

THE ALBERTA TEACHERS' ASSOCIATION

REPORT OF THE HEARING COMMITTEE
OF THE PROFESSIONAL CONDUCT COMMITTEE

IN THE MATTER OF CHARGES OF UNPROFESSIONAL
CONDUCT AGAINST MARK GERARD MCNALLY

The hearing committee of the Professional Conduct Committee of the Alberta Teachers' Association reports that charges of unprofessional conduct laid against Mark Gerard McNally 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, October 23, 2008.

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

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

CONSTITUTION/JURISDICTION

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

CHARGES AND PLEA

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

1. Mark Gerard McNally is charged with unprofessional conduct pursuant to the *Teaching Profession Act* in that he, while a member of the Alberta Teachers' Association, between September 1, 2002 and June 25, 2003, both dates inclusive, at or near [REDACTED] being in a position of trust or authority towards, or in a relationship of dependency with, a young person, did, for a sexual purpose, unlawfully touch, directly or indirectly, with a part of the body or with an object, a part of the body of the young person, contrary to section 153(1)(a) of the *Criminal Code* of Canada.
2. Mark Gerard McNally is charged with unprofessional conduct pursuant to the *Teaching Profession Act* in that he, while a member of the Alberta Teachers' Association, failed to respond to the investigating officer, thus failing to cooperate, contrary to section 26(4) of the *Teaching Profession Act*.

The prosecuting officer requested that the second charge be withdrawn. The hearing committee accepted the request.

In the absence of McNally, a plea of not guilty to Charge One was entered on behalf of the member.

WITNESSES

No witnesses were called.

EXHIBITS FILED

1. Copy of the Notice of Hearing and covering letter, sent to McNally via registered mail, and Canada Post confirmation of delivery (Exhibit 1).
2. Letter from [School Division Redacted] confirming the employment of McNally during the time of the offence (Exhibit 2).
3. Copy of the certificate of conviction of Mark Gerard McNally (Exhibit 3).
4. Conditional Sentence Order for Mark Gerard McNally, dated May 5, 2008 (Exhibit 4).
5. Agreed Statement of Facts between the Crown and Mark McNally, entered at McNally's court trial (Exhibit 5).
6. Official transcript of the court proceedings between the Crown and McNally (Exhibit 6).

EVIDENCE ADDUCED INDICATED THAT

1. McNally had been properly served with notice of hearing (Exhibit 1).
2. McNally was employed by [School Division Redacted] during the time of the offence. The committee deduced, therefore, that McNally was a member of the Alberta Teachers' Association at the time of the offence (Exhibit 2).
3. The certificate of conviction showed that on May 5, 2008, McNally was convicted of an indictable offence under section 153(1)(a) of the *Criminal Code* of Canada (Exhibit 3).

4. McNally received a 15-month sentence to be served within the community, ie, house arrest (Exhibit 4).
5. The court imposed a publication ban on the name of the student.
6. The agreed statement of facts entered at the trial states that McNally, being in a position of trust or authority towards or in a relationship of dependency with Student A, a young person, did for a sexual purpose unlawfully touch, directly or indirectly, with a part of the body or with an object, a part of the body of Student A, contrary to section 153(1)(a) of the *Criminal Code* of Canada. This included kissing and [REDACTED] and [REDACTED] at the home of the accused.
7. The victim impact statement, part of the court proceedings, showed how the relationship with McNally affected, and continues to affect, Student A, emotionally and physically. The statement gave examples of loss of self-confidence, negative self-image and an unhealthy perception of the [REDACTED] (Exhibit 6).

DECISION OF THE HEARING COMMITTEE

The hearing committee found McNally guilty of Charge One.

REASONS FOR DECISION

1. McNally was convicted of an indictable offence under section 153(1)(a) of the *Criminal Code* of Canada.
2. Pursuant to section 23(2) of the *Teaching Profession Act*, if a member is convicted of an indictable offence, then the behaviour of the member on which the conviction is based is deemed to constitute unprofessional conduct.

PENALTY

The hearing committee imposed the following penalty on McNally:

1. He is declared ineligible for membership in the Alberta Teachers' Association.
2. A letter will be sent to the minister of education recommending permanent cancellation of Mark McNally's teaching certificate.

REASONS FOR PENALTY

1. McNally was convicted of an indictable offence under the *Criminal Code* of Canada and is therefore guilty of unprofessional conduct under section 23(2) of the *Teaching Profession Act*.
2. McNally acted in a manner that was detrimental to the best interests of a student.
3. Society has a right to expect that teachers will act in a manner that establishes and maintains a trust relationship between teachers and students. McNally betrayed that trust.
4. Society views sexual relationships between teachers and students as repugnant and reprehensible. The actions of McNally damaged the life of Student A and brought dishonour to the profession.

Dated at the City of Edmonton in the Province of Alberta, Thursday, October 23, 2008.

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



