

PRACTICE REVIEW HEARING COMMITTEE

HEARING DECISION IN THE MATTER OF MICHAEL CLEMENT DIDUCK

**HEARING HELD ON OCTOBER 22, 2018
EDMONTON, ALBERTA**

The Practice Review Hearing Committee (the “Committee”), established in accordance with section 7 of the *Practice Review of Teachers Regulation*, Alberta Regulation 11/2010 (the “*Regulation*”), convened to hear a complaint about the alleged unprofessional conduct of Michael Clement Diduck (the “Teacher”).

The following were Members of the Committee:

- [REDACTED], Chair, Teacher Member;
- [REDACTED], Teacher Member; and
- [REDACTED], Public Member.

The hearing was held on Monday, October 22, 2018 commencing at 9:48 a.m. at the 44 Capital Boulevard Building, 10044 108 Street, Edmonton, Alberta.

In addition to the Committee, the following individuals were present at the hearing:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

PRELIMINARY MATTERS

The Teacher was neither represented nor in attendance at the hearing.

The Registrar’s Representative submitted several pieces of documentary evidence to confirm service of required notifications to the Teacher:

1. Letter to the Chair of the Practice Review Hearing Committee, dated September 10, 2018, notifying the Chair that after multiple attempts to locate and serve the Teacher with the Registrar’s Notice of Decision, dated March 12, 2018, the Teacher had not been served.
2. Evidence of service of the Registrar’s Notice of Decision and Investigation Report, via an acknowledgment of receipt letter, dated September 17, 2018, signed by the Teacher and the serving Investigator, [REDACTED]
3. Letter to the Chair of the Practice Review Hearing Committee, dated September 21, 2018, notifying the Chair that the Teacher had been served on September 17, 2018, with Registrar’s Notice of Decision, and Reasons for Decision.
4. E-mail dated October 3, 2018, from [Name redacted] who assisted with locating the Teacher. The e-mail included an attached copy of a letter from the Teacher, dated September 18, 2018. The Teacher’s letter:

- a. notified the Registrar of the Teacher's receipt of the Notice of Hearing;
- b. requested permission to have his Alberta teaching certificate [Number Redacted] relinquished; requesting a closed hearing in consideration of any embarrassment the hearing may cause to his elderly parents; and
- c. advising that he would not attend the said hearing.

Section 22 of the *Regulation* provides that the Committee may, on proof of service of the Notice of Hearing on the Teacher, proceed with the hearing in the absence of the Teacher and act, decide and report on the matter being heard in the same way as if the Teacher were in attendance. The Committee reviewed the evidence of service and concluded that the Teacher had been served with the Notice of Hearing and was aware of the proceedings. The Committee concluded that the hearing should proceed in his absence.

The Chair made introductions of the Committee Members, all individuals party to the hearing, and all those in attendance. There were no objections to the composition of the Committee from the Registrar's Representative.

The Chair confirmed dates of service of the Notice of Hearing and the materials disclosed to both the Teacher and the Office of the Registrar. All dates were verified and no objections were raised from the Registrar's Representative.

The Committee approved the entry of a binder containing the Registrar's Materials, which had been distributed in advance to the Teacher, as Exhibit "A" for the purposes of this proceeding.

The Chair accepted each of the pieces of documentary evidence relating to evidence of service, as noted above, as a package. The Committee approved the entry of this package as Exhibit "B".

The Registrar's Representative had no objections to the Teacher's request for a closed hearing.

The Committee considered the request of the Teacher that the hearing be closed on the basis that the hearing would cause embarrassment to his elderly parents. Section 19(2) of the *Regulation* provides that a hearing must be open to the public but allows the Committee to close the hearing if the complainant requests the hearing to be closed because of the confidential nature of the matters to be heard or if, in the opinion of the Committee, the interest of any person other than the Teacher may be detrimentally affected if the hearing is not held in private.

The Teacher requests the hearing to be closed because of embarrassment to his parents. In the view of the Committee, this is not a sufficient reason for the hearing to be closed. The nature of such hearings is such that embarrassment may be caused to a teacher or to his or her family members. Under the *Regulation*, the default is for hearings to be open to the public. This reflects the importance of transparency and accountability to the public in professional discipline hearings. Embarrassment is not a sufficient reason to close a hearing. The Committee noted that in this case no members of the public were present, but that the principles of transparency and accountability would still apply as overriding the Teacher's request to close the hearing.

ALLEGATIONS

The allegations in the Registrar's Notice of Decision were referred to the Committee for a hearing:

- (A) A conviction under section 253(1)(b) of the *Criminal Code of Canada* for consuming over 80 milligrams of alcohol on October 1, 2013.

- (B) A conviction under section 334(b) of the *Criminal Code of Canada* for theft of money on June 4, 2015.
- (C) A conviction under section 355(b) of the *Criminal Code of Canada* for the possession of stolen property on July 27, 2015.
- (D) A conviction under section 342(1)(c) of the *Criminal Code of Canada* for possession of stolen credit cards on July 27, 2015.
- (E) A conviction under section 56.1 of the *Criminal Code of Canada* for possession of fraudulent identity documents on January 27, 2015.
- (F) A conviction under section 430(1)(a) of the *Criminal Code of Canada* for mischief on July 27, 2015.
- (G) A conviction under section 4(1) of the *Criminal Drug and Substance Act* for being in possession of a controlled substance on August 2, 2015.
- (H) A conviction under section 91(2) of the *Criminal Code of Canada* for possession of a prohibited weapon on October 11, 2015.
- (I) Three convictions under section 145(3) of the *Criminal Code of Canada* for failure to comply with a condition or order issued by the Court twice on August 2, 2015 and October 11, 2015.
- (J) Three convictions under section 733.1(1) of the *Criminal Code of Canada* for failure to comply with a probation order on October 11, 2015, and twice on March 4, 2016.
- (K) A conviction under section 145(5) of the *Criminal Code of Canada* for failure to attend Court for which a warrant was issued on June 1, 2016.

EXHIBITS

The following were entered as Exhibits in the hearing:

- A. Exhibit A – Registrar’s materials binder titled “Registrar Materials” with tabs 1 to 10;
- B. Exhibit B – Package of the following documents:
 - 1) Letter to the Chair of the Practice Review Hearing Committee, dated September 10, 2018.
 - 2) Acknowledgment of receipt letter dated September 17, 2018.
 - 3) Letter to the Chair of the Practice Review Hearing Committee, dated September 21, 2018.
 - 4) E-mail dated October 3, 2018, from [Name Redacted] and attached letter dated September 18, 2018 from the Teacher.

MANDATE OF THE COMMITTEE

The mandate of the Committee is to hear the evidence presented with respect to the complaint about the alleged unprofessional conduct of the Teacher, to determine whether the Teacher’s actions constitute unprofessional conduct, as defined under section 24 of the *Regulation* and, if so, to make recommendations under section 25 of the *Regulation*, as noted below.

Unprofessional conduct

24(1) The practice review hearing committee

- (a) may find the conduct of a teacher to constitute unprofessional conduct if, in the opinion of the practice review hearing committee, that conduct is

- (i) detrimental to the best interests of students, the public or teachers generally, or
 - (ii) does not meet the professional conduct requirements,
- and
- (b) must find the conduct of a teacher to constitute unprofessional conduct if that conduct is the basis for a conviction for an indictable offence.

(2) Where a teacher has been convicted of an indictable offence, a practice review hearing committee shall make a recommendation to the Minister under section 25(1)(b) and has no authority to investigate the conduct of the teacher on which the conviction is based except for the purpose of making a recommendation to the Minister.

Recommendations of practice review hearing committee

25(1) If a practice review hearing committee

- (a) does not find that a teacher is unskilled or incompetent in teaching or does not find that the conduct of a teacher constitutes unprofessional conduct, the practice review hearing committee may recommend that the Minister dismiss the complaint, or
- (b) finds that a teacher is unskilled or incompetent in teaching or that the conduct of a teacher constitutes unprofessional conduct, the practice review hearing committee may recommend that the Minister do one or more of the following:
 - (i) serve a letter of reprimand on the teacher who is the subject of the complaint;
 - (ii) suspend the certificate of the teacher who is the subject of the complaint, with or without conditions;
 - (iii) cancel the certificate of the teacher who is the subject of the complaint or cancel the certificate and issue a certificate of a different class, with or without conditions;
 - (iv) order that the teacher who is the subject of the complaint be ineligible for a certificate for a definite or indefinite period of time, with or without conditions.

(2) If the decision of a practice review hearing committee

- (a) relates to a teacher who has been convicted of an indictable offence, and
- (b) does not contain a recommendation that the Minister cancel or suspend the certificate of the teacher,

the decision must include reasons why such a recommendation has not been made.

BACKGROUND

The Teacher:

- Currently holds a Permanent Professional Certificate in Alberta, issued to him on July 8, 1988;
- Pursuant to the *Criminal Code of Canada* was convicted of:
 - Section 253(1)(b) on August 28, 2014,
 - Section 145(3) on August 26, 2015 – two counts,
 - Section 334(b) on January 14, 2016,
 - Section 355(b) on January 14, 2016,

- Section 342(1)(c) on January 14, 2016,
- Section 56.1 on January 14, 2016,
- Section 430(1)(a) on January 14, 2016,
- Section 91(2) on January 14, 2016,
- Section 145(3) on January 14, 2016,
- Section 733.1(1) on January 14, 2016;
- Pursuant to the *Controlled Drugs and Substances Act* was convicted of:
 - Section 4(1) on August 27, 2015; and
- At the time of the investigation and pursuant to the *Criminal Code of Canada*, had warrants issued against him in relation to violations of the following sections:
 - Section 733.1(1) – charged on March 4, 2016
 - Section 733.1(a) – charged on March 4, 2016
 - Section 145(5) – charged on June 1, 2016.

POSITIONS OF THE PARTIES

Registrar's Representative:

- The Registrar was alerted to possible criminal activity by the Teacher based on an inquiry made to the Office of the Registrar by the Royal Canadian Mounted Police (RCMP).
- Based on the concerns expressed by the RCMP and pursuant to section 12(1)(b) of the *Regulation*, the Registrar appointed an investigator to investigate this matter.
- Based on the findings in the investigator's report, the Registrar rendered his decision dated March 12, 2018, referring the matter to a Practice Review Hearing Committee.
- The Teacher has a total of fifteen convictions (including the warrants) over a period of three years. The Registrar is of the opinion that the Teacher's convictions are serious and multiple in nature, and they constitute a breach of section 5 of the *Schedule* to the *Regulation*, in particular section 5. The *Schedule* states:

Professional Conduct Requirements for Teachers

The conduct of a teacher, both on and off duty, bears directly on the community's perception of the ability of teachers to fulfill their unique position of trust and influence. Society and the school community hold teachers to a high standard of conduct. Teachers are expected to conduct themselves with due regard to the honour, dignity, welfare, rights and best interests of students, parents, colleagues, their employer and the teaching profession.

5 In relation to the teaching profession, the teacher is required

- (a) to conduct himself or herself in a manner that maintains the honour and dignity of the profession, and
 - (b) not to engage in activities that adversely affect the quality of the teacher's professional service.
- The Registrar recognizes that the Court did not proceed by indictment with the Teacher's convictions. However, the Registrar is of the view that all Teachers are required to conduct themselves with due regard to the honour, dignity, welfare, rights and best interests of students, parents, colleagues, employers, and the teaching profession, and through his criminal activities the Teacher breached his position of trust.

- The Registrar requests that the Committee make a finding of unprofessional conduct by the Teacher in this circumstance. The Registrar asks that the Committee recommends to the Minister of Education that the Teacher’s certificate be cancelled.

Teacher:

The Teacher did not make submissions at the hearing, as he was not present. He did, however, provide the following information in his letter to the Registrar and cc’d to the Secretary (part of Exhibit “B”):

- an acknowledgment of his receipt of the Registrar’s Notice of Decision, the Investigation Report, and the Notice of Hearing;
- a request for permission to voluntarily “relinquish [his] teaching certificate”;
- an account of his abuse of alcohol and its consequences on his life;
- an expression of shame and embarrassment related to his legal issues and the effects of his actions on his “family, friends and members of the teaching community”;
- an acknowledgment that his criminal actions reflect poorly on the values upheld by the teaching profession; and
- a description of the current positive improvements in his life.

COMMITTEE’S FINDINGS

After due deliberation and consideration of the evidence and submissions before it, and in accordance with section 24(1)(a)(i) and 24(1)(a)(ii) of the *Regulation*, the Committee finds:

Mr. Michael Clement Diduck is guilty of unprofessional conduct as his conduct was the basis for numerous convictions under the *Criminal Code of Canada*, and one conviction under the *Criminal Drug and Substance Act*.

DECISION AND RECOMMENDATION

After due deliberation and consideration of the evidence before it, and in accordance with section 24(1)(a)(i) and 24(1)(a)(ii) of the *Regulation*, the Committee finds that Mr. Michael Clement Diduck’s conduct constitutes unprofessional conduct.

Based on this finding, and in accordance with section 25(1) of the *Regulation*, the Committee recommends to the Minister of Education that Mr. Michael Clement Diduck’s Alberta Permanent Professional Certificate be cancelled.

COMMITTEE’S REASONS

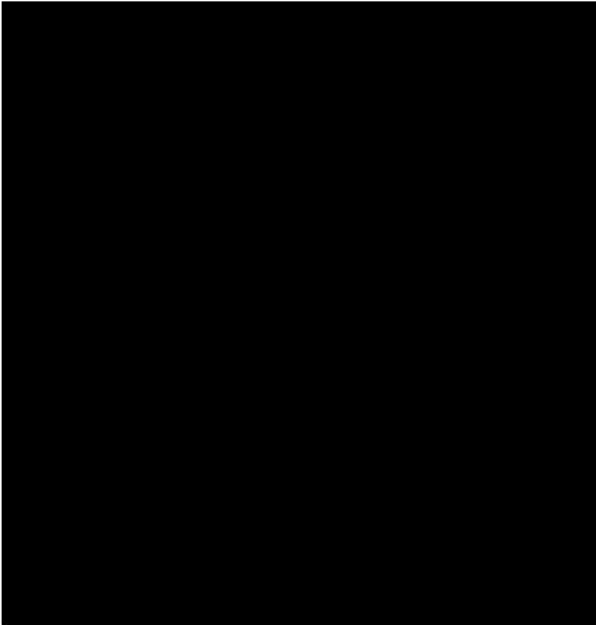
The Committee heard uncontested evidence from the Registrar’s Representative that the Teacher had been convicted of fifteen offences under the *Criminal Code of Canada* and the *Criminal Drug and Substance Act*. In his letter, the Teacher did not contest these facts.

The Teacher in this hearing engaged in criminal activities on multiple occasions and was convicted of multiple offences while in possession of his teaching certificate. The convictions were serious and related to drug offences, theft, possession of stolen property, credit cards, and fraud identity documents, possession of a prohibited weapon and failures to comply with a condition, order, and probation and failure to appear in court.

The Teacher’s conduct consisted of repeated offences over a significant period of time. Such conduct seriously undermines the honour and integrity of the profession.

The Committee is of the opinion that while the Teacher was not employed as a teacher at the time of his convictions he is the holder of an Alberta Permanent Professional Certificate which requires him to comply with the *Regulation* including the *Schedule* that sets out professional conduct requirements for teachers. The Committee is of the view that the Teacher acted in contravention of section 5 of the *Schedule* and that cancellation is appropriate in this case.

The Teacher's ongoing and repeated criminal offences over a period of time show a disregard for the integrity of the profession. The Committee further considered the Teacher's proposal to relinquish his teaching certificate in determining that a recommendation to cancel his Certificate is appropriate in this case. The Committee notes the Teacher's comments that he has re-established himself in his community and is now sober and commends him for taking these positive steps.



December 4, 2018

Date

December 4, 2018


Date

December 4, 2018

Date

OPTION TO APPEAL – NOTICE TO MICHAEL CLEMENT DIDUCK

In accordance with section 28 of the *Regulation*, within fifteen (15) days of receipt of this decision, you may appeal to the Practice Review Appeal Committee. The appeal must be in writing and must describe the finding or recommendation, or both, being appealed and state the reasons for the appeal. The appeal must be addressed to:

The Chair, Practice Review Appeal Committee
c/o 
44 Capital Blvd., 10044 – 108 Street
Edmonton, Alberta T5J 5E6