

**DISCIPLINE COMMITTEE
OF THE ONTARIO COLLEGE OF TEACHERS**

IN THE MATTER OF *the Ontario College of Teachers Act, 1996* and the Regulation (Ontario Regulation 437/97) thereunder;

AND IN THE MATTER OF discipline proceedings against ALE (also known as AL), a member of the Ontario College of Teachers.

Heard: September 29, 2003

PANEL: Pauline Demers (Chair)
 Don Cattani
 George Merrett

BETWEEN:

ONTARIO COLLEGE OF TEACHERS

- and -

ALE
(also known as AL)
(CERTIFICATE #[XXX])

REASONS FOR DECISION, DECISION AND ORDER (S)

Carole Jenkins, McCarthy Tétrault, for Ontario College of Teachers, assisted by Trevor Evans, Senior Law Clerk

Brent Cumming, Boyd, Cumming, for ALE

Nancy Spies of Stockwoods, Independent Legal Counsel

ALE was not present.

This matter came before a panel of the Discipline Committee for a hearing on September 29, 2003 at the Ontario College of Teachers at Toronto.

A Notice of Hearing, dated May 28, 2003 was served on ALE, requesting attendance before the Discipline Committee of the Ontario College of Teachers on June 23, 2003 to set a date for a hearing, and specifying the charges.

ALE was not in attendance at the hearing. Proof of service of the Notice of Hearing was presented and accepted by the panel. (Exhibit 1).

The Allegations

The allegations against ALE in the Notice of Hearing dated May 28, 2003 are as follows:

IT IS ALLEGED that ALE (also known as AL), is guilty of professional misconduct as defined in section 30(2) of the Act, and/or is incompetent as defined in section 30(3) of the Act, in that:

- (a) he failed to maintain the standards of the profession, contrary to Ontario Regulation 437/97, subsection 1(5);
- (b) he failed to comply with the Act and the Education Act, Revised Statutes of Ontario, 1990, chapter E.2, and specifically section 264(1)(c) thereof or the Regulations made under those Acts, contrary to Ontario Regulation 437/97, subsections 1(14) and (15);
- (c) he contravened laws and that contravention is relevant to his suitability to hold a certificate of qualification and registration contrary to Ontario Regulation 437/97, subsection 1(16);
- (d) he committed acts that having regard to all the circumstances would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 437/97, subsection 1(18);

- (e) he engaged in conduct unbecoming a Member, contrary to Ontario Regulation 437/97, subsection 1(19); and
- (f) he displayed a lack of knowledge, skill or judgment and/or a disregard for the welfare of students of a nature or extent that demonstrates that the Member is either unfit to carry out his professional responsibilities or that the Member's certificate should be made subject to terms, conditions or limitations.

College counsel did not pursue the allegations of incompetence as outlined in section (f) of the Notice of Hearing.

PARTICULARS OF THESE ALLEGATIONS ARE AS FOLLOWS:

1. ALE (also known as AL), (the "Member") is a member of the Ontario College of Teachers.
2. Between 1 January 1973 and 31 December 1973 the Member sexually assaulted [XXX] an [XXX] year old boy, which assault included, but was not limited to, the Member kissing [XXX] all over his body and performing fellatio on him.
3. In or around the summer of 1974, the Member sexually assaulted four young persons, [XXX] and [XXX] following which charges were laid against him.
4. On or about 9 May 1975, the Member was convicted of sexual assault in respect of [XXX] and [XXX] and was given a suspended sentence followed by two years probation. In or around the year 1984, the Member obtained a pardon in respect of that conviction.

5. On or about 2 March 1994 the Member pleaded guilty to a charge that between 1 January 1973 and 31 December 1973, at the Town of [XXX], he unlawfully indecently assaulted [XXX] an [XXX] year old male person, contrary to the *Criminal Code of Canada*. The Member was convicted of that charge and was sentenced on 14 July 1994 to twelve months imprisonment followed by probation for a period of thirty-six months, during which he was directed not to associate with, or be found in the company of, any young person under the age of 18 years unless accompanied by a responsible adult person. At that hearing, the court imposed an order banning publication of any evidence including the identity of the victim.

6. On or about 17 March 1998, the Member pleaded guilty to a charge that between 1 January 1973 and 31 January 1973, at the [XXX], he unlawfully indecently assaulted [XXX] contrary to the *Criminal Code of Canada*. The Member was convicted of that charge and was given a suspended sentence. He was also placed on probation for a period of two years during which he was not to be in the company of any person under the age of 18 years except in the presence of an adult person. An Order was made by the court banning publication in respect of that matter.

7. On or about 24 March 2000, the Member pleaded guilty to a charge that between 1 January 1973 and 31 December 1974, at the [XXX] and elsewhere in the Province of Ontario, did commit an act of gross indecency with [XXX] to wit fellatio, contrary to section 157 of the *Criminal Code of Canada*. The Member was convicted of that charge and was given a conditional sentence of fifteen months during which he was ordered not to be alone with any child under the age of 16 years. The court imposed a publication ban in respect of the proceedings in that matter.

8. The particulars of the charges referred to in paragraphs 3, 5, 6 and 7 above of which the Member was found guilty are within the knowledge of the Member.

Member's Plea

ALE admits the allegations set out in numbered paragraphs 2 through 7 of the Agreed Statement of Facts and pleads guilty to the allegations of professional misconduct, being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(14), 1(15), 1(16), 1(18) and 1(19).

Agreed Statement of Facts

Counsel for the College advised the panel that agreement had been reached on the facts and introduced as Exhibit 3 an Agreed Statement of Facts and Guilty Plea, which provides as follows:

1. ALE (also known as AL) (the "Member") is a member of the Ontario College of Teachers. Attached hereto and marked as Exhibit "1" is a copy of the Ontario College of Teachers Registry System Status re the Member.
2. Between 1 January 1973 and 31 December 1973 the Member sexually assaulted [XXX] an [XXX] year old boy, which assault included, but was not limited to, the Member kissing [XXX] all over his body and performing fellatio on him.
3. On or about 2 March 1994 the Member pleaded guilty to a charge that between 1 January 1973 and 31 December 1973, at the [XXX], he unlawfully indecently assaulted [XXX] an [XXX] year old male person, contrary to the *Criminal Code of Canada*. The Member was convicted of that charge and was sentenced on 14 July 1994 to twelve months imprisonment followed by probation for a period of thirty-six months, during which he was directed not to associate with, or be found in the company of, any young person under the age of 18 years unless accompanied by a responsible adult person. At that hearing, the court imposed

- an order banning publication of any evidence including the identity of the victim. Attached as Exhibit "2" and "3" respectively are a copy of Information No. 93-05179 in respect of that conviction and sentence, and Probation Order dated 14 July 1994.
4. In or around the summer of 1974, the Member sexually assaulted four young persons, [XXX] and [XXX] following which charges were laid against him.
 5. On or about 9 May 1975, the Member was convicted of sexual assault in respect of [XXX] and [XXX] and was given a suspended sentence followed by two years probation. In or around the year 1984, the Member obtained a pardon in respect of that conviction.
 6. On or about 17 March 1998, the Member pleaded guilty to a charge that between 1 January 1973 and 31 January 1973, at the [XXX] he unlawfully indecently assaulted [XXX] contrary to the *Criminal Code of Canada*. The Member was convicted of that charge and was given a suspended sentence. He was also placed on probation for a period of two years during which he was not to be in the company of any person under the age of 18 years except in the presence of an adult person. An Order was made by the court banning publication in respect of that matter. Attached as Exhibits "4" and "5" respectively, are copies of Information No. 97-05275 in respect of that conviction and sentence, as well as the Probation Order dated 17 March 1998.
 7. On or about 24 March 2000, the Member pleaded guilty to a charge that between 1 January 1973 and 31 December 1974, at the [XXX] and elsewhere in the Province of Ontario, did commit an act of gross indecency with [XXX] to wit fellatio, contrary to section 157 of the *Criminal Code of Canada*. The Member was convicted of that charge and was given a conditional sentence of fifteen months during which he was ordered not to be alone with any child under the age of 16 years. The court imposed a publication ban in respect of the proceedings in that matter.

8. Attached as Exhibits "6" and "7" respectively are copies of Information No. 00-00378 and the Conditional Sentence Order dated 24 March 2000. The conviction referred to in paragraph 7 above is in respect of charge no. 2 on Information No. 00-00378. All other charges referred to in that Information were withdrawn by the Crown.
9. Attached hereto as Exhibit "8" is a copy of the transcript of the oral reasons of Mr. Justice T.G. O'Hara on sentencing, delivered on 24 March 2000.

By this document, the Member, ALE (also known as AL), accepts that the matters referred to in paragraphs 2 to 7 above constitute professional misconduct and pleads guilty to the allegations of professional misconduct against him being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(14), 1(15), 1(16), 1(18), and 1(19).

In light of the admitted facts and circumstances, the Ontario College of Teachers and the Member ask that the Discipline Committee find the Member guilty of professional misconduct and direct the Registrar of the Ontario College of Teachers to immediately revoke the Member's Certificate of Qualification and Registration, which the Member is to immediately surrender to the Registrar of the Ontario College of Teachers. Further, the Ontario College of Teachers and the Member, ask that the decision of the Discipline Committee, and its findings, be published in the official publication of the Ontario College of Teachers.

Decision

Having examined the Exhibits filed, and based on the Agreed Statement of Facts and Guilty Plea and submissions made by counsel, the Committee finds that the facts support a finding of professional misconduct, and in particular finds that ALE

committed acts of professional misconduct as alleged, being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(14), 1(15), 1(16), 1(18) and 1(19).

Penalty

Counsel for the College referred the panel to the joint submission as to penalty that had been agreed upon as set out in the Agreed Statement of Facts. The Ontario College of Teachers and the Member ask that the Discipline Committee direct the Registrar of the Ontario College of Teachers to immediately revoke the Member's Certificate of Qualification and Registration, which the Member is to immediately surrender to the Registrar of the Ontario College of Teachers. Further, the Ontario College of Teachers and the Member, ask that the decision of the Discipline Committee, and its findings, be published in the official publication of the Ontario College of Teachers.

The Committee received submissions from both counsel with respect to publication of the Member's name which was not expressly dealt with in the joint submission.

Counsel for the College indicated that publication of the Member's name would lend openness and transparency to the proceedings and that the victims might find reassurance in knowing that the Member's certificate had been revoked. Counsel also advised the panel that there was no precedent for not publishing the Member's name in prior cases of the Discipline Committee, unless there was a concern that in so doing, the identity of victims would be made known. It was her position that this would not occur in this case, as the victims were not even referred to by initials in this case. As such, she

urged the Committee to follow the past precedents and order that the Member's name be published.

Defence counsel indicated that publishing the Member's name in *Professionally Speaking/Pour parler profession* would not serve the interests of the public or the profession because the Member had not been employed by a public or a separate board since 1962. Defence counsel indicated that the actions giving rise to the charges against the Member occurred in 1973 and 1974, and that the Member has not reoffended or returned to circumstances or situations bringing him in contact with young males.

Penalty Decision

The Committee accepts the joint submission as to penalty and accordingly directs the Registrar of the Ontario College of Teachers ("Registrar") to immediately revoke the certificate of qualification and registration of ALE, which certificate the Member is to immediately surrender to the Registrar.

Pursuant to Section 30 (5), paragraph 3, of the *Ontario College of Teachers Act*, the Committee also orders that the findings and order of the Committee be published in summary, with the initials only of the Member, in the official publication of the College, *Professionally Speaking/Pour parler profession*.

The Committee finds that the Oral Reasons For Sentence of Mr. Justice T.G. O'Hara on March 24, 2000 (Exhibit 3, Tab 8) contain compelling arguments showing the rehabilitation of the Member in that there had been no repeat offences since 1974.

The Committee finds that the public interest has been served by revocation of the Member's certificate and publication of the decision of the Committee and its findings in the official publication of the Ontario College of Teachers. The Committee notes that the Member has not reoffended since 1974, has continued to take psychiatric treatment and has continued to isolate himself from society as much as possible to protect others. The Committee finds that the public interest will not be further served by publication of the Member's name.

**DATED AT TORONTO, THIS 30TH DAY OF SEPTEMBER, 2003
BY ORDER OF THE DISCIPLINE COMMITTEE.**

Pauline Demers, **Chair**

Don Cattani

George Merrett