

LEADERSHIP UPDATE

Volume 5

A publication for Alberta's school administrators

Number 5



Professional Conduct Investigations

Although teachers are governed by a code of professional conduct, there are times when there is reason to believe a teacher may be guilty of improper behaviour.

According to the *Teaching Profession Act* and the Association's bylaw developed under that legislation, the Alberta Teachers' Association is legally required to provide a system of reviewing complaints against members. Those who are charged and found guilty of unprofessional or unethical conduct are sanctioned. Obviously, the interests of both the public and the profession are best served by steps designed to enforce high standards of teacher behaviour. All Alberta teachers employed by an Alberta public or separate school board, except as the superintendent, the superintendent's chief deputy or associate members by election, are active members of the Association.

What Is Unprofessional Conduct?

As defined in Section 23 of the *Teaching Profession Act*, unprofessional conduct is conduct by an ATA member that

- is detrimental to the best interests of students, the public or the teaching profession;
- contravenes the *Teaching Profession Act* or the Code of Professional Conduct;
- harms or tends to harm the standing of teachers generally; and
- leads to a conviction on an indictable offence.

A member who refuses to cooperate with an investigator appointed by the executive secretary may also be charged with unprofessional conduct.

Section 23(3) of the *Teaching Profession Act* prohibits the ATA from disciplining members for conduct related to collective bargaining, the administration of a collective agreement, any matter under the jurisdiction of the Labour Relations Board or any matter that arises under the employment clauses (Sections 77 to 85 and 92[1]) of the *School Act*.

The Discipline Process

A formal complaint to the executive secretary of the ATA by any person about the behaviour of any active member will lead to an investigation. A complaint about a former member must be lodged within five years of the day on which the former member ceased to be a member.

The formal complaint can result in a hearing before a hearing panel of the Association's Professional Conduct Committee. The Professional Conduct Committee consists of 17 active members and three members of the public, each of whom is appointed for a three-year term by the Association's Provincial Executive Council.

Whenever it appears that a member has behaved in an unprofessional or unethical way, any person may make a complaint by forwarding the relevant information in writing to the executive secretary of the Association. In addition, complaints can be filed by

- any member who believes another member to be guilty of unprofessional conduct,
- superintendents who believe a member has been or may have been convicted of an indictable offence and
- any member who has been convicted of an indictable offence.

I will waste
not even a
precious
second today
in anger
or hate or
jealousy or
selfishness.
I know that
the seeds
I sow I will
harvest,
because
every action,
good or bad,
is always
followed by
an equal
reaction. I will
plant only
good seeds
this day.

—Og Mandino



The process for members charged with unprofessional conduct not involving an indictable offence differs somewhat from the process followed when an indictable offence is involved.

Unprofessional Conduct Not Involving an Indictable Offence

After the executive secretary receives a written complaint, an ATA staff officer will be assigned to investigate the complaint, and a letter is sent to the investigated member outlining the nature of the allegation(s). In extreme cases and where the situation warrants, the executive secretary may temporarily suspend the teacher's ATA membership pending the outcome of the investigation. The member being investigated has the right to appeal the suspension to the Court of Queen's Bench.

The staff officer assigned to the investigation generally interviews the complainant first to ascertain the nature of the allegations and makes every effort to determine exactly why the complainant thinks a teacher's actions are unprofessional. The staff officer will ask for recommendations for the names of other persons who may have knowledge of the situation to be interviewed; will record dates, times, names of those present and as much specific information as possible about the situation; and will get copies of all relevant documents. The staff officer will interview the complainant's recommended parties, and if new allegations arise, will make note of them and follow up if necessary; will record dates, times, names of those present and as much specific information as possible about the situation; and will get copies of all relevant documents. Then, the staff officer will interview the

accused member, share all allegations about the person, and record dates, times, names of those present and as much specific information as possible about a situation. The member may choose to make a written statement and recommend people to be interviewed. The staff officer will interview the investigated member's recommended people and if new allegations arise, will make note of them and follow up if necessary; will record dates, times, names of those present and as much specific information as possible about the situation; and will get copies of all relevant documents. Finally, the staff officer will determine if follow-up interviews of the complainant and investigated member are necessary.

At the conclusion of the preliminary investigation the staff officer will report his or her findings to the executive secretary. Based on the outcome of the investigation, the executive secretary takes one of three possible actions:

- a. Concludes that no hearing or further action is warranted either because of insufficient evidence or because the charge is frivolous or vexatious.
- b. Concludes that the matter, though not requiring a hearing, is of sufficient concern to warrant an informal meeting with the accused to review the situation and to identify the concerns of the profession and the public. Known as an *invitation*, this informal dispute-resolution process is outlined in the ATA's discipline bylaw. If the invitation is successful, no hearing is ordered. If it is unsuccessful, the executive secretary orders a hearing.
- c. Concludes that sufficient evidence exists to warrant a hearing and orders that a Hearing Committee be called to hear the matter.

The executive secretary then advises the member and the complainant of the decision. The complainant may appeal the executive secretary's decision (in (a) or (b) that no further action be taken) to the Complainant Appeal Committee. The fee for initiating such an appeal is \$250.

The Complainant Appeal Committee may uphold the decision of the executive secretary not to order a hearing (in which case the matter is closed) or refer the case to a Hearing Committee.

If the case is referred to a Hearing Committee, the hearing is open to the public unless the complainant or Hearing Committee requests privacy. The Hearing Committee determines the member's guilt or innocence. Hearings are conducted in a formal manner, and all testimony is given under oath. The accused has the right to due notice, to be represented by legal counsel (at his or her own expense) and to cross-examine witnesses called by the prosecution.

At the conclusion of the hearing the executive secretary advises the member, the complainant, Provincial Executive Council and the registrar of the Hearing Committee's decision. The executive secretary also advises the minister of learning if the committee has recommended cancellation or suspension of the member's teaching certificate.

The Consequences

If the committee determines that the member is guilty of unprofessional conduct, it may issue a reprimand, cancel or suspend the member's ATA membership, recommend that the minister of learning cancel or suspend the member's teaching certificate and/or impose additional penalties, including

a fine of up to \$10,000. The committee must justify any decision not to recommend cancellation or suspension of the member's teaching certificate.

Appeal

The investigated member or Provincial Executive Council has the right to appeal the verdict and/or the penalty to the Professional Conduct Appeal Committee, which consists of three to five active members and one member of the public. The Professional Conduct Appeal Committee may quash, vary or confirm the Hearing Committee's decision, make its own decision, or refer the case back to the Hearing Committee.

The executive secretary advises the member, Provincial Executive Council and the registrar of the Professional Conduct Appeal Committee's decision. The minister of learning is also advised of the decision if the committee has recommended cancellation or suspension of the member's teaching certificate. The member may apply for a judicial review of the decision.

Unprofessional Conduct Involving an Indictable Offence

This process is initiated by filling out a form entitled Request for Investigation of Alleged Unprofessional Conduct and mailing or faxing it to the executive secretary. Any superintendent who believes a member has been convicted of an indictable offence must lodge a written complaint with the executive secretary and inform the registrar. Any member who believes another member has been convicted of an indictable offence must lodge a written complaint with the executive secretary. Any member who has been

convicted of an indictable offence must immediately inform the ATA of the conviction.

A complaint about a former member must be lodged within five years of the day on which the former member ceased to be a member.

The ATA investigates and confirms the offence. In extreme cases and where the situation warrants, the executive secretary may temporarily suspend the teacher's ATA membership pending the outcome of the investigation. The member being investigated has the right to appeal the suspension to the Court of Queen's Bench.

The executive secretary refers the case to a Hearing Committee. The executive secretary advises the member and complainant of the referral. Again, the hearing is open to the public, unless the complainant or Hearing Committee requests privacy. The Hearing Committee may not subpoena witnesses who testified at the member's criminal trial.

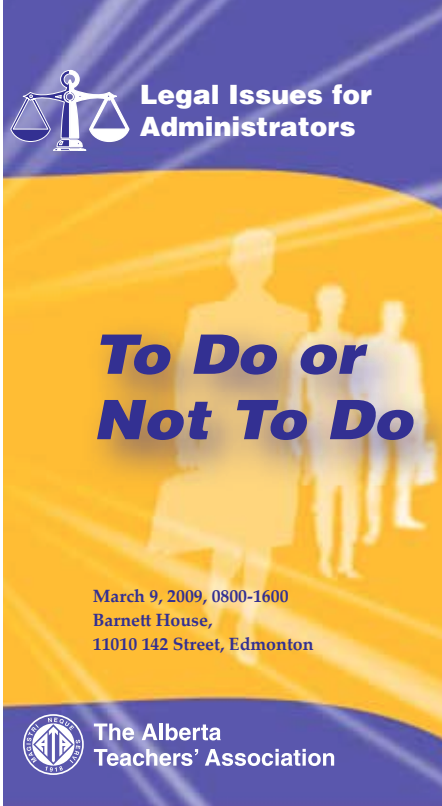
The Hearing Committee considers penalty but not guilt (which is automatic in cases involving indictable offences). The committee may issue a reprimand, cancel or suspend the member's ATA membership, recommend that the minister of learning cancel or suspend the member's teaching certificate and/or impose additional penalties, including a fine of up to \$10,000. The committee must justify a decision not to recommend cancellation or suspension of the member's teaching certificate.

The executive secretary advises the member, the complainant, Provincial Executive Council, the registrar and the minister of learning of the Hearing Committee's decision. The member or Provincial Executive Council may appeal the decision to the Professional Conduct Appeal Committee.

The appeal hearing is open to the public, unless the Professional Conduct Appeal Committee requests privacy. The Professional Conduct Appeal Committee may quash, vary or confirm the Hearing Committee's decision; render its own decision; or refer the case back to the Hearing Committee. The executive secretary advises the member, Provincial Executive Council, the registrar and the minister of learning of the Professional Conduct Appeal Committee's decision.

The member may apply for a judicial review of the decision.

For more information, please contact any staff officer in Member Services by calling the Edmonton office at 1-800-232-7208 or the Calgary office at 1-800-332-1280.



Legal Issues for Administrators

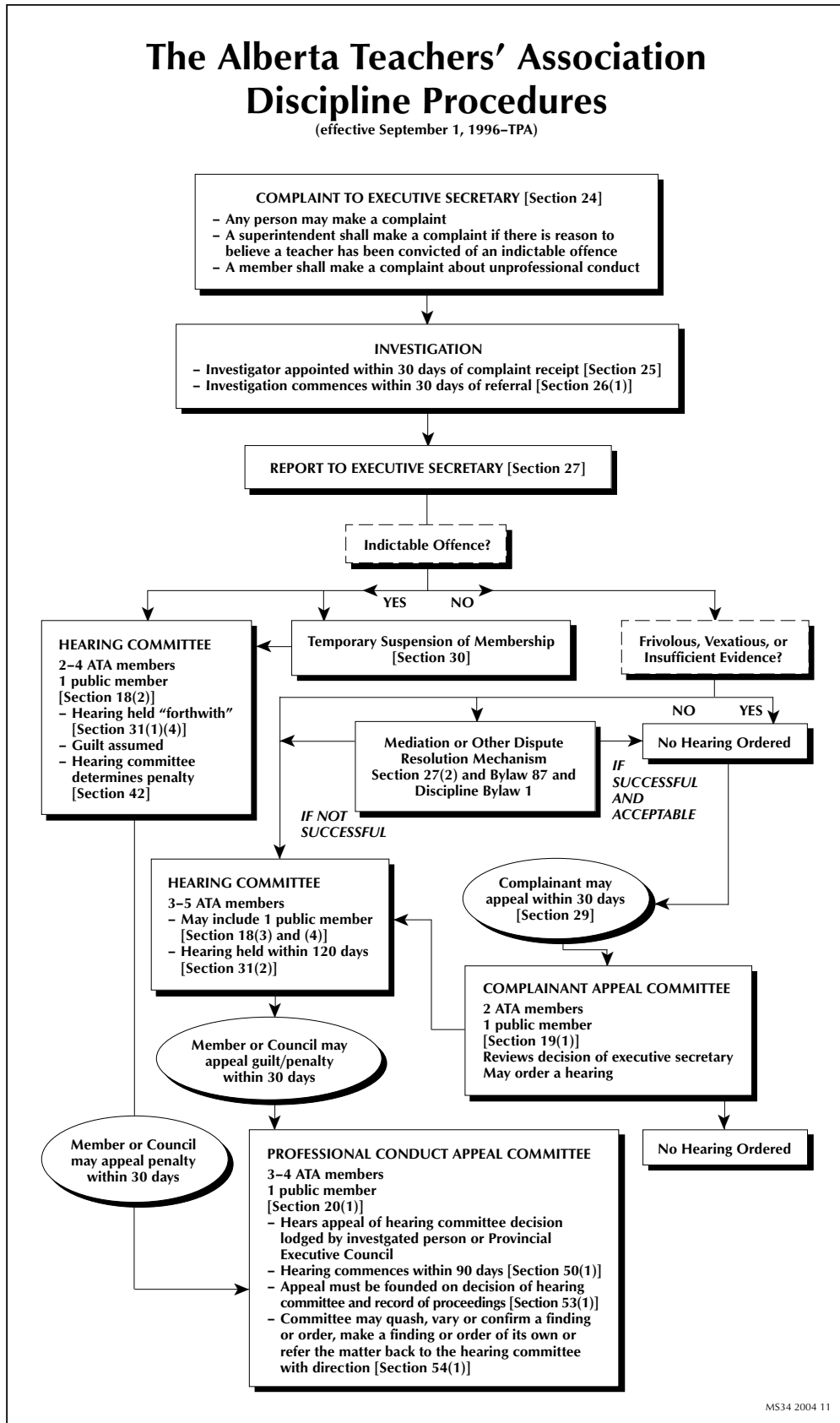
To Do or Not To Do

March 9, 2009, 0800-1600
Barnett House,
11010 142 Street, Edmonton

The Alberta Teachers' Association

The Alberta Teachers' Association Discipline Procedures

(effective September 1, 1996-TPA)



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Association Administrator Instructor Corps

Gone are the days when a school administrator was expected to simply manage the school. School administrators now need to be instructional leaders, team builders and visionaries. They need to lead learning communities, develop and facilitate leadership skills in others, and also manage their schools effectively.

The ability to plan and present professional development with school staff, to facilitate collaborative decision making, to coach others to improve professional practice and to develop teacher leadership is now part of the skill set every school administrator needs. However, many school administrators identify the leadership aspect of their role as a priority for their own professional development.

The ATA has established an Association Administrator Instructor Corps to inculcate leadership skills and give administrators opportunities to share their expertise with one another. Members of the corps deliver workshops and presentations on professional learning communities, instructional leadership and administrator resiliency to other administrators.

Current administrator instructors say that their work in the corps is excellent professional development, hones their leadership skills and provides a strong support network with the other administrators in the corps for dealing with the many challenges that school administrators face each day.

Applications are invited for the Association Administrator Instructor Corps for a new three-year term.

In your application please include the following:

1. current resume
2. leadership experience
3. workshop and facilitation skills

4. reasons for applying
5. names of two professional references
6. language capability: English, French or both

Successful candidates are expected to attend two training sessions per year and deliver between four and six workshops. Initial training for new instructors will be held in the summer of 2009. The workshop materials and script are prepared by the Association, and all expenses and honoraria are paid by the Association. Please notify your superintendent prior to applying. The Association will facilitate release time and appropriate

reimbursement with the school district. All applicants must be active or associate members of the ATA.

Please send a letter of application to Catherine Moir, the Alberta Teachers' Association, 11010 142 Street NW, Edmonton T5N 2R1 or e-mail catherine.moir@ata.ab.ca. The deadline for applications has been extended to March 20, 2009.

In making application to become an administrator instructor for the Alberta Teachers' Association, you are voluntarily providing your personal information to the ATA.



Q & A
GORDON THOMAS,
Executive Secretary

Q: I have been contacted by a staff officer from the ATA to participate in an interview regarding allegations of unprofessional conduct of one of my colleagues. Do I have to speak to the staff officer? Do I need someone present in the interview? What happens if the staff officer asks questions that are not related to the original complaint? Will I be informed of the outcome of the investigation?

A: The discipline process that the ATA follows in dealing with members accused of unprofessional conduct, including conduct leading to a conviction for an indictable offence, is set out in sections 16 to 60 of the *Teaching Profession Act* and in ATA general bylaws 78 to 89.

The interests of both the public and the profession are protected by the professional conduct investigative process. In this process an ATA staff

officer interviews persons who may have knowledge related to the allegation. While not required as they are not in a position of jeopardy, an interviewee can have legal representation present. That representation would be at their own cost. The investigator may require the investigated person or any other member to produce any records in their possession or control and may require their attendance at an interview. An investigator may investigate any other matter relating to the conduct of the investigated person that arises during the course of the investigation, whether associated with the original complaint or investigation or not. If a member does not cooperate with an investigator, the investigator may make a complaint to the executive secretary, and the failure or refusal to cooperate may be found by a Hearing Committee to constitute unprofessional conduct. The investigator, on concluding a preliminary investigation, will prepare and submit a report to the executive secretary. If the matter is referred to a hearing, the investigated member will receive a copy of the investigative report. No other parties are entitled to a copy of the report.