

## PRACTICE REVIEW APPEAL COMMITTEE

### APPEAL OF A DECISION OF THE PRACTICE REVIEW HEARING COMMITTEE REGARDING THE UNPROFESSIONAL CONDUCT OF PENNY HOWELL

1. The Practice Review Appeal Committee (the “Appeal Committee”) is established under sections 8 and 29 of the *Practice Review of Teachers and Teacher Leaders Regulation*, Alta Reg 92/2019 (the “Regulation”). The Appeal Committee hears appeals from decisions of the Practice Review Hearing Committee (the “Hearing Committee”) regarding complaints of unskilled or incompetent teaching, or unprofessional conduct by a teacher.
2. In a decision dated November 16, 2022 (the “Hearing Committee Decision”), the Hearing Committee found that Ms. Penny Howell, a teacher, had engaged in unprofessional conduct in relation to two out of three allegations and that the remaining allegation was not proven. The Hearing Committee Decision also included a sanction recommendation in connection with the proven allegations. The Registrar appealed from the Hearing Committee Decision to the Appeal Committee. On June 26, 2023, the Appeal Committee convened to hear the Registrar’s appeal. The hearing was held via video conference.
3. The composition of the Appeal Committee was:
  - [REDACTED] (Chair);
  - [REDACTED] (teacher member);
  - [REDACTED] (public member).
4. There was no objection to the composition of the Appeal Committee.
5. The Appeal Committee confirmed for the record that its members had no knowledge of Ms. Howell or the allegations, apart from the materials provided to the Appeal Committee in advance of the hearing.
6. In addition to the Appeal Committee members, the following were present at the appeal hearing:

- [REDACTED] Legal counsel to the Registrar
- [REDACTED] Practice Assurance Consultant, Alberta Education  
Office of the Registrar Branch
- [REDACTED] Legal counsel to the Appeal Committee
- [REDACTED] Director, Alberta Education  
Governance and Registries Branch
- [REDACTED] Governance Secretariat, Alberta Education  
Governance and Registries Branch
- [REDACTED] Governance Specialist, Alberta Education  
Governance and Registries Branch
- [REDACTED] Virtual Technician
- [REDACTED] Court Reporter

7. Ms. Howell was not present at the appeal hearing.

8. The exhibits marked during the appeal hearing consisted of the following:

- Exhibit 1 - package of correspondence with Ms. Howell, consisting of:
  1. Alberta Education staff notes entitled “Table of Contents”
  2. emails dated December 15-16, 2022 between Alberta Education staff and Ms. Howell
  3. emails dated January 26, 2023 from Alberta Education staff to Ms. Howell, enclosing updated letter dated January 26, 2023 from Practice Review General Panel Chair to Registrar and Ms. Howell
  4. email dated March 22, 2023 from Alberta Education staff to Ms. Howell
  5. email dated May 18, 2023 from Alberta Education staff to Ms. Howell, enclosing Notice of Appel Hearing and other documents
  6. email dated June 5, 2023 from Alberta Education staff to Ms. Howell, in follow-up to May 18, 2023 email
  7. delivery completion notification dated June 5, 2023
  8. email dated June 12, 2023 from Alberta Education staff to Ms. Howell, in follow-up to May 18 and June 5, 2023 emails
  9. email dated June 20, 2023 from Alberta Education staff with videoconference hearing link
  10. delivery completion notification dated June 20, 2023

- Exhibit 2 - Registrar's materials, consisting of:
  1. Letter dated January 26, 2023 from Practice Review General Panel Chair to Registrar and Ms. Howell, regarding committee establishment
  2. Letter dated December 9, 2022 from Registrar to Practice Review General Panel Chair, requesting an appeal of the Hearing Committee Decision
  3. Hearing Committee Decision
  4. Hearing Committee Official Record of Proceedings
  5. Registrar Materials entered as Exhibit A before the Hearing Committee
  6. Transcript of the October 6, 2022 hearing before the Hearing Committee

## ISSUES

9. The issues in this appeal are as follows:
  - a. Did the Hearing Committee reasonably find that one of the allegations was not proven?
  - b. Was the sanction recommended by the Hearing Committee reasonable?

## BACKGROUND FACTS

10. Ms. Howell was issued an Alberta Permanent Professional Certificate on October 12, 1999. She began teaching at [REDACTED] in 2017 after transferring from [REDACTED], both of which were [REDACTED] schools operated by the [REDACTED].
11. On April 30, 2019, [REDACTED] Superintendent [REDACTED] and Headmaster [REDACTED] made a written complaint to the Registrar about unprofessional conduct alleged of Ms. Howell. The Registrar appointed an investigator to investigate the following allegations that Ms. Howell had:
  - i. invited a student (the "Student") to stay at her home overnight on March 19, 2019;
  - ii. made plans to provide a long term residence for this Student by acting as a counsellor and creating a relationship of dependence with the Student that caused the Student to rely on her for support beyond the scope of the student teacher relationship; and

- iii. attempted to conceal the events of March 19, 2019 and had been dishonest with school administration.
12. The investigator completed [REDACTED] investigation report on December 8, 2019. The Registrar decided to refer all three allegations to a hearing before the Hearing Committee.
13. The Hearing Committee heard the matter on October 6, 2022, via videoconference. Ms. Howell attended the hearing before the Hearing Committee.
14. The Hearing Committee found that Ms. Howell had engaged in unprofessional conduct regarding the first and third allegations.
15. Regarding the second allegation, the Hearing Committee determined that the evidence did not establish that Ms. Howell's actions had caused a relationship of dependence with the Student. The Hearing Committee found that there was no evidence that the Student had contacted Ms. Howell on March 19, 2019 because of a relationship of dependence, or that the Student relied upon Ms. Howell beyond the scope of an acceptable teacher and student relationship.
16. Based on its findings, the Hearing Committee recommended that Ms. Howell's Permanent Professional Certificate be suspended for a period of one year and until she successfully completed a course acceptable to the Registrar regarding professional conduct requirements, including professional boundaries.
17. The Registrar appealed the Hearing Committee's finding on the second allegation and its sanction recommendation.

#### **PRELIMINARY AND PROCEDURAL MATTERS**

18. Ms. Howell was not present on the virtual platform at the 9:00 a.m. scheduled start to the appeal hearing. As such, the Appeal Committee Chair directed Alberta Education staff to email Ms. Howell and inform her that the hearing would proceed at 9:15 a.m. The hearing was briefly adjourned until that time.

19. As Ms. Howell was still not present at 9:15 a.m., the Appeal Committee Chair invited counsel for the Registrar to provide a submission on whether the Appeal Committee should proceed with the appeal hearing in the absence of Ms. Howell, pursuant to section 24 of the Regulation. The Appeal Committee Chair noted that the parties had been emailed a copy of the package of correspondence between Alberta Education staff and Ms. Howell, which the Appeal Committee marked as Exhibit 1.
20. Counsel for the Registrar argued that notice had been sent and that the appeal hearing should proceed. The Appeal Committee adjourned the hearing briefly to deliberate on this preliminary issue.
21. Following the adjournment, the Appeal Committee notified counsel for the Registrar that it had decided to proceed with the appeal hearing.
22. While the Appeal Committee briefly addressed in the appeal hearing its reasons for proceeding, the Appeal Committee wishes to further explain its reasoning in this decision.
23. Section 24 of the Regulation applies to the Appeal Committee pursuant to section 30(3) of the Regulation. Section 24 allows the Appeal Committee to proceed with an appeal hearing in the absence of the teacher who is the subject of the appeal hearing, on proof of service of the notice of hearing on the teacher.
24. Section 34(1)(b) and section 34(2) of the Regulation set out the following requirements for service via email:

34(1) When this Regulation requires that a document or notice be served on an individual, the document or notice is sufficiently served ...

(b) if it is sent to the individual at an address the individual has provided as an address to which information or data may be transmitted by electronic means and

(i) the electronic means used results in the receipt of a document in a form that is usable for subsequent reference, and

(ii) the sender obtains or receives a confirmation that the transmission to the address of the person to be served was successfully completed.

(2) Service is effected under subsection (1)(b) when the sending electronic agent obtains or receives confirmation of the successfully completed transmission.

25. Counsel for the Registrar did not specifically address whether there was proof of service of the notice of hearing on Ms. Howell, pursuant to sections 24 and 34 of the Regulation. However, the Appeal Committee reviewed the correspondence package and determined that there was sufficient proof of service of the notice of hearing, in satisfaction of the Regulation, based on the following findings:
- a. Notice of the Registrar's appeal had been sent to Ms. Howell via email and Ms. Howell responded to that email, confirming that she had received the appeal notice. The Appeal Committee notes that Ms. Howell stated in her response email that she lived in a different country, had no intent to return to Canada, and was close to retirement.
  - b. An email enclosing a formal Notice of Appeal Hearing and a follow-up email were sent to Ms. Howell, using the same email address, more than 15 days before the appeal hearing. Alberta Education staff did not receive any automatic reply or other response that would indicate that these emails had not been delivered to Ms. Howell. A delivery confirmation was received for the follow-up email.
  - c. Alberta Education staff sent a further follow-up email regarding the Notice of Appeal Hearing and an email invitation for the appeal hearing date and time with the virtual hearing link to Ms. Howell in the days leading up to the appeal hearing. Alberta Education staff did not receive any automatic reply or other response that would indicate those further emails had not been delivered to Ms. Howell. A delivery confirmation was received for the email with the virtual hearing link.
26. The Appeal Committee is satisfied that Ms. Howell was served electronically with notice of the appeal hearing and that she had the opportunity to respond and participate in the appeal hearing had she chosen to.

**THE REGISTRAR'S SUBMISSION**

Allegation: Relationship of Dependence

27. The Registrar argues that it was proven before the Hearing Committee that Ms. Howell had created a relationship of dependence with the Student that caused the Student to rely on her for support beyond the scope of an acceptable teacher and student relationship. The Registrar's notice of appeal refers to the following evidence as proof of this allegation:

- a. The Student called Ms. Howell because ■ had no one else to rely on. Other individuals did not offer ■ the assistance ■ sought.
- b. The Student contacted Ms. Howell personally and she came to ■ aid without contacting appropriate authorities, which actions went beyond the scope of an acceptable teacher and student relationship.
- c. Ms. Howell suggested ideas to the Student about how she alone could help ■ with personal problems, such as the Student potentially living with her.

28. Counsel for the Registrar also refers to the following additional evidence that was before the Hearing Committee as establishing that Ms. Howell had created a relationship of dependence:

- a. Ms. Howell had student cell numbers and told students to call her if they were in a situation where they could not reach their parents.
- b. Ms. Howell had discussed with the Student, and not with ■ parent, the possibility of boarding the Student.

29. The Registrar's position is that the Hearing Committee Decision does not include sufficient consideration of the evidence presented at the hearing, and that the Hearing Committee either failed to consider the entire evidence or failed to give sufficient weight to the evidence presented, in relation to this allegation.

Recommended Sanction

30. The Registrar takes issue with the Hearing Committee's recommended sanction of suspension with conditions, rather than cancellation of Ms. Howell's teaching certificate. The Registrar points to the Hearing Committee having erred in referring to Ms. Howell's statement that she "could have done things better" as an acknowledgment of future compliance.
31. The Registrar also refers to Ms. Howell's statements that she did not regret her actions as constituting evidence that she is ungovernable, and that cancellation of a teaching certificate sends the appropriate message to Ms. Howell and to the profession that only those who acknowledge and adhere to professional standards of conduct will remain certified.
32. Alternatively, the Registrar argues that the Hearing Committee's recommended sanction is not actionable as it does not identify any consequence for Ms. Howell, or recourse for the Minister or Registrar, if Ms. Howell fails to complete the required course. The Registrar further states that an indefinite suspension is untenable and raises concerns around competency.
33. Counsel for the Registrar further notes that:
  - a. Ms. Howell continued to blur the lines around professional boundaries after she was warned about those boundaries in 2016.
  - b. She stated she would do it again.
  - c. She did not use resources that were available.
34. Counsel for the Registrar also argues that the recommended sanction does not specify whether the suspension continues indefinitely pending the completion of the course.

**DECISION OF THE APPEAL COMMITTEE**

35. The Appeal Committee confirms the findings of the Hearing Committee regarding the second unprofessional conduct allegation against Ms. Howell.
36. The Appeal Committee confirms the recommendations of the Hearing Committee regarding the sanction for Ms. Howell's unprofessional conduct

**REASONS FOR DECISION**

37. The Registrar's grounds of appeal relate to the Hearing Committee's findings on one of the unprofessional conduct allegations and to the Hearing Committee's recommended sanction. Those findings and recommendations have been reviewed by this Appeal Committee based on whether they are reasonable.<sup>1</sup>

Allegation: Relationship of Dependence

38. The Hearing Committee Decision refers to the evidence that the Registrar states it had failed to appropriately consider or weigh:
  - a. Paragraphs 56-57 and 112 of the Hearing Committee Decision note Ms. Howell's evidence regarding student cell numbers and her telling them that they could contact her.
  - b. Paragraph 61 summarizes the evidence regarding the Student's lack of other options. Paragraph 113 states that the Committee considered that the Student had contacted Ms. Howell on March 19, 2019.
  - c. The Hearing Committee refers to the evidence of Ms. Howell having failed to contact appropriate authorities when the Student contacted her, at paragraphs 104-105, in relation to the first allegation.

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<sup>1</sup> [REDACTED]

- d. The Hearing Committee noted the evidence regarding Ms. Howell’s suggestion of the Student potentially living with her, at paragraphs 88 and 111.
39. While some of this evidence is also referred to in the overview of the witness evidence or connection with the first allegation, it is all specifically referred to in the Hearing Committee Decision.
40. The Hearing Committee explained its finding that there was no evidence that the Student had contacted Ms. Howell on March 19, 2019 because of a relationship of dependence. In the view of the Hearing Committee, the Student had contacted Ms. Howell, but the evidence did not show that [REDACTED] depended or relied upon her for support.
41. The Hearing Committee also noted that Ms. Howell’s comments to the Student about [REDACTED] potentially living with her “were made in the course of one evening and in the context of very stressful events” and that Ms. Howell “was concerned for the Student’s safety and made comments in the moment to comfort [REDACTED]” (at paragraph 111).
42. The Appeal Committee sees no basis to disturb the Hearing Committee’s findings on this allegation. The evidence referred to by the Registrar regarding this allegation, including Ms. Howell’s comments to students about calling her and to the Student about potentially boarding [REDACTED], did not establish that a relationship of dependence had been created. While Ms. Howell’s relationship with the Student could have potentially developed into a relationship of dependence, that did not occur. The Hearing Committee reasonably determined that Ms. Howell’s conduct did not cause a relationship of dependence.
43. In the opinion of the Appeal Committee, the Hearing Committee reached a finding that was open to it based on the evidence. The appeal from the findings of the Hearing Committee is accordingly denied.

Recommended Sanction

44. The Hearing Committee recommended that Ms. Howell’s teaching certificate be suspended and that she be ineligible for a certificate:

- a. for a period of one year; and
  - b. until she has successfully completed a course acceptable to the Registrar regarding professional conduct requirements, including professional boundaries.
45. The Hearing Committee set out its reasoning for this recommendation as follows:
- a. It did not consider this an appropriate case for cancellation, which would be an extreme penalty, and excessive in this case.
  - b. It accepted that Ms. Howell had the Student's best interests at heart and, while she did not regret her actions, she acknowledged she could have done things better.
  - c. It considered that suspension and ineligibility for one year was an appropriate message of deterrence to the teacher.
  - d. It considered that the course on professional conduct and boundaries was a remedial action to help Ms. Howell learn to properly deal with such issues.
  - e. It considered that this was a unique environment where teachers did more for students than in a traditional school, and that Ms. Howell faced circumstances that may not be encountered in other school settings.
46. The Appeal Committee notes that the sanction recommended by the Hearing Committee may effectively result in an indefinite suspension if Ms. Howell does not complete the required course within a year of her suspension taking effect. However, the Registrar did not point to any provision in the applicable legislation which would prevent the Hearing Committee from making such a recommendation. An indefinite suspension places the onus on Ms. Howell to engage in the remedial action recommended by the Hearing Committee. In the view of the Appeal Committee, it was open to the Hearing Committee to make such a recommendation.
47. If the Registrar has concerns regarding Ms. Howell's competency, if and when she requests that her certificate be reinstated, upon completion of the course and following the full year suspension, it is open to the Registrar to address such concerns at that time.

48. Regarding the reasonableness of the Hearing Committee’s recommendation for suspension, rather than cancellation, the Appeal Committee agrees with the Hearing Committee that the conduct in this case did not rise to a level of egregiousness that would warrant cancellation. The Hearing Committee provided sound reasoning for its conclusions in this regard. The Hearing Committee Decision does refer to the evidence regarding the events in 2016, and to Ms. Howell’s statements that she did not regret her actions and would do it again. As noted by the Hearing Committee, Ms. Howell made a mistake. However, there were mitigating circumstances, including her having acted in what she thought was the Student’s best interest and her acknowledgment that she could have done things better.

49. The Hearing Committee based its recommendation on the evidence before it, and the Appeal Committee finds that it was a reasonable recommendation. The appeal from the sanction recommendation of the Hearing Committee is accordingly denied.

Dated at Edmonton, Alberta this 12<sup>th</sup> day of July, 2023.

