

**PRACTICE REVIEW HEARING COMMITTEE**

**HEARING DECISION IN THE MATTER OF JAMES (JIM) MILO HIGGS**

**HEARING HELD ON APRIL 11, 2019  
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 James (Jim) Milo Higgs (the “Teacher”).

The following were Members of the Committee:

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

The hearing was held on Thursday, April 11, 2019 commencing at 10:02 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] |
| ■ [REDACTED] | [REDACTED] |
| ■ [REDACTED] | [REDACTED] |
| ■ [REDACTED] | [REDACTED] |
| ■ [REDACTED] | [REDACTED] |
| ■ [REDACTED] | [REDACTED] |

**PRELIMINARY MATTERS**

The Teacher was present at the commencement of the hearing, along with [REDACTED] who acted as support but [REDACTED] did not make any submissions during the hearing.

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 or the Teacher.

During these preliminary comments, the Teacher raised that he felt it was unfair that the Committee had legal counsel and he did not, because he did not have the funds to hire his own lawyer. This concern was noted by the Chair and the Chair explained the role of independent legal counsel to the Committee to the Teacher.

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. No objections were raised from the Registrar’s Representative or the Teacher.

The hearing was open to the public, and members of the public were present for portions of the hearing. The Registrar's Representative requested that one witness be able to be called by telephone, and the Teacher agreed that the witness could be called by telephone.

## ALLEGATIONS

The allegation in the Notice of Decision (Exhibit "B", tab 7) was referred to the Committee for a hearing:

- (A) On April 28, 2017, the Teacher demonstrated unprofessional conduct when he inappropriately reached out and firmly grabbed the right buttocks of a staff member at [School Redacted].

## EXHIBITS

The Committee approved the entry of the following Exhibits submitted by the Registrar's Representative:

- Exhibit "A" Notice of Hearing dated January 25, 2019
- Exhibit "B" Binder of Registrar's Materials entitled "Practice Review Committee – Registrar Materials"

The Teacher had no objections to the entry of these Exhibits.

Although the Teacher had provided documents to the Secretary to the Committee in advance of the hearing, the Teacher chose not to enter those documents into evidence or refer to them, and so those documents were not reviewed or considered by the Committee.

## 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.

“Unprofessional conduct” is also defined in the *Regulation* as follows:

#### **Unprofessional conduct**

**2** Conduct that

- (a) is detrimental to the best interests of students, the public or teachers generally,
- (b) does not meet the professional conduct requirements, or
- (c) is the basis for a conviction for an indictable offence

constitutes unprofessional conduct.

### **BACKGROUND**

The Teacher currently holds a Permanent Standard E Certificate [Number Redacted] as evidenced by the letter dated April 6, 1972 in Exhibit “B”, Tab 1.

Further submissions and information about the Teacher’s teaching authority and why the Teacher remains subject to regulation by the Committee was addressed by the Registrar’s Representative in her submissions, outlined below.

## POSITIONS OF THE PARTIES

### Registrar's Representative:

- The Registrar's Representative advised that she would be addressing her presentation as follows:
  - Evidence of the Teacher's teaching authority;
  - Why his conduct continues to be subject to regulation;
  - Background of the complaint (including the evidence from 4 witnesses);
  - Closing submissions; and
  - Recommendation.

#### *Evidence of the Teacher's Teaching Authority*

- The Teacher currently holds a Permanent Standard E Certificate [Number Redacted] as evidenced by the letter dated April 6, 1972 in Exhibit "B", Tab 1.
- The Registrar's Representative went through the *Certification of Teachers Regulation*, Alberta Regulation 3/1999, which includes a Schedule which outlines Equivalent Certificates. At pages 18-19 of that *Regulation*, a "Permanent Standard E Certificate", as held by the Teacher, is noted in the Schedule. The Registrar's Representative submitted that the Teacher's certification is equivalent to a Permanent Professional Certificate in Alberta.
- The Registrar's Representative identified that once there is a valid teaching certificate, that person will enter the ranks of being considered a teacher. Then, the Teacher's competency and conduct are governed by the *Regulation* and the teacher is considered a professional.

#### *Conduct Subject to Regulation*

- The Registrar's Representative then reviewed the *Regulation* (Exhibit "B", Tab 9) and in particular, identified that so long as a teacher holds a certificate, they are subject to the *Regulation*.
- In this case, the Teacher was no longer employed with an accredited authority under the *School Act* but was conducting classroom presentations in schools across the province.
- Due to the fact that the Teacher holds a certificate but does not fall under the *School Act*, RSA 2000, c. S-3, the *Regulation* governs his conduct.
- The Registrar's Representative stressed certain portions of the *Regulation*, including:
  - Section 9(1) of the *Regulation*, which allows that "Any individual may make a complaint to the Registrar about the professional competence or alleged unprofessional conduct of a teacher"; and
  - Section 9(4) of the *Regulation*, which states that a complaint against a teacher may be made "about the alleged unprofessional conduct of a teacher at any time." The Registrar's Representative submitted that this section of the *Regulation* means that there is no statute of limitations on making a complaint against a teacher under the *Regulation* – that a complaint can be made at any time, as long as the teacher holds valid certification in Alberta.

### *Background of the Complaint*

- The Registrar’s Representative began by taking the Committee to Exhibit “B”, Tab 2, where the complaint, dated June 2, 2017, was included (“the Complaint”).
- The Complaint was made by [Name Redacted], the Principal of [School Redacted], which is a private school in [Location Redacted].
- [Name Redacted] wrote in the complaint that:
  - “On April 28<sup>th</sup> while presenting to students at [School Redacted] on behalf of the [Group redacted], Mr. Jim Higgs inappropriately grabbed a member of [School Redacted] staff on [gender redacted] buttock.”
- After the Complaint was received, the Registrar referred an allegation stemming from the Complaint to an investigation by a Notice of Decision dated July 26, 2017 (Exhibit “B”, Tab 4). It was the Registrar’s opinion that “the allegations presented in the complaint, set out in paragraph 1(a) is of a serious nature and should be referred to investigation”.
- On July 26, 2017, [Name Redacted], an investigator with the Governance and Investigations Branch of the Office of the Registrar was appointed by the Registrar (Exhibit “B”, Tab 5).
- On June 11, 2018, [Name Redacted] completed [Gender Redacted] investigation and submitted an Investigation Report (Exhibit “B”, Tab 6).
- The Registrar’s Representative identified the following highlights from the Investigation Report:
  - On page 14/14 of the Investigation Report, [Name Redacted] outlined [Gender redacted] conclusions which were essentially that [Name Redacted] and [Name Redacted], employees of [School Redacted], both witnessed the event but that the Teacher denied the allegations;
  - The Investigation Report also includes within it the [School Redacted] Incident Report (Exhibit “B”, Tab 6, pp. 42-44) which contains a description of the incident;
  - The investigator [Name Redacted] also spoke to an independent witness, [Name Redacted], who watched the event unfold; and
  - The Registrar’s Representative identified that the Teacher’s response to the questions of the investigator were inappropriate and unusual as:
    - The Teacher first denied knowing [Name Redacted] (pp. 9, 12);
    - The Teacher denied remembering the person who resolved the computer issue when he clearly remembered a computer issue (p.10);
    - The Teacher allegedly “chuckled” and denied the allegation to the investigator (p. 12);
    - The Teacher and his friend [Name Redacted] (another teacher at [school redacted]) had a conversation about another young student in the class who had [Medical Information Redacted] who may have grabbed [Name Redacted] and that he and [Name Redacted] had spent a lot of time going over possibilities of what could have happened (p. 12); and
    - The Teacher chuckled again during the investigator’s questions (p. 13) and again denied that the incident occurred (p. 13).
- On June 12, 2018, the Registrar signed a Notice of Decision, referring this matter to a hearing (Exhibit “B”, Tab 7).

*Witness 1: [Name Redacted]*

- [Name Redacted] was sworn in at 10:40 am.
- During the direct examination of [Name Redacted] by the Registrar's Representative, [Name Redacted] gave the following evidence:
  - [Gender Redacted] advised that [Gender Redacted] current position is an Education Assistant ("EA") with [school redacted].
  - During the time in question, [Gender Redacted] was a learning facilitator (for about 2 years) with [school redacted].
  - [Gender Redacted] identified the Teacher as the individual who [Gender Redacted] met on April 28, 2017 when he attended at [school redacted] to present on the fur trade.
  - [Gender Redacted] had not met him before this incident.
  - [Name Redacted] was working in another classroom but had been sought by [Name Redacted], a teacher at [school redacted], because of [Gender Redacted] technological skills.
  - [Gender Redacted] came into the classroom, was introduced to the Teacher, and had a friendly conversation with him while setting up a computer and attaching it to a television.
  - During the encounter, [Gender Redacted] reported that the Teacher was sitting at a desk and [Gender Redacted] was leaning on the arm of a couch to assist him with the set-up.
  - When the set-up was complete, they both stood up at the same time and at that time, the Teacher firmly and with intention grabbed [Gender Redacted] right buttocks with his left hand.
  - In total, [Gender Redacted] interactions with him were approximately 10-15 minutes in duration.
  - After the touching occurred, [Name Redacted] immediately left the classroom and debriefed with 2 of [Gender Redacted] co-workers, [Name Redacted]. [Gender Redacted] was not sure what to do about the incident, and they advised that [Gender Redacted] call the principal of the school, [Name Redacted].
  - [Name Redacted] then called [Name Redacted], who was off-site that day, to advise what happened.
  - When asked about whether [Gender Redacted] was confident that it was the Teacher who touched [Gender Redacted], rather than another person in the room, [Name Redacted] replied that [Gender Redacted] was confident that it was the Teacher. [Gender Redacted] noted that there were no students around where [Gender Redacted] was sitting, as [Gender Redacted] was on the arm of a couch and the students were all in their desks, not near [Gender Redacted].
  - In terms of the impact of the incident, [Name Redacted] advised that [Gender Redacted] was unsure of what to do, and had never experienced something like that before. It made [Gender Redacted] very uncomfortable and [Gender Redacted] reached out to other colleagues to discuss it. It made [Gender Redacted] not want to be at work that day.
  - [Gender Redacted] noted at the conclusion of [Gender Redacted] testimony that [Gender Redacted] went back into the classroom with the Teacher one time after the incident and then left the classroom again with a student.
- The Teacher was given the opportunity to question [Name Redacted]. He asked [Gender Redacted] whether [Gender Redacted] was positive that [Gender Redacted] was not sitting at the desk at the computer, and [Gender Redacted] responded that [Gender Redacted] was positive.
- The Registrar's Representative was then given an opportunity to re-direct [Name Redacted]. [Gender Redacted] asked whether [Name Redacted] was "absolutely sure" whether it was the Teacher who inappropriately touched [Gender Redacted] buttocks, and [Name Redacted] replied yes.

*Witness 2: [Name Redacted]*

- [Name Redacted] was sworn in at 10:49 am
- During the direct examination of [Name redacted] by the Registrar's Representative, [Name redacted] gave the following evidence:
  - [Gender Redacted] advised that [Gender Redacted] current position is an EA with [School Redacted].
  - [Gender Redacted] advised that [gender redacted] knows the Teacher who was present during the hearing.
  - [gender redacted] met the Teacher when he came to [gender redacted] school on April 28, 2017 to do a presentation on the fur trade, but [gender redacted] had never met him before that day.
  - [gender redacted] was present in the classroom where the Teacher was going to present, and witnessed [Name redacted] come into the classroom to assist with set-up.
  - During the set-up, [Name redacted] observed [Name redacted] helping the Teacher and when the Teacher went to stand up, he grabbed the right side of [Name redacted]' bottom with his left hand.
  - [Name redacted] demonstrated visually how the grab appeared to [gender redacted] and phrased it as "forcefully" or "intentionally" grabbed.
  - After the incident occurred, [Name redacted] remained in the classroom with the students who were still present. [gender redacted] did not stay for the entire presentation by the Teacher but [gender redacted] confirmed that [gender redacted] was present when the incident occurred.
  - [Name redacted] felt that the students were discomfited by it.
  - [gender redacted] noted that [gender redacted] did not believe that [Name redacted] had known that [Name redacted] had viewed the grab, but that [gender redacted] discussed the incident with [Name redacted] afterward in another classroom.
  - [gender redacted] said that [gender redacted] found [Name redacted] to be visibly upset and that [gender redacted] almost immediately reported the incident.
  - The Registrar's Representative ended her direct examination by asking [Name redacted] whether [gender redacted] was confident that it was the Teacher who had touched [Name redacted], not someone else. [Name redacted] confirmed that yes, [gender redacted] was confident it was the Teacher.
- The Teacher was given the opportunity to cross-examine [Name redacted]. He asked [gender redacted] where she was sitting in the classroom. [gender redacted] advised that [gender redacted] was sitting on a couch, and that there were three couches in the classroom. [gender redacted] advised that [gender redacted] was sitting on a couch across from the computer.
- The Registrar's Representative was then given an opportunity to re-direct [Name redacted]. [Redacted] asked [Name redacted] to confirm whether [gender redacted] had a clear view of the incident, which [gender redacted] stated [gender redacted] did. The Registrar's Representative then had [Name redacted] confirm again who [gender redacted] saw grab the buttocks of [Name redacted] that day, and [Name redacted] confirmed that it was the Teacher.

*Witness 3: [Name Redacted]*

- [Name Redacted] was sworn in at 10:56 am.
- During the direct examination of [Name Redacted] by the Registrar's Representative, [Name Redacted] gave the following evidence:
  - [Gender Redacted] advised that [gender redacted] current position is the Principal of [School Redacted].
  - [Gender Redacted] knew [Name Redacted] as an EA who worked at [School Redacted] when [Name Redacted] had started working there.

- On April 28, 2017, the Teacher came to the school to do a presentation on the fur trade. He had been brought in by one of the teachers at [School Redacted] and was associated with the [group redacted].
- On that day, [Name Redacted] was not at the school, [gender redacted] was away at training that day. [gender redacted] had no personal interactions with the Teacher.
- [gender redacted] received a call from [Name Redacted] that day. [gender redacted] described [Name Redacted] as distressed, distraught, and shocked and unsure of what to do next.
- [Name Redacted] advised that [gender redacted] had been in a classroom at the school with the Teacher while setting up a laptop, and he had grabbed [gender redacted] buttock. [Name Redacted]’ aim at this time was to calm [Name Redacted] down so [Name Redacted] did not get more specifics during this call.
- [gender redacted] directed [Name Redacted] to get some emotional support at that time and to emotionally debrief and that they would deal with everything else when [Name Redacted] returned to the school.
- [Name Redacted] left [gender redacted] training and came back to the school that day. When [gender redacted] arrived, [gender redacted] sat down with [Name Redacted] to decide what to do and how [gender redacted] wanted to record the incident.
- [Name Redacted] chose to complete an Incident Report (Exhibit “B”, Tab 6, page 42) which [Name Redacted] reviewed during [gender redacted] testimony. [Name Redacted] noted that this was in [gender redacted] handwriting, as [gender redacted] wrote the report, although it was [Name Redacted]’ words. [gender redacted] noted that they recorded it as quickly as possible after the incident.
- After the report was complete, [Name Redacted] signed it first, then [Name Redacted] signed it, then [Name Redacted] signed it.
- Twice during [gender redacted] direct examination, the Registrar’s Representative asked [Name Redacted] if [gender redacted] had any reason to believe that [Name Redacted] was making up the story or that the story was inaccurate or untruthful. [Name Redacted]’ response both times was no.
  - The Teacher was given an opportunity to cross-examine [Name Redacted], but he chose not to.
  - There were no further questions for [Name Redacted].

*Witness 4: [Name Redacted]*

- [Name Redacted] was sworn in at 11:18 am and gave [gender redacted] evidence over the telephone. The Teacher did not object to [Name Redacted] giving [gender redacted] evidence in this manner.
- During the direct examination of [Name Redacted] by the Registrar’s Representative, [Name Redacted] gave the following evidence:
  - [gender redacted] advised that [gender redacted] role was senior investigator with the Investigation and Governance Unit and [gender redacted] was appointed by the Registrar in July 2017 to investigate a complaint made against the Teacher.
  - [Name Redacted] has been an investigator with the Alberta Government since [date redacted], investigating criminal and regulatory matters. Previous to that, [gender redacted] [occupation redacted].
  - The Registrar’s Representative ensured that [Name Redacted] was reviewing the same document as the individuals present at the hearing and asked [gender redacted] to identify the date of [gender redacted] Investigation Report, which was dated June 11, 2018 (Exhibit “B”, Tab 6).

- Registrar [REDACTED] appointed [Name Redacted] to investigate the Teacher's conduct with respect to the incident.
  - [Name Redacted] did not feel that the Teacher took responsibility for his actions, because he denied that the incident ever happened to [gender redacted] during [gender redacted] interview with him.
  - [Name Redacted] testified that the Teacher told her an alternate theory of what may have occurred. The Teacher told [Name Redacted] that there was a student in the class who had [medical information redacted] who was sitting in the vicinity of [Name Redacted] and the Teacher felt that this student had probably grabbed [Name Redacted]' buttocks.
  - [Name Redacted] testified that the Teacher had come to that theory, by his own telling, by speaking to [Name Redacted] after the incident. [Name Redacted] had proposed this theory because he knew this student had issues.
  - [Name Redacted] was asked if it was [Gender Redacted] perception that the Teacher took the allegation against him seriously during [gender redacted] investigation, and [gender redacted] advised that [gender redacted] felt that he did not. [gender redacted] noted that during the investigation, he had "chuckled" and said that the incident did not happen.
  - [Name Redacted] interpreted the chuckling from the Teacher as him taking the complaint flippantly. [Name Redacted] felt that he was acting this way because he was not aware that [Name Redacted] had spoken to another credible witness [Name Redacted] who had independently witnessed the incident. [gender redacted] thought that at this point, the Teacher believed this was a "my word against [gender redacted]" situation.
- The Teacher was given an opportunity to cross-examine [name redacted]. He asked [name redacted] to define the term "chuckle". [name redacted] responded with [gender redacted] definition: "sort of a grin and not really laughter but kind of an unbelievable chuckle". The Teacher advised that he had looked up the definition of chuckle ("a quiet laugh") and he advised that he did anything but laugh. He stated that the sound he made was an "indignant, disbelieving snort", not a laugh.
  - The Registrar's Representative was given an opportunity to re-direct [name redacted] but had no further questions for this witness.

### *Closing Submissions*

- The Registrar's Representative began her closing submission by highlighting the following evidence which was before the Committee:
  - The documentary evidence, including the Investigation Report and the complaint;
  - The sworn, in-person testimony of [name redacted], who testified that [gender redacted] did not know the Teacher prior to the incident occurring on April 28, 2017 and testified clearly that [gender redacted] buttocks had been grabbed by the Teacher;
  - The sworn, in-person testimony of [name redacted], who testified that [gender redacted] was a firsthand witness to the Teacher grabbing the buttocks of [name redacted];
  - The sworn, in-person testimony of [name redacted], who filed the Incident Report; and
  - The sworn, telephone testimony of [name redacted], a seasoned investigator, who provided [gender redacted] account based on [gender redacted] findings.
- The Registrar's Representative submitted that given the above, there was overwhelming evidence, based on reasonableness, that the Teacher did in fact engage in unprofessional conduct when he inappropriately touched the buttocks of [name redacted] while [gender redacted] was helping him to set up the computer.

- This conduct, according to the Registrar’s Representative, is a breach under the *Regulation*. She identified two areas where she felt the breach was clear:
  - Section 2 of the *Regulation* defines “unprofessional conduct”.
  - She noted section 2(b) of the *Regulation* in particular, which states that conduct that “does not meet the professional conduct requirements” constitutes unprofessional conduct.
  - She drew the Committee’s attention to the Schedule at the back of the *Regulation* (Exhibit “B”, Tab 9, page 80) and read from the preamble to the “Professional Conduct Requirements for Teachers”, highlighting the following:
    - The requirements are for “conduct of a teacher, both on and off duty” – this means that teachers are held to these standards at all times, as long as they hold a teaching certificate, which the Teacher does hold.
    - That society and the school community hold teachers to “a high standard of conduct” and 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”.
- Therefore, the Registrar’s Representative submitted that (a) the conduct that formed the allegation did in fact occur and (b) that the conduct was unprofessional conduct under the *Regulation*.
- The Registrar’s Representative added that in [REDACTED] view, the additional conduct of denying that the Teacher knew [Name Redacted], that his construction of an alternate theory, that he “chuckled” at the investigator’s questions in the investigation of this matter were all additionally inappropriate actions in this case.
- The Registrar’s Representative asked the Committee to make a finding of unprofessional conduct on the basis that this conduct was serious, inappropriate, detrimental to students, colleagues, and the teaching profession.

### *Recommendation*

- The Registrar’s Representative requested that if the Committee was to find unprofessional conduct in this instance, that the Committee recommend the following to the Minister:
  - That the Minister suspend the Teacher’s teaching certificate for a 6 month period; and
  - That the Minister add the following condition to the Teacher’s re-application for a teaching certificate: should the Teacher seek reinstatement of his suspended certificate, he should first provide evidence to the Registrar of successful completion of training around respect in the workplace, gender bias training, workplace safety training, or training that shows he can challenge his own views about why he took these actions and that he must seek the approval of the Registrar prior to taking that training. Once the training is complete, he would also need to submit to the Registrar with his application for reinstatement a personal statement of how the training affected him.
- With these concluding recommendations, the Registrar’s Representative rested [REDACTED] case.

**Teacher:**

- Prior to making his submissions, the Chair asked whether the Teacher intended to provide evidence on his own behalf. The Teacher confirmed that he would. The Chair then requested that the Teacher be sworn in, and he agreed and was sworn in at 11:35 am.
- The Teacher began by confirming that on April 28, 2017, he was present at [School Redacted] to do a presentation. Part of the presentation involved a slide presentation that required a computer.
- [Name Redacted] was assisting the Teacher in setting up the computer and the Teacher acknowledged that [name redacted] was the one who arrived to assist, due to being asked by [name redacted].
- The Teacher stated that he recognized the seriousness of this allegation and does not believe that [name redacted] is lying about what occurred. Somewhere along the line [gender redacted] backside was touched, but the Teacher was adamant that it was not him.
- The fact that the Teacher was not advised about the complaint until a month later – June 15, 2017 – was upsetting to him. He received a notice that just said “inappropriate touching” and that it related to [school redacted].
- During his testimony, the Teacher noted some discrepancies with the evidence as presented by the Registrar’s Representative:
  - The Registrar’s Representative identified a number of times to the Committee that the Teacher denied ever meeting or knowing [name redacted]. The Teacher wished to correct this on the record.
  - When he stated to [name redacted] that he did not “know” [name redacted], what he meant was that he had never met [gender redacted] before and did not know [gender redacted] name.
- The Teacher also noted a number of issues that he had with the witnesses’ testimony that was given during the hearing:
  - During [gender redacted] testimony and in [gender redacted] Investigation Report, [name redacted] noted that the Teacher “chuckled”. The Teacher stated, a number of times, that when he was advised of the allegations and again when he saw the phrase “grab [gender redacted] ass”, he snorted because he was thoroughly shocked and could not believe it. He did not chuckle or laugh, he was appalled and in disbelief.
  - The Teacher could not understand how [name redacted] could tell, sitting across the room, that he firmly grabbed “anyone’s anything”.
  - The Teacher stated that in [name redacted]’ sworn testimony that [gender redacted] stated that [gender redacted] did not re-enter the classroom where the Teacher was presenting. However, he noted that in the Investigation Report, [gender redacted] had said [name redacted] was attempting to get his attention. He noted that he did not believe that [gender redacted] did come back into the classroom, so that could not have occurred.
  - The Teacher noted that the hearing was occurring nearly 2 years after the fact which may have made witness testimony less clear. He was also notified of the complaint nearly two months after it occurred.
  - [name redacted] was not called as a witness, either by the Registrar’s Representative or by the Teacher and the Teacher questioned why he had not been called by the Registrar’s Representative.
- The Teacher relayed that he had already invited [name redacted] and [personal information redacted] over for dinner on the evening of the day of the incident and that when [name redacted] arrived, he told the

Teacher about the allegation. The Teacher was totally shocked. [Name Redacted] told him of the allegation in front of his wife. That evening, the Teacher and [Name Redacted] sat down together and tried to figure out what had happened. They had no idea. According to what [Name Redacted] told the Teacher, the following Monday, [Name Redacted] “read [gender redacted] the riot act” for [Name Redacted] telling the teacher details about the incident, and forbade any further contact between [Name Redacted] and the Teacher.

- Twice during his testimony, the Teacher made note that he was [age redacted] years old and does not currently need a teaching certificate. He was not attending the hearing to defend his teaching certificate, he was defending his reputation.
- The Chair adjourned the hearing for a lunch break at 11:50 am and re-convened the hearing at 12:34 pm.
- After the adjournment, the Teacher continued. He thanked everyone for their attendance, identified that he was here to defend his reputation, not his teaching certificate, and concluded that the hearing was a “waste of my time”.
- He expressed that he believed that the Registrar’s Representative has already made up [gender redacted] mind about his guilt and he would live with that. He advised that he could stand before God as his judge, and placed the decision back into the hands of the Committee.
- He told the Committee not to waste any further time on the hearing and that he agonized over these allegations, woke up in the middle of the night almost in tears, and again reiterated that he was offended that he was accused of laughing at the situation, which he acknowledged was very serious.
- The Teacher concluded his remarks.

## Registrar’s Response

- The Registrar’s Representative began [gender redacted] response by highlighting that the Teacher did not deny that the incident occurred, he was just suggesting that it was not him who touched [name redacted].
- [gender redacted] identified that this was not a reasonable conclusion to draw from the evidence, and started to speak about the witnesses’ evidence that was before the Committee.

At this juncture, the Teacher interrupted and advised that he was leaving the hearing. He felt that he had already heard [redacted] submissions and did not wish to hear them again. The Chair explained the process and stated that the Committee was following the process. The Teacher acknowledged that the Committee had to stay to hear the response from the Registrar, but he did not. The Teacher and the Teacher’s Support exited the hearing at this point and did not return. The hearing proceeded in his absence.

- The Registrar’s Representative then continued with the response.
- [redacted] asked the Committee, using reasonableness, to find that the Teacher did indeed inappropriately grasp [name redacted]’ buttocks that day.
- The Registrar’s Representative requested that the Committee take into account that in [name redacted]’ testimony, [gender redacted] had stated that there were no other students that engaged in this behaviour. [name redacted] also had no reason to fabricate these allegations.

- The Registrar’s Representative submitted that these things did happen and they are truthful and the Registrar has an obligation and responsibility to ensure the safety and well-being of students, and to protect the integrity of the profession.
- Regarding the other items of note that came up during the Teacher’s testimony:
  - The Registrar’s Representative noted that the investigator, [name redacted], had an audio recording of [gender redacted] interview with the Teacher, which could be made available to the Committee, if the Committee wished to have more information about the “chuckling” that remains an issue between the two parties.
  - Regarding [name redacted] leaving and returning to the classroom, the Registrar’s Representative noted that in [gender redacted] testimony, [gender redacted] had identified that [gender redacted] came back into the classroom briefly with a student, which aligns with what was stated in the Investigation Report.
  - [name redacted] was consistent in [gender redacted] testimony and if the Teacher had an issue with [gender redacted] testimony, he had an opportunity to cross-examine [gender redacted] on that point, which he chose not to do.
  - [name redacted] testified that [gender redacted] saw a “firm grasp”. If the Teacher had reason to doubt that characterization, he should have addressed that with [name redacted]. [gender redacted] testimony was valid, accurate and truthful.
  - The Registrar is not required to call every witness, such as [name redacted]. The Registrar chose not to do so, and [name redacted] was not present when the incident occurred, so [gender redacted] testimony would be limited in any event.
  - The Teacher had identified that today was not about his teaching certificate, but the Registrar’s Representative clarified that today was about his teaching certificate. The hearing would not have been called if the Teacher did not have a valid teaching certificate in Alberta. The Teacher has the option of surrendering his teaching certificate to the Registrar.
  - Finally, the Registrar’s Representative noted that the Teacher left the hearing without entering any exhibits into the record and therefore took the position that the Committee could not review or take the letters he had submitted prior to the hearing into account.
- To conclude, the Registrar’s Representative urged the Committee to find that the Teacher engaged in inappropriate touch of [Name redacted], and that after the fact, he also denied knowing [gender redacted] and created an additional story of what occurred.
- The Registrar’s Representative urged the Committee to make a finding and if so, that the recommendation identified earlier in [gender redacted] submissions be recommended to the Minister.
- With these concluding recommendations, the Registrar’s Representative rested [gender redacted] case.

### Questions from the Committee

- One member of the Committee asked at this point about proximity – and specifically how close the children were to [name redacted] when the incident occurred.
- The Registrar’s Representative advised that proximity is a relative thing, but reiterated [name redacted]s testimony that [redacted] had a clear view of the incident, and that [name redacted] had testified that no other students were close enough to [gender redacted] to touch [gender redacted].

## COMMITTEE'S REASONS

The Committee considered the allegations against the Teacher in two parts:

1. Were the allegations factually proven by the Registrar's Representative; and
2. If the Committee finds that the allegations are proven, does the conduct constitute unprofessional conduct as defined in the *Regulation*?

### *Factual Findings*

The Committee considered, in detail, the facts that were presented during the hearing of this matter. In her submissions, the Registrar's Representative spent time on the idea that the Teacher's behaviour after the incident was also inappropriate and constituted unprofessional conduct. The Committee, in reviewing the allegation before it, did not feel that the conduct following the incident was properly before it and as such, has focussed upon the evidence relating directly to the allegation.

The Committee reviewed the documentary evidence contained in Exhibit "B", including the complaint filed by [name redacted], the Incident Report signed by [name redacted], [name redacted] and [name redacted], and the Investigation Report completed by [name redacted].

In addition to the documentary evidence, the Committee considered the testimony of the three witnesses who were physically present on April 28, 2017:

- The sworn testimony of [name redacted], including most importantly her clear and consistent statements identifying the Teacher as the individual who grabbed [gender redacted] buttocks on April 28, 2017. Importantly, [name redacted] did not know the Teacher prior to this incident and no reason was expressed by anyone at the hearing as to why [gender redacted] would fabricate or have any reason to tell anything but the narrative of what occurred that day. This testimony, which was consistent with the Incident Report and the Investigation was credible and went largely unchallenged by the Teacher. The Teacher conceded that he believed that someone touched [name redacted] that day, but that it was not him;
- The sworn testimony of [name redacted], an uninterested witness who had never met the Teacher prior to April 28, 2017, who testified that [gender redacted] was present and witnessed firsthand the Teacher reach out and firmly grab the buttocks of [name redacted]. Again, [name redacted]'s testimony during the hearing was consistent with the Incident Report and the Investigation Report. In addition, no reason was presented to suggest a motive for [name redacted] to fabricate any evidence in relation to the Teacher. [name redacted] did not know the Teacher prior to the incident occurring; and
- The sworn testimony of the Teacher in this matter. During his evidence, the Teacher acknowledged the following under oath:
  - That he was present on April 28, 2017 at [school redacted] to give a presentation;

- That [name redacted] was called into the classroom where he was presenting to assist him in setting up a presentation on a computer; and
- That [name redacted]'s buttocks were grabbed by someone that day but it was not him.

Although there were alternative theories as to what occurred included in the Investigation Report, the Teacher did not put forth an alternative theory during the hearing. The Teacher spent much of his submissions rebutting the idea that he had told [name redacted] that he had never met [name redacted], and that he did not “chuckle” when told of the allegations, but neither of these facts are related to the allegations against the Teacher.

As such, three individuals who were physically present on April 28, 2017 all agree that the Teacher was present at [school redacted] that day to do a presentation, and that [name redacted]'s buttocks were grabbed. The only fact left in dispute between the parties is whether the Teacher grabbed [name redacted]'s buttocks, or if another individual did.

Reviewing the evidence before it, the Committee found the testimony of both [name redacted] and [name redacted] to be credible. The evidence was consistent with the documentary evidence, and consistent with each other's evidence. Both [name redacted] and [name redacted] were very clear that they were certain that it was the Teacher who grabbed [name redacted]'s buttocks, and that there was nobody other than the Teacher in close proximity to [name redacted]. The Committee found the evidence of [name redacted] and [name redacted] to be believable.

The Committee feels that [name redacted], having been grabbed, would take immediate note of the person who had grabbed [gender redacted] and who was nearby. In addition, a teacher reaching out and grabbing the buttocks of a colleague would have been a memorable and disturbing sight for [name redacted], who was also clear in [gender redacted] testimony that it was the Teacher who had grabbed [name redacted]'s buttocks.

The Teacher's evidence was that it was not him. Unlike in the Investigation Report where another student with [medical information redacted] was suggested, the Teacher did not propose an alternate theory during the hearing as to who could have touched [name redacted]. The Teacher did not put forth any documentary or eyewitness evidence to support an alternate theory, nor did the Committee find from a review of the evidence presented that an alternate theory existed.

Therefore after due and careful consideration of the evidence before it, on a balance of probabilities, the Committee finds that Mr. James (Jim) Milo Higgs inappropriately reached out and firmly grabbed the right buttocks of a staff member, [name redacted], at [school redacted] on April 28, 2017.

### *Unprofessional Conduct*

In determining whether the conduct constitutes unprofessional conduct, the Committee is mindful of the following sections of the *Regulation*:

#### **Unprofessional conduct**

##### **2 Conduct that**

- (a) is detrimental to the best interests of students, the public or teachers generally,

- (b) does not meet the professional conduct requirements, or
  - (c) is the basis for a conviction for an indictable offence
- constitutes unprofessional conduct.

### **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,

The Committee first considered whether the conduct was detrimental to the best interests of students, the public or teachers generally (sec. 24(1)(a)(i)).

The Committee finds that the conduct was detrimental to the best interests of students, due to the fact that the conduct found occurred in a classroom, in front of a number of students. Teachers are held to a high standard of conduct and it is detrimental to the best interests of students to see a teacher, in an authority position, engage in unconsensual behaviour with another person. Teachers are models to young students. This does not demonstrate modelling of good behaviour in front of impressionable students, who may feel it is justified or okay to engage in unconsensual touching if a teacher is engaged in this behaviour.

In addition, the Committee finds that the conduct was detrimental to the best interests of the public, given that the Teacher was engaging in behaviour that does not honour the dignity and best interests of the teaching profession. The public, in trusting teachers with the care of their children, must have faith that teachers will act with integrity in all matters. Inappropriate touching undermines the public's confidence that teachers will instruct students properly and may cause parents concern that such touching could occur with a student.

Finally, the Committee finds that the conduct was detrimental to the best interests of teachers, largely for the reasons identified above. The teaching profession, as a whole, is harmed by the conduct that occurred here. More specifically, the conduct here was detrimental to another staff member who deals with students – [name redacted] – an educational assistant in the classroom with the Teacher. [Gender redacted] testified that the conduct made [gender redacted] very uncomfortable and caused [gender redacted] to leave the room immediately. Other witnesses, including [name redacted] and [name redacted], testified that [name redacted] was panicked, shocked and distressed by the incident.

Secondly, the Committee considered whether the conduct did not meet the professional conduct requirements (sec. 24(1)(a)(ii)).

The professional conduct requirements are included in the *Regulation* as a Schedule. They are designed as minimum professional conduct requirements and not as an exhaustive list. The

Committee in particular reviewed the introductory portion of the Schedule, which reads:

**Schedule**

**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.

The Committee finds that the conduct did not meet the professional conduct requirements as set out in the Schedule. In particular, the Committee noted that teachers are in a unique position of trust and influence in a community. How a teacher behaves or acts informs the community's perception of the teaching profession as a whole. Actions like those taken by the Teacher do not provide the community with confidence of a teacher's ability to fulfil their unique position of trust and influence. The Committee expects that teachers conduct themselves in a manner which is respectful to the people around them, including students, other teachers, staff members or other members of the public.

Additionally, the Schedule specifically identifies that the conduct of a teacher, "both on and off duty" bears directly on the community's perception of teachers. Simply because the Teacher was not acting in a traditional teaching role when he arrived at [school redacted] does not mean that the expectations of him were any less during the incident that occurred on April 28, 2017, as he was in a leadership position in that classroom and was in front of students and a colleague during that time.

*Conclusions*

Therefore, the Committee makes the following findings:

1. The allegations, as written, were found to be proven on a balance of probabilities by the Committee; and
2. The Committee finds that the conduct constitutes unprofessional conduct.

*Recommendation*

During her submissions, the Registrar's Representative sought the recommendations to the Minister expressed previously in this decision.

In considering the proper recommendation, the Committee was cognizant of the following section of the *Regulation*:

**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.

The Committee considered all of the evidence before it in coming to a decision on sanction.

The Committee also took into account the comments of the Teacher, made twice, that he did not require a teaching certificate, as he is [age redacted] years old. The Registrar's Representative, in her submissions, noted that the issuance of a teaching certificate is an honour and that if the Teacher did not want his certificate, he could certainly surrender it to the Registrar and that they would gladly take it. The Committee wishes to again provide this option to the Teacher, as the Teacher made it clear that he does need his teaching certificate at this time. Teaching certificates, and the dignity and honour that they import, are not taken lightly by the Committee.

In sum, the Committee decided to accept the submission of the Registrar's Representative, as it was an appropriate balance between sanctioning the Teacher for the conduct and allowing the Teacher appropriate re-entry into the profession, while demonstrating that the Committee takes conduct of this nature very seriously to protect the integrity of the teaching profession.

The Committee chose to add an additional recommendation not requested by the Registrar's Representative, being, a letter of reprimand, as it was not clear to the Committee that the Teacher understood the gravity and severity of what occurred. The Committee hopes that a letter of reprimand will bring home to the Teacher the gravity of the offence and his role in requiring this matter to be heard in a hearing with a number of witnesses who were required to be present and to testify.

Based on this finding, and in accordance with section 25(1) of the *Regulation*, the Committee recommends to the Minister of Education the recommendation outlined below.

**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. James (Jim) Milo Higgs is guilty of unprofessional conduct as on April 28, 2017, he inappropriately reached out and firmly grabbed the right buttocks of a staff member at [School redacted]

**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. James (Jim) Milo Higgs’ 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:

1. That the Minister serve a letter of reprimand on the Teacher;
2. That the Minister suspend the certificate of the Teacher for a period of six (6) months, subject to the condition set out below; and
3. The Teacher must successfully complete a training course at his own cost. Prior to completing it, the Teacher must provide the Registrar with a proposed training course in the one of the following topics: respect in the workplace, gender bias training, or workplace safety training. Once the Registrar approves the course proposed, the Teacher must attend and prove his attendance in the approved course to the Registrar, and submit a written personal statement to the Registrar of how the training affected him. Upon completion of this condition to the satisfaction of the Registrar, the Registrar will then confirm to the Minister that the condition has been completed.


May 2, 2019  
Date

May 13, 2019  
Date

May 3, 2019  
Date

**OPTION TO APPEAL – NOTICE TO JAMES (JIM) MILO HIGGS**

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  
  
2<sup>nd</sup> Floor, 44 Capital Blvd., 10044 – 108 Street  
Edmonton, Alberta T5J 5E6