

**IN THE MATTER OF: *The Registered Teachers Act, 2015***  
and Lyle Bernard Gartner, registered teacher certificate No. [REDACTED]

**DECISION OF THE DISCIPLINE COMMITTEE FOR THE  
SASKATCHEWAN PROFESSIONAL TEACHERS REGULATORY BOARD**

Counsel: Roger Lepage  
for the Professional Conduct Committee

Jay Watson  
For Lyle Bernard Gartner

Hearing Date and Location: April 11, 2017  
Regina, Saskatchewan

**INTRODUCTION**

1. The Discipline Committee of the Saskatchewan Professional Teachers Regulatory Board ("Discipline Committee") convened on April 11, 2017 to hear allegations of misconduct against Lyle Bernard Gartner (the Teacher). No objection was taken to the composition of the Discipline Committee. Mr. Watson and the Teacher appeared by video as requested.
2. A Notice of Hearing of Formal Complaint dated January 20, 2017 set out eight charges of professional misconduct. At the outset of the hearing, charges 1 and 4 were withdrawn. The Teacher pled guilty to the remaining six charges which are as follows:
  2. **On or about September 15, 2015 you touched Student A's buttocks with your hand while walking past her in a group of students gathered in gym class in [REDACTED] Saskatchewan.**
  3. **On September 16, 2015 you met with Student A alone in your classroom. You did this in disregard to prior instruction from school officials not to meet with her alone to discuss her prior complaint. During this meeting you told Student A that she could be playing on the more competitive volleyball team but to do so she would need to**

**write a letter stating her previous allegations of you touching her inappropriately went too far and/or the touching was accidental, and that similar allegations would not happen in the future.**

- 5. Between January 1, 2014 and June 30, 2014 after a volleyball game, you pulled Student C aside, put your arm around her waist area and grabbed Student C's buttocks with your hand.**
  - 6. Between September 1, 2012 and December 31, 2015, during a volleyball practice you approached Student D from behind and slapped her buttocks with your hand.**
  - 7. Between September 1, 2011 and June 30, 2013, you as a coach of Student D would apply support tape to Student D's leg, buttock and waist. Sometimes while doing this taping you would assist Student D to stretch out her leg muscles. This taping and stretching occurred on a number of occasions, sometimes in public areas and sometimes in private rooms making the student feel uncomfortable.**
  - 8. Between January 1, 2012 and December 31, 2013, while you and Student E were attending the same community dance in ██████████ Saskatchewan you approached Student E and slapped her on her buttocks with your hand.**
3. The Discipline Committee accepts the Teacher's guilty plea to the six charges and finds him guilty of professional misconduct. A joint submission on sentence was presented.

### **FACTS**

4. The hearing proceeded on the basis of an Agreed Statement of Facts.
5. By the terms of the Agreed Statement of Facts, the Teacher admitted the particulars as set out in the Notice of Hearing. The particulars provide a good summary of the facts:
  - (2.) On or about September 15, 2015 Student A was in a group of students in the ██████████ School gymnasium. You walked through the group of students and while doing so stopped behind Student A and touched Student A's buttocks.**
  - (3.) On or about June 29, 2015 you received a Letter of Caution and Discipline Warning from your employer. In this letter, your employer advised of your need to act with an**

abundance of caution to ensure your interaction with students are not misinterpreted. On or about September 1, 2015 you met with [REDACTED] Principal of [REDACTED] School, and [REDACTED] assistant volleyball coach, to discuss a previous incident involving Student A and how to deal with the issue of the volleyball team on which she should play. At this meeting the principal instructed that you should avoid one on one interactions with all the girl volleyball players, including Student A. On or about September 16, 2015 during the lunch hour, Student A approached you in the industrial arts lab which is also your classroom. You did not seek any other individual to join the meeting. During this meeting you told Student A a number of things including:

- that you didn't touch her previously;
- that she could be playing on the more competitive volleyball team but to do so she would need to write a letter. This letter should state:
  - her allegations of you touching her inappropriately went too far and/or the touching was accidental;
  - that similar allegations by her would not happen in the future; and
  - that Student A apologize to you for the previous complaint
- that you told Student A that it was your reputation on the line and not hers;
- that Student A was not on the competitive volleyball team because there was a lack of trust with Student A. Student A believed this was because she reported the previous incident and that your reaction was discriminatory;
- that you asked Student A if her parents were aware of what was going on between you and Student A and if she was also aware that Principal [REDACTED] was aware of the situation between them;
- that you made a remark about bringing in a lawyer.

Student A did not want to write the letter and felt threatened by your insistence that she do so.

- (5.) Sometime between January 1, 2014 and June 30, 2014 you as coach of the [REDACTED] club volleyball team, pulled volleyball player Student C aside after the final club game of the year, put your arm around Student C's waist area, thanked her for playing volleyball with the team and then you grabbed Student C's buttocks with your hand.
- (6.) Sometime between September 1, 2012 and December 31, 2015 Student D was at a [REDACTED] School volleyball team practice. Student D was a player on the team but during this practice she was on the side keeping score. You as coach of the school's volleyball team approached Student D from behind and with your hand slapped her buttocks.
- (7.) Between September 1, 2011 and June 30, 2013, Student D was in Grades 10 and 11. Student D suffered a groin injury that required supportive tape to be applied before she could run. The tape needed to be wrapped around her leg, around her buttocks and around her waist. The tape was applied over sports shorts worn by Student D. During this time, you as coach of the track and field team, would sometimes apply the tape to Student D and assist her in stretching the affected muscles. This taping was sometimes done on the public field and sometimes done in a private room. There were times when Student D felt uncomfortable when you applied the tape and assisted in her stretching.
- (8.) Sometime between January 1, 2012 and December 31, 2013 you, as a community member, attended a community dance in [REDACTED] Saskatchewan. Student E was also attending the community dance. At the event, you approached Student E and slapped her buttocks with your hand.

6. The Teacher also admits that the conduct described in the Agreed Statement of Facts and particulars amounts to professional misconduct as defined in the Act and a breach of the provisions of the Regulatory Bylaws set out in the Notice of Hearing of Formal Complaint.
7. Section 33 of the Act defines professional misconduct as follows:

**33 Professional misconduct is a question of fact, but any matter, conduct or thing, whether or not disgraceful or**

**dishonourable, constitutes professional misconduct within the meaning of this Act if:**

- (a) it is harmful to the best interests of students or other members of the public;**
- (b) it tends to harm the standing of the profession;**
- (c) it is a breach of this Act or the bylaws; or**
- (d) it is a failure to comply with an order of the professional conduct committee, the discipline committee or the board of directors.**

8. These are the relevant provisions from the Regulatory Bylaws:

**2.01 Without restricting the generality of section 33 of the Act, the following conduct on the part of a teacher is misconduct:**

- (a) conduct which is harmful to the best interest of pupils or affects the ability of a teacher to teach;**
- (b) any intentional act or omission designed to humiliate or cause distress or loss of dignity to any person in school or out of school which may include verbal or non-verbal behavior;**
- ...**
- (d) sexually abusive conduct that violates a person's sexual integrity, whether consensual or not which includes sexual exploitation;**
- (e) an act or omission that, in the circumstances, would reasonably be regarded by the profession as disgraceful, dishonourable or unprofessional;**

#### **SUBMISSION ON PENALTY**

9. The joint submission on penalty is as follows:

- (a) That pursuant to section 40(1)(b) of *The Registered Teachers Act*, Lyle Bernard Gartner's teaching certificate be suspended for one year commencing the date of the Discipline Committee decision;**

- (b) That pursuant to section 40(1)(c) of *The Registered Teachers Act*, Lyle Bernard Gartner's teaching certificate be suspended pending the satisfaction and completion of the following terms and conditions:
- (i) that prior to returning the practice of being a registered teacher, Lyle Bernard Gartner shall complete at his cost a course that includes at least one of the following areas: respectful behavior with students, respect for professional boundaries and respect for a student's personal space;
  - (ii) the said course must be pre-approved by the Registrar of the SPTRB;
  - (iii) within thirty (30) days of his completion of the course outlined above, the Teacher shall provide to the Registrar a written certificate from the course provider stating that:
    - (A) the course provider reviewed a copy of the Agreed Statement of Facts and guilty plea and joint submission on penalty documents and the decision and reasons of the Discipline Committee;
    - (B) the teacher has successfully completed the course;
- (c) Pursuant to section 40(2)(a)(ii) of *The Registered Teachers Act*, Lyle Bernard Gartner shall pay Ten Thousand (\$10,000.00) Dollars in costs representing 50% of the investigation and hearing costs. The said costs shall be paid no later than April 11, 2018. If the Teacher fails to make payments in accordance with an Order pursuant to section 40(2)(a)(ii) within the time stipulated, then his teacher's certificate shall be suspended until payment is made in full.
- (d) That pursuant to section 40(1)(e) of *The Registered Teachers Act*, Lyle Bernard Gartner be reprimanded and the fact of the reprimand be recorded on the Register of the Saskatchewan Professional Teachers Regulatory Board.

## DECISION

10. Although a discipline committee is not bound to accept a joint submission, case law requires that deference should be given to a joint submission. In *Pankiw v Board of Chiropractors Association of Saskatchewan*, 2009 SKQB 268, the court stated:

**Joint submissions are to be encouraged, not ignored. If joint submissions are ignored, plea bargains such as occurred here will be much less likely to occur. Lengthy discipline hearings and increased costs to be borne initially by members of the profession and perhaps ultimately by the public they serve will result. Joint submissions are in the public interest and should be followed by an administrative tribunal in the same fashion as done by the court unless it can be clearly demonstrated they are unfit, unreasonable or contrary to the public interest.**

11. The test was clarified in *R v. Anthony Cook*, 2016 SCC 43 as a simple public interest test as follows:

**A trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.**

12. A key component to endorsing joint submissions is whether the submissions fall within the appropriate range of sentences for similar cases. Many of the precedents cited by counsel were consent resolutions rather than actual dispositions by tribunals. Nevertheless, the Discipline Committee considered those cases.
13. The Discipline Committee was provided with and considered the following consent resolution cases from the British Columbia Commissioner for Teacher Regulation:
- (a) *David Thomas Hobbs*;
  - (b) *Richard Any George Roderick Payne*;
  - (c) *John Edward Grant Lake*
  - (d) *Blair Christopher Haddrell*;

- (e) *Dana Mond Lum;*
  - (f) *David Elton Ganner.*
14. In *Hobbs*, the summary provides these facts:
- Mr. Hobbs admits that in February 2009 he demonstrated a science lesson on rock formations to his Grade 7 class during which he did the following: he positioned a female student (Student A) on her back, on top of some desks, with her legs bent. Intending to be humorous, he said words to the effect "you are a rock and I am lava, the hot stuff". He then used Student A to demonstrate how magma lava changes from an igneous to a metamorphic rock by rubbing her legs from her calves up to her buttocks. Mr. Hobbs recalls holding Student A by the ankle during the demonstration and has no recollection of touching her in any other way. Participation in this demonstration brought Student A to tears, with students in the classroom observing that Student A was upset. Mr. Hobbs then had 3 male students lie on top of one another, after which he squatted lightly on them in order to demonstrate the impact of pressure on the bottom layer of rock. Two of the three male students had objected, but Mr. Hobbs said "let's go" so they reluctantly participated. Mr. Hobbs then had Student A crawl past them on her hands and knees to be the heat or magma in the demonstration. While Student A initially said "no" Mr. Hobbs told her "just one more, you be the hot stuff this time". ..**
15. In that case, Mr. Hobbs agreed that he would never return to teaching or apply for a certificate in the future.
16. In the case of *Richard Andy George Roderick Payne*, the Resolution Agreement describes Mr. Payne's history of inappropriate contact with students. In 2011, he was reprimanded following allegations that he had dumped a student out of his chair and engaged in a mock fight. He advised that it was done in jest. Later in 2011, he was again reprimanded because he broke a meter stick over a student's head. Once again Mr. Payne said he was joking around. In 2012, he admitted to poking and mock tasing students in their sides, hugging a student and placing his hands on a student's shoulders. In 2014 Payne grabbed a female student's face and blew on her nose.
17. Mr. Payne agreed to the following:



- (a) to attend 4 individual counselling sessions at his own cost which will focus on maintaining professional boundaries;
  - (b) to provide written confirmation from his counsellor satisfactory to the Commission that Payne attended the counselling sessions;
  - (c) a public reprimand.
18. In the case of *John Edward Grant Lake*, the facts from the Resolution Agreement described that on two occasions, he was observed to have surreptitiously taken photographs of female students which the students found disturbing. Mr. Lake agreed to a reprimand. He also resigned and agreed that the Registrar would not issue a Certificate of Qualification in the future.
19. In *Blair Christopher Haddrell*, Mr. Haddrell was the coach of a Grade 9 female basketball team. He made comments to several players such as "you are good-looking for Grade 9" and "you can date anyone you want". Mr. Haddrell received a public reprimand.
20. In the case of *Dana Mond Lum*, Mr. Lum admitted to periodically touching the shoulders and necks of both male and female students. He would occasionally rub the base of their necks and hug them. On one occasion Mr. Lum comforted an emotional student, by placing a hand on her shoulder and saying that he loved her. It was also reported that Mr. Lum would periodically lift a student identified as Student B off the ground holding her by her bent elbows. Mr. Lum also told Student B that "I love you so much". By agreement, Mr. Lum received a reprimand and agreed to complete a course on professional boundaries.
21. Finally and in the *David Elton Ganner* case, the teacher admitted to engaging in inappropriate physical contact with Grade 9 students which included :
- squeezing girls by the arm,
  - patting boys and girls on the back,
  - giving girls a brief shoulder and neck massage,

- jokingly pretending to choke boys and girls by standing behind them and placing his arms around their necks,
  - jokingly pretending to choke a girl by putting his hand on her throat and
  - on one occasion, jokingly kicking a boy in the “butt”.
22. Mr. Ganner agreed to a reprimand and the completion of a professional boundaries course.
23. The Discipline Committee notes at the outset that the sanctions agreed to in these cases were significantly less than the joint submission presented in this case. Counsel for the Professional Conduct Committee described the authorities as guidance for cases where a teacher fails to respect appropriate physical boundaries. He described the touching of students' buttocks as having an additional sexual connotation that was not present in the authorities cited. Counsel for the Teacher did not take issue with this characterization. Although the Teacher's behavior was probably at the lower end of sexual misconduct, the Discipline Committee believes a strong statement is required. Children are entrusted to the care of a teacher. Any inappropriate sexual behavior or behavior that could be viewed as sexualized by students is to be denounced.
24. There are also additional aggravating factors. The most serious is the Teacher's private meeting with Student A, wherein he attempted to persuade her to retract her statements. This was a completely inappropriate attempt by the Teacher to exploit a power imbalance with the student. In addition, the Discipline Committee noted the number of reported incidents and the seniority of the Teacher as aggravating factors.
25. The Discipline Committee is also aware that there were some mitigating factors in that the Teacher entered a guilty plea on the charges without making the students testify. In addition, the Teacher has faced significant professional repercussions because of his conduct.
26. The Discipline Committee is of the view that considering the authorities and all appropriate factors, the joint submission of counsel is a reasonable disposition. The Discipline Committee therefore orders:

- (a) That pursuant to section 40(1)(b) of *The Registered Teachers Act*, Lyle Bernard Gartner's teaching certificate will be suspended for one year commencing the date of the Discipline Committee's decision;
- (b) That pursuant to section 40(1)(c) of *The Registered Teachers Act*, Lyle Benard Gartner's teaching certificate be suspended following the satisfaction and completion of the following terms and conditions:
  - (i) That prior to returning to the practice of being a registered teacher, Lyle Bernard Gartner shall complete at his own cost, a course that includes at least one of the following areas: respectful behavior with students, respectful professional boundaries and respect for a student's personal space;
  - (ii) The said course must be pre-approved by the Registrar of the Saskatchewan Professional Teachers Regulatory Board;
  - (iii) Within thirty (30) days of his completion of the course outlined above the Teacher shall provide to the Registrar a written certificate from the course provider stating that:
    - (A) the course provider reviewed a copy of the Agreed Statement of Facts and guilty plea and joint submission on penalty documents and the decision and reasons of the Discipline Committee;
    - (B) the Teacher has successfully completed the course.
- (c) Pursuant to section 40(2)(a)(ii) of *The Registered Teachers Act*, Lyle Bernard Gartner shall pay Ten Thousand (\$10,000.00) Dollars in costs no later than April 11, 2018. If the Teacher fails to make payments in accordance with an Order pursuant to Section 40(2)(a)(ii) within the time stipulated, then his Teacher's certificate shall be suspended until payment is made in full.


- (d) That pursuant to section 40(1)(e) of *The Registered Teachers Act*, Lyle Bernard Gartner be reprimanded and the fact of the reprimand be recorded on the register of the Saskatchewan Professional Teachers Regulatory Board.

DATED at Regina, Saskatchewan this 9th day of May, 2017.



Thomas Schonhoffer, Chair

DATED at Saskatoon, Saskatchewan this 10th day of May, 2017.



Sandy Antonini

DATED at Regina, Saskatchewan this 10th day of May, 2017.



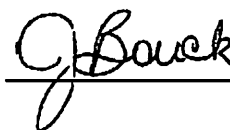
Don Lee

DATED at Prince Albert, Saskatchewan this 9th day of May, 2017.



Mark Hastings

DATED at Lloydminster, Saskatchewan this 9th day of May, 2017.



Jacqueline Bouck