

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2. Since Ross was not present at the hearing to make an oral submission about the increased penalty, the committee recessed to provide [REDACTED] with an opportunity to contact Ross to invite her to join the hearing when it reconvened after the recess or to provide a written submission about the proposed revision to the penalty.
3. When the committee reconvened, two e-mails from Ross were provided to the committee.
 - a. The first, sent on September 26, 2022, at 1:18 PM (Exhibit 10) read:

Dear committee,

I'm sorry you feel I have not shown remorse. I have felt very bad about this incident, I resigned from subbing voluntarily.

I felt very unable to really defend myself and I also felt it would make little difference on the outcome.

Siting the examples that were shared with you and me, I felt the one year suspension was severe.

I will agree to the two years.

I know you are under considerable pressure from the [REDACTED] right now. I do feel this sets a very harsh precedent for future incidents.

We are all human. We make mistakes. I hope teachers are cautioned in future to not be lulled into accepting norms at the [REDACTED] schools. I was given so many examples of students being dealt with very harshly (by [REDACTED]) Anyway a cautionary tale for other teachers in the future.

Yours sincerely,

Donna Ross

- b. The second e-mail, sent September 26, 2022, at 1:24 PM (Exhibit 11) read:

Please add that I've been extremely stressed by this whole ordeal since the night of Dec 9 when [REDACTED] called me.

Donna

Final Decision

The committee ordered the following penalty for both charges:

1. A letter of severe reprimand;
2. A declaration that Ross be ineligible to hold membership in the Association for a period of two years; and
3. A recommendation to the minister of education that Ross's teaching certificate be suspended for a period of two years.

REASONS FOR PENALTY

The Professional Conduct Committee considered the following factors in the matter of penalty, and felt they were sufficient to warrant a variance from the joint submission on penalty.

1. Slapping a student is both a serious offence and an abhorrent response. A student's safety and well-being should be paramount for all teachers at all times.
2. Physical interactions are not acceptable ways for a teacher to discipline students. It is reasonable for a parent to expect that when a student is sent to school, they are going to be safe.
3. Student A, the witnesses to the incident in the classroom, as well as Student A's [REDACTED] were emotionally impacted by the slap to Student A's face.
4. Other students witnessed this event, which was demeaning to Student A. Thus, Ross failed in her responsibility to treat Student A with dignity and respect.
5. Any conduct of a teacher that, in the opinion of the hearing committee is detrimental to the dignity of a student, is unprofessional.
6. Given Ross's many years of teaching experience, it is the committee's belief she ought to have understood the expectations of a teacher to treat students with dignity and respect.
7. There was no evidence presented to the committee that Ross apologized or sought to make amends with Student A or the witnesses in the classroom.
8. Ross shows little, if any, remorse. This distinguishes her case from the two precedent cases shared by [REDACTED] in which the investigated members demonstrated clear remorse, apologized to the impacted parties and made attempts to reconcile with them.

9. There are multiple comments in evidence that Ross felt justified in slapping Student A in class.
10. Ross's inappropriate behaviour necessitates a significant penalty that demonstrates the Association's desire to deter unacceptable conduct and to ensure the safety of students.
11. It is imperative that members of the teaching profession, as well as members of the public, understand that the Association takes the regulation of its members' conduct seriously and that the profession will decisively respond to professional misconduct.
12. While the conduct in question was very serious in nature and emotionally impacted Student A, the committee also considered the seriousness of the conduct against the following mitigating factors:
 - a. Over Ross' lengthy career, Ross has no known previous convictions for misconduct within the statutory regulations related to the teaching profession.
 - b. Ross was cooperative in the investigations conducted by [REDACTED] and the Association.
 - c. Ross agreed to the termination of her position with the division and ceased work immediately effective December 10, 2021.

Dated at the City of Edmonton in the Province of Alberta, November 8, 2022.

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

