

**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 Roderic Russell Brawn, a member of the Ontario College of Teachers.

PANEL: Annilee Jarvis, Chair
 Rosemary Fontaine
 Mel Greif

BETWEEN:)	
	)	David Leonard,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -)	
)	
RODERIC RUSSELL BRAWN	)	Philip Abbink,
CERTIFICATE #274249)	)	Cavalluzzo Hayes Shilton McIntyre
	)	& Cornish LLP,
	)	for Roderic Russell Brawn
)	
	)	Christopher Wirth,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
)	
	)	Heard: August 20, 2008

REASONS FOR DECISION, DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on August 20, 2008 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated January 10, 2008, was served on Roderic Russell Brawn, requesting his attendance before the Discipline Committee of the Ontario College of Teachers on January 21, 2008 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for August 20, 2008.

Roderic Russell Brawn was not in attendance at the hearing.

THE ALLEGATIONS

The *Notice of Hearing* sets out the following allegations:

IT IS ALLEGED that Roderic Russell Brawn (“the Member”) is guilty of professional misconduct as defined in section 30(2) and/or is incompetent as defined in section 30(3) 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, 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 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);
and

- (e) he engaged in conduct unbecoming a Member, contrary to Ontario Regulation 437/97, subsection 1(19).

At the hearing on August 20, 2008 College counsel sought to withdraw the allegation of incompetence as defined in section 30(3) of the Act and the particular allegations contained in paragraphs (b) and (d) of the *Notice of Hearing*, being alleged breaches of Ontario Regulation 437/97, subsection 1(7) and 1(18). The Committee agrees that these allegations shall be withdrawn.

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 2)*.

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

1. Roderic Russell Brawn is a member in good standing of the Ontario College of Teachers (the “Member”). 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 Thames Valley District School Board (the “Board”) and carried out occasional teaching assignments at various schools of the Board.

UNCONTESTED FACTS AND PLEA OF NO CONTEST

3. The Member, for the purposes of this proceeding only, does not contest the following facts:

(a) On various occasions between January 2001 and November 2005, while carrying out these teaching assignments, the Member failed to display classroom management skills that evidenced his exercise of appropriate and adequate control of student behaviour and discipline. The Member's conduct, towards his students, his colleagues, and school administration, lacked the professionalism expected of a teacher of experience. Specifics of the Member's conduct in this regard include:

- (i) Commenting to a female colleague about his own personal clothing discomfort because of the temperature at the school, saying words to the effect that he doesn't wear corduroy pants because to do so would make his testicles sweat. There were no students present when this comment was made;
- (ii) On one occasion, while holding a closed Swiss army knife in his hand, responded to a female student's advice that her finger was sore by remarking, in a joking fashion, "Would you like me to cut it off?"
- (iii) Engaging in student-type activities, such as joining in the students' frivolous and sometimes juvenile conversations and activities. For example, if called to give evidence, witnesses would say that the Member, on one occasion, was dancing in front of his class and commenting on drinking tequila and rum on the beach in the

Bahamas. The Member acknowledges that his behaviour on occasion with students was inappropriate and unprofessional;

(iv) On one occasion, while walking behind a grade 7 student, came into contact with the student (the Member's chest bumping the student's back). If called to give evidence, the student would say that the Member deliberately bumped into him to hurry him along. However, the Member has stated that the contact was due to the student unexpectedly slowing his pace. The Member acknowledges that the appropriate physical boundary between him and the student was not maintained; and

(v) Failing to display the required courtesy and respect to school administration, including yelling at one of his principals in front of both other staff and a parent when responding to the principal's enquiries about the Member's reason for sending a student down to the office.

(b) The Member's unprofessional and inappropriate conduct resulted in the Board terminating his employment by letter dated November 25, 2005.

(c) A grievance relating to the Member's termination was resolved.

4. The Member does not contest, for the purposes of this proceeding only, that the facts described in paragraph 3 above constitute professional misconduct, being more particularly breaches of Ontario Regulation 437/97 1(5), 1(14), 1(15), and 1(19), and pleads no contest to these allegations of professional misconduct.

5. By this document the Member states that:

(a) he understands fully the nature of the allegations against him;

- (b) 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;
- (c) he voluntarily decided to plead no contest; and
- (d) he understands and acknowledges that he is executing this Agreement voluntarily, unequivocally and with the advice of legal counsel.

6. 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 him as to the facts or findings in any other civil, criminal or administrative proceeding.

7. In light of the uncontested facts and the Member's plea of no contest, the Ontario College of Teachers and the Member submit that the Discipline Committee find the member guilty of professional misconduct.

JOINT SUBMISSION ON PENALTY

8. In light of the uncontested facts and the plea of no contest to the allegations above, and upon the Discipline Committee making the finding of professional misconduct requested by the parties, 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 impose the following terms, conditions or limitations on the Member's Certificate of Qualification and Registration, the fact of such terms and conditions and limitations to be recorded on the Register of the College until such time as they are fulfilled:
- (i) the Member shall enrol in and attend, at his own expense, within six (6) months of the date of the hearing of this matter, a course in classroom management acceptable to the Registrar;
 - (ii) the Member shall enrol in and attend, at his own expense, within six (6) months of the date of the hearing of this matter, a course addressing professional interactions with students, staff and administration acceptable to the Registrar;
 - (iii) the Member shall deliver directly to the Registrar proof of the successful completion of the courses in (i) and (ii) above within thirty (30) days of the completion of the courses or within thirty (30) days of the approval of this penalty by the Discipline Committee, whichever is the later;
- (b) directs that there be publication of the findings and Order of the Committee in the official publications of the College, *Professionally Speaking/Pour parler profession*. The parties have not agreed upon whether the Member's full name will be published in *Professionally*

Speaking/Pour parler profession and submissions will be made to the Committee on that issue.

9. 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.

SUBMISSIONS ON PUBLICATION

The Committee received submissions from both counsel with respect to publication of the Member's name in *Professionally Speaking/Pour parler profession*, which was not expressly dealt with in the joint submission.

Counsel for the College argued that the Member's name should be published and that there were no good reasons not to publish the name of the Member. He reminded the Committee 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. He indicated that not publishing the name may give the impression of secrecy.

Counsel for the Member argued that the Member's name should not be published. Counsel also said that the Member's actions were not at the serious end of the spectrum. They were a collection of minor comments, with one incident of physical contact which resulted in no apparent injury. Counsel indicated that the agreement and penalty were remedial in nature and were not meant to be punitive and to publish the name would be an additional penalty. Counsel indicated that there was no statutory presumption that the name of the Member be published and that this was discretionary on the part of the

Committee. Counsel indicated that the level of penalty agreed upon was not consistent with publication of the Member's name. He also suggested that publication of the events would be effective in educating other members and that therefore there was no need to identify the Member.

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 Roderic Russell Brawn committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(14),1(15) and 1(19), as set out in the *Notice of Hearing*.

REASONS FOR DECISION

The Member did not contest that the facts described in paragraph 3 of the *Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty* (ASF - Exhibit 2) constituted professional misconduct and pleaded no contest to these allegations of professional misconduct.

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

The Member on various occasions from 2001 to 2005 spoke inappropriately to colleagues and students and on one occasion came into physical contact with a student. In addition he yelled at one of his principals in front of other staff and a parent. By engaging in this behaviour he failed to maintain the standards of the profession and engaged in conduct unbecoming a member. He failed to comply with the *Act* and the *Education Act* by engaging in student-type activities and discussing with students the drinking of alcohol.

PENALTY DECISION

The Committee makes the following order as to penalty:

1. 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 and conditions and limitations to be recorded on the Register of the College until such time as they are fulfilled:

- (i) the Member shall enrol in and attend, at his own expense, within six (6) months of the date of the hearing of this matter, a course in classroom management acceptable to the Registrar;
- (ii) the Member shall enrol in and attend, at his own expense, within six (6) months of the date of the hearing of this matter, a course addressing professional interactions with students, staff and administration acceptable to the Registrar;
- (iii) the Member shall deliver directly to the Registrar proof of the successful completion of the courses in (i) and (ii) above within thirty (30) days of the completion of the courses or within thirty (30) days of the approval of this penalty by the Discipline Committee, whichever is the later.

2. 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

Members of the profession must be aware of expectations regarding professional behaviour and not engage in unprofessional conduct. The Member's behaviours indicated a lack of understanding of appropriate boundaries within a school setting. The course in classroom management and the course addressing professional interactions with students, staff and administration will clarify for, and reinforce for the Member the need to maintain these boundaries. These courses will assist in the process of remediation and rehabilitation of the Member.

Publication in general of the decision and findings of the Committee serves to inform the public that the College will deal with members of the profession who conduct themselves in an inappropriate and unprofessional manner.

The Committee considered the submissions of College Counsel and Counsel for the Member with respect to publication of the Member's name. The Committee ordered publication of the findings and order with the name of the Member for the following reasons:

1. Seeing his name in print will serve as a specific deterrent to the Member not to repeat his actions.

2. In this case, including publication of the Member's name will serve as a deterrent to all members of the profession by reminding them of the level of professionalism that is expected of teachers.
3. The Member was an occasional teacher who was employed in a number of schools. The Committee considered that the events occurred over several years in various locations. Publishing the Member's name serves to inform others in the educational community.

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

Date: August 20, 2008

Annilee Jarvis
Chair, Discipline Panel

Rosemary Fontaine
Member, Discipline Panel

Mel Greif
Member, Discipline Panel