

ONTARIO COLLEGE OF TEACHERS

DISCIPLINE COMMITTEE

IN THE MATTER OF ONTARIO COLLEGE OF TEACHERS ACT, 1996, and the Regulation (Ontario Regulation 437/97) thereunder:

AND IN THE MATTER OF discipline proceedings against Shawn Ahluwalia.

The Discipline Committee held a hearing on January 13, 2003.

BETWEEN:

ONTARIO COLLEGE OF TEACHERS

- and -

**Shawn Ahluwalia
Certificate #435021**

REASONS FOR DECISION, DECISION AND ORDERS

PRESENT:

Members of the Panel

Diane Leblovic (Chair)

Dick Malowney

Pierrette Nadeau

Paul LeVay, Stockwood Spies, Independent Counsel to the Committee

Carole Jenkins, McCarthy Tétrault, Counsel for the Ontario College of Teachers, assisted by Jennifer Robinson

Shawn Ahluwalia was not present nor was he represented.

A Notice of Hearing, dated August 22, 2002 was served on Shawn Ahluwalia, requesting attendance before the Discipline Committee of the Ontario College of Teachers on September 23, 2002 to set a date for hearing, and specifying the charges. The hearing date was set for January 13 & 14, 2003.

It is alleged that Shawn Ahluwalia is guilty of professional misconduct and/or incompetence as defined in subsection 30(2) and (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 abused a student or students physically, sexually, verbally, psychologically or emotionally contrary to Ontario Regulation 437/97, subsection 1 (7);
- (c) he failed to comply with the Act and the *Education Act*, Revised Statutes of Ontario 1990, Chapter E. 2 and particularly section 264 (1) (c) thereof, and the Regulations made under those Acts, contrary to Ontario Regulation 437/97, subsections 1 (14) and (15);
- (d) he contravened laws, the contravention of which is relevant to the member's suitability to hold a certificate of qualification and registration, contrary to Ontario Regulation 437/97, subsection 1 (16);
- (e) 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);

- (f) he engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1 (19); and
- (g) he displayed a lack of knowledge, skill or judgement and/or a disregard for the welfare of his 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.

The Notice of Hearing states that Shawn Ahluwalia is a member of the Ontario College of Teachers and therefore comes under the jurisdiction of the Ontario College of Teachers (Exhibit 1).

On January 13, 2003, the Discipline Committee of the Ontario College of Teachers conducted a hearing into whether Shawn Ahluwalia was guilty of professional misconduct.

Shawn Ahluwalia was not in attendance at the hearing, nor was he represented by counsel. Counsel for the College provided documentation to the panel in order to indicate that the member was aware of the allegations and that every reasonable effort was made to contact the member (Exhibit 5).

EVIDENCE

Counsel for the Ontario College of Teachers referred to the charges set out in the Notice of Hearing, alleging that Shawn Ahluwalia is guilty of professional misconduct in that his acts were contrary to the Professional Misconduct Regulation made under the Ontario College of Teachers Act and filed as Regulation 437/97, in particular, sections 1 (5), (7), (14), (15), (16), (18), and (19) and that he displayed a lack of knowledge, skill or judgement and/or a disregard for the welfare of his 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.

Counsel presented evidence that Shawn Ahluwalia is a member of the Ontario College of Teachers, (Exhibit 1). At all material times, Shawn Ahluwalia was employed by Limestone District School Board as a teacher, and was assigned to [] from September 2000 to May 2001.

Witness Antje McNeely, Staff Sergeant with the Kingston Police Department, testified to her eighteen years experience as an officer, nine of which were with criminal investigations and that she is currently in charge of the Sexual Assault Unit. She also stated that she had completed many investigations and had taken courses on how to deal with children.

The Committee heard testimony from McNeely that she had received a call from Hal Snyder of the Children's Aid Society on May 24, 2001 advising her that Shawn Ahluwalia had undone [REDACTED] pants and put his hand down her pants. She explained that she and Hal Snyder investigated the incident and met with [REDACTED] and her parents. McNeely further testified that a video interview with [REDACTED] took place on May 28, 2001 at the police station. [REDACTED] father wanted to be present during the interview as [REDACTED] was shy and emotional and needed his support. [REDACTED] mother watched the interview from a monitoring room. During the interview [REDACTED] started to cry and curl up in her father's arms. McNeely told the Committee that [REDACTED]'s "demeanour is there" and that in the interview [REDACTED] said that Shawn Ahluwalia had put his hand down her pants more than once when [REDACTED] or [REDACTED]. McNeely also testified that [REDACTED] told her, with Hal Snyder and her father present, that these incidents also occurred when Shawn was [REDACTED]. [REDACTED] told McNeely that when she sat on his lap and he touched her, she slid off him to get away. McNeely testified that during the interview [REDACTED] said that when she was in bed Shawn would lie in bed over the covers with her. McNeely further testified that [REDACTED] made a movement to show her how the member was rubbing her under her pajamas.

A copy of the video interview was admitted as Exhibit #2. McNeely took the Committee through numerous segments of the one hour video to demonstrate to the Committee [REDACTED]'s responses to questions and her interactions with herself, Hal Snyder and her father.

At the beginning of the interview, McNeely established with [REDACTED] the difference between a truth and a lie. The Committee observed [REDACTED] sitting with her father and holding her teddy bear. [REDACTED] was reluctant to talk. McNeely reassured [REDACTED] that she had done nothing wrong and began asking [REDACTED] what she had told her father and Hal Snyder about Shawn. McNeely, at this juncture of the video, pointed out to the Committee that [REDACTED] was crying. When asked by McNeely, "Why did you slip off his lap?" [REDACTED] responded "Don't like where he touches me." McNeely asked "Where did he touch you?" and [REDACTED] responded "pants", "underneath". McNeely says, "He undoes your buttons on your pants?" [REDACTED] nods in the affirmative. When asked what happens when [REDACTED] she is in bed, [REDACTED] snuggled her teddy bear and put her head on her father's chest.

In the video interview, Hal Snyder illustrated to [REDACTED] that Shawn was on top of the covers and she was underneath. [REDACTED] tells them that he puts his hand in her pajamas and she also says that she moves over and then his hand slips out.

The question "What does he do with his hand?" was posed and [REDACTED] gestures using her teddy bear and indicates that his hand was moving back and forth. [REDACTED] nodded "yes" to questions about whether it (the touching) had happened before. [REDACTED] responds by saying it occurred (the touching) in the dining room, bedroom and at his home.

[REDACTED] answered “no” when asked if it had happened at school.

When asked by McNeely whether [REDACTED] thinks Shawn putting hands under the pants is unusual, [REDACTED] nods in the affirmative. McNeely asked [REDACTED] how that makes her feel and she responded “angry”. [REDACTED] was also asked what she would have said to Shawn if she could and [REDACTED] responded, “Please don’t touch me there anymore.”

McNeely further testified that she had received a written statement from [REDACTED]’s father (Exhibit 3) which confirmed the forgoing facts. She also stated that there was enough information to investigate further based on [REDACTED]’s demeanour and what [REDACTED] had told her father regarding Shawn Ahluwalia. The Committee heard testimony from McNeely that other children, [REDACTED], were interviewed and that there were no disclosures.

McNeely testified to the reliability and credibility of [REDACTED]’s statements. She noted the consistency of what [REDACTED] had told her father (Exhibit 3) and Hal Snyder as well as what [REDACTED] had stated in the video interview. McNeely further stated that [REDACTED]’s testimony was logical.

The Committee heard testimony from David Harold (Hal) Snyder who is currently employed as a Supervisor with the Children’s Aid Society (CAS). He testified to his experience in handling allegations of sexual abuse in his role as an assessment worker

(January 1990 to October 2002). He also stated that he had completed a Bachelor of Arts Degree and a Bachelor of Social Work Degree from the University of Australia.

Snyder stated that CAS had received a report from [REDACTED]'s father on May 24, 2001 that his daughter had been molested and touched in her genital area by the member. Snyder testified that he met with [REDACTED]'s father and then with [REDACTED] and her father in the recreation room of their home. When he mentioned the member's name, [REDACTED]'s demeanour changed and she began to cry. As he continued speaking with [REDACTED], the following information was confirmed by [REDACTED]: Shawn had touched her on more than one occasion; Shawn had undone the buttons on her pants and put his hand inside her pants; [REDACTED] pointed to upstairs when asked where the touching happened; and [REDACTED] did not want to see Shawn again.

Snyder testified to the consistency of what [REDACTED] had told him. He further testified that on the second interview (Exhibit 2 - the video interview), [REDACTED] gave a little more detail which was consistent with her earlier statements. He further stated that [REDACTED] had said that her way of making the touching stop when sitting on the member's lap was by slipping between his legs. Snyder testified that these statements by [REDACTED] came out "spontaneously".

The areas of consistency in the videotaped interview that Hal Snyder testified to were the following: the member undid [REDACTED]'s pants, was rubbing her and that these incidents occurred when he was [REDACTED].

The Committee heard further testimony from Snyder that [REDACTED]'s father did not want to pursue charges through the court. Snyder stated that [REDACTED]'s father wanted to write the member and resolve the matter. Furthermore [REDACTED]'s father told Snyder that he had spoken with the member in July and that he had admitted to touching [REDACTED], that it was an impulse, that the member offered to apologize to [REDACTED] and that he would seek help.

Snyder testified that the CAS verified that child abuse had taken place with [REDACTED] and that Shawn Ahluwalia's name was placed on the Ontario Child Abuse Registry. The CAS notified the Board and as a result the member was relieved of his duties.

The Committee heard testimony from Snyder as to the contents of Exhibit #4, including: his case notes which were done at the time of the interviews, investigative findings, information regarding [REDACTED] and letters to the School Board and the member. He also stated that the conclusions drawn in this case were arrived at jointly amongst his staff and with the Kingston Police Department.

College Counsel asked Snyder whether, based on his experience, abuse took place and he confirmed that he believed that abuse occurred based on disclosures to him, the joint

video interview (Exhibit 2), a written statement provided by [REDACTED]'s father (Exhibit 3), and the consistency of [REDACTED]'s demeanour. He also stated that the verification of the complaints were sufficient enough to place the member's name on the Ontario Child Abuse Registry, which is accessible to all Children's Aid Societies in Ontario.

When asked by College Counsel why the agency did not pursue criminal charges, he stated that any criminal charges rest with the police. The Committee also heard that [REDACTED]'s parents did not want to put [REDACTED] through a court case recognizing her young age [REDACTED]. Further, they had serious concerns about the trauma of [REDACTED] being grilled on the stand and were putting [REDACTED] safety ahead of any charges and court proceedings.

FINDINGS OF FACT:

The panel finds the following facts:

1. Shawn Ahluwalia is a member of the Ontario College of Teachers.
2. Shawn Ahluwalia was employed by the Limestone District School Board and during all relevant times was an elementary teacher at [REDACTED] from September 2000 to May 2001.
3. [REDACTED] was an [REDACTED] and was receiving [REDACTED].

4. On numerous occasions, Shawn Ahluwalia sexually abused [■].
5. The Children's Aid Society's investigation verified that the Shawn Ahluwalia had abused [■] while in his care.
6. The Children's Aid Society placed Shawn Ahluwalia's name on the Ontario Child Abuse Registry.
7. No criminal charges were laid against the member by the local Children's Aid Society or police authorities.
8. Shawn Ahluwalia was released from his teaching duties by the Limestone District School Board.

The Committee in reaching its conclusions relied on the in depth investigation and the professional experience of Sergeant McNeely and Hal Snyder in dealing with children who are victims of abuse.

The Committee, in weighing the evidence of the Ontario College of Teachers witnesses, finds the consistency of their statements extremely persuasive. The Committee accepts their recollections and explanations of the incidents that occurred when [■] was [■].

The Committee further accepts that Sergeant McNeely and Hal Snyder believe [REDACTED] explanations of these incidents of sexual touching. The Committee finds the College witnesses testimony to be credible.

The Committee accepts the written statement by [REDACTED] father (Exhibit 3) and is satisfied that his statement reflects [REDACTED] recounting of the sexual abuse which is consistent with the testimony of Sergeant McNeely and Hal Snyder.

The Committee finds that [REDACTED] demeanour in the video interview, as well as Sergeant McNeely's and Hal Snyder's testimony about [REDACTED] demeanour, is clear and convincing evidence that [REDACTED] is a victim of abuse.

The Committee is satisfied that [REDACTED] understands the difference between the truth and a lie. The Committee also finds [REDACTED] responses to questions posed to her regarding the member and these abusive incidents to be consistent and credible.

In reaching its decision, the Committee gave little or no weight to the double hearsay evidence in Hal Snyder's testimony regarding the member admitting that he did touch [REDACTED], was sorry, would seek help and would apologize to [REDACTED].

DECISION AND ORDER:

Having considered the evidence of the witnesses, and the submissions of College Counsel and having examined the exhibits filed, the Committee finds Shawn Ahluwalia is guilty of professional misconduct as defined under sections 1 (5), (7), (14), (15), (18) and (19) of the Ontario Regulation 437/97 and the Education Act , R.S.O., as alleged. Accordingly, the Committee directs the Registrar to revoke the member's Certificate of Qualification and Registration immediately.

Notice

It is important to the College's role in the governance of the profession to provide evidence to members that the College is active in self-regulation and is vigilant to breaches of its bylaws and rules of conduct. Such evidence is provided through notification of the decisions and orders of the College's disciplinary Committees, and is, in the opinion of the panel, a practice that has significant general deterrent value.

Pursuant to Section 30(5)(iii) of the Ontario College of Teachers Act, the Committee orders that the findings of this hearing, as well as the name of the member, be published in the official publication of the Ontario College of Teachers. It is to be noted, that the Committee orders that the name of the student or the name of the student's father be identified only by initials in any publication.

Pursuant to Section 30(5)(iv), the Committee fixes costs to be paid by the member to the College in the amount of \$5000.00.

DATED AT TORONTO, THIS 10th DAY OF MARCH, 2003
BY ORDER OF THE DISCIPLINE COMMITTEE

Diane Leblovic, **Chair**

Dick Malowney

Pierrette Nadeau