

**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** a discipline proceeding against David Bryan Anderson, a member of the Ontario College of Teachers.

PANEL:           Rosemary Fontaine, Chair  
                      Mel Greif  
                      Hanno Weinberger

BETWEEN:	)	
	)	David Leonard,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Jennifer Robinson
	)	Law Clerk
- and -	)	
	)	Mandy Wojcik,
DAVID BRYAN ANDERSON	)	Sack Goldblatt Mitchell LLP,
(CERTIFICATE #157319)	)	for David Bryan Anderson
	)	
	)	
	)	Luisa Ritacca,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
	)	
	)	Heard: May 6, 2009

**REASONS FOR DECISION, DECISION AND ORDERS**

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on May 6, 2009 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated September 24, 2008 was served on David Bryan Anderson, requesting attendance before the Discipline Committee of the Ontario College of Teachers on October 7, 2008 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for May 6, 2009.

David Bryan Anderson was not in attendance at the hearing.

### **THE ALLEGATIONS**

The allegations against David Bryan Anderson in the *Notice of Hearing* (Exhibit 1) dated September 24, 2008, are as follows:

**IT IS ALLEGED** that David Bryan Anderson is guilty of professional misconduct as defined in section 30(2) of the *Ontario College of Teachers Act, 1996* (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* or the *Education Act*, Revised Statutes of Ontario, 1990, chapter E2 or the regulations made under those Acts, contrary to Ontario Regulation 437/97, subsections 1(14) and (15);
- (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); and
- (e) he engaged in conduct unbecoming a Member, contrary to Ontario Regulation 437/97, subsection 1(19).

## **AGREED STATEMENT OF FACTS**

Counsel for the College advised the Committee that an agreement had been reached on the facts and introduced as Exhibit 3, an *Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty (ASF – Exhibit 3)* which provides as follows:

### **STATEMENT OF FACTS**

1. David Bryan Anderson (the “Member”) is a member of the Ontario College of Teachers. Attached hereto and marked as **Exhibit “A”** is a copy of the Ontario College of Teachers Registered Member Information respecting the Member.
2. At all material times the Member was employed by the York Region District School Board (the “Board”) and taught at the elementary level at two of the Board’s schools in Newmarket, Ontario.
3. On a number of occasions during the 2004/2005 and 2005/2006 academic years, the Member, in order to get the attention of his students, hit a number of them on the backs of their heads with his hand or with rolled up paper and poked or prodded them in their backs. As well, on one occasion the Member grabbed a student by the arm and yelled at her because she forgot her science paper. None of the students were injured by the Member’s conduct.
4. In addition to the physical interaction with students described above, on more than one occasion the Member used the derogatory term “idiot” when addressing his students about their inattention or misbehaviour. On one occasion, the Member, in a

derogatory manner, questioned a student about whether this student was, or ought to be, engaged in special education.

5. On or about November 10, 2005, a student teacher at the school the Member was teaching at, was standing at the photocopier making copies. The Member approached the student teacher from behind and pressed himself against her buttocks. At the same time, the Member grabbed the student teacher by her waist and spoke to her in a manner which she perceived was sexual, and which was unwelcome.

6. On or about October 2, 2006, the Member resigned from his employment with the Board.

#### **PLEA OF NO CONTEST**

7. By this document, the Member admits, for the purposes of this proceeding only, the truth of the facts and exhibit referred to in paragraphs 1 to 6 above.

8. The Member hereby acknowledges that the facts referred to in paragraphs 3, 4 and 5 above constitute professional misconduct and pleads no contest to these allegations of professional misconduct against him, being more particularly a breach of Ontario Regulation 437/97 1(5), 1(7), 1(14), 1(15), 1(18) and 1(19).

9. By this document the Member states that:

- (a) he understands fully the nature of the allegations against him;
- (b) he understands that by signing this document he is consenting to the evidence as set out in paragraphs 1 to 6 above, including the referenced

exhibit, being presented to the Discipline Committee at the hearing of this matter;

- (c) he understands that by pleading no contest to the allegations, he is waiving the right to require the College to prove the case against him, and the right to have a full hearing on these issues; and
- (d) he understands and acknowledges that he is executing this Agreement voluntarily, unequivocally and with the advice of legal counsel.

10. The Member provides this plea of no contest pursuant to Rule 3.02 of the Rules of Procedure of the Discipline Committee under protection of the *Evidence Act*, R.S.O. 1990, chapter E. 23, for the purpose of this proceeding under the *College of Teachers Act 1996*, chapter 12, and for no other purpose. The Member's plea of no contest does not constitute an admission by the Member as to the facts or findings in any other civil, criminal or administrative proceeding.

11. In light of the admitted facts and circumstances, the Ontario College of Teachers and the Member submit that the Discipline Committee find the Member guilty of professional misconduct.

#### **JOINT SUBMISSION ON PENALTY**

12. The Ontario College of Teachers and the Member jointly submit that the appropriate penalty to be imposed by the Discipline Committee in this matter would be that the Committee:

- (a) directs the Registrar of the Ontario College of Teachers to suspend the Certificate of Qualification and Registration of the Member for a period of one (1) year from the date of this Order;
- (b) directs the Registrar to impose a term or condition on the Member's certificate that the Member is to enrol in and complete, at his own expense, within six (6) months from the date of this Order of the Discipline Committee, a course of instruction, pre-approved by the Registrar, regarding appropriate boundaries and boundary violation issues, and that the Member shall deliver directly to the Registrar within thirty (30) days of its completion, proof of his successful completion of the course
- (c) directs that there be publication of the findings and Order of the Committee in summary form in the official publication of the College. The parties have not agreed whether or not the publication shall include the name of the Member, and submissions will be made to the Committee on this issue.

13. By this document, the Member acknowledges his understanding that any agreement between the College and the Member with respect to the penalty proposed in this document does not bind the Discipline Committee.

## **DECISION**

Having examined the Exhibits filed, and based on the plea of no contest, the *Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty*, and the

submissions made by counsel for the College and Counsel for the Member, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that David Bryan Anderson is guilty of professional misconduct, being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(7), 1(14), 1(15), 1(18) and 1(19).

### **REASONS FOR DECISION**

The Member admitted the truth of the facts and exhibits referred to in paragraphs 1 to 6 of the *Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty*, (Exhibit 2). He acknowledged that the facts referred to in paragraphs 3, 4 and 5 above constitute professional misconduct and pleaded no contest to these allegations of professional misconduct against him.

The Committee accepted both the Member's plea of no contest and the facts contained in the *Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty*.

On a number of occasions, over two academic years, the Member hit, poked or prodded students in order to get their attention. In addition to the physical interaction, on more than one occasion the Member made disparaging remarks about students in his class when addressing them regarding their inattention or misbehaviour. The Committee deemed the Member's behaviour to be professional misconduct in that he abused students physically and verbally contrary to Ontario Regulation 437/97, subsection 1(7). The Member failed in his responsibility to act as a positive role model for his students, contrary to Ontario Regulation 437/97, subsections 1(14) and 1(15).

On one occasion the Member approached a student teacher from behind and pressed himself against her buttocks, grabbed her by the waist and spoke to her in a manner which she perceived as sexual and which was unwelcome. This behaviour is disgraceful, dishonourable and unprofessional and conduct unbecoming a member of the profession, contrary to Ontario Regulation 437/97, subsections 1(18) and 1(19).

Overall, this Member in his actions towards students and a colleague, failed to maintain the standards of the profession contrary to Ontario Regulation 437/97, subsection 1(5).

#### **SUBMISSIONS REGARDING PUBLICATION**

Counsel for the College submitted that publication with the name of the Member was appropriate in this case and part of the consequence of this type of behaviour. He submitted that the public needs to have confidence in the disciplinary hearing process. If the member's name was not published it would give rise to suspicion on the part of the public.

Counsel for the Member argued that the conduct agreed to, occurred in only two school years over a lengthy teaching career. Counsel submitted that there was sufficient transparency through access to the Public Register. In addition, she noted that College discipline hearings are open to the public and decisions of the Discipline Committee are readily available. Counsel also indicated that the Member had resigned his position and moved on to other pursuits.

## **PENALTY DECISION**

The Committee makes the following order as to penalty:

1. The Registrar of the Ontario College of Teachers is directed to suspend the Certificate of Qualification and Registration of the Member for a period of one (1) year from the date of this Order;
2. The Registrar of the Ontario College of Teachers is directed to impose a term or condition on the Member's certificate that the Member is to enrol in and complete, at his own expense, within six (6) months from the date of this Order, a course of instruction, pre-approved by the Registrar, regarding appropriate boundaries and boundary violation issues, and the Member shall deliver directly to the Registrar within thirty (30) days of its completion, proof of his successful completion of the course.
3. Pursuant to Section 30 (5) (3) of the *Ontario College of Teachers Act*, the findings and order of the Committee shall be published in summary, with the name of the Member, in the official publication of the College, *Professionally Speaking/Pour parler profession*.

## **REASONS FOR PENALTY DECISION**

The Member engaged in repeated verbal and physical abuse of students in a classroom setting. This behaviour will not be tolerated. Further, the Member pressed himself up against a student teacher and spoke to her in a manner she deemed sexual. Interaction with colleagues must be respectful and beyond reproach. The Member's behaviour in this situation was repugnant. The Committee found the Member's actions in all instances were sufficiently serious to warrant a suspension of his certificate.

The course of instruction in appropriate boundaries and boundary violation issues will serve to clarify for the Member why his behaviour was determined to be professional misconduct. It will reinforce to the Member the need to maintain appropriate boundaries with students and colleagues should he return to teaching. The course will provide a rehabilitative component to the penalty.

The Committee orders publication of the finding and order with the name of the Member. The behaviour of the Member occurred over a period of two school years and displayed a pattern. This shameful misconduct warrants the severe penalty of suspension and publication of his name. In addition, publication with name provides a specific deterrent to the Member, a general deterrent to the membership and informs the profession and the public that the College denounces this type of conduct.

The Committee is satisfied that the penalty is appropriate in the circumstances and serves to protect the public interest.

Dated: June 3, 2009

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Rosemary Fontaine  
Chair, Discipline Panel

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Mel Greif  
Member, Discipline Panel

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Hanno Weinberger  
Member, Discipline Panel