

THE ALBERTA TEACHERS' ASSOCIATION

REPORT OF THE PROFESSIONAL CONDUCT APPEAL COMMITTEE

IN THE MATTER OF AN APPEAL BY PROVINCIAL EXECUTIVE COUNCIL
OF THE ALBERTA TEACHERS' ASSOCIATION OF THE DECISION OF THE HEARING
COMMITTEE OF THE PROFESSIONAL CONDUCT COMMITTEE WITH RESPECT TO
CHARGES OF UNPROFESSIONAL CONDUCT AGAINST CHEYNO FINNIE

The Professional Conduct Appeal Committee reports that the appeal by Provincial Executive Council of the Alberta Teachers' Association of the decision of the hearing committee of the Professional Conduct Committee with respect to charges of unprofessional conduct against Cheyno Finnie 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 Monday, January 13, 2003 at 0900.

Professional Conduct Appeal Committee members present were [REDACTED]

[REDACTED] The respondent, C Finnie, was present and was not represented by legal counsel.

Prior to his submission, [REDACTED] requested that the hearing be closed to the public, as per section 52 of the *Teaching Profession Act*. [REDACTED] further requested that Student X and [REDACTED] father be allowed to participate in the hearing if special leave was granted to hear Student X's testimony. [REDACTED] also requested that neither Student X nor [REDACTED] father be named in the report of the Professional Conduct Appeal Committee. After deliberation, the committee granted all three requests.

[REDACTED] sought special leave to introduce further evidence through a written victim impact statement and oral testimony by the victim. [REDACTED] argued that this evidence would demonstrate the impact that the teacher's actions had on the student and the school community and that the evidence could not have been presented to the hearing committee even with the exercise of reasonable diligence. He explained his decision not to call Student X at the hearing by the hearing committee of the Professional Conduct Committee, citing a strong desire to ensure the anonymity of Student X and to avoid raising emotional trauma which would surely result from [REDACTED] having to write or think about the events once again.

C Finnie argued that the evidence was available at the time of the hearing and that his actions since being charged had been aimed at minimizing any further hardship for Student X. He argued that according to section 53 of the *Teaching Profession Act*, the appeal hearing should be based on the transcript and that the request to introduce additional evidence arose from Student X's dissatisfaction with the penalty imposed.

After deliberation, the committee granted special leave to [REDACTED] to introduce the further evidence. The committee decided that the victim's testimony and victim impact statement were not available at the time of the original hearing, in the sense that there were valid reasons for the

information not being submitted. Given [redacted] experiences with C Finnie, Student X did not want to participate in the hearing before the Professional Conduct Committee. The committee also felt that the additional evidence could be significant in the determination of penalty.

The committee received the victim impact statement signed by Student X (Exhibit 2). Student X was sworn in and provided testimony on the impact of the events both at the time they occurred and subsequently. Student X felt pressured to stay after school and meet there on Sunday, [redacted] was encouraged by C Finnie to lie to [redacted] family and friends to protect his employment and his marriage, [redacted] felt that [redacted] was going against [redacted] morals, and [redacted] felt estranged from [redacted] family and friends. Student X has had to seek counselling to deal with familial and relationship issues, [redacted] has experienced problems in [redacted] relationships with [redacted] in terms of honesty and trust. C Finnie declined the opportunity to cross-examine the witness.

SUBMISSION OF THE APPELLANT

[redacted] restated the arguments presented at the initial hearing and he quoted from the letter of appeal submitted by [redacted] on behalf of Provincial Executive Council. [redacted] concluded his presentation by asking that the penalty be varied and that membership in the Association be cancelled and that a recommendation be sent to the minister of learning to cancel C Finnie's teaching certificate.

SUBMISSION OF THE RESPONDENT

C Finnie stated at the outset that he was surprised that Provincial Executive Council could appeal the penalty. C Finnie argued that the hearing committee of the Professional Conduct Committee had heard the evidence in this case and that it had ruled on it. He then reread the statement that he had presented at the initial hearing.

DECISION OF THE COMMITTEE

The Professional Conduct Appeal Committee decided to vary the penalty of the hearing committee of the Professional Conduct Committee by cancelling C Finnie's membership in the Alberta Teachers' Association and recommending to the minister of learning that C Finnie's teaching certificate be cancelled.

REASONS FOR DECISION

1. C Finnie's actions were not considerate of Student X's circumstances, he failed to treat Student X with dignity and respect, and in so doing brought dishonour to the profession.

2. The committee considered six factors in assessing the appropriateness of the penalty:
 - The nature of the incidents
 - The frequency of the incidents and the duration of the relationship
 - The impact on the victim
 - Specific deterrence to C Finnie
 - General deterrence
 - Protection of the public interest

Based on its review of these factors, the committee found that the penalty was insufficient.

3. In addition, the committee reviewed precedent cases and found them supportive of the increased penalty.

Dated at the City of Edmonton in the Province of Alberta, Monday, January 13, 2003.

THE PROFESSIONAL CONDUCT APPEAL COMMITTEE
OF THE ALBERTA TEACHERS' ASSOCIATION

[REDACTED]

[REDACTED]