

THE ALBERTA TEACHERS' ASSOCIATION  
DECISION OF THE PROFESSIONAL CONDUCT APPEAL COMMITTEE  
IN THE MATTER OF AN APPEAL BY PROVINCIAL EXECUTIVE COUNCIL  
OF THE DECISION OF THE HEARING COMMITTEE OF THE PROFESSIONAL  
CONDUCT COMMITTEE WITH RESPECT TO CHARGES  
OF UNPROFESSIONAL CONDUCT AGAINST CATHERINE ROLICA

The Professional Conduct Appeal Committee reports that the appeal by Provincial Executive Council of the decision of the hearing committee of the Professional Conduct Committee with respect to charges of unprofessional conduct against her was heard in accordance with the *Teaching Profession Act* (TPA). The appeal hearing was held via videoconference by Zoom, commencing Monday, December 7, 2020 and continuing until Tuesday, December 8, 2020.

Professional Conduct Appeal Committee (PCAC) members present were [REDACTED]  
[REDACTED] counsel to the committee. [REDACTED] secretary and was  
assisted by [REDACTED]. [REDACTED] was recorder. [REDACTED] represented Provincial  
Executive Council (PEC). The respondent, Catherine Rolica, was present and was not  
represented by legal counsel.

CONFIRMATION OF MEMBER'S RIGHT TO LEGAL COUNSEL

Following the PCAC's established steps and procedures, the chair confirmed with Rolica that

1. she was not presently represented by counsel;
2. she was aware of her right to be represented by legal counsel; and
3. she would not be represented by legal counsel during these PCAC proceedings.

The chair then asked Rolica if she was prepared to proceed or had any objections. Rolica raised no objections and said that the committee could proceed.

COMPOSITION AND JURISDICTION

There was no objection to either the composition or the jurisdiction of the appeal committee.

EXHIBITS FILED

Exhibit 1—Notice of Hearing of Appeal and proof of Canada Post delivery, dated  
August 14, 2020 (delivered to Rolica's front door at 12:23 PM on August 17, 2020)

Exhibit 2—[REDACTED]

Exhibit 3—Precedent cases: [REDACTED]

Exhibit 4—Alberta Teachers' Association Discipline Procedures (flowchart), dated 2019 07.

### SUBMISSION OF THE APPELLANT

[REDACTED], on behalf of PEC, presented a two-part submission

1. that the PCAC allow the appeal in that the decision and penalty of the hearing committee of the Professional Conduct Committee (PCC) be quashed and a new hearing be ordered, or
2. the PCAC vary the penalty ordered by the hearing committee if it does not allow the first option above.

### Regarding Quashing the Hearing Committee's Findings and Order

In the first part of [REDACTED] submission, [REDACTED] submitted that both the finding and the order of the hearing committee should be quashed for the following reasons:

1. On April 4, 2019, a professional conduct hearing was ordered for Rolica by the Association's [REDACTED]. Rolica received a letter advising that a hearing had been ordered, on April 25, 2019. Rolica received no additional communication from the Association until November 14, 2019, when she was notified that her hearing had been scheduled for December 16-20, 2019. This meant Rolica had only 33 days to prepare for the hearing.
2. The disclosure package from the presenting officer, [REDACTED] was received by Rolica on November 26, 2019. [REDACTED] highlighted that in excess of 236 days had passed since being advised that the matter had been referred to a hearing committee. Rolica was left with only 20 days before the hearing in which to prepare her defence (Record of Proceedings, Decision of the Hearing Committee, page 2).
3. On August 2, 2019, the 120-day period during which a hearing should have been convened (unless an extension had been approved by PEC) had passed. Rolica, assuming that the charges against her had been dropped as she had received no additional communication, dismissed her legal counsel. [REDACTED] argued that though Rolica's assumption was incorrect, [REDACTED] could understand how she could have reached this conclusion. The end result of this assumption was Rolica having limited time to prepare for her hearing without the assistance of legal counsel.
4. Rolica requested an adjournment to secure legal counsel on November 29, 2019. This request was denied by the hearing committee. [REDACTED] drew attention to sections of the hearing committee's written decision (Reasons for Decision, pages 2-3, items b, c, d, e and j), which outline the hearing committee's rationale for denying the adjournment. These focused

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primarily on procedural norms (ie, investigated members are not informed of extensions granted by PEC), that Rolica had received ample notification that a hearing was ordered and that the hearing committee had concerns that the quality of evidence might deteriorate over time. [REDACTED] argued that denying Rolica's request for adjournment for these reasons was a failure of natural justice and procedural fairness.

5. As a precedent, [REDACTED] submitted the decision of [REDACTED] (Exhibit 2). [REDACTED] requested an adjournment during a disciplinary process (in which [REDACTED] was the investigated member) because [REDACTED] was unable to secure legal counsel before [REDACTED] hearing date. This request was denied by the hearing committee and the hearing continued with [REDACTED] having no legal representation. The decision concludes that the hearing committee's failure to grant an adjournment for [REDACTED] was a breach of procedural fairness and a denial of natural justice.
6. The [REDACTED] decision alluded to the concept of procedural fairness in relation to disciplinary body processes (Exhibit 2, paragraph 26)

... if the statute or practice of the tribunal follows a common practice, the person affected will have a legitimate expectation that the practice will be followed and such will be required by the duty of fairness.

7. The [REDACTED] decision included the following (Exhibit 2, paragraph 30, page 11, item 16).

Whether or not an adjournment should be granted by an administrative tribunal including a disciplinary body must be considered by balancing the applicant's right to a fair hearing against the desirability of an expeditious penalty hearing following guilty pleas of professional misconduct. The right of the applicant to a fair hearing must be the predominant consideration.

8. The [REDACTED] decision also reads (Exhibit 2, paragraph 37):

There is nothing in the factual situation that would suggest that the hearing had to go forward on [REDACTED] when the tribunal knew in advance that [REDACTED] would not be able to retain counsel for attendance and would not be appearing on [REDACTED] own to challenge the witness in cross-examination.

#### Regarding Varying the Hearing Committee's Penalty

In the second part of his submission, [REDACTED] requested that if the appeal committee did not grant the appeal of the hearing committee's decision to deny an adjournment, the appeal committee consider varying the penalty instead.

Report of the PCAC re C Rolica, page 4

1. [REDACTED] questioned the reasonableness of the rationale that the hearing committee used to determine penalties (Decision of the Hearing Committee, pages 39-40, items 11, 12, and 13).
2. [REDACTED] described the following seven precedent cases (Exhibit 3):
  - a) [REDACTED] which concerned sick leave abuse (ie, theft of time)
  - b) [REDACTED] which concerned forgery of employer e-mails to avoid paying rent
  - c) [REDACTED] which concerned the abuse of school division credit cards for the purchase of personal property (indictable offences of property theft)
3. [REDACTED] compared the penalties imposed on Rolica by the hearing committee to the precedent cases, drawing attention to the following:
  - a) The hearing committee ordered a letter of severe reprimand, a declaration that Rolica is permanently ineligible for membership in the Alberta Teachers' Association and a recommendation to the minister of education that Rolica's teaching certificate be permanently cancelled.
  - b) [REDACTED]'s offences were indictable. They were declared ineligible for membership in the Alberta Teachers' Association for two years and a recommendation was made to the minister of education to suspend their teaching certificates for a period of two years. [REDACTED] stated that Rolica's penalty was more severe than what was ordered for [REDACTED] even though she was not charged with any indictable offences.
  - c) [REDACTED] received a letter of reprimand and a fine of \$3,000 for defrauding [REDACTED] employer of sick leave so [REDACTED] could earn a speaking honourarium in addition to [REDACTED] salary and benefits. [REDACTED] argued that [REDACTED]'s case is the most closely aligned with Rolica's case as Rolica is accused of violating the sick leave provisions of her collective agreement while she allegedly earned additional income. [REDACTED] stated that Rolica's actions were more severe than [REDACTED]'s.
  - d) [REDACTED], and [REDACTED] received lighter penalties than [REDACTED], but all accessed sick leave inappropriately. Their penalties ranged from no sanction to oral reprimand to a letter of reprimand, respectively. [REDACTED] stated that the penalties for these cases were less severe than those imposed on Rolica, even though their charges were similar.
4. [REDACTED] recommended that given the precedent cases, the appeal committee consider varying Rolica's penalty and ordering a letter of severe reprimand and a \$10,000 fine (the approximate equivalent of 22 sub days, valued at \$5500, and 18 days of pay for substitute teaching in [REDACTED] while on sick leave, valued at \$4500). Failure to pay within a time to be

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determined by the appeal committee would result in a declaration of ineligibility for membership.

5. [REDACTED] repeated [REDACTED] initial request that the appeal committee quash the hearing committee's finding and order a new hearing by a hearing committee of the PCC or vary the penalty ordered by the hearing committee to reduce its severity.

#### SUBMISSION OF THE RESPONDENT

1. Rolica agreed with what [REDACTED] presented but had some additions and clarifications.
2. Rolica made the following requests of the appeal committee, in the following order of preference:
  - a) That the finding and order of the hearing committee be dismissed
  - b) That the penalty ordered by the hearing committee be dismissed
  - c) That the appeal committee vary the penalty ordered by the hearing committee (although Rolica said that would not be able to afford the amount suggested by [REDACTED])
  - d) That a new hearing by a new hearing committee of the PCC be ordered (even though she mentioned at a number of points that this would be difficult for her)
3. Rolica referenced statements made by [REDACTED] counsel to the hearing committee, from the hearing transcript, in regard to discussions about procedural fairness when considering adjournments, specifically the following quotation, "So the right to make full answer in defence, balance of convenience is a factor, but it shouldn't override the right to make full answer in defence" (Record of Proceedings, pages 19-20).
4. Rolica said that the hearing committee adjusted its hearing schedule to accommodate a family-related health request by one of the hearing committee members. She said that, "it's not fair" that the hearing committee amended its hearing schedule to accommodate the requests of one of its members but wouldn't approve her adjournment request.
5. Rolica questioned whether or not the hearing committee had jurisdiction, given her understanding of the Association's timelines. She elaborated on her understanding that hearings should be held within 120 days of the matter being referred to a hearing committee and that this did not happen in her case.
6. Rolica said when she raised this concern during her hearing, [REDACTED], [REDACTED] to the hearing committee, said "We'll [Rolica and [REDACTED] would] discuss this later, off record." This is reflected in the hearing transcript on page 24.
7. Rolica believed that [REDACTED] had questioned whether the hearing should proceed given the 120-day timeline.

8. Rolica compared grievance timelines and discipline timelines and suggested that if grievance processes expire after 120 days, so should discipline timelines. Rolica said that the employer had filed a grievance against her and those timelines, as per collective agreement language, had expired. She said she believed that similar to the grievance, there were expiration dates to timelines in the Association's discipline process as well.
9. Rolica introduced the Association's Discipline Procedures flowchart (Exhibit 4) and said that, "You didn't follow your own steps and procedures." She shared her belief that her case is not subject to indictment, but that it was frivolous and vexatious.
10. As a point of clarification, [REDACTED] explained that the Association's [REDACTED] can choose one of three options for disposition of the case upon receiving and considering the investigation report and recommendation of the investigating officer
  - a) that the complaint lacked sufficient evidence or it was frivolous and vexatious,
  - b) that mediation or "the invitation process" occur, or
  - c) a hearing can be ordered.

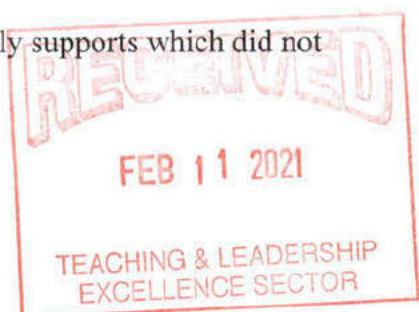
It was [REDACTED]'s decision in this case to proceed to a hearing. [REDACTED] further clarified that these three choices are not a sequence of steps; rather, they are three independent courses towards resolution of a complaint.

11. Rolica admitted her "actions were not good, but not unprofessional." She again admitted that it was wrong to
  - a) work in [REDACTED] while on sick leave from her Alberta school division and
  - b) to misuse the sick leave provisions of her collective agreement to travel to [REDACTED]

She stated, "I admit that was wrong. I didn't know it was wrong [at the time], but now I know it was wrong."

12. Rolica said she was never deceptive with her Alberta employer when asked about teaching in [REDACTED] while on sick leave.
13. Rolica said she believed she was not unprofessional in her actions because she only attended training opportunities and taught for her [REDACTED]-based job during the Alberta-based employer's non-operational days, weekends, and after school hours.
14. Rolica added that [REDACTED]'s submission and the precedent cases [REDACTED] presented did not consider her particular health needs and medical history.
15. Rolica explained that she needed to be in [REDACTED] to access family supports which did not exist in [REDACTED]

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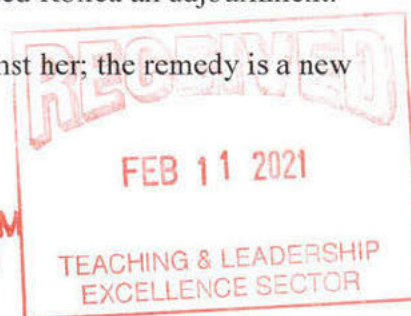
16. In regard to whether or not her trip to [REDACTED] was unprofessional, Rolica said her doctor told her it would "be good for her."
17. Rolica said that other individuals who have been found guilty of misconduct for more severe offences have received lighter penalties than those ordered for her.
18. Rolica mentioned, at a number of points in her submission, that she believed the investigation processes and penalties conducted by both her employer and by the Association were unfair.
19. Rolica spoke about issues with her employer's resolution process. She said that one of the options her employer presented to her referenced filing a complaint with the RCMP [REDACTED]  
[REDACTED]
20. Rolica said that her employer should have filed a complaint with the Association immediately if it felt there was an intentional act on her part to misuse the leave provisions in her collective agreement.
21. She said that her employer did not offer the opportunity for mediation. Her belief is that her school division used its power to "manipulate" her.
22. Rolica said she worked with an Association Member Services executive staff officer to develop employment resolution options which were in addition to those developed by her employer.
23. One possible solution was that Rolica would resign, that the school division's complaints to the Association and the RCMP would be withdrawn and the school division would reimburse Rolica for classroom supplies she had purchased. Although the school division's [REDACTED] agreed to these terms, Rolica did not. Rolica refused to sign the letter of resignation because she felt doing so would limit her legal rights.
24. In regard to the possibility of a new professional conduct hearing, Rolica stated that, "It's cruel to make this happen again," and added that she should not have to "endure" another hearing; as she had received "no fairness in the first hearing."
25. Rolica said she was not afforded all of her rights, including human rights and legal rights.
26. Rolica described both
  - a) the hearing committee's failure to grant her adjournment request and
  - b) her employer's actionsas "unnecessary mental harassment."

27. In regard to the declaration of her ineligibility for Association membership and the recommendation for the cancellation of her teaching certificate, Rolica said it was “unfair to prevent me from having a future” teaching career. She said she hasn’t worked as a teacher since [REDACTED]
28. Rolica said she was not interested in teaching in Alberta again and would be willing to give up her membership in the Alberta Teachers’ Association. She emphasized that she would like to retain her teaching certificate so she could continue to teach elsewhere.
29. Throughout Rolica’s submission, the chair of the appeal committee reminded her to focus on the grounds for the appeal. Latitude was granted to Rolica, given her self-representation.
30. In summation, Rolica reiterated her requests of the appeal committee in the following order of preference:
  - a) That the finding and order of the hearing committee be dismissed
  - b) That the penalty ordered by the hearing committee be dismissed
  - c) That the appeal committee vary the penalty ordered by the hearing committee
  - d) That a new PCC hearing be ordered

APPELLANT’S RESPONSE TO NEW MATTERS RAISED BY THE RESPONDENT

1. [REDACTED] said [REDACTED] appreciated hearing her perspective.
2. [REDACTED] rejected Rolica’s argument that the hearing committee amending its schedule due to the availability of one its members dealing with family issues was equivalent to Rolica’s request for adjournment. [REDACTED] said as long as the hearing committee believed that the hearing could continue, it could continue.
3. [REDACTED] rejected Rolica’s arguments pertaining to her interpretation of a 120-day expiration timeline. The TPA allows PEC to extend the timeline. PEC does not need to communicate this extension to the investigated member.
4. [REDACTED] said that Rolica veered into irrelevant territory regarding issues about her employment.
5. [REDACTED] clarified grievance procedures and timelines are not equivalent to the TPA.
6. [REDACTED] reiterated that the hearing committee should have granted Rolica an adjournment.
7. [REDACTED] rejected Rolica’s notion of dismissing the charges against her; the remedy is a new hearing.

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8. [REDACTED] refuted Rolica's argument that the Association was not following its own discipline procedures; [REDACTED] confirmed that the Association was indeed following its procedures.
9. [REDACTED] re-emphasized that this was Rolica's first request for adjournment and it was refused. [REDACTED] said that Rolica did not have a history of abusing the process.

#### DECISION OF THE APPEAL COMMITTEE

It is the decision of the Professional Conduct Appeal Committee that both the finding and the order of the hearing committee be quashed and the matter be sent back to the Professional Conduct Committee to be heard by a new hearing committee.

The appeal is allowed.

#### REASONS FOR DECISION

1. Rolica's letter, dated November 23, 2020, requesting an adjournment was her first request.
2. Rolica's request was heard by the hearing committee on November 29, 2019. The adjournment was requested so Rolica could secure legal counsel before her hearing. The hearing committee denied this request. Rolica has a right to legal counsel and requested adjournment to secure this representation.
3. Rolica had engaged legal counsel after receiving the letter advising her that a hearing was ordered in her case but she did not continue to retain her counsel after the 120-day timeline had passed because she assumed the Association had abandoned the hearing order and therefore, counsel was no longer required.
4. Upon notification of the hearing date in November, Rolica contacted an employment lawyer who said that the short amount of time available before the hearing would not allow sufficient time to help Rolica adequately prepare.
5. Rolica was hampered in her ability to prepare adequately and represent herself or have legal counsel.
6. During the professional conduct hearing, [REDACTED] asked Rolica directly if she would like legal representation and she answered in the affirmative. Rolica said that her case was complex and that she needed professional assistance. The hearing committee proceeded with the hearing despite Rolica not having legal counsel present.

7. The hearing transcript reflects that [REDACTED] advised the hearing committee that adjournment should be considered.
8. Considering the [REDACTED] decision, it is the opinion of the appeal committee that ultimately, the balance of the right to a fair hearing versus the need for an expeditious hearing required the granting of an adjournment to Rolica. The hearing committee's refusal to grant an adjournment in this case constituted a breach of natural justice and a denial of procedural fairness to Rolica. This matter should not have proceeded without Rolica having had the opportunity to secure legal representation. The administrative convenience/procedural concerns raised by the hearing committee did not constitute sufficient reasons for denying Rolica's adjournment request in this case.
9. This appeal committee, in making its decision, considered the totality of the evidence before the hearing committee, in addition to the case authorities and submissions by [REDACTED] and submissions by Rolica provided at the appeal hearing itself.

Dated at the City of Edmonton in the Province of Alberta, Thursday, February 4, 2021.

THE PROFESSIONAL CONDUCT APPEAL COMMITTEE  
OF THE ALBERTA TEACHERS' ASSOCIATION

[REDACTED]



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