

PRACTICE REVIEW HEARING COMMITTEE

HEARING DECISION IN THE MATTER OF MELISSA ANNE CARDINAL

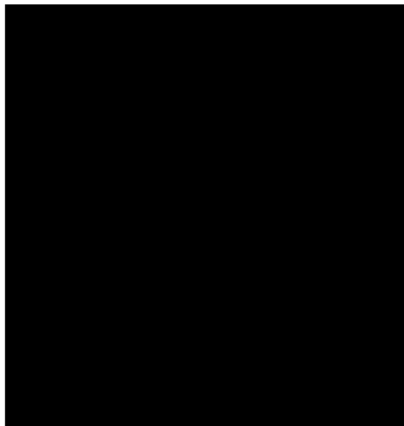
**HEARING HELD ON SEPTEMBER 15, 2022
EDMONTON, ALBERTA**

The Practice Review Hearing Committee (the “Committee”), established in accordance with section 7 of the *Practice Review of Teachers and Teacher Leaders Regulation*, AR 92/2019 (the “Regulation”), convened to hear a complaint about the alleged unprofessional conduct of Melissa Anne Cardinal (the “Teacher”).

The following were Members of the Committee:

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

The hearing was held on Thursday, September 15, 2022 commencing at 9:17 a.m. via video-conference. In addition to the Committee, the following individuals were present at the hearing:



Registrar
Registrar’s Representative
Manager, Practice Assurance
Teacher
Secretary to the Committee
Independent Legal Counsel to the Committee
Staff Member, Alberta Education
Court Reporter
Virtual Hearing Technician
Observer

PRELIMINARY MATTERS

- [1] The Chair opened the hearing and asked the Members of the Committee, the parties to the hearing and all those in attendance to introduce themselves for the record.
- [2] The Members of the Committee stated they did not have any knowledge of the Teacher or the allegations, apart from the materials that were provided to them in advance of the hearing. The Registrar’s Representative and the Teacher each confirmed they had no objection to the composition of the Committee.
- [3] The Teacher was present at the hearing but was not represented by legal counsel or another representative. The Teacher confirmed that she understood she had a right to legal counsel or a representative. The Teacher confirmed she was waiving the right to be represented by

legal counsel or a representative and was asking that the hearing proceed.

- [4] The Chair confirmed the date of the Registrar's Notice of Decision of May 18, 2022.
- [5] The Registrar's Representative and the Teacher each confirmed there were no preliminary applications.

ALLEGATION

- [6] The allegation in the Registrar's Notice of Decision dated May 18, 2022 is that the Teacher was criminally convicted of assault causing bodily harm contrary to Section 267(B) of the *Criminal Code of Canada*.

EXHIBITS

- [7] The following were entered into the record:
1. Exhibit A – Registrar's Materials (120 pages);
 2. Exhibit B – Registrar's Cover Letter dated September 1, 2022 (1 page).

MANDATE OF THE COMMITTEE

- [8] 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 26 of the Regulation and, if so, to make recommendations under section 27 of the Regulation, as noted below.

Finding - unprofessional conduct

26(1) The practice review hearing committee

- (a) may find the conduct of the teacher or teacher leader who is the subject of the hearing to constitute unprofessional conduct if, in the opinion of the practice review hearing committee, the teacher's or teacher leader's conduct
 - (i) is detrimental to the best interests of students, the public, teachers or teacher leaders generally, or
 - (ii) does not meet the professional conduct requirements,
 - (b) must find the conduct of a teacher or teacher leader who is the subject of the hearing to constitute unprofessional conduct if the teacher's or teacher leader's conduct is the basis for a conviction for an indictable offence, or
 - (c) if clauses (a) and (b) do not apply, may find that the conduct of the teacher or teacher leader who is the subject of the hearing does not constitute unprofessional conduct.
- (2) If a teacher or teacher leader has been convicted of an indictable offence, a practice review hearing committee must make a recommendation to the Minister under section 27(3) and has no authority to investigate the conduct of the teacher or teacher leader on which the conviction is based except for the purpose of making a recommendation to the Minister.

Recommendations of practice review hearing committee

27(1) The practice review hearing committee may recommend that the Minister dismiss the complaint if the practice review hearing committee does not find

- (a) that the teacher or teacher leader who is the subject of the complaint is
 - (i) unskilled or incompetent in teaching,
 - (ii) unskilled or incompetent in carrying out the leadership duties related to a leadership certificate, or
 - (iii) unskilled or incompetent in carrying out the leadership duties related to a superintendent leadership certificate,
- or
- (b) that the conduct of the teacher or teacher leader constitutes unprofessional conduct.

(2) The practice review hearing committee may make a recommendation to the Minister under subsection (3) if the practice review hearing committee finds

- (a) that the teacher or teacher leader who is the subject of the hearing is
 - (i) unskilled or incompetent in teaching,
 - (ii) unskilled or incompetent in carrying out the leadership duties related to a leadership certificate, or
 - (iii) unskilled or incompetent in carrying out the leadership duties related to a superintendent leadership certificate;
- or

- (b) that the conduct of the teacher or teacher leader constitutes unprofessional conduct.

(3) The practice review hearing committee may recommend that the Minister do one or more of the following:

- (a) serve a letter of reprimand on the teacher or teacher leader;
- (b) suspend one or more of the certificates of the teacher or teacher leader, with or without conditions;
- (c) cancel one or more of the certificates of the teacher or teacher leader or cancel the certificate and issue a certificate of a different class, with or without conditions;
- (d) order that the teacher or teacher leader be ineligible for one or more certificates for a definite or indefinite period of time, with or without conditions.

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

- (a) relates to a teacher or teacher leader 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 or teacher leader,

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

AGREED STATEMENT OF FACTS AND JOINT SUBMISSION

- [9] An Agreed Statement of Facts and Joint Submission for Penalty between the Registrar and the Teacher was submitted for the Committee's consideration (Exhibit A, Tab 7).
- [10] The Agreed Statement of Facts and Joint Submission for Penalty states that it contains facts admitted to by the Teacher for the purpose of dispensing with formal proof of such facts in respect to an allegation of unprofessional conduct against the Teacher, to be heard before the Committee. It is dated August 22, 2022 and is signed by the Teacher and the Registrar, [REDACTED]

Statement of Facts

1. The Teacher held an *Interim Professional Certificate* issued on August 19, 2013 until September 28, 2016, when her *Permanent Professional Certificate* was issued and remains valid in the province of Alberta with no expiry date. Both certificates were issued in accordance with the *Certification of Teachers Regulation* (AR 3/99). This legislation was repealed and replaced by the *Certification of Teachers and Teacher Leaders Regulation* (AR 84/2019) on September 1, 2019.
2. The conduct of Alberta certified teachers who are not subject to the *Teaching Profession Act* is governed by the Regulation.
3. The *Practice Review of Teachers Regulation* was replaced by the Regulation effective September 1, 2019, and this matter continues under this Regulation.
4. Section 1(1)(r) of the Regulation defines a teacher as: (i) *an individual who holds a teaching certificate but is not subject to the Teaching Profession Act, or (ii) an individual who once held but no longer holds a teaching certificate.*
5. Between the years of 2013 and 2019, the Teacher was employed as a teacher by the [REDACTED] and worked at the [REDACTED] School.
6. On or about May 28, 2017, the Teacher engaged in criminal conduct in Alberta, while she held an Alberta teaching certificate.
7. On the evening of May 28, 2017, while attending a family gathering, the Teacher consumed alcohol, became intoxicated and engaged in a physical altercation with another adult individual known to her at the gathering. The altercation was reported to the police by the individual involved in the altercation with the Teacher.
8. The Teacher was criminally charged, the Crown proceeded by indictment, and on April 29, 2019, the Teacher was convicted of an offence under Part XIX (Indictable) of the *Criminal Code (C.C.) of Canada*, for committing an assault causing bodily harm, contrary to C.C. 267(B).
9. Provincial court documents show that the court adjudged that the Teacher be discharged

on conditions that included a 24-month probation order which entailed: maintaining good behavior, no contact with the assaulted individual, reporting to a probation officer, completing a counselling program with [REDACTED], abstaining from alcohol or drugs, and completing 50 hours of community service work.

10. The Teacher successfully completed the terms of her 24-month probation on April 28, 2021.
11. The Teacher notified her employer about the charge and subsequent conviction, and on October 7, 2019, the Registrar received a complaint from the Chief Executive Officer at [REDACTED], who was required to file a complaint with the Registrar in accordance with Section 11(3) of the Regulation which states:

“11(3) If an administrator has reason to believe that a teacher or teacher leader has been or may have been convicted of an indictable offence at a time when the teacher or teacher leader held a certificate or was eligible for the reissuance of a certificate, the administrator must make a complaint under this section relating to that belief.”
12. Pursuant to Section 13(2)(d) the Registrar referred the matter to investigation, which confirmed the Teacher’s conviction.
13. Based on information in the investigation report, the Teacher was forthcoming with her employer about the incident and resulting criminal charges and conviction, and she was cooperative with the investigator at Alberta Education. Also, as evidenced in the investigation report, she had demonstrated accountability for her actions through the successful completion of her court-mandated sentence.
14. During the investigation by Alberta Education, the Teacher’s past employer at [REDACTED] informed the Investigator that the Teacher was a well-respected teacher with no previous complaints regarding her conduct as a teacher, and that the employer would like to have the Teacher back at [REDACTED] School.
15. On May 18, 2022, in accordance with Section 16(2) of the Regulation, based on the findings of the investigation report that confirmed the Teacher’s criminal convictions by indictment, the Registrar rendered a decision to direct the Chair of the Practice Review General Panel to establish a Practice Review Hearing Committee to hear the matter.

Joint Recommendation for Findings

16. The Registrar and Teacher jointly ask the Practice Review Hearing Committee, under Section 26 of the Regulation, to find the conduct of the Teacher to constitute unprofessional conduct, based on Section 2 of the Regulation which states:

“2 Conduct that ... (c) is the basis for a conviction for an indictable offence constitutes unprofessional conduct.”

Joint Recommendation for Penalty

17. The Registrar, and the Teacher, jointly ask the Committee to recommend to the Minister,

pursuant to Section 27(3)(b) of the Regulation:

- a. That the Minister suspend the Teacher's certificate until August 31, 2023, subject to the following conditions:
 - i. Completion of a course approved by the Registrar in managing emotions, such approval not be unreasonably withheld, on or before August 31, 2023;
 - ii. Proof satisfactory to the Registrar of successful completion of the above course provided to the Registrar on or before September 7, 2023.
 - b. The Teacher acknowledges that failure to comply with the conditions set out [above] will result in the cancellation of her Permanent Professional Certificate on September 14, 2023.
18. The Registrar and the Teacher agree that the joint submission on penalty is reasonable and appropriate considering the nature of the unprofessional conduct described above, and the Teacher acknowledged her unprofessional conduct by accepting this joint submission.
19. The Teacher acknowledged that if the Committee accepted this joint submission and made this agreed upon recommendation for penalty to the Minister of Education, the Minister of Education is not bound by the recommendation, and has the discretion pursuant to Section 33 of the Regulation to dismiss the complaint, substitute a lesser or greater penalty, or cancel or amend the conditions.

SUBMISSIONS OF THE PARTIES

- [11] The Registrar's Representative provided a detailed review of the Agreed Statement of Facts and Joint Recommendation for Penalty, including submissions regarding why the conduct was unprofessional conduct. The Registrar's Representative also reviewed the recommendation for penalty in detail, including why the penalty was viewed to be appropriate.
- [12] The Teacher chose not to make a statement at the hearing.

COMMITTEE'S FINDINGS

- [13] The Committee carefully reviewed and considered the Agreed Statement of Facts and Joint Recommendation for Penalty and accepts the facts as stated therein.
- [14] After careful deliberation and consideration of the evidence and submissions before it, and in accordance with Section 26(1)(b) of the Regulation, the Committee finds that Ms. Cardinal's actions constitute unprofessional conduct.
- [15] The Committee accepts the proposed recommendation to the Minister which was the Joint Recommendation on Penalty put forward by the parties.

DECISION AND RECOMMENDATION

Part One -- Facts Found by the Committee

- [16] In terms of the fact-finding portion of the Committee's mandate, the Committee carefully listened to the submissions of the Registrar's Representative and carefully reviewed the materials presented to the Committee.
- [17] The Committee acknowledged Ms. Cardinal's signed Agreement of Facts, and accepted the facts presented therein as found on the balance of probabilities by the Committee.

Part Two -- Unprofessional Conduct

- [18] After having found the facts referenced above, the Committee considered the definition of "unprofessional conduct" found in section 2 of the Regulation, which states:

Unprofessional conduct

2 Conduct that

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

constitutes unprofessional conduct.

- [19] Based on the fact that the Teacher engaged in conduct that was the basis for a conviction for an indictable offence, the Committee finds that Ms. Cardinal is guilty of unprofessional conduct. The Teacher admitted to the fact underlying this matter in the Agreed Statement of Facts, which included an admission that she had committed an indictable offence while holding an Alberta teaching certificate. In addition, the Committee was provided with additional documentation, the Investigation Report, which included documents confirming the nature of the conviction.
- [20] In coming to this conclusion, the Committee is also mindful of section 26(1)(b) of the Regulation, which states that the Committee "must find the conduct of a teacher or teacher leader who is the subject of the hearing to constitute unprofessional conduct if the teacher's or teacher leader's conduct is the basis for a conviction for an indictable offence". The Teacher was criminally convicted of assault causing bodily harm contrary to Section 267(B) of the *Criminal Code of Canada*, which is an indictable offence. The Teacher was placed on a 24-month probation with conditions, which she has since successfully completed.


Part Three -- Recommendation to the Minister

- [21] The Committee considered the submissions of the parties regarding sanction.
- [22] The Committee does acknowledge the Teacher's cooperation in the hearing and investigation process. The Teacher entered into an Agreed Statement of Facts and Joint

Recommendation on Penalty, and she also attended the hearing where she took responsibility for her actions. She has also successfully completed her 24 month probation, relating to her criminal charges. The Committee views these as mitigating factors which demonstrate that the Teacher is on the path to being accountable for her actions.

- [23] The Committee is prepared to give deference to the recommendation of the Registrar and the Joint Submission of the Registrar and Teacher. The Committee found the proposed recommended penalty is appropriate in this case and will maintain the integrity of the teaching profession.
- [24] The Committee noted that the conduct of the Teacher in this case was not related to students or related to the school division. The Committee also recognized that the Teacher's school authority would like her to have her back at work, which further supports the joint submission on penalty.
- [25] Therefore, the Committee recommends the following penalty to the Minister, pursuant to section 27(3)(b) of the Regulation to:
- a. Suspend the Teacher's Permanent Professional Certificate in teaching until August 31, 2023, subject to the following conditions:
 - i. Completion of a course approved by the Registrar in managing emotions, such approval not be unreasonably withheld, on or before August 31, 2023;
 - ii. Proof satisfactory to the Registrar of successful completion of the above course provided to the Registrar on or before September 7, 2023.
 - b. Failure to comply with the conditions set out in subparagraph (a) will result in cancellation of the Teacher's Permanent Professional Certificate on September 14, 2023.

Dated at the City of Edmonton in the Province of Alberta on this 26th day of September 2022.



OPTION TO APPEAL – NOTICE TO THE TEACHER & THE REGISTRAR

The Teacher and the Registrar have fifteen (15) days of receipt of this decision to submit a notice of appeal to the Practice Review Appeal Committee, in accordance with section 29 of the Regulation.

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:

██████████, Chair
Practice Review General Panel
44 Capital Blvd., 10044 – 108 Street
Edmonton, Alberta T5J 5E6

Or submitted via email to:
EDC.Governance@gov.ab.ca