

**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 Gordon Charles Baxter, a member of the Ontario College of Teachers.

PANEL: Danny Anckle, Chair
 Alexander Bass, OCT
 Pauline Smart

BETWEEN:	)	Christine Lonsdale,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Daniela De Bartolo,
	)	Litigation Paraprofessional
- and -)	
)	
GORDON CHARLES BAXTER	)	Gordon Charles Baxter,
(CERTIFICATE #139702)	)	was not present or represented
)	
)	
	)	Rebecca Durcan,
	)	Steinecke Maciura LeBlanc,
	)	Independent Legal Counsel
)	
	)	Heard: November 3, 2010

DECISION, REASONS FOR DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on November 3, 2010 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated July 21, 2010 was served on Gordon Charles Baxter, requesting his presence on August 30, 2010 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for November 3, 2010.

Gordon Charles Baxter was not in attendance.

THE ALLEGATIONS

The allegations against Gordon Charles Baxter in the *Notice of Hearing*, (Exhibit 1) dated July 21, 2010, are as follows:

IT IS ALLEGED that Gordon Charles Baxter is guilty of professional misconduct as defined in section 30(2) and 40(1.1) 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, contrary to Ontario Regulation 437/97, subsection 1(7.1);
- (c) he abused a student or students psychologically or emotionally, contrary to Ontario Regulation 437/97, subsection 1(7.2);
- (d) he abused a student or students sexually, contrary to Ontario Regulation 437/97, subsection 1(7.3);
- (e) he failed to comply with the *Education Act*, Revised Statutes of Ontario, 1990, chapter E.2, and specifically section 264(1)(c) thereof or the Regulations made under that Act, contrary to Ontario Regulation 437/97, subsection 1(15);

- (f) he contravened a law, 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);
- (g) he contravened a law, the contravention of which has caused students under the Member's professional supervision to be put at or to remain at risk, contrary to Ontario Regulation 437/97, subsection 1(17);
- (h) 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);
- (i) he engaged in conduct unbecoming a Member, contrary to Ontario Regulation 437/97, subsection 1(19); and
- (j) he engaged in sexual abuse of a student or students of a nature defined in sections 1 and 40 (1.1) of the *Act*.

Counsel for the College advised the Committee that an agreement had been reached on the facts and introduced a *Statement of Uncontested Facts, Plea of No Contest and Joint Submission on Penalty* (Exhibit 2), which provides as follows:

STATEMENT OF UNCONTESTED FACTS

1. Gordon Charles Baxter (the "Member") was at all material times, 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 Niagara Catholic District School Board (the "Board") as a teacher at [XXX] School (the "School") in [XXX]. The Member also was self employed as a [XXX] high school students.
3. During the 2007-2008 academic year, the Member was a [XXX] and [XXX] [XXX] of a female [XXX] student of the School (the "Student").

4. While she was in her grade [XXX] year, the Member [XXX] the Student at the School in [XXX].
5. During the summer of 2008, the Member started to communicate with the Student by e-mails, MSN chats and telephone.
6. During the 2008-2009 academic year, while the Student was in grade [XXX], the Member [XXX] and they became close friends.
7. During the 2008-2009 academic year, the Member:
 - (a) during the course of telephone conversations and electronic communications, disclosed personal information to, and flirted with, the Student;
 - (b) on one or more occasions hugged the Student in his portable classroom at the School; and
 - (c) spent time with the Student during school hours and at his home.
8. In [XXX] 2009, the month in which she celebrated her [XXX] birthday, the Student started to develop a crush on the Member and told him around the end of that month that she liked him. The Member apparently reciprocated those feelings.
9. On or about Sunday, 1 February 2009, the Member invited the Student to his home to watch [XXX] on television. While sitting on a couch at his home, the Member kissed and cuddled the Student.
10. Between the approximate dates of 1 February 2009 and 29 April 2009, the Member engaged in a sexual relationship with the Student which included kissing, cuddling, hugging and her performing fellatio on him.
11. There were no incidents of sexual activity between the Member and the Student at the School or during school hours and they did not engage in sexual intercourse.
12. On or about 9 June 2009, the Member resigned his teaching position with the Board with immediate effect.

13. On or about 3 June 2010, the Member pleaded guilty before the Ontario Court of Justice, in respect of the following charge, and was found guilty of that charge:

- (a) that he between 1 February 2009 and 29 April 2009, at the City of St. Catharines, did, being a person who was in a position of trust or authority towards a young person, with a part of his body, for a sexual purpose, directly touched the body of that young person, contrary to Section 153, subsection (1.1) of the *Criminal Code* (Canada).

14. On or about 5 August 2010, the Member was sentenced to an intermittent jail sentence of fourteen (14) days to be followed by probation for a period of one (1) year.

15. Attached hereto and marked as **Exhibit B** is a certified copy of the Ontario Court of Justice Information, dated 30 April 2009, with respect to that charge.

16. A certified copy of the Probation Order dated 5 August 2010, is attached as **Exhibit C**.

17. Copies of the transcripts of the Plea of Guilt made on 3 June 2010 before Mr. Justice D.A. Harris, and the Reasons for Sentence of Justice Harris on 5 August 2010, are attached as **Exhibits D and E** respectively.

PLEA OF NO CONTEST

18. By this document, the Member admits, for the purposes of this proceeding only, the truth of the facts and the exhibits referred to in paragraphs 1 to 17 above (the “Uncontested Facts”).

19. The Member hereby acknowledges that the Uncontested Facts referred to in paragraphs 7 to 10 and paragraph 13 above, constitute conduct which is professional misconduct, and pleads no contest to the allegations of professional misconduct against him, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(7.1), 1(7.2), 1(7.3), 1(15), 1(16), 1(17), 1(18) and 1(19). The Member also acknowledges that he engaged in sexual abuse of a student or students of a nature defined in Sections 1 and 40(1.1) of the *Act*.

20. 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 the Uncontested Facts being presented to the Discipline Committee;
- (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 hearing;
- (d) he understands that depending on the penalty ordered by the Discipline Committee, the decision of the Committee and a summary of its reasons, including reference to his name, may be published in the official publication of the College;
- (e) he understands that any agreement between counsel for the College and himself with respect to the penalty proposed in this document does not bind the Discipline Committee;
- (f) he understands and acknowledges that he is executing this Agreement voluntarily, unequivocally, and without the advice of legal counsel.

21. 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 *Ontario 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.

22. In light of the uncontested 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

23. 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 immediately revoke the Certificate of Qualification and Registration of the Member, which Certificate the Member is to immediately surrender to the Registrar; and
- (b) directs that there be publication of the findings and Order of the Committee in summary form in the official publication of the College, Professionally Speaking/Pour parler profession. The parties have not agreed on whether or not the Member's name should be included and submissions will be made on that issue.

DECISION

Having considered the evidence, onus and standard of proof, and the submissions made by Counsel for the College, and the Member, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that Gordon Charles Baxter committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(7.1), 1(7.2), 1(7.3), 1(15), 1(16), 1(17), 1(18) and 1(19) and that he engaged in sexual abuse of a student or students of a nature defined in Sections 1 and 40(1.1) of the *Act*.

REASONS FOR DECISION

The Member admitted the truth of the facts and exhibits referred to in paragraphs 1 to 17 (the "uncontested facts") of the *Statement of Uncontested Facts, Plea of No Contest, and*

Joint Submission on Penalty (Exhibit 2). He acknowledged that the uncontested facts referred to in paragraphs 7 to 10 and paragraph 13 above constitute conduct that is professional misconduct and pleaded no contest to the allegations of professional misconduct. The Committee accepted the Member's plea of no contest and the facts in the *Statement of Uncontested Facts, Plea of No Contest, and Joint Submission on Penalty*.

On or about 3 June 2010, the Member pleaded guilty before the Ontario Court of Justice, in respect of the following charge, and was found guilty of that charge:

- (b) that he between 1 February 2009 and 29 April 2009, at the City of St. Catharines, did, being a person who was in a position of trust or authority towards a young person, with a part of his body, for a sexual purpose, directly touched the body of that young person, contrary to Section 153, subsection (1.1) of the *Criminal Code* (Canada).

On or about 5 August 2010, the Member was sentenced to an intermittent jail sentence of fourteen (14) days to be followed by probation for a period of one (1) year.

The Committee finds that the Member's actions and conviction for sexual exploitation of one of his students as outlined herein, constitutes an act of professional misconduct, being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(7.1), 1(7.2), 1(7.3), 1(15), 1(16), 1(17), 1(18) and 1(19). By this conduct, the Member engaged in sexual abuse of a student of a nature defined in sections 1 and 40 (1.1) of the *Act*.

SUBMISSIONS ON PUBLICATION

The Committee received submissions from Counsel for the College and a written submission from the Member with respect to publication of the Member's name in *Professionally Speaking/Pour parler profession*.

Counsel for the College argued that the Member's name should be published. She submitted that hearings are open to the public and that resulting decisions are publicly accessible. In order to support the transparency of the proceedings, publication of the Member's name should follow. Counsel submitted that publication of the name served general and specific deterrence and provided consistency.

The Committee received a letter and an e-mail from the Member dated October 18, 2010 (Exhibit 4) requesting that his name not appear in *Professionally Speaking/Pour parler profession*. The Member stated that he saw no purpose in having his name mentioned in the Ontario College publication due to the fact that he is presently retired from teaching and has apologized for his actions. He further requested that his name not be published to avoid embarrassment to himself, colleagues, school board and the victim.

PENALTY

The Committee makes the following order as to penalty:

1. The Registrar of the Ontario College of Teachers is directed to revoke the Certificate of Qualification and Registration of the Member; and
2. 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

During the summer of 2008, the Member started to communicate with the Student by e-mails, MSN chats and telephone. During the 2008-2009 academic year, while the Student was in [XXX], the Member [XXX] and they became close friends. During the course of telephone conversations and electronic communications, the Member disclosed personal information and flirted with the Student. On one or more occasion the Member hugged the Student in his portable classroom and spent time with the Student during school hours and at his home. The Student developed a crush on the Member and told him that she liked him and the Member apparently reciprocated those feelings.

In February 2009, the Member invited the Student to his home to watch the Superbowl football game on television and while sitting on a couch, he kissed and cuddled the Student.

Between the approximate dates of 1 February 2009 and 29 April 2009, the Member engaged in a sexual relationship with the Student which included kissing, cuddling, hugging and her performing fellatio on him. The Student indicated that the incidents of sexual activity did not occur at the school and did not include sexual intercourse.

These actions led to the Member pleading guilty and being charged and convicted before the Ontario Court of Justice of sexual exploitation. He was sentenced to 14 days intermittent jail time and one year probation. (Exhibit 3, Tab B).

The Committee finds the Member engaged in an inappropriate and unprofessional relationship with the Student while she was under his care and supervision. For a period between February 1, 2009 and April 29, 2009 their relationship intensified and eventually

became physical. By disclosing personal information and flirting with the Student, the Member showed poor judgment. He did not discourage, but rather allowed the relationship to go beyond the appropriate teacher/student boundary, progressing to sexual activity.

The Committee finds the Member's conduct is disgraceful and unbecoming a member of the profession. The Member abused the authority and trust vested in him in his role as a teacher, without regard for the well being of the student. The conduct of the Member was unacceptable and in conflict with the duty of a teacher to protect students. The Member, as a result of his conduct, has forfeited the privilege of holding a teaching certificate and being a member of the teaching profession. Revocation is the appropriate penalty for misconduct of this severity.

The Committee orders publication of the finding and order with the name of the Member.

The Committee considered the Member's request to withhold publication of his name to prevent embarrassment to himself, colleagues, school board and the victim. However, the Committee felt there were more compelling reasons to publish the Member's name. Publication of the findings and order of the Committee, in summary, along with the name of the Member, identifies to the profession the serious nature of the Member's misconduct and the consequences for such behaviour. Publication, in this case, acts as a specific and general deterrent and informs the profession that such conduct will not be tolerated and will result in the harshest penalty.

Publication also serves the public interest by reassuring and informing the community that the profession acts decisively when matters of this nature are brought to its attention.

In conclusion, the Committee denounces such behaviour and is confident that the penalty serves the interest of the public and the profession.

Date: November 3, 2010

Danny Anckle
Chair, Discipline Panel

Alexander Bass, OCT
Member, Discipline Panel

Pauline Smart
Member, Discipline Panel