

## PRACTICE REVIEW HEARING COMMITTEE

### HEARING DECISION IN THE MATTER OF DARRIN COLBY HOGUE

#### HEARING HELD ON MAY 8, 2023 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*, Alberta Regulation 92/2019 (the “Regulation”), convened to hear a complaint about the alleged unprofessional conduct of Darrin Colby Hogue (the “Teacher”).

The following were Members of the Committee:

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

The hearing was held on Monday, May 8, 2023 commencing at 9:00 a.m. via video-conference. In addition to the Committee, the following individuals were present at the hearing:

- [REDACTED] Registrar
- [REDACTED] Registrar’s Representative
- [REDACTED] Governance Secretariat to the Committee
- [REDACTED] Governance Secretariat to the Committee
- [REDACTED] Registrar’s Representative
- [REDACTED] Court Reporter
- [REDACTED] Virtual Hearing Technician
- [REDACTED] Independent Legal Counsel to the Committee

#### PRELIMINARY MATTERS

- [1] The Chair opened the hearing and asked the Members of the Committee 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 confirmed that they had no objection to the composition of the Committee.
- [3] The Registrar’s Representative opened by advising that [REDACTED] had three preliminary applications:
  1. That the binder entitled “Practice Review Hearing Committee - Registrar’s Materials – Darrin Colby Hogue” (“Disclosure Binder”) be entered as the first exhibit;

2. That the proceedings be closed to the public; and
  3. That the hearing proceed in the absence of the Teacher, who was not present at the hearing.
- [4] In relation to closing of the hearing, the Registrar's Representative submitted that this was a matter that involved very sensitive and serious charges in relation to a minor. In the past, similar hearings have been closed to protect the minor and their family from any disclosure of sensitive information. In addition, [REDACTED] noted that there was a court-ordered Publication Ban in relation to the criminal proceedings which should be upheld in these proceedings.
- [5] The Registrar's Representative noted that the Teacher was not present at the hearing, and it was understood that he was unlikely to attend. [REDACTED] identified the allowance of the Committee to proceed in the Teacher's absence and felt it was in the best interests of the process to proceed.
- [6] The Committee requested proof that the Teacher had sufficient notice of the hearing from the office of the Secretariat. [REDACTED] submitted that the Notice of Hearing was delivered personally to the Teacher on April 6, 2023 by his Parole Officer, [REDACTED]. [REDACTED] provided the email from [REDACTED] confirming the service.
- [7] The Committee adjourned to deliberate these preliminary applications.
- [8] In considering the closure of the hearing, the Committee was cognizant of section 21(2) of the Regulation, which allows a hearing to be closed to the public when, in the opinion of the Committee, the interests of any person other than the Teacher may be detrimentally affected if the hearing is not held in private.
- [9] In this case, the Committee found that there was a possibility that the minor or their family may be detrimentally affected if this hearing was open to the public, given the nature of the charges. In addition, the Committee was cognizant of the publication ban which was ordered by the Courts in respect of the Teacher's criminal matter, and the clear desire of the Court to protect the identity of the minor.
- [10] In considering proceeding in the absence of the teacher, the Committee reviewed section 24 of the Regulation, which allows a hearing to proceed in the absence of the Teacher if the Committee has "proof of service of the notice of hearing on the teacher or teacher leader who is the subject of the hearing" (Regulation, sec. 24).
- [11] In this case, the Committee was satisfied that it had proof of service upon the Teacher, and that he had communicated through his parole officer that he was not planning to attend, but was aware of the hearing taking place.
- [12] Following deliberations, the Committee made the following orders:
1. The Disclosure Binder would be entered as Exhibit A;
  2. The email provided for evidence of service would be entered as Exhibit B;
  3. The Hearing will be closed pursuant to section 21(2) of the Regulation; and

4. The Hearing may take place in the absence of the Teacher, pursuant to section 24 of the Regulation.

## ALLEGATION

[13] The allegation in the Registrar's Notice of Decision dated November 24, 2022 is that:

- (a) The Teacher was charged under the *Criminal Code of Canada* for:
  - i. Possession of child pornography contrary to section 163.1(4);
  - ii. Accessing child pornography contrary to section 163.1(4.1);
  - iii. Making child pornography contrary to section 163.1(2); and
  - iv. Invitation to sexual touching of a person under the age of 16 years contrary to section 152.

## EXHIBITS

[14] The following were entered into the record:

1. Exhibit A – Disclosure Binder (192 pages);
2. Exhibit B – Email Exchange Relating to Service (1 page).

## MANDATE OF THE COMMITTEE

[15] 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
  - (a) 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.

## **SUBMISSIONS OF THE PARTIES**

### **Submissions of the Registrar's Representative**

#### **Part 1: Jurisdiction**

- [1] As a preliminary point, the Registrar's Representative commented on the appropriate legislation, given the duration of time that has passed since the Teacher's conduct, which occurred in both 2014 and 2018. In 2018, the Registrar learned of the Teacher's conduct, and an investigation was started in 2019.
- [2] During the time of the conduct and the initiation of the investigation, a prior version of the Regulation was in effect. The Regulation came into force on September 1, 2019. Pursuant to the transitional provisions of the Regulation, and specifically section 35(8), "[a] complaint under the former regulation that is not disposed of before the coming into force of this Regulation must be continued under and dealt with in accordance with this Regulation."
- [3] Accordingly, the Regulation is the appropriate legislation for the hearing and disposition of this matter.
- [4] Moving to the matter of the Committee's jurisdiction over Mr. Hogue, the Registrar's Representative advised of the following:
  1. Mr. Hogue received an Interim Professional Certificate in teaching, effective from January 13, 2016 and expiring on August 31, 2019;
  2. Part of the conduct occurred during the existence of this certificate, in 2018;
  3. In Alberta, the discipline of teachers who are employed by public, Catholic and Francophone schools falls under the *Teaching Profession Act*, however, teachers employed by other authorities fell under this Regulation;
  4. At the time of conduct, Mr. Hogue was not actively teaching in a public, Catholic, Francophone, private or charter school and therefore not subject to the *Teaching Profession Act*, but he held a valid teaching certificate in Alberta and engaged in the practice of teaching in the role of a private music teacher at that time. The criminal offences occurred while the Teacher held a valid teaching certificate, and therefore his conduct and competency are therefore subject to the Regulation;
  5. Although the Teacher's certificate has now expired, "teacher" is defined in the Regulation as including "an individual who once held but no longer holds a teaching certificate" (Regulation, sec. 1(1)(r)(ii)).
- [5] As such, the Committee has jurisdiction over the Teacher.

Part 2: Facts

- [6] On March 6, 2018, the Registrar’s Office reviewed a media notice from [REDACTED] News which referenced the Teacher and his criminal charges.
- [7] The Registrar’s Office reviewed its data and found a “Darrin Colby Hogue” registered as a teacher. The office then took steps to verify that this was the same teacher as the Darrin Colby Hogue in the registry. It was verified as one and the same individual by his full name and birthdate.
- [8] Once identify was verified, the Registrar moved forward with a complaint under section 14 of the Regulation. Under that provision, the Registrar can make inquiries and appoint an investigator in any matter relating to the alleged unprofessional conduct of the Teacher or Teacher Leader.
- [9] Pursuant to this section, in the absence of a complaint, the Registrar appointed an investigator and referred the matter to an investigator on June 3, 2019.
- [10] However, due to ongoing criminal proceedings, the Investigation was suspended until the criminal proceedings were complete.
- [11] In 2022, the Investigator reached out to the Courthouse to seek further status information about the criminal proceedings. At that point, Court documents were obtained and the it was confirmed that the criminal matter was now completed. At that time, the investigation was recommenced and was completed on November 7, 2022.
- [12] The Investigation Report was provided to the Committee, and reviewed. It includes the charges that were levied against the Teacher. The Registrar’s Representative noted that a page was missing in the original Disclosure Binder provided to the Teacher, however, once it was noted that the page was missing, it was provided to the Teacher in advance of the hearing.
- [13] The charges against Mr. Hogue were reviewed by the Committee. He was originally charged with 7 charges, related to: invitation to sexual touching, making child pornography, accessing child pornography, possessing child pornography, distributing sexually explicit material to a child (2), and unlawful possession for the purpose of publication to wit: pornographic video.
- [14] Ultimately, four charges were withdrawn at the request of the Crown, and the Crown proceeded with the following three charges against the Teacher:

Count 1 – On or about the 18<sup>th</sup> day of February, 2018, at or near [REDACTED] did, for a sexual purpose, unlawfully invite, counsel or incite S.R., a person under the age of [REDACTED] year to touch, directly or indirectly, with a part of the part or with an object, the body of Darrin Hogue, contrary to section 152 of the Criminal Code of Canada.

Count 2 – On or about the 18<sup>th</sup> day of February, 2018, at or near [REDACTED]



of the Teacher's home computer. No evidence was obtained relevant to the investigation;

[REDACTED]

11. The Teacher was re-arrested on September 5, 2018. Another interview with the Teacher occurred that evening with Detective [REDACTED]. During this interview, he admitted that a child saw a pornographic video while [REDACTED] was in his company and care. He did not deny, relating to the video he made, that the direction was for the student to perform [REDACTED]. He stated that he would explain at a later time; and
12. The Teacher refused to re-watch the video he had made "for his own sanity and personal feelings". He "didn't want to subject himself to seeing that type of content". Detective [REDACTED] played the audio recording. When asked whether the Teacher had put the video on Youtube, he would not respond;
13. Ultimately, the Teacher acknowledged all the facts set out in the Agreed Statement of Facts in support of the guilty plea and sentencing in relation to the charges.

[17] The Teacher was convicted of all three charges on September 3, 2020, and was sentenced that day with the following sentence:

1. Imprisoned for a term of two years (Count 1);
2. Imprisoned for a term of one year (Count 2); and
3. Imprisoned for a term of one and a half years (Count 3).

[18] As a result of the convictions, the Court ordered the Teacher to comply with the following:

1. Comply with Sex Offender Information Registration Act for life;
2. Surrender a DNA sample under Court Order;
3. Be recommended for treatment through the high-intensity Integrated Correctional Program Model (ICPM) module for sex offenders; and
4. Be subjected to a lifetime weapons prohibition.

[19] The Court ordered the terms served consecutively and this amounts to a global sentence of 4.5 years. Mr. Hogue is currently serving his federal prison sentence at the [REDACTED]

[20] Subsequent to the investigation, which concluded on November 7, 2022, the Teacher applied for parole.

[21] On November 17, 2022, the Parole Board denied the Teacher full parole but did grant him day parole for a period of six months, with a series of conditions. The Teacher agreed to the conditions and stated that he felt he would benefit most with traditional day parole release, and reiterated the need for supervision and the Community Residential Facility ("CRF")

would be preferable to his home which was a “dark place” that enabled his unhealthy maladaptive coping behaviour.

[22] The conditions imposed on the Teacher for his 6-month day parole include:

1. Must follow treatment plan;
2. No contact with victims;
3. No contact with children (not to be in the presence of children under the age of 18, unless you are accompanied by a responsible adult who knows your criminal history, and has previously been approved in writing by your parole supervisor);
4. Not to seek or obtain any employment or volunteer in a capacity that involves being in a position of trust or authority towards a person under the age of 18 years;
5. Not to be in a position of trust/authority over any children under age of 18 years old;
6. Must report all sexual and non-sexual relationships and friendships with females or males who have parental responsibility for children under the age of 18 unless previously approved by parole supervisor;
7. Not to own, use or possess any technological device that would allow him to access the internet, unless previously approved in writing by his parole supervisor; and
8. Not to be in, near or around places where children under the age of 18 are likely to congregate such as elementary and secondary schools, parks, swimming pools and recreational centers unless accompanied by an adult previously approved in writing by his parole supervisor.

[23] After this information was received and considered, the Registrar decided to proceed to a hearing. A Notice of Hearing was provided to the Teacher.

[24] The Registrar accepts the Agreed Statement of Facts as signed and agreed to by the Teacher in his criminal proceedings, and notes the confirmed guilty charges on three indictable offences, and submits that the conduct is unprofessional.

### Part 3: Request

[25] The Registrar’s Representative noted that the definition of “unprofessional conduct” is contained 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.

[26] Clearly, when the conduct is the basis for a conviction for an indictable offence, that constitutes unprofessional conduct under the Regulation.

- [27] In this case, the Teacher has committed conduct which was the basis for three convictions of indictable offences, as outlined above. Accordingly, the Registrar's Representative submitted that this was clearly unprofessional conduct.
- [28] The Registrar was seeking that the Committee recommend to the Minister that the Minister cancel the certificate of the Teacher.
- [29] The Registrar's Representative noted that this request is in line with section 27(4) of the Regulation, which state that if a Committee is not recommending that the Minister cancel or suspend the Teacher's certificate when it has been found that the Teacher was convicted of an indictable offence, the Committee must include in its reasons why such a recommendation is not being made.

#### Part 4: Closing Remarks

- [30] The Registrar's Representative confirmed that this conduct was clearly unprofessional. ■■■ reaffirmed the request that the Committee recommend to the Minister that the Teacher's certificate be cancelled, given the serious nature of the Teacher's behaviour, and the fact that he was convicted of three indictable offences.
- [31] ■■■ concluded by noting that the cancellation will ensure that the Teacher does not take on a teaching role in the Province of Alberta.

#### **Submissions of the Teacher**

- [32] The Teacher was not present at the hearing. Neither the Registrar nor the Secretariat received any submissions from the Teacher to provide to the Committee, and the Committee confirmed this on the record.

#### **COMMITTEE'S FINDINGS**

- [33] The Committee carefully reviewed and considered the information that was provided to them by the Registrar's Representative.
- [34] Notably, the Committee reviewed and took note of the signed Agreed Statement of Facts which the Teacher signed in relation to his criminal charges. Even though there was no live evidence in the hearing and the Teacher did not attend, the Committee noted that the Teacher admitted, in the criminal context, to conduct that formed the basis of three indictable convictions.
- [35] 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 the Teacher's actions constitute unprofessional conduct.
- [36] The Committee agrees with the recommendation to the Minister suggested by the Registrar's Representative – cancellation of the Teacher's certificate.

#### **DECISION AND RECOMMENDATION**

## Part One -- Facts Found by the Committee

- [37] 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.
- [38] As set out above, the Committee reviewed the Agreed Statement of Facts which was signed by the Teacher and set out the facts related to the convictions for the indictable offences outlined above in the “Facts” section.
- [39] The Committee also took note of the fact that the materials provided to it by the Registrar’s Representative were largely gathered via the investigation and contained mostly Court documents, which can be relied upon for their veracity, given that they came directly from the Courthouse, and contained an Agreed Statement of Facts signed by the Teacher himself.
- [40] Finally, the Committee noted that the Teacher had been provided with the Notice of Hearing and the disclosure in this matter and made no representations with respect to the facts as set out therein.
- [41] For the purposes of these Allegations and given section 26(1)(b) of the Regulation, the Committee need only to find facts which establish that the Teacher has been convicted of one or more indictable offence(s).
- [42] The Committee finds the following facts, on a balance of probabilities:
1. On September 3, 2020, the Teacher was convicted of an indictable offence, being: “On or about the 18<sup>th</sup> day of February, 2018, at or near ██████████ did, for a sexual purpose, unlawfully invite, counsel or incite ██████, a person under the age of ██████ year to touch, directly or indirectly, with a part of the part or with an object, the body of Darrin Hogue, contrary to section 152 of the Criminal Code of Canada.
  2. On September 3, 2020, the Teacher was convicted of an indictable offence, being “On or about the 18<sup>th</sup> day of February, 2018, at or near ██████, ██████, knowingly, did make child pornography, to wit: a video of ██████, contrary to s. 163.1(2) of the Criminal Code of Canada.”
  3. On September 3, 2020, the Teacher was convicted of an indictable offence, being “Between the 1<sup>st</sup> day of May, 2014, and the 3<sup>rd</sup> day of March, 2018, both dates inclusive, at or near ██████████, did access child pornography, contrary to section 163.1(4.1) of the Criminal Code of Canada.”

## Part Two -- Unprofessional Conduct

- [43] After having found the facts referenced above, the Committee considered sections 2 and 26(1)(b) of the Regulation in order to conclude that the Teacher’s actions constitute unprofessional conduct.
- [44] Per the facts found, it is clear that the Teacher’s conduct in relation to those three convictions, outlined above, formed the basis for three convictions for indictable offences. Accordingly,

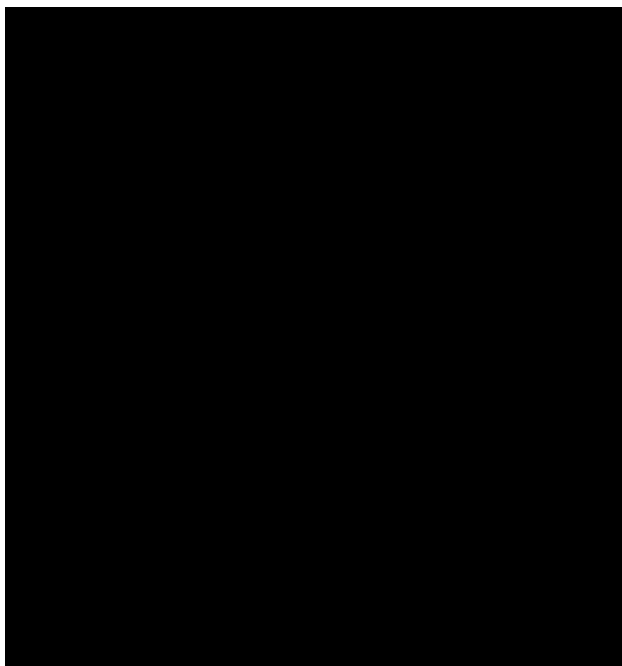
the conduct is automatically unprofessional conduct in accordance with the Regulation.

- [45] Although that is all that is required, the Committee wished to comment additionally on the Teacher's conduct, as it is particularly egregious and deserves additional comment. Any teacher in a position of authority is responsible for the well-being and safety of the people in their charge.
- [46] In this case, the Teacher did not protect the student, and furthermore was actually the person who harmed the student. In doing so, he caused damage in the life of the student, ■ family, but also brought disrepute upon the profession, in that the public expects teachers to ensure the safety of people in their charge, and he did not uphold that standard.
- [47] The Committee reviewed the Schedule to the Regulation entitled "Professional Conduct Requirements for Teachers and Teacher Leaders." Pursuant to that Schedule, the Committee found that the Teacher's conduct breached the minimum professional conduct requirements set out therein, including the following specific breaches:
1. **1(c)** required that a teacher "is required to teach or lead, as the case may be, in a manner that respects the dignity and rights of all persons and is considerate of their circumstances." In this case, that was not met, as the Teacher did not respect the dignity of his student, ■ family, or the community at large by undertaking the action that led to his criminal charges.
  2. **2(a)** states that a teacher is required "to strive to establish a relationship of trust with parents". Again, in this case, by virtue of his conduct, the Teacher did not establish a relationship of trust with the parent of this particular student when he engaged in the criminal and unprofessional conduct identified here. Parents trust that teachers will respect and uphold the trust placed in them to care for students, and the Teacher did not uphold that responsibility in this case.
  3. **5(a)** states that a teacher is required "to conduct himself or herself in a manner that maintains the honour and dignity of the profession." In this case, the Teacher's conduct clearly did not maintain the honour or the dignity of the profession, and in fact tarnished the profession and the community's perception of teachers by failing to protect a student in his case, and actively committing criminal offences in relation to that young student.
  4. **5(b)** states that a teacher is required "not to engage in activities that adversely affect the quality of the teacher's or teacher leader's professional service". Here, the conduct of the Teacher clearly adversely affected the quality of his professional service. He was not taking care of the student, and not providing ■ with education, when he committed the conduct underlying the criminal charges.
- [48] As such, the Committee finds this to be a clear instance of unprofessional conduct, and denounces the Teacher's conduct in the strongest possible terms.

**Part Three -- Recommendation to the Minister**

- [49] The Committee considered the submissions of the Registrar's Representative in relation to the appropriate recommendation to the Minister.
- [50] The Committee is cognizant of the section 27(4) of the Regulation, which states that if a decision of the Committee relates to a teacher who has been convicted of an indictable offence, and cancellation or a suspension is not recommended, the decision is required to include reasons why such a recommendation has not been made.
- [51] In this instance, the Committee finds the requested sanction – cancellation – reasonable and appropriate in the circumstances.
- [52] The nature of this offence is so egregious that to put this Teacher in a position of authority of students again would be very problematic to society. Protection of students is one of the most important jobs of the educational community, and the Committee's recommendation is to ensure this teacher's certificate is cancelled.
- [53] There is also no indication that by doing so, the Teacher's livelihood will be compromised directly – the Teacher is currently incarcerated and his parole conditions specifically include prohibitions on him being around children, or being employed or volunteering in relation to children. The Parole Board concluded this after much consultation with the Teacher, and the teacher agreed with the issuance of those conditions. Therefore, the Committee feels that cancellation is an appropriate and merited recommendation in this case.
- [54] Therefore, the Committee recommends the following penalty to the Minister, pursuant to section 27(3)(c) of the Regulation to cancel one or more of the certificates of the Teacher.

Dated at the City of Edmonton in the Province of Alberta on this 17<sup>th</sup> day of May, 2023.



**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](mailto:EDC.Governance@gov.ab.ca)