

THE ALBERTA TEACHERS' ASSOCIATION
REPORT OF THE HEARING COMMITTEE
OF THE PROFESSIONAL CONDUCT COMMITTEE
IN THE MATTER OF CHARGES OF UNPROFESSIONAL
CONDUCT AGAINST BRIAN NICKEL

The hearing committee of the Professional Conduct Committee of the Alberta Teachers' Association reports that charges of unprofessional conduct laid against Brian Nickel of [REDACTED] were duly investigated in accordance with the *Teaching Profession Act*. The hearing was held in Barnett House, 11010 142 Street NW, Edmonton, Alberta, Canada on Thursday, February 4, 2010.

Professional Conduct Committee members present as the hearing committee were [REDACTED] D [REDACTED]

[REDACTED] presented the case against the investigated member. The investigated member, Brian Nickel, was not present and was not represented by counsel.

CONSTITUTION/JURISDICTION

There were no objections to the constitution or jurisdiction of the hearing committee.

CHARGES AND PLEA

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

1. Brian Douglas Nickel is charged with unprofessional conduct pursuant to the *Teaching Profession Act* in that he, while a member of the Alberta Teachers' Association, on or about September 5, 2008, at or near [REDACTED], engaged in conduct for which he, on July 28, 2009, was convicted of an indictable offence, in that Brian Douglas Nickel did have in his possession child pornography, to wit: a digital video image of a nude young person, contrary to section 163.1(4) of the *Criminal Code* of Canada and in doing so, failed to maintain the honour and dignity of the profession.
2. Brian Douglas Nickel is charged with unprofessional conduct pursuant to the *Teaching Profession Act* in that he, while a member of the Alberta Teachers' Association, on or about September 5, 2008, at or near [REDACTED] Alberta, engaged in conduct for which he, on July 28, 2009, was convicted of an indictable offence, in that Brian Douglas Nickel did have in his possession child pornography, to wit: multiple digital picture image files of young people, contrary to section 163.1(4) of the *Criminal Code* of Canada and in doing so, failed to maintain the honour and dignity of the profession.

Report of the Hearing Committee of PCC, B Nickel, page 2

3. Brian Douglas Nickel is charged with unprofessional conduct pursuant to the *Teaching Profession Act* in that he, while a member of the Alberta Teachers' Association, between August 1, 2007 and September 5, 2008, both dates inclusive, at or near [REDACTED], engaged in conduct for which he, on July 28, 2009, was convicted of an indictable offence, in that Brian Douglas Nickel did make child pornography to wit: a video of a young person fully nude in the shower, contrary to section 163.1(2) of the *Criminal Code* of Canada, and in doing so, engaged in activities which failed to maintain the honour and dignity of the profession.
4. Brian Douglas Nickel is charged with unprofessional conduct pursuant to the *Teaching Profession Act* in that he, while a member of the Alberta Teachers' Association, on or about August 13, 2008, at or near [REDACTED], Alberta, engaged in conduct for which he, on July 28, 2009, was convicted of an indictable offence, in that Brian Douglas Nickel did, for a sexual purpose, touch [REDACTED], a person under the age of [REDACTED] directly with a part of his body to wit: his hands, contrary to section 151 of the *Criminal Code* of Canada, and in doing so, failed to treat a pupil with dignity and respect.

In the absence of Nickel and the absence of a written plea, the hearing committee directed pleas of not guilty to each charge on his behalf.

WITNESSES

No witnesses were called.

EXHIBITS FILED

Exhibit 1—Charges

Exhibit 2—Notice of hearing sent to Nickel at the [REDACTED] and Canada Post confirmation of delivery

Exhibit 3—Process server's affidavit of service of notice of hearing to Nickel's home address

Exhibit 4—Agreed statement of facts entered at the Provincial Court of Alberta

Exhibit 5—Order of Prohibition and four certificates of conviction with respect to Nickel

Exhibit 6—Proof of Nickel's membership in the Alberta Teachers' Association

EVIDENCE ADDUCED INDICATED THAT:

1. Nickel was a member of the Alberta Teachers' Association during the period January 1, 2007 to April 30, 2009 inclusive (Exhibit 6).
2. Nickel was employed by [REDACTED] as a teacher at a [REDACTED] school in [REDACTED] Alberta during that time period (Exhibits 4 and 6).

Report of the Hearing Committee of PCC, B Nickel, page 3

3. Nickel was convicted of four indictable offences under sections 163.1(2), 163.1(4) and 151 of the *Criminal Code* of Canada (Exhibit 5).
4. Nickel admitted to, and was convicted under section 163.1(4) of the *Criminal Code* of Canada of, possessing child pornography in the form of a digital video image of a nude young person and multiple digital picture image files of young people (Exhibits 4 and 5).
5. Nickel admitted to, and was convicted under section 163.1(2) of the *Criminal Code* of Canada of, making child pornography in the form of a video of a young person fully nude in the shower (Exhibits 4 and 5).
6. Nickel admitted to, and was convicted under section 151 of the *Criminal Code* of Canada of, touching a young person under the age of [REDACTED] for a sexual purpose (Exhibits 4 and 5).
7. Nickel engaged in an inappropriate relationship of a sexual nature with a student and, in so doing, failed to treat the student with dignity and respect (Exhibit 4).
8. Nickel possessed and created child pornography and, in so doing, failed to maintain the honour and dignity of the profession (Exhibit 4).

DECISION OF THE HEARING COMMITTEE

The hearing committee found Nickel guilty of all four charges.

REASONS FOR DECISION

1. Nickel was convicted of four indictable offences under sections 163.1(2), 163.1(4) and 151 of the *Criminal Code* of Canada and is therefore guilty of unprofessional conduct under section 23(2)(a) of the *Teaching Profession Act*.
2. Nickel was convicted of four indictable offences. He did not adhere to the Code of Professional Conduct and thus failed to maintain the honour and dignity of the profession.
3. The public has a right to expect that children will be protected from those who engage in the possession or creation of child pornography. By his conduct, Nickel jeopardized the public's trust in the profession and failed to uphold the honour and dignity of the profession.
4. A student has the right to expect that teachers will not abuse their positions of trust and authority. By engaging in inappropriate behavior of a sexual nature with a student, Nickel failed to treat the student with dignity and respect.

Report of the Hearing Committee of PCC, B Nickel, page 4

PENALTY

The hearing committee imposes the following penalties:

1. Nickel will be given a letter of severe reprimand for the four charges.
2. Nickel is declared permanently ineligible for membership in the Alberta Teachers' Association
3. A recommendation will be made to the minister of education for permanent cancellation of Nickel's teaching certificate.

REASONS FOR PENALTY

1. Nickel was convicted of four indictable offences under sections 163.1(2), 163.1(4) and 151 of the *Criminal Code* of Canada.
2. Nickel's actions showed disregard for society's expectations of teachers. Society and the profession view such actions as repugnant and reprehensible.
3. Nickel's possession and creation of child pornography was unbecoming of a teacher and dishonoured the profession.
4. Nickel's actions represent serious violations of the Code of Professional Conduct.

Dated at the City of Edmonton in the Province of Alberta, Thursday, February 4, 2010.

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

