

THE ALBERTA TEACHERS' ASSOCIATION
DECISION OF THE HEARING COMMITTEE
OF THE PROFESSIONAL CONDUCT COMMITTEE
IN THE MATTER OF A CHARGE OF UNPROFESSIONAL
CONDUCT AGAINST AARON JAMES HEINEMANN

The hearing committee of the Professional Conduct Committee of the Alberta Teachers' Association reports that a charge of unprofessional conduct laid against Aaron Heinemann of [Location Redacted] was duly investigated in accordance with the *Teaching Profession Act*. The hearing was held online, via video conference, on Monday, November 21, 2022.

The participants were

1. Professional Conduct Committee members appointed as the hearing committee, [Name Redacted] (chair), [Name Redacted] and [Name Redacted];
2. counsel to the hearing committee, [Name Redacted];
3. secretary to the hearing committee, [Name Redacted];
4. administrative secretary to the hearing committee, [Name Redacted];
5. presenting officer, [Name Redacted]; and
6. investigated member Aaron Heinemann, not present and was not represented by counsel.

COMPOSITION/JURISDICTION

There were no objections to the composition of the hearing committee or its jurisdiction to hear the matter.

CHARGES AND PLEA

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

1. Aaron James Heinemann is charged with unprofessional conduct pursuant to the *Teaching Profession Act* in that Heinemann, while a member of the Alberta Teachers' Association, on or about August 31, 2017, failed to maintain the honour and dignity of the profession when Heinemann assaulted a teaching colleague by making physical contact with their buttocks, contrary to article 18 of the Code of Professional Conduct.

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

WITNESSES

No witnesses were called.

EXHIBITS FILED

- Exhibit 1 Proof of Heinemann's membership in the Alberta Teachers' Association for multiple time periods from 1998 2001 and continuous membership from August 2001 to present
- Exhibit 2 Declaration of awareness of rights, signed by Heinemann, dated October 12, 2022
- Exhibit 3 Notice of hearing and Canada Post confirmation of delivery, on July 20, 2022 Exhibit 4 Submission on plea, signed by Heinemann, dated October 12, 2022
- Exhibit 5 Agreed statement of facts inclusive of appendix 1, signed by Heinemann and [Name Redacted], dated October 12, 2022
- Exhibit 6 Joint submission on penalty, signed by Heinemann and [Name Redacted], dated October 12, 2022

EVIDENCE ADDUCED AND EXHIBITS FILED INDICATED

Background

A request for investigation of alleged unprofessional conduct was made by Teacher A on April 4, 2019. An investigating officer was assigned on April 10, 2019, and the investigation commenced on April 12, 2019. The report was submitted to the executive secretary on June 6, 2022, with the recommendation that a Professional Conduct Committee hearing be held. The executive secretary confirmed the need for a Professional Conduct Committee hearing on June 13, 2022.

Background Facts Relating to Allegation

1. Heinemann was a teacher with the [School Division Redacted] from September 1, 2001 until present.
2. Heinemann was a teacher at [School Redacted] from September 1, 2001 until September 1, 2017.
3. Teacher A was a teacher at [School Redacted] from March 2015 until June 2020.
4. Teacher A had returned [Personal details] at the beginning of the 2017/18 school year.

Facts Relating to Charge 1

1. Heinemann entered the work room of [School Redacted] on the afternoon of August 31, 2017.
2. Teacher A and Teacher B were present in the workroom when Heinemann entered.
3. Heinemann approached Teacher A from behind and made physical contact with his hand on Teacher A's buttocks.
4. On September 1, 2017, Teacher A wrote an e-mail to Heinemann. In the e-mail, Teacher A wrote,

I have given considerable thought to your actions and language towards me in the copy room on August 31 at approximately 1:10 [PM]. I will be reporting it to administration. I have contacted member services and I suggest you do the same.
5. Heinemann replied to Teacher A's e-mail. He wrote,

Hi [Teacher A] I will do that. For what it's worth I am sorry my actions were completely inappropriate. I will be owning up to this let me know which administrator to talk to. I did try to call to find out which administrator to talk to.
6. Teacher A made a formal complaint to the school division.
7. [Name Redacted], associate superintendent, investigated the matter.
8. On September 8, 2017, [Name Redacted] informed the parties of the findings of the investigation. [Name Redacted] reported,

After a formal investigation into the complaint considering both (*sic*) all information gathered and both parties' understanding of the events in question, it was found that Mr Heinemann did not adhere to the Division's Harassment Procedure 170.
9. Actions taken against Heinemann included a meeting advising him that the investigation results concluded that he behaved contrary to the Division's Administrative Procedure 170 Harassment; documentation to that effect was placed on Heinemann's file; and Heinemann was transferred to [School Redacted].
10. On the evening of March 18, 2019, Heinemann was coaching a community-based volleyball team in the gymnasium at [School Redacted] Teacher A observed Heinemann in the gymnasium.
11. After the event of March 18, 2019, Teacher A made a complaint to the RCMP about the August 31, 2017 incident.
12. On May 30, 2019, Heinemann made a statement to the RCMP.

13. Heinemann was charged with a single count of sexual assault under section 271 of the *Criminal Code*.
14. A trial into the matter occurred on March 15, March 16 and April 23, 2021.
15. On June 30, 2021, Judge Jeffrey Champion provided written reasons for his decision. Certain sections of the decision appear below. (Exhibit 5, Appendix 1)
 - a) It is not disputed that on the day of the alleged offence, the accused applied force by touching [Person A] without their consent. The main issue to be determined is whether the touching was sexual in nature, thus constituting a sexual assault under the [*Criminal*] Code. (paragraph 5, Appendix 1, Exhibit 5)
 - b) The evidence of [witness name redacted] leaves me with reasonable doubt about the nature of the contact such that I cannot conclude that the assault was sexual in nature. (paragraph 117, Appendix 1, Exhibit 5)
 - c) The testimony of [witness name redacted], coupled with that of the accused, raise a reasonable doubt in my mind that it was contact of a sexual nature. Therefore, I find the accused not guilty of the offence of sexual assault, as charged. (paragraph 118, Appendix 1, Exhibit 5)
 - d) As stipulated above, it is not disputed that the accused intentionally touched [Teacher A]'s buttocks on the day in question without [gender redacted] consent. I am left with reasonable doubt as to whether the touching was sexual in nature. (paragraph 135, Appendix 1, Exhibit 5)
 - e) The accused admitted under oath that he applied force to [Teacher A]'s buttocks, and whether it be a 'tap' or a 'slap,' it was done without [gender redacted] consent. The accused's actions therefore constitute an assault in law. (paragraph 136, Appendix 1, Exhibit 5)
 - f) Accordingly, pursuant to [section] 662 (1) of the *Criminal Code*, I find the accused guilty of the lesser and included offence of assault under [section] 265 and enter a conviction to that charge. (paragraph 137, Appendix 1, Exhibit 5)
16. Heinemann's conviction was a summary conviction and he was sentenced to a conditional discharge following 12 months of probation.

DECISION OF THE HEARING COMMITTEE

Charge 1 Guilty

REASONS FOR DECISION

1. Aaron James Heinemann has contravened article 18 of the Code of Professional Conduct by failing to maintain the honour and dignity of the teaching profession. Colleagues are expected to maintain proper professional boundaries and in touching a colleague without permission in the manner he did, Heinemann failed to do so.

2. By his own admission and as a part of the agreed statement of facts, Heinemann acknowledged that, while a member of the Alberta Teachers' Association, on or about August 31, 2017, he made intentional physical contact to the buttocks of Teacher A. (Exhibit 5)
3. As part of the agreed statement of facts, Heinemann acknowledged that the intentional physical contact to the buttocks of Teacher A constituted unprofessional conduct according to the Code of Professional Conduct, article 18. (Exhibit 5)
4. The courts, using a higher standard of proof than that required for a professional conduct committee, found Heinemann guilty of assault. Even though the criminal matter did not result in conviction for an indictable offense, it is further confirmation of the seriousness of Heinemann's unprofessional conduct. (Exhibit 5, Appendix 1)
5. Heinemann's wrongdoing was injurious to the teaching profession because he did not uphold appropriate professional boundaries and in doing so failed to maintain the honour and dignity of the profession.

SUBMISSION ON PENALTY

1. The parties requested that the Professional Conduct Committee consider the following factors in the matter of penalty:
 - a) The nature and gravity of the charges are in the range of moderate to high in terms of seriousness.
 - b) At the time of the incident, Heinemann was 52 years old and had approximately 30 years of teaching experience.
 - c) Heinemann has no previous convictions of professional conduct.
 - d) Teacher A was [REDACTED] years old at the time of incident who had recently returned to work from a leave. In their victim impact statement, Teacher A clearly outlined how the incident impacted their physical, psychological, social, and occupational health and wellness.
 - e) Heinemann did experience consequences as a result of his unprofessional conduct. He was transferred to a new school, lost his department head position and was subject to an investigation by his school division. In addition, Heinemann was investigated and charged by the RCMP leading to numerous news reports of his arrest, conviction, and conditional discharge. Finally, as a part of the conditional discharge, Heinemann was ordered to stay away from Teacher A for the duration of his probationary period.
 - f) There were no mitigating circumstances identified.
 - g) There was a need to promote both general and specific deterrence in this instance. A penalty that is consequential enough is required to ensure that Heinemann does not reoffend in the manner he did. The financial cost to Heinemann will deter Heinemann from repeating his unprofessional actions. A penalty such as the one jointly submitted creates a general deterrence for the larger membership. A significant fine makes it clear

to the teachers of Alberta that unwanted touching by a teacher towards a colleague is never appropriate.

- h) The penalty as jointly submitted will support public confidence in the profession.
- i) There were two cases submitted for consideration, but the fact sets around these cases was significantly different Heinemann's case. In the precedent cases supplied, the behaviours were more frequent and egregious and so the penalty suggested tries to make distinction between the precedent cases, this case has no direct equivalent.

2. The joint submission on penalty recommended to the hearing committee is:

- a) A letter of severe reprimand
- b) A fine of \$2,000

The fine must be paid within 120 days from the receipt of the hearing report by Heinemann. Non-payment within the time period would result in a suspension of membership in the Association until the fine is paid.

3. The parties recognize the committee is not bound by the recommended penalty. The committee will make its own determination.

PENALTY

The committee imposed the following penalty:

- 1. A letter of severe reprimand and
- 2. A fine of \$2,000

The fine must be paid within 120 days from the receipt of the hearing committee's written decision by Heinemann. Non-payment within the time period would result in a suspension of membership in the Association until the fine is paid.

REASONS FOR PENALTY

- 1. The committee gave considerable deference to the joint submission on penalty, noting that in general, a joint submission on penalty should not be amended unless the penalty proposed was so unhinged that justice would not be served, or the system would breakdown.
- 2. Heinemann's actions had clear impact on Teacher A. The penalty imposed reflects the seriousness of the offense on impacted individual as well as the impact it had on the teaching profession.
- 3. Heinemann was a teacher with considerable experience and should have possessed a clear understanding of professional boundaries. The penalty reflects the need to provide specific deterrence to Heinemann so this behaviour is not repeated.

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4. Teachers are expected to uphold professional boundaries at work and participate in creating and supporting safe working environments for all. Heinemann failed in his obligation to do so, therefore the penalty imposed reflects the profession's condemnation of his conduct.
5. Heinemann's unprofessional conduct was reported in the media, this negative coverage damages the honour and dignity of the profession amongst the public. The penalty provides reassurance to the public that this conduct is not tolerated by the teaching profession.

Dated at the City of Edmonton in the Province of Alberta, Wednesday, January 11, 2023.

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



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