

THE ALBERTA TEACHERS' ASSOCIATION
DECISION OF THE HEARING COMMITTEE
OF THE PROFESSIONAL CONDUCT COMMITTEE
IN THE MATTER OF CHARGE OF UNPROFESSIONAL
CONDUCT AGAINST DAVID BELKE

The hearing committee of the Professional Conduct Committee of the Alberta Teachers' Association reports that a charge of unprofessional conduct laid against David Belke of [Location Redacted] was duly investigated in accordance with the *Teaching Profession Act*. The hearing was held in Southern Alberta Regional Office (SARO), 6815 8 Street NE, Calgary, Alberta, Canada on Thursday, October 8, 2020.

Professional Conduct Committee members present as the hearing committee were [REDACTED]
[REDACTED]
[REDACTED] presented the case against the investigated member. The investigated member, David Belke, was not present and was represented by [REDACTED]
[REDACTED]

COMPOSITION/JURISDICTION

There was no objection to the composition or the jurisdiction of the committee to hear the matter.

CHARGES AND PLEA

The following charge was read aloud by the secretary to the hearing committee:

1. David Matthew Belke 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 February 26, 2017, did engage in conduct that failed to maintain the honour and dignity of the profession, contrary to article 18 of the Code of Professional Conduct, for which he, on November 17, 2017, was convicted of a summary offence, to wit: possession of child pornography, contrary to section 163.1(4)(b) of the *Criminal Code*, RSC, 1985, c. C-46.

The investigated member entered a plea of guilty to the charge.

WITNESSES

There were no witnesses called.

EXHIBITS FILED

- Exhibit 1—Notice of hearing and Canada Post confirmation of delivery on September 22, 2020
Exhibit 2—Proof of Belke’s membership in the Association from October 1, 1997 to March 31, 2017, signed by [REDACTED] deputy chief financial officer on October 4, 2019
Exhibit 3—Submission on plea, signed by Belke, dated September 24, 2020
Exhibit 4—Declaration of awareness of rights, signed by Belke, dated September 24, 2020
Exhibit 5—Agreed statement of facts and acknowledgement of unprofessional conduct, signed by Belke and [REDACTED], dated September 24, 2020 and September 30, 2020 respectively
Exhibit 6—Page 4 of the agreed statement of facts and acknowledgement of unprofessional conduct with Belke’s legible signature, dated September 24, 2020
Exhibit 7—Submission on penalty, signed by Belke, dated September 24, 2020
Exhibit 8—Submission of investigated member on penalty

EVIDENCE ADDUCED AND EXHIBITS FILED INDICATED THAT:

1. An agreed statement of fact was put before the committee consisting of
 - a. an agreed statement of facts with respect to the within hearing;
 - b. an acknowledgement of unprofessional conduct;
 - c. a copy of an agreed statement of fact presented on or about October 26, 2017 to [REDACTED] [REDACTED] of the Provincial Court of Alberta; and
 - d. a copy of the judgment of [REDACTED] of the Provincial Court of Alberta.

2. According to the agreed statement of facts, Belke was a member of the Association from April 2, 1989 to March 31, 2017. This was in contradiction to the letter supplied by [REDACTED], but both parties agreed the correct period of time for which Belke was a member extended back to 1989 even though the Association’s financial records do not extend that far back in time.
(Exhibit 2 and Exhibit 5)

3. Belke was employed as a substitute teacher by the [School Division Redacted] at the time of the incidents giving rise to the charges. Belke had also held five temporary contracts from time to time with [School Division Redacted]. (Exhibit 5)

4. During Belke’s tenure as a substitute and temporary contract teacher, there were no other disciplinary issues. (Exhibit 5)

5. On February 19, 2017, Belke brought a computer to [REDACTED] to have it repaired. In the course of a diagnostic analysis on the computer, a technician noted nude pictures of young children. The technician reported the findings to their manager who then contacted the Edmonton Police Services (EPS). (Exhibit 5)

6. The EPS suspected that some of the images in Belke's computer contained child pornography, seized the computer and obtained a warrant to search the computer. The computer and its contents were analysed by the Internet Child Exploitation Unit's digital forensic laboratory. Evidence gathered and examined by the EPS determined that collection spanned over an eight-year period and there was sufficient evidence to warrant criminal charges. (Exhibit 5)
7. Approximately 827 unique images were categorized as possible child pornography with another 732 unique images considered to be of investigative interest by the police (child nudity not defined as child pornography, clothed children under 18). (Exhibit 5)
8. In addition, a number of word documents were found that described children between the ages of 12 to 16 engaged in sexual acts with adults. (Exhibit 5)
9. Belke admitted that approximately a dozen of the images met the *Criminal Code* definition of child pornography. These consisted of images of nude children or persons under the age of 18 where the dominant characteristic is the depiction for sexual purpose of a sexual organ/anal region. None of the images depicted sexual activity although a number of them contained captions describing explicit sexual activity. (Exhibit 5)
10. The word documents contained written material whose dominant characteristic was the description, for sexual purpose, of sexual activity with a person under the age of 18. It was not alleged that Belke authored these documents; however, they were in his possession. (Exhibit 5)
11. On March 17, 2017, Belke surrendered himself into the EPS custody. Belke co-operated with the police confirming that he took the computer to [REDACTED] for repair and was the sole user of the computer. Belke advised that he is attracted to the innocence of the young people depicted, finding them beautiful. He denied that he viewed the images for sexual gratification or [REDACTED] purposes. (Exhibit 5)
12. There is no evidence that the Belke shared or distributed any of the images.
13. Belke pled guilty to a single count of possession of child pornography under section 163.1(4)(b) of the *Criminal Code*, RSC, 1985, c C-46. (Exhibit 5)
14. Belke was convicted of a summary conviction offense with a mandatory minimum jail sentence of six months plus probation for one year following his release from jail with condition that he continue counselling sessions. With this conviction, Belke was mandated to comply with Sex Offender Information Registration Act (SOIRA) for a period of 10 years and provide a DNA sample pursuant to section 487.051 of the *Criminal Code*. (Exhibit 5)
15. The Crown also applied for an order under section 161 of the *Criminal Code* which the judge declined to grant. Section 161 of the *Criminal Code* permits the court to make an order

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prohibiting the offender from certain activities that may have them in contact with persons under the age of 16. In the judge's analysis, the evidence did not support the need for a section 161 order. (Exhibit 5)

16. The judge also concluded that Belke was at very low risk to re-offend and that the risk to children was very low. (Exhibit 5)
17. The judge accepted that Belke was very remorseful, had a deep sense of shame, that he made no effort to conceal the pictures and documents, that he took responsibility for his behaviour, and by all accounts now understands the harmful nature of child pornography. (Exhibit 5)
18. In 2019, after media coverage of Belke being in possession of child pornography, two complaints of unprofessional conduct were filed with the Association. (Exhibit 5)

DECISION OF THE HEARING COMMITTEE

Charge 1—Guilty

REASONS FOR DECISION

1. Belke, by his own admission, failed to maintain the honour and dignity of the profession as dictated by article 18 of the professional code of conduct by being in possession of child pornography.
2. Belke, by his own admission, stated that his behaviour may have negatively impacted some of his students and violated the trust instilled in him as a teacher.
3. Belke entered a guilty plea to and was convicted of a single count of possession of child pornography under section 163.1(4)(b) of the *Criminal Code*, RSC, 1985, c C-46.
4. Although Belke was cooperative and remorseful, an individual that is prominent in the arts community and a substitute teacher should have known that it was extremely inappropriate to collect and possess images of child pornography.

SUBMISSION ON PENALTY

The Presenting Officer submission

1. ██████████ recommended the following penalty to the hearing committee:
 - a) Cancellation of Belke's membership in the Association.

- b) Recommendation to the minister of education to cancel Belke's teaching certificate issued under the *Education Act*. (Exhibit 7)
2. In his presentation to the committee, ██████ asked the committee to consider the following factors:
- a. The nature and gravity of the proven offense
 - b. Age and experience of the teacher—Belke was [Age Redacted] and was a well experienced teacher from 1989 to 2017 with five temporary contracts
 - c. Belke did not have any previous disciplinary issues
 - d. The age and position of persons adversely affected by Belke's actions—including students, teachers, staff, parents and the public
 - e. Belke's actions demonstrated remorse and he admitted guilt in both the criminal courts and in the ATA's discipline process
 - f. ██████ noted that there is no way to determine the impact of Belke's actions on children. Quoting ██████, the judge for Belke's criminal trial, "Child pornography raises feelings of moral repugnance in the minds of nearly everyone in our society. Children should never be made subjects of sexual interest, in any circumstance. It is the creation of child pornography that causes the most harm. Demand for it creates a steady supply; both demand and supply must be curtailed by all reasonable legal means. In particular, where real children are depicted in the material, as was he case here, these children are unequivocally victims of abuse, and very often great long-term is done to them by those who create this child pornography. For these reasons, Parliament has determined that the law should treat persons who create, distribute, and possess child pornography harshly." (Exhibit 5)
 1. In addition, Belke's actions impacted families, students, his colleagues and the profession as the case was widely publicized in the media and the digital footprint is everlasting.
 - g. ██████ noted that Belke had suffered other consequences for his actions:
 - i. Belke was convicted, sentenced to a mandatory six-month prison sentence, and one year probation.
 - ii. Belke was removed from the substitute teacher list with [School Division Redacted].
 - iii. Belke was cut off from the arts community.
 - iv. Belke was subject to extensive media coverage.
 - h. ██████ noted that Belke was a consumer of child pornography; however, he had no contact with children concerned and did not distribute the child pornography.
 - i. Teachers must act in a way that maintains the honour and dignity of the profession. It is important that the penalty deters other teachers from engaging in similar conduct.
 - j. Confidence in the teaching profession by the public is paramount. ██████ quoted ██████ reasons for penalty, citing ██████ who wrote, "employment as a school teacher will no longer be available to him." (Exhibit 5)
3. ██████ stated there must be an appropriate sanction. He noted there must be high trust in the teaching profession by the public. In considering the matter before the committee, ██████

stated that while the courts made distinction about the seriousness of the crime, the profession is not bound to this distinction.

4. ██████ noted there are no precedent cases that are exactly the same as the matter before the committee, but he referenced three cases (ND1187, ND1121 and ND1033) that had parallels to Belke's with the same outcomes as his requested penalty.
5. In closing, ██████ stated that Belke's actions will have a lasting impact on the community, in particular his digital footprint. He noted that we live in a Google culture and any prospective students and parents of Belke's could easily "google" him and find that he was a convicted sex offender.

The Investigated Member's submission

1. ██████ made a summary of the submission document highlighting that Belke has accepted responsibility for his conduct throughout all proceedings, he remains in psychological treatment, he poses no risk and continues to have the support of many community members. ██████ argued that Belke should not be barred from the chance of future teaching by cancellation of his certificate. ██████ stated their proposed penalty is a lengthy suspension from the Association with conditions, if appropriate. ██████ conveyed that Belke had proposed a three-year suspension. (Exhibit 8)
2. ██████ highlighted that Belke admitted that a summary conviction constitutes professional misconduct. In addition, ██████ noted that Belke was co-operative and helpful at both the court and the ATA's discipline processes.
3. ██████ stated that Belke had completed a psychological assessment and is committed to counselling. Reports from ██████ indicated that Belke was very low risk to actually offend against a child. In ██████ follow up report, he stated that during his sessions with Belke, there were no indications that Belke was a danger to children and could safely return to teaching in the future. (Tab 1 and Tab 2, Exhibit 8)
4. ██████ stated that Belke did not create or distribute child pornography and that he was a consumer on the low end of the spectrum.
5. ██████ argued that Belke's conviction was a summary conviction and that the rules for indictable convictions of section 42(3) of the TPA do not apply in this matter. ██████ stated the committee is not obligated to declare Belke ineligible for membership nor recommend cancellation of Belke's teaching certificate to the minister of education.
6. ██████ referenced ██████ reasons for sentence stating that, "there are many factors here which place this case in the low end of the spectrum. They include, firstly, the size of the collection is relatively small." (Paragraph 11, Appendix 2, Exhibit 5)

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7. ██████ alluded to Belke's lack of effort to conceal the materials on his computer and his belief that it was legal.
8. ██████ also pointed out that "Belke has lived what only can be described as an active and social life." She noted that "he has contributed a great deal to his community as a teacher, over a 28-year period he has taught students of all ages from Kindergarten up to university level." Further, she noted the judge declined to make an order under section 161 of the *Criminal Code* which would have prohibited Belke from having any contact with children had it been applied. (Appendix 2, Exhibit 5, Exhibit 8)
9. ██████ argued that the committee, should it choose to impose a suspension on Belke, could impose conditions, such as a psychological report on Belke, prior to reinstating his membership.
10. ██████ then outlined "parity and other penalty precedents" ██████ had obtained from the Association. (pages 2-3, Exhibit 8)
11. ██████ stated that Belke's Vulnerable Sector Check had come back negative. (Tab 4, Exhibit 8)
12. ██████ referred to reference letters from friends, neighbours, colleagues and members of the arts community. Particular emphasis was placed on the letter from retired ██████ ██████ and ██████ from the [Location Redacted] Public Library. (Tab 3, Exhibit 8)
13. ██████ also provided a response to the factors ██████ had outlined.
 - a. As the nature and gravity of the situation, ██████ argued that Belke's offenses were on the low end of the spectrum. (Page 10, Tab 1, Exhibit 8)
 - b. Belke is now [Age Redacted] and according to a former colleague, [Name Redacted], is a gifted teacher. (Tab 4, Exhibit 8)
 - c. Belke has no previous disciplinary issues with the ATA.
 - d. The media coverage was created by Belke being an award-winning playwright and as a result Belke has suffered horrendously.
 - e. ██████ noted that there was no distribution of the pornography and no sexual contact with children. She also referenced that the impact on Belke's colleague was due to the media coverage of the case.
 - f. The consequences to Belke were extraordinary—he was excoriated, not so much for his role as a teacher, but because he was a well-known playwright and because the "Google footprint" of the publicity surrounding his situation will be there forever.
 - g. Belke noted the following mitigating circumstances: there was no distribution of the child pornography; Belke accepted responsibility for his actions; and he poses a low risk to the community.

- h. ██████ spoke about the need to deter professionals from this sort of action. ██████ noted that a heavy sanction is warranted, but that it need not be permanent. ██████ asked the committee to consider that Belke could be rehabilitated and he ought to be treated with compassion. ██████ noted the need to balance deterrence with public confidence in the profession. Further, ██████ noted that the committee could require Belke to provide a re-assessment of risk at the end of his suspension.
14. In summary and conclusion, ██████ acknowledged that the honour and dignity of the profession has been harmed. ██████ noted we cannot change media and internet artefacts that may haunt him forever. ██████ then noted there ought to be room for rehabilitation and redemption for Belke and stressed that he poses no risk to children. Finally, ██████ strongly recommended a sanction of a three-year suspension.

Rebuttal by presenting officer for new elements only

1. ██████ stated that while ██████ asserted that Belke had community support, it did not appear that this was the case within the theatrical community. In addition, it is not clear that the teaching community supports Belke.
2. ██████ objected to Duckett's assertion that possession of child pornography was analogous to illicit drug use and trafficking because it does not consider the victims of child pornography.
3. ██████ did agree that Belke was a low risk to re-offend, but that this is not the committee's determination—committee needs to determine whether the honour and dignity of the profession had been maintained. ██████ noted that ██████ did not comment on the impact of Belke's actions on the teaching profession.
4. ██████ argued while suspension of Association membership could require condition for reinstatement, there was no ability to put conditions on reinstatement of Belke's teaching certificate with the Department of Education. His teaching certificate would be automatically reinstated allowing Belke to work as a teacher across provincial borders, in charter schools, private schools and international schools.
5. ██████ acknowledged that the Fringe performing arts festival cancelled Belke's play as a result of his conviction.
6. ██████ also stated the letters of reference for Belke were excellent, but they were not from many members of the teaching profession.

7. [REDACTED] highlighted the “#MeToo” movement shines a light on how society views issues such as these, particularly ones that involve children.

PENALTY

The hearing committee imposed the following penalty:

1. a declaration that Belke be declared ineligible for membership in the Alberta Teachers Association effective immediately and
2. a recommendation to the minister of education to cancel Belke’s teaching certificate.

REASONS FOR PENALTY

1. The teaching profession expects the highest standards of conduct for its members. In procuring materials involving child pornography, Belke caused harm to the teaching profession and the trust that the public places in teachers and the teaching profession. A teacher in possession of child pornography diminishes the reputation of the teaching profession; it is illegal and reprehensible. Section 18 of the Code of Professional Conduct states that teachers must maintain the honour and dignity of the profession. A teacher charged under the *Criminal Code* with possession of child pornography, collected over lengthy period of time, perhaps eight years, does not maintain the honour and dignity of the teaching profession.
2. The public holds teachers to high standards as members of the community who are in loco parentis. Possessing child pornography is not in the best interest of any child, it is illegal and repugnant. Gathering and possessing child pornography casts doubt on Belke’s ability to safeguard children.
3. The public and profession must be confident that children in a teacher’s care are safe, protected and are not at risk for exposure to criminal behaviors.
4. A teacher with 28 years in the profession should know that teachers, as professionals are held to a higher standard than the general public. All teacher members of the Association are obliged to maintain professional conduct. The Code of Professional Conduct provides general guidelines for all teachers to follow but the scope of professional conduct goes far beyond the code. Teachers should be familiar with the code and with the responsibilities placed on them by the *Teaching Profession Act*. Substitute teachers should become familiar with these expectations and conduct themselves accordingly. Adhering to the code is a 24 hour a day responsibility. All teachers must respect the standards of the profession. Belke failed to maintain the honor and dignity of the profession by viewing, collecting and possessing child pornography.

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5. The committee received several reference letters supporting Belke from his counsel. However, not all letters acknowledged that Belke had collected and possessed child pornography. The letter from [Name Redacted] stipulated that Belke was allowed to volunteer after the Vulnerable Sector Check came back negative. However, the letter also states that Belke is only allowed to work with adults as an extra precaution.
6. There was considerable media attention paid to this case that highlighted his occupation as a teacher and this served to harm the teaching profession.
7. Teachers must act in a way that maintains the honour and dignity of the profession. A suspension is not sufficient in this case. Collecting and possessing child pornography and word documents depicting sexual acts with children is reprehensible. It is important that the penalty deters other teachers from engaging in similar conduct.

Dated at the City of Calgary in the Province of Alberta, Tuesday, December 1, 2020.

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

