

**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
Joseph Wayne Arsenault, a member of the Ontario College of
Teachers.

PANEL: Janet Cornwall, Chair
Nancy Hutcheson
Larry M. Capstick

BETWEEN:)	
)	
)	David Leonard, McCarthy
ONTARIO COLLEGE OF TEACHERS)	Tétrault, for Ontario College of
)	Teachers, assisted by Trevor Evans,
- and -)	Senior Law Clerk
)	
JOSEPH WAYNE ARSENAULT)	Maurice Green, Green & Chercover
(CERTIFICATE #180816))	for Joseph Arsenault
)	
)	Nancy Spies, Stockwoods,
)	Independent Legal Counsel
)	
)	Heard: December 10, 2003

REASONS FOR DECISION, DECISION AND ORDER(S)

This matter came on for hearing before a panel of the Discipline Committee on
December 10, 2003 at the Ontario College of Teachers at Toronto.

A *Notice of Hearing* dated October 31, 2002 was served on Joseph Wayne Arsenault, requesting attendance before the Discipline Committee of the Ontario College of Teachers on November 12, 2002 to set a date for hearing, and specifying the charges. The hearing date was set for December 10, 2003.

Joseph Wayne Arsenault was not in attendance at the hearing.

The Allegations

IT WAS ALLEGED that Joseph Wayne Arsenault is guilty of professional misconduct as defined in sections 30(2) and 40(1.1) 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 abused a student or students physically, sexually, verbally, psychologically and/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, subsection 1(14) and (15);
- (d) he contravened laws, the contravention of which was and 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 performed acts that, having regard to all the circumstances, would reasonably be regarded by members as being 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);
- (g) he engaged in sexual abuse of a student or students of a nature defined in sections 1 and 40 (1.1) of the Act; and
- (h) he displayed in his professional responsibilities a lack of knowledge, skill and/or judgment of a nature or extent that demonstrates that the Member is unfit to carry out his professional responsibilities or that the Certificate held by the Member should be made subject to terms, conditions or limitations contrary to Ontario Regulation 437/97, Section 30(3) of the Act.

At the hearing, College Counsel withdrew the allegations contained in paragraphs (b) and (g) of the Notice of Hearing.

Member's Plea

The Member pleaded 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), 1(19) and admitted that he displayed in his professional responsibilities a lack of knowledge, skill and/or judgment of a nature or extent that demonstrates that the Member is unfit to carry out his professional responsibilities or that the Certificate held by the Member should be made subject to terms, conditions or limitations contrary to Ontario Regulation 437/97, Section 30(3) of the Act, as set out in the *Notice of Hearing*.

Agreed Statement of Facts

Counsel for the College advised the panel that agreement had been reached on the facts and introduced an *Agreed Statement of Facts and Joint Submission on Penalty*, (Exhibit 2) which provides as follows:

1. Joseph Wayne Arsenault (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 Registry System Status re the Member.
2. At all material times up until the time of his employment by the District School Board of Niagara ("the Niagara Board") in December 1998, the Member was employed as a teacher by the former West Parry Sound Board of Education, now the Near North District School Board ("the Near North Board").
3. On or about 23 September 1997, the Member was dismissed by the Near North Board. Attached hereto and marked as Exhibit "B" is a copy of a letter from the Director of Education to the Member dated 23 September 1997, advising him of the dismissal.
4. On or about 13 October 1998, the Member was convicted of a charge that on or about 10 March 1998 at the City of St. Catharine's, he did assault a peace officer engaged in the execution of his duty, by pushing him, contrary to s. 270(1)(a) of the *Criminal Code of Canada*, and was fined \$300. Attached hereto and marked as Exhibit "C" is a certified copy of the Information showing the plea of guilty and the sentence.

5. The Member was employed by the Niagara Board as an occasional teacher between December 1998 and 24 March 2000. The Member was suspended from the secondary occasional teachers' list of the Niagara Board in February 2000. The suspension was confirmed by a letter dated 24 March 2000, from the Niagara Board to the Member, a copy of which is attached hereto and marked as Exhibit "D".
6. The Member was also employed, as an occasional teacher, by the Niagara Catholic District School Board between 23 February 2000 and 2 March 2000. By letter dated 2 March 2000, a copy of which is attached hereto and marked as Exhibit "E", the Member was informed by the Niagara Catholic District School Board that he had been removed from the list of supply teachers for the Board.
7. On or about 13 October 2000, the Member was convicted of the following charges, for which he was sentenced to a total of sixty days in jail, fined a total of \$150.00, and placed on probation for a period of two years:
 - (a) Two counts of uttering threats to cause death to two officers of the Ontario Provincial Police in the Township of Seguin, on or about 19 April 2000; and
 - (b) One count of failing to comply with release conditions.Attached hereto and marked as Exhibit "F" is a copy of the reasons for sentence of Mr. Justice Humphrey dated 7 December 2000.
8. The Member appealed the conviction referred to in paragraph 7 above, but the conviction was upheld on 30 August 2001. Attached hereto and marked as Exhibit "G" is a copy of the Decision of Mr. Justice Caputo, dated 21 August 2001.
9. Between October 2000 and November 2000, in order to obtain a mortgage through the First National Financial Corporation, the Member knowingly submitted fraudulent documents, which included but were not limited to:

- (a) an altered pay stub in the name of the Member, dated 4 October 2000, which indicated that he continued to be on the payroll of the Niagara Board as of 4 October 2000; and
 - (b) a letter dated 6 November 2000, on the stationery of the Niagara Board, with the forged signature of a human resources employee of that Board, which letter stated that the Member was employed with the Niagara Board on the Occasional Teachers List and had been employed by that Board since February of 1998.
10. Between October 2000 and November 2000, the Member forged or arranged to have forged, the signature of Lisa Clark, a human resources employee of the Niagara Board, on the letter, dated 6 November 2000, referred to in paragraph 9(b) above.
11. On or about 29 August 2001, the Member pleaded guilty to resisting arrest contrary to Section 129 of the *Criminal Code of Canada* and was fined \$500.00 plus a surcharge of \$75.00. Attached hereto and marked as Exhibit "H" is a certified copy of the Information relating to that offence showing the conviction.

By this document, the Member, Joseph Wayne Arsenault, accepts that the matters referred to in paragraphs 3, 4, 5, 6, 7, 9, 10, and 11 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), 1(19); and that he displayed in his professional responsibilities a lack of knowledge, skill and/or judgment of a nature or extent that demonstrates that the Member is unfit to carry out his professional responsibilities or that the certificate held by the Member should be made subject to terms, conditions or limitations, contrary to Regulation 437/97 s. 30(3) of the *Act*.

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

- (a) direct the Registrar to suspend the Certificate of Qualification and Registration held by the Member for a period of one year, commencing on the date of the hearing of this matter; and
- (b) prior to the Member being permitted to return to any teaching duties, require the Member to provide the Registrar with proof that the Member is fit to return to teach, such proof to be in the form of a report prepared by a physician approved by the Registrar, and which is acceptable to the Registrar.

At the hearing, both counsel also requested that the findings in this matter, be published in summary, in *Professionally Speaking/Pour parler profession*, with the name of the Member.

Decision

The Committee accepts the guilty plea of the Member. Based on the guilty plea, the *Agreed Statement of Facts and Joint Submission on Penalty*, and the submissions made by counsel, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that Joseph Wayne Arsenault committed acts of professional misconduct as alleged, more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(14), 1(15), 1(16), 1(18), 1(19). The Committee also finds that the Member displayed in his professional responsibilities a lack of knowledge, skill

and/or judgment of a nature or extent that demonstrates that he is unfit to carry out his professional responsibilities or that the Certificate held by the Member should be made subject to terms, conditions or limitations contrary to Ontario Regulation 437/97, Section 30(3) of the Act.

The Committee authorizes the College, on consent, to withdraw the allegations contained in paragraph (b) of the Notice of Hearing, that the Member abused a student or students, sexually, verbally, psychologically and/or emotionally contrary to Ontario Regulation 437/97, subsection 1(7) and in paragraph (g) that the Member engaged in sexual abuse of a student or students of a nature defined in sections 1 and 40(1.1) of the Act.

Penalty

The *Agreed Statement of Facts and Joint Submission on Penalty* contains a joint submission as to penalty as set out above.

Penalty Decision

The Committee accepts the joint submission as to penalty as set out in the *Agreed Statement of Facts, Guilty Plea and Joint Submission on Penalty* and accordingly:

1. directs the Registrar to suspend the certificate of qualification and registration held by the Member for a period of one year, commencing on the date of the hearing of this matter; and
2. directs the Registrar to impose the following condition on the Member's certificate:

that prior to the Member being permitted to return to any teaching duties after the expiration of the suspension of his certificate, as referred to in 1. above, the Member must provide the Registrar with proof that the Member is fit to return to teach, such proof to be in the form of a report prepared by a physician approved by the Registrar, and which is acceptable to the Registrar.

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 summary in the official publication of the Ontario College of Teachers, *Professionally Speaking /Pour parler profession.*

The Committee concluded that the proposed penalty is reasonable and serves to protect the public interest. The Committee also finds that the order meets the objective of general deterrence in that it serves as a message to the profession to deter members of the profession from engaging in similar misconduct.

Date: December 10, 2003

Janet Cornwall
Chair, Discipline Panel

Nancy Hutcheson
Member, Discipline Panel

Larry M. Capstick
Member, Discipline Panel