

**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 Hubert Levi Antone, OCT, a member of the Ontario College of Teachers.

PANEL:            Brent Hamelin, OCT, Chair  
                      Annilee Jarvis, OCT  
                      John Tucker

BETWEEN:	)	
	)	
	)	Awanish Sinha & Yasmin Nizami,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers
ONTARIO COLLEGE OF TEACHERS	)	
	)	
- and -	)	
	)	Howard Goldblatt &
	)	Mandy Wojcik,
HUBERT LEVI ANTONE)	)	Sack Goldblatt Mitchell LLP,
(CERTIFICATE #423793)	)	for Hubert Levi Antone
	)	
	)	
	)	Luisa Ritacca & Christopher Wirth,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
	)	
	)	Heard: November 25, 2008, April
	)	20 & 29, 2009 & September 29, 2009

**REASONS FOR DECISION, DECISION AND ORDERS**

This hearing began before a panel of the Discipline Committee (the “Committee”) on November 25, 2008 at the Ontario College of Teachers (“the College”) at Toronto. The

hearing continued for a further three dates (as shown above), ending on September 29, 2009.

A *Notice of Hearing*, dated November 5, 2007 (Exhibit 1) was served on Hubert Levi Antone (the “Member”), and he was provided with notice that the Discipline Committee of the Ontario College of Teachers would meet on December 6, 2007, to set a date for a hearing, and specifying the charges. The hearing was subsequently set for November 25, 2008. Hubert Levi Antone was in attendance at the hearing.

### **THE ALLEGATIONS**

The allegations against Hubert Levi Antone in the *Notice of Hearing*, (Exhibit 1) dated November 5, 2007 are as follows:

**IT IS ALLEGED** that Hubert Levi Antone is guilty of professional misconduct as defined in sections 30(2) and 40(1.1) of the *Ontario College of Teachers Act* (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 specifically section 264(1)(c) thereof 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);
- (e) he engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19); and

- (f) he engaged in sexual abuse of a student or students of a nature defined in sections 1 and 40(1.1) of the *Act*.

**PARTICULARS OF THESE ALLEGATIONS ARE AS FOLLOWS:**

1. Hubert Levi Antone (the “Member”) was at all material times a member of the Ontario College of Teachers.
2. At all material times, the Member was employed by the Thames Valley District School Board and was a teacher of Native studies.
3. Commencing in October 2006 and specifically during November and December, 2006, “A”, [XXX], was in the care of the Member on at least four (4) weekends (“the material time”).
4. “A” spent Friday and Saturday nights during the material time at the Member’s residence.
5. During the material time the Member:
  - a. permitted “A” to spend the night at the Member’s home;
  - b. permitted “A” to sleep in the Member’s bed;
  - c. joined “A” in the Member’s bed;
  - d. touched “A”’s body with his hands, including “A”’s back and/or legs and/or arms;
  - e. touched “A”’s penis and/or buttocks with his hands;
  - f. touched “A”’s body with his penis; and
  - g. was naked in “A”’s presence.

## **MEMBER'S PLEA**

The Member denied the allegations set out in the Notice of Hearing.

## **OVERVIEW**

At all material times, the Member was employed by the Thames Valley District School Board as a teacher of Native Studies. The case concerned the Member's relationship with "A", [XXX], who was in the care of the Member on four weekends.

The specific issues for the Committee to consider were whether or not the Member engaged in sexual abuse of an [XXX] while in his care and whether the sleeping arrangements allowed by the Member amounted to professional misconduct.

## **DECISION**

### **(i) Onus and Standard of Proof**

The onus of proof was on the College. The standard of proof applied by the Committee was the balance of probabilities, using clear, cogent and convincing evidence.

### **(ii) Decision**

After hearing all the evidence and considering the submissions of counsel for both parties and the onus and standard of proof, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that Hubert Levi Antone committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(18 - unprofessional) and 1(19), as set out in the *Notice of Hearing*.

The Committee finds the College has not proven the allegations of professional misconduct, more particularly breaches of Ontario Regulation 437/97, subsections 1(7), 1(14), 1(15), section 264 (1)(c) of the *Education Act* and sections 1 and 40(1.1) of the *Act* and accordingly these allegations are dismissed.

## **THE EVIDENCE**

### **(a) Background**

The general background to this matter is not contested. “A” stayed overnight at the Member’s home on a number of occasions during the fall of 2006. “A” slept in the Member’s bed, along with the Member’s [XXX] and the Member on these occasions.

### **(b) The Evidence**

The Committee relied on the evidence provided by “A” and the Member. These two individuals provided the primary testimony used by the Committee in reaching its decision. The supplemental evidence provided by the other witnesses was not first hand to the allegations of sexual touching but helped in providing context and background.

The College called two witnesses, “A” and his mother. The Member also testified before the Committee and called two witnesses, his [XXX] and daughter.

#### *Testimony of Witness “A”*

In examination in chief, “A” testified that he stayed over at the Member’s house to visit with the Member’s [XXX] and foster son. “A” testified that during the visit on the first night he slept over, “when he (the Member) would come home he would molest me”. “A” testified that the Member “would be touching me and rubbing against my body and

touching inappropriate parts”. When asked “where did he touch you on your body”, “A” indicated “on my penis, everywhere”. When asked how long the touching went on for, “A” replied “for the first weekend it just went on and I think he was awake the whole time. It just kept going on until the morning whenever he would stop.” “A” said he did not say anything because he felt the Member would hurt him or tell him it was okay. “A” indicated that similar, inappropriate touching occurred on two or three subsequent weekends. During all of these occasions, “A” indicated that the Member’s [XXX] was also in the bed. “A” testified that on one occasion, after he had had a shower, the Member opened up his towel revealing himself.

Under cross-examination, “A” was unable to provide exact details of timing, duration and number of incidents. “A” stated that on one occasion, the Member returned home from work, found “A” on the couch and asked him to move into the bed and then molested him. This evidence was never provided in the criminal trial and “A” was confused as to whether the Member’s [XXX] was awake at this time and watching TV. According to “A”, this occurred at 5:00 a.m. when the Member returned home from his weekend job. “A” stated that during the time of these alleged incidents, the Member’s mother was in hospital, and the Member did get up at 7:00 a.m. and go to the hospital to feed his mother breakfast. “A” was aware that during a weekend where one of these alleged incidents occurred, the Member’s father was killed in a tragic accident. However, “A” maintained that sexual touching occurred and held this position throughout the hearing.

“A” also provided evidence that he enjoyed visiting the Member’s home and [XXX], and foster child. “A” agreed that it was a friendly and warm environment and that everybody got along there. When asked if he was happy there, he said “yes”.

At some point the mother of “A” asked “A” where he slept when visiting the Member. “A” indicated “I sleep in his bed”. She then compared the Member to Michael Jackson.

It wasn’t until his mother refused permission to let him visit that “A” made his allegations against the Member. “A” confirmed that if his mother hadn’t said anything he would not have a problem going back to the Member’s house and that until this conversation with his mother he didn’t realize that things were not okay.

Testimony of [XXX]

In contradiction to the testimony of “A”, the Member’s [XXX], indicated that “A” never said anything to her about her [XXX] acting inappropriately.

Testimony of Member

The Member testified that he is an employee of the Thames Valley District School Board. The Member teaches native art, native studies and native language at two schools, grades 4 to 8. The Member currently teaches approximately 54 students. The Member testified that on weekends, during the time of the alleged incidents, he worked a part-time job as a bouncer at a bar, getting home at 4:00 to 4:30 in the morning. He testified that on the weekends during the time of these alleged incidents he was up by 6:00 a.m. in order to go to the hospital for 7:00 a.m. to feed his mother breakfast. The Member testified that as part of his upbringing, family members often shared a bed in order to sleep.

The Member testified that his daughter knew the family of “A” years earlier. “A” was reintroduced to the Member’s family at the two fundraisers that the Member organized to support his students’ trip to a pow-wow in Toronto. At the fundraisers, “A” became

friends with the Member's foster child and was invited to sleep over on the night preceding the pow-wow. On the night preceding the pow-wow, the Member testified that four people, including himself, slept in the bed together. The Member testified that on other occasions between when he came home from his part-time job and got up to go to the hospital, he did sleep in the same bed with [XXX] and "A". When asked "Do you recall whether you had any contact with "A" at all while he was sleeping in your bed?" the Member indicated "just the one incident for sure is when I moved him over, so I can get room to sleep. Other than that, no." When asked if he cuddled up against "A" in bed, the Member testified that he was "claustrophobic, and I can't face somebody or I can't face the wall, and I can't have nothing over my head." The Member further testified that he never slept facing "A"'s back or front.

The Member testified that each person sleeping in the house had their own blanket and that they did not use the covers that were on the bed.

The Member testified that to his recollection "A" would not have seen him naked as he did not expose himself or flash him. The Member indicated that he always slept with gym shorts or boxers. When asked "but never naked from the waist down?" he said "no, [XXX]. I wouldn't do that." The Member testified that over 35 years he has had eleven foster children, plus his own two children and that during this time, off and on, they typically would sleep in bed with him.

The Member testified that he never raised the sleeping arrangements with either "A" or his mother because he felt there was nothing inappropriate about the sleeping arrangements as they were.

## **REASONS FOR DECISION**

Witness “A” was not credible to the Committee. The testimony of “A” appeared to have been coached and “A” had difficulty recalling details with consistency. When asked about his first meeting with the Member at the Friendship Centre, “A” indicated that he remembered the Member asking if he would sleep over at the Member’s house to visit his foster son, [XXX]. This is inconsistent with the evidence provided by the Member and the mother of “A” who stated it was a group decision. There was further inconsistency between the testimony of “A” and that of other witnesses regarding the number of sleepovers that occurred, when they occurred and the sleeping arrangements within the Member’s bed. “A” was inconsistent regarding being asleep or awake, whether the Member was asleep or awake, where he lay in the bed and how much time passed during the alleged assaults. The Committee found that the testimony of “A” was not cogent, clear or convincing. Witnesses testified that “A” seemed to be comfortable with the Member and the Member’s family.

The Committee found the Member’s testimony to be clear, cogent and convincing. Evidence provided by the Member was unchallenged by College counsel and was relied upon by the Committee. The Member’s testimony was credible and the Committee finds that based on the evidence and the balance of probabilities, no sexual touching occurred between the Member and “A”.

The Committee found that the Member failed to maintain the standards of the profession and engaged in unprofessional conduct and conduct unbecoming a Member, contrary to subsections 1(5), 1(18-unprofessional) and 1(19) of Ontario Regulation 437/97.

Despite acknowledging that his training and experience as a teacher had taught him about appropriate conduct and boundaries with students, the Member did not acknowledge the inappropriateness of the sleeping arrangements in terms of accepted standards in the community in which he taught. On the evening before the pow-wow, the Member testified that children slept all over his apartment. On that evening the Member and three children slept in his bed. "The sleeping arrangements is something I don't see anything wrong in," the Member said. In further questioning, he confirmed that he did not see anything wrong with the sleeping arrangement of "A" sleeping in the bed with him, when "A" was visiting. The Member said it was never an issue with anyone before. The Committee found that this practice is not consistent with societal norms and would be deemed unprofessional by his peers in the teaching profession.

On numerous occasions, when asked if he should have spoken with the mother of "A" about the sleeping arrangements for "A", the Member said it had not occurred to him. In cross-examination of the Member by College counsel, the Member was asked, "Did it not ever occur to you that your sleeping arrangements in your home with a student who is not related to you is an issue on which you should seek a parent's perspective?" The Member replied "Not at all."

Members of the College should have an understanding of the values of society and the school in the greater community, which may differ from the values of their personal cultures. The Member should have been cognizant of these differences. The practice of having visiting children sharing a bed with an adult is not accepted in society. The Member should have been aware of this, and corrected this behaviour. Treating student "A" as he did [XXX] with regard to sleeping arrangements was inappropriate. The

Member did not consider the standard of the larger community in allowing children to sleep in the same bed as him.

The Committee dismissed the allegations related to section 264(1) (c) of the *Education Act* and subsections 1(14) and 1(15) of Ontario Regulation 437/97. In the opinion of the Committee, the Member has fostered appropriate values for those around him. The Member has cared for eleven foster children and has raised two of his own children over a 35 year period. In addition, he frequently cares for [XXX]. There has been no evidence provided of any allegations or issues being raised about his relationships with these children during this time. The Member continues to be employed by the Thames Valley District School Board. The Member organizes fundraising activities to ensure that students are involved in their First Nations heritage. The Member attends church on a regular basis. The Committee accepts that the Member is a caring son, father, grandfather and community member.

The Committee dismissed the allegations related to subsection 1(7) of Ontario Regulation 437/97 and sections 1 and 40 (1.1) of the Act. The Committee finds that the Member did not engage in sexual abuse of a student. The Committee did not accept the College's submission that sexual activity occurred.

During the time of the alleged incidents, the Member had difficult personal circumstances with his mother being in hospital and the death of his father occurring. At the same time the Member was working a part-time job on weekends as a bouncer at a bar, arriving home at 4:00 a.m. only to have to arise at 6:00 a.m. At this time the Member was sharing his bed with [XXX] and "A". Given these circumstances, the Committee finds it improbable that the alleged sexual touching occurred.

## **PENALTY DECISION**

The Committee makes the following order as to penalty:

The Member is required to appear before the Committee within 3 months of the date of this order, to be reprimanded, and the fact of the reprimand is to be recorded on the Register of the Ontario College of Teachers;

The Registrar is directed to impose the following terms, conditions or limitations on the Member's Certificate of Qualification and Registration, the fact of such terms, conditions and limitations to be recorded on the Register until such time as they are fulfilled:

the Member shall attend, at his own expense, within 3 months of the date of this order, a course of instruction, approved by the Registrar, on appropriate boundaries and boundary violation issues, and shall provide to the Registrar written proof, satisfactory to the Registrar, of the successful completion of such course of study within 30 days of completion.

The Committee directs that there be publication of the findings and Order of the Committee in summary form, with the name of the Member, in the official publication of the College, *Professionally Speaking/Pour parler profession*.

## **REASONS FOR PENALTY DECISION**

The Member did not recognize the inappropriateness of the sleeping arrangements.

The reprimand of the Member by his peers in respect of his inappropriate conduct serves to reinforce the necessity to maintain appropriate boundaries. The Member needs

direction regarding sleeping arrangements for children and the need to communicate these arrangements with parents. The Committee must impress upon the Member the message that his behaviour is not acceptable to the greater community or to members of the profession. The content of the reprimand serves the public interest. The reprimand itself and the fact of the reprimand being recorded on the Register serve as specific deterrents to the Member.

The course on boundaries and boundary violations will serve to remediate the Member's behaviour and reinforce behaviours deemed appropriate by the larger community and the profession. Through the boundary course the Member will learn that he cannot rely on his own personal experience with family to determine what is appropriate within society.

Publication with name informs the public that the College has dealt with the issue in an open and transparent manner. It clarifies which allegations led to the findings. Publication provides an opportunity to educate the membership that the actions that led to the finding of professional misconduct were inappropriate and unprofessional. Publication with name provides both a specific and general deterrent.

Dated: January 14, 2010

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Brent Hamelin, OCT  
Chair, Discipline Panel

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Annilee Jarvis, OCT  
Member, Discipline Panel

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John Tucker  
Member, Discipline Panel