

**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 Shepstone Bertram, a member of the Ontario College of Teachers.

PANEL: Gabrielle Blais, Chair
 Tianna Travaglini-Babic
 Jacques Tremblay

BETWEEN:)	
	)	Awanish Sinha,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Jennifer Robinson,
	)	Law Clerk
- and -)	
	)	Philip Abbink,
	)	Cavalluzzo Hayes Shilton McIntyre
	)	Cornish LLP,
DAVID SHEPSTONE BERTRAM	)	for David Shepstone Bertram
(CERTIFICATE #196125))	
)	
	)	Paul Le Vay,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
)	
	)	Heard: November 19, 2007

REASONS FOR DECISION, DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on November 19, 2007 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated April 7, 2005, was served on David Shepstone Bertram, requesting his attendance before the Discipline Committee of the Ontario College of Teachers on April 11, 2005 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for November 19, 2007. David Shepstone Bertram was not in attendance at the hearing.

THE ALLEGATIONS

The allegations against David Shepstone Bertram in the *Notice of Hearing*, (*Exhibit 1*) dated April 7, 2005, are as follows:

IT IS ALLEGED that David Shepstone Bertram is guilty of professional misconduct as defined in sections 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, 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*.

PUBLICATION BAN

On November 19, 2007, the Committee made an order that there be no publication of any information that may disclose the identity of the victims involved in this matter.

AGREED STATEMENT OF FACTS

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

The Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty provides as follows:

1. David Shepstone Bertram (the “Member”) is a member of the Ontario College of Teachers. Attached hereto and marked as **Exhibit “A”** to Exhibit 3 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”) as a teacher at [REDACTED] School and later at [REDACTED] School.

3. During the 2003-2004 academic year, [REDACTED] and [REDACTED] were female grade [REDACTED] students at high schools of the Board.

4. [REDACTED] and [REDACTED] had been students of the Member while they were in grades [REDACTED] and [REDACTED] at [REDACTED] School, during the approximate academic years of 1998-1999 and 1999-2000. After they commenced high school in the 2000-2001 academic year, both students joined [REDACTED] in which the Member was involved.

5. Between the approximate years of 1999 and 2004, the Member encouraged the development of relationships that offended appropriate and acceptable teacher/student boundaries between himself and each of [REDACTED] and [REDACTED] which included his:

- (a) using suggestive nicknames for them;
- (b) inviting/allowing them to visit him at his residence;
- (c) providing to both girls his e-mail address and home telephone number and encouraging them to communicate frequently with him for social purposes;
- (d) engaging in inappropriate telephone conversations including the discussion of personal matters;
- (e) engaging in frequent, lengthy and/or inappropriate communications with them by means of instant messaging on the Internet, as well as by e-mail;
- (f) driving them to and from his home and their homes;
- (g) engaging in sexually suggestive discussions;
- (h) inviting them to meet with him outside of the school hours for dinner, movies, shopping and other social gatherings; and

- (i) breaching confidentiality by engaging in discussions with them regarding matters involving other students and staff.

[REDACTED]

6. Between approximately January 10, 2003 and November 30, 2003, the Member engaged [REDACTED] in a series of instant messaging discussions on the Internet using a program known as ICQ. The ICQ log of the chats between the Member and [REDACTED] comprises approximately 377 pages and evidence discussions about [REDACTED]'s dates, her boyfriend, and inappropriate remarks regarding television programs and areas of [REDACTED]'s personal life, including several references to the Member's use of endearing and affectionate personal comments about her.

7. Had the hearing proceeded, [REDACTED] would have testified that in or about May 2003, the Member became angry with [REDACTED] because she did not take the advice he had given her regarding her boyfriend of whom he disapproved. The Member told [REDACTED] that if her relationship with this boyfriend was purely for sexual purposes, that he, the Member, was available, cared about her, and would be better suited for her in this regard.

8. [REDACTED] further would have testified that in or around the summer of 2003, the Member asked [REDACTED] "how far" she had gone with a boy, and some time in the fall of 2003, the member engaged [REDACTED] in a discussion in which he implied that she was sexually frustrated.

[REDACTED]

9. In or about December 2000, the Member made sexual comments and told sexual jokes to [REDACTED] who was then approximately [REDACTED] years of age.

10. During the summer of 2003, the Member engaged in various discussions with [REDACTED] about his own sexual experiences.

11. Had the hearing proceeded, [REDACTED] would have testified that in or around January 2004, the Member engaged in inappropriate personal discussions with [REDACTED] which included him telling [REDACTED] that she reminded him of a girlfriend who had been killed when this girlfriend was [REDACTED]'s age.

12. Between 2000 and 2003, the Member engaged in voluminous inappropriate electronic communications to [REDACTED] which included e-mail and messages via an instant messaging system known as ICQ, sometimes on a daily basis. The tone and content of these messages were often sexually suggestive.

PHYSICAL TOUCHING

13. In addition to the inappropriate conduct referred to in paragraphs 5 – 12 above, the Member also engaged in inappropriate touching of [REDACTED] and [REDACTED]. Had the hearing proceeded, [REDACTED] and [REDACTED] would have testified as follows:

[REDACTED]

- (a) that she sat on the Member's lap and that he rubbed her back;
- (b) that on one occasion at his house, the Member kissed her; and
- (c) on another occasion, the Member massaged her back.

[REDACTED]

- (a) during a train trip [REDACTED], she was asleep on the Member's shoulder and was awakened when the Member touched her breast area over her clothing; and
- (b) that on one occasion while she was helping to paint at the Member's house, the Member wiped paint off her bare legs.

14. While the Member does not agree as to the exact time, date and circumstances of the touching incidents, the Member does not dispute that touching of the nature described

in paragraph 13 did occur and that such touching constitutes professional misconduct as set out in the Notice of Hearing.

15. On or about 28 October 2004, the Member was dismissed by the Board for just cause.

PLEA OF NO CONTEST

16. By this document, the Member pleads no contest to the facts and exhibits referred to in paragraphs 1 to 15 above, (“the Agreed Facts”).

17. The Member acknowledges that the Agreed Facts referred to in paragraphs 5, 6, 7, 8, 9, 10, 11, 12 and 13 constitute professional misconduct, and pleads no contest to these allegations of professional misconduct against him, being more particularly, breaches of Ontario Regulation 437/97 1(5), 1(7), 1(14), 1(15), 1(18), 1(19), and Section 1 and 40 (1.1) of the *Act*.

18. 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 Admitted 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; and
- (d) he understands and acknowledges that he is executing this Agreement voluntarily, unequivocally and with the advice of legal counsel.

19. 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.

20. In light of the Agreed Facts, the Ontario College of Teachers and the Member submit that the Discipline Committee find the Member guilty of professional misconduct.

JOINT SUBMISSION ON PENALTY

21. In light of the Admitted Facts and circumstances, 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 of the Ontario College of Teachers; and
- (b) directs that the findings and order of the Committee, including the Member's name, be published in the official publication of the College *Professionally Speaking/Pour parler profession*.

22. 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, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that David Shepstone Bertram committed acts 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), and Section 1 and 40(1.1) of the *Act* as set out in the *Notice of Hearing*.

REASONS FOR DECISION

The Member acknowledged that Agreed Facts described in paragraphs 5, 6, 7, 8, 9, 10, 11, 12 and 13 of the *Agreed Statement of Facts, Plea of No Contest, and Joint Submission on Penalty* (ASF - Exhibit 3) constitute professional misconduct and pleaded no contest to these allegations of professional misconduct. The Committee accepted the Member's plea of no contest and the *Agreed Statement of Facts, Plea of No Contest, and Joint Submission on Penalty*.

The Committee finds that the Member's behaviour towards two female students, who had been students of the Member in grades [■] and [■] and later joined [■] in which the Member was involved, consists of professional misconduct and is contrary to Ontario Regulation 437/97 subsections 1(5), 1(7), 1(14), 1(15), 1(18) and 1(19). As well, this

was sexual abuse of a student or students of a nature defined in sections 1 and 40(1.1) of the Act.

The Committee learned that after the two students graduated from public school, the Member continued to develop an inappropriate relationship with them that continued over a four-year period. This conduct involved excessive and improper communication, unsuitable socializing in settings outside of the school environment, and touching of the students.

The Member has acknowledged that he engaged in frequent, lengthy and inappropriate communications with the students by means of telephone, instant messaging on the Internet as well as by e-mail. In one case the ICQ logs of the chats comprised of approximately 377 pages and included discussions regarding the student's personal life. Also, the Member adopted an affectionate and/or sexually suggestive vocabulary with the students that transcended acceptable teacher/student interaction. The frequency and nature of these exchanges indicate that the Member sought a sustained and intimate relationship with the students.

The Member's communication with the students was particularly offensive as it evolved into sexual invitations and questions of a very personal nature, for example, whether the students were engaging in sexual activities. In addition, the Member discussed his own sexual experiences.

In addition to providing the students with his personal contact information, the Member invited them to visit him at his residence and occasionally provided transportation for these visits. The Member also invited the students to meet him outside of school hours

for dinner, movies, shopping and other social gatherings. Such social interaction and invitations constitute inappropriate professional behaviour.

The students allege that on a number of occasions the Member engaged in inappropriate touching, such as rubbing/massaging their back, kissing, and touching a student's breast.

The Member does not dispute that touching of this nature occurred and agrees that such touching constitutes professional misconduct.

Given all of these facts, which the Member does not dispute, the Committee finds that the evidence supports a finding of professional misconduct. In his behaviour, the Member abused a student or students physically, sexually, verbally, psychologically or emotionally and engaged in sexual abuse of a student or students.

Overall, the Member failed to maintain the standards of the profession and failed in his duties to comply with the Education Act. The Member engaged in conduct that would reasonably be regarded by members as disgraceful, dishonourable and unprofessional and engaged in conduct unbecoming a member.

PENALTY DECISION

The Committee accepts the joint submission on penalty and 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, which Certificate the Member is to surrender immediately to the Registrar; 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 Member's full name, in the official publication of the College, *Professionally Speaking/Pour parler profession*.

REASONS FOR PENALTY DECISION

The Member engaged in consistent inappropriate behaviour, with two different students, over a number of years. This was not an isolated incident but consisted of a series of actions, often of a sexual nature, that included communications, social activities and touching. The Committee does not believe that suspension, reprimand and/or course work would address the circumstances of this case. The Member's behaviour was so serious as to warrant revocation of his certificate.

Students must be protected from members who engage in this type of misconduct. Revocation will ensure that the Member no longer has access to opportunities that place him in a position of trust and authority within the community were he to remain a member of the profession. Parents and the general public need to be reassured that members who behave in such a manner will not be tolerated by the profession.

Revocation of the Member's certificate will ensure that the Member no longer finds himself in a class setting and will advise the community that, since he has failed to maintain the standards of the profession in his overall conduct with students, he has lost the privilege of being a teacher.

Publication of the findings and order of the Committee, in summary, along with the name of the Member, provides a specific deterrent to the Member by identifying to his peers the nature of his misconduct. It will serve as a general deterrent to the profession as it will demonstrate that such behaviour will be treated harshly. Finally, publication serves the public interest by reassuring the community that the profession will act decisively when matters of this nature are brought to its attention.

Date: November 19, 2007

Gabrielle Blais
Chair, Discipline Panel

Tianna Travaglini-Babic
Member, Discipline Panel

Jacques Tremblay
Member, Discipline Panel