

**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 Douglas Ian Brown, a member of the Ontario College of Teachers.

PANEL:            Gabrielle Blais, Chair  
                      Rosemary Fontaine  
                      Brent Hamelin

BETWEEN:	)	
	)	David Leonard,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -	)	
	)	
DOUGLAS IAN BROWN)	)	Douglas Ian Brown appeared
(CERTIFICATE #267344)	)	on his own behalf, via
	)	teleconference
	)	
	)	
	)	Luisa Ritacca,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
	)	
	)	Heard: September 19, 2007

**REASONS FOR DECISION, DECISION AND ORDERS**

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

A *Notice of Hearing*, dated May 14, 2004 (Exhibit 1) was served on Douglas Ian Brown (the “Member”), providing him with notice that the Discipline Committee of the Ontario College of Teachers would meet on June 9, 2004 to set a date for a hearing, and specifying the charges. The Member attended on June 9, 2004. A date was not set for a hearing at that time as the Member’s criminal trial was scheduled to begin on September 13, 2004. A further set date was held on April 10, 2007, with the Member participating via teleconference, and the Committee peremptorily set September 19, 2007 as the date for the hearing on the merits.

The Member attended the hearing via teleconference.

#### THE ALLEGATIONS

The allegations against Douglas Ian Brown in the *Notice of Hearing*, (Exhibit 1) dated May 14, 2004 are as follows:

**IT IS ALLEGED** that Douglas Ian Brown 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 Ontario College of Teachers Act (“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 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)
- e) 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);
- f) 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);
- g) he engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19);
- h) 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
- i) he displayed a lack of knowledge, skill or judgment and/or a disregard for the welfare of students of a nature or extent that demonstrates that the Member is either unfit to carry out his professional responsibilities or that the Member's Certificate should be made subject to terms, conditions or limitations.

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

1. Douglas Ian Brown, (the "Member") is a member of the Ontario College of Teachers.
2. At all material times the Member was employed as a teacher by [XXX] (the "School") which is located in Toronto.
3. An order has been imposed by the Ontario Court of Justice, directing that the identities of complainants and any information that could disclose their identities of those

persons, are not to be published in any document or broadcast in any way. The students involved in this matter are therefore referred to herein by initial.

4. At all material times [XXX], [XXX], [XXX], [XXX], [XXX], [XXX], [XXX], [XXX], [XXX], and [XXX] were students at the School, and were between [XXX] and [XXX] years of age.

5. While he was employed as a teacher at the School, the Member, between the dates of 1 September 1975 and 31 August 1981, engaged in several acts of indecent assault, gross indecency, common assault and forcible confinement, on the premises of the School, in what was then known as the Municipality of Metropolitan Toronto,.

6. The particulars of the acts referred to in paragraph 5 above are that the Member::

- a) sometime between and including 1 September 1975 and 30 June 1976, indecently assaulted [XXX];
- b) sometime between and including 1 September 1975 and 30 June 1976, committed an act of gross indecency with [XXX] to wit: masturbation and fellatio;
- c) sometime between and including 1 September 1975 and 30 June 1976, indecently assaulted [XXX];
- d) sometime between and including 1 September 1975 and 30 June 1976, indecently assaulted [XXX];
- e) sometime between and including 1 September 1975 and 30 June 1976, committed a common assault on [XXX];
- f) sometime between and including 1 September 1978 and 30 June 1980, indecently assaulted [XXX];
- g) sometime between and including 1 June 1980 and 31 August 1981, indecently assaulted [XXX];

- h) sometime between and including 1 June 1980 and 31 August 1981, without lawful authority confined [XXX];
- i) sometime between and including 1 September 1975 and 30 June 1976, committed a common assault on [XXX];
- j) sometime between and including 1 June 1980 and 31 August 1980, indecently assaulted [XXX];
- k) sometime between and including 1 September 1976 and 30 June 1977, indecently assaulted [XXX]; and
- l) sometime between and including 1 September 1975 and 30 June 1976, indecently assaulted [XXX]

7. Criminal charges against the Member in respect of the matters referred to in paragraphs 4(a), 4(b), 4(c), 4(d), 4(f), 4(g), 4(h), 4(j), 4(k), and 4(l) above, are presently before the court.

8. The activities by the Member referred to in paragraphs 5 and 6 above are public knowledge through media coverage thereof. The publicity resulting from the said media coverage and communication within both the general public and the school community has resulted in a reputation and image inconsistent with that expected of a member.

#### MOTION BY THE MEMBER

Following the introduction into evidence of the *Notice of Hearing* dated May 14, 2004, the Member brought a motion “for a decision to quash the proceedings into the Complaint of Registrar W. Douglas Wilson from the outset, and prohibit the College from any further action against the Applicant”.

The grounds set out in the Member's *Notice of Motion* (Exhibit 2) were "that the proceedings are not within the power or mandate of the College, and the College has erred in law and jurisdiction to conduct Discipline Committee proceedings into a Registrar's Complaint when the allegations that make up the subject and particulars of the Complaint relate to events that predate the existence of the College itself and are not referable to any time during which the Applicant held an Ontario Teacher's Certificate or a letter of standing under the Education Act or a Certificate of Qualification under the Ontario College of Teachers Act, contrary to Section 14(5) of the Ontario College of Teachers Act".

The Member argued that he became an Ontario certified teacher in 1991 and retired in 1993. The Member also argued that consequently, when the events in question occurred, he did not hold an Ontario teaching certificate.

The Member further argued that he is not currently a member of the College because no fee payments were made after the year 2000 and that the College's records show his status to be *suspended for non-payment of fees*, in accordance with section 24(1) of the Act.

The Member also argued that the proceedings were invalid because the investigation had gone beyond 120 days pursuant to his interpretation of section 26(9) of the Act.

College Counsel argued that section 14(5) of the Act did not apply to the Member as his certificate was never revoked. He is in fact a member with the status of Suspended–Non-Payment of Fees. (Exhibit 6 – Registered Member Information)

Counsel for the College indicated that the College was proceeding only on the basis of the Member’s 2004 criminal conviction and prison sentence, both of which were upheld on appeal. The conviction on various counts of indecent assault and sentence occurred while Mr. Brown was a member of the College. Counsel argued that the criminal convictions and sentencing to prison of the Member are breaches of Ontario Regulation 437/97, subsections 1 (16), 1(17), 1(18) and 1(19) and it was on the basis of these allegations that he would be proceeding.

Based on the College’s decision to proceed only with allegations (d), (e), (f) and (g) in the Notice of Hearing as they relate to the 2004 convictions, sentencing and loss of subsequent appeal, the Committee denies the Member’s motion. The Committee is satisfied that Mr. Brown was a member of the College at the time of his criminal convictions. The fact that his status was *suspended for non-payment of fees* does not mean Mr. Brown was not subject to the College’s jurisdiction. Section 24(1) of the Act states that:

24.1 The Registrar may suspend a member’s certificate of qualification and registration for,

(a) failure to pay a fee or penalty prescribed by the by-laws.

During such time, Mr. Brown continued to hold membership in the Ontario College of Teachers as his certificate had not been cancelled or revoked and the College therefore has jurisdiction and authority to proceed with the matter before the Discipline Committee.

As regards Section 26(9) of the Act, the Committee deemed it had no jurisdiction to rule on any procedures or processes followed by the Investigations and Hearings Department nor on any decision of the Investigation Committee. Any issue with the timelines during the Investigations stage should have been addressed by the Member at that stage of the proceedings.

#### MEMBER'S PLEA

The Member pleaded not guilty to the allegations.

#### THE EVIDENCE

Counsel for the College entered into evidence the following additional documents:

*Brief of Court Documents – Her Majesty the Queen v. Douglas Brown* (Exhibit 5)

A *Brief of Court Documents* with respect to the criminal proceedings against the Member was submitted into evidence. This *Brief* consisted of:

- A. Certified copy of Indictment dated July 10, 2003
- B. Transcript of Reasons for Judgment before The Honourable Justice Laforme on October 8, 2004
- C. Transcript of Reasons for Sentence before The Honourable Justice Laforme on January 7, 2005
- D. Reasons of the Court of Appeal for Ontario released on December 14, 2006.

Registered Member Information (Exhibit 6)

Douglas Ian Brown is a member of the Ontario College of Teachers as shown on the *Registered Member Information*.

The *Brief of Court Documents* indicates that:

1. The Member was charged with eleven counts of “indecent assault” and one count of “gross indecency”. (Exhibit 5, Tab B, p. 3)
2. On or about October 8, 2004, the Member was convicted under the *Criminal Code* (Canada) of nine counts of indecent assault on seven male students. (Exhibit 5, Tab B, pp 36-38 & Tab C, p.3)
3. On or about January 7, 2005, a sentence of three years incarceration was imposed on the Member. He was ordered to [XXX] and to [XXX]. (Exhibit 5, Tab C, pp 11-12)
4. The Member’s appeal of the conviction and sentence was dismissed by the Court of Appeal on December 14, 2006. (Exhibit 5, Tab D, p.3)

College Counsel argued that the evidence contained in the court documents satisfies the College’s requirement to meet the burden of proof that the Member contravened a law, contrary to Ontario Regulation 437/37, subsection 1(16). Counsel argued that these convictions amounted to disgraceful, dishonourable and unprofessional behaviour, contrary to Ontario Regulation 437/37, subsection 1(18) and is conduct unbecoming a

member, contrary to Ontario Regulation 437/37, subsection 1(19). Counsel urged the Committee to find the member guilty of professional misconduct.

In his defence, the Member stated that he had been wrongfully convicted in the criminal proceedings. He claimed that the Indictment that was presented by College Counsel (Exhibit 5, Tab A) was not the true indictment and that the one submitted in evidence was fabricated. He denied the allegations in the Notice of Hearing. In particular, he stated that he was not employed by [XXX], but by [XXX]. He argued that two of the complainants in the criminal proceedings had not been students at the School. He denied the particulars of the acts that he was found guilty of in criminal court, stating that the testimony in court speaks for itself. He also indicated that he could not defend himself adequately as he did not have access to all of the evidence, and that the College should have made available to him all court and police transcripts and concluded that the College had misconstrued the evidence.

Counsel for the College argued that the Member's attempt to review his trial and conviction amounted to a collateral attack on the criminal court and appellate court findings.

## DECISION

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

The College bears the onus of proving the allegations in accordance with the standard of proof set out in *Re Bernstein and College of Physicians and Surgeons of Ontario* (1977)

15 O.R. (2d) 477. The standard of proof applied by the Committee, in accordance with the *Bernstein* decision, was a balance of probabilities with the qualification that the proof must be “clear and convincing” and based upon “cogent evidence” accepted by the Committee. The Committee also recognized that the more serious the allegation to be proved, the more cogent must be the evidence. The Committee considered the allegations in this case to be very serious and assessed the evidence on that basis.

**(ii) Decision**

Having considered the evidence, onus and standard of proof, and the submissions made by Counsel for the College and by the Member, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that Douglas Ian Brown committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97, subsections, 1(16), 1(17), 1(18) and 1(19).

REASONS FOR DECISION

Rules 13.05 and 13.06 of the *Rules of Procedure of the Discipline Committee of the Ontario College of Teachers* allow the Committee to accept as proof that an offence was committed by a person, where there is a finding of guilt and conviction in a Canadian court, provided that there is no evidence to the contrary and that no appeal has been granted. The rules are as follows:

**13.05            Proof of Prior Conviction or Discharge**

13.05(1)        Proof that a person has, in proceedings before a court in Canada, been convicted or discharged of an offence following a finding of guilt is proof, in the absence of evidence to the contrary, that the offence was committed by the person, if:

- (a) no appeal of the conviction or discharge was taken and the time for an appeal has expired; or
- (b) an appeal of the conviction or discharge was taken but dismissed or abandoned and no further appeal is available.

13.05(2) Sub-rule (1) applies whether or not the convicted or discharged person is a party to the proceeding.

13.05(3) A certificate of conviction or discharge or certified copy of a Court Information meeting the requirements of sub-section 22.1(3) of the *Evidence Act* (Ontario) shall be accepted by the Discipline Committee as proof that the person was convicted or discharged of the offence for purposes of sub-rule (1).

### **13.06 Findings of Fact in Prior Proceedings**

13.06(1) Where a certificate of conviction or discharge or certified copy of a Court Information has been admitted in evidence under sub-rule 13.05(3), the Discipline Committee shall also admit as ancillary to the certificate of conviction or discharge or certified copy of a Court Information the specific findings of fact contained in the court's reasons for judgment or reasons for sentence, which findings of fact are proof, in the absence of evidence to the contrary, of the facts so found.

The Committee finds that the Member did not provide any evidence to challenge the veracity of the criminal convictions resulting from the court case. The Member's request for transcripts was deemed by the Committee as an attempt to relitigate the criminal conviction in a civil matter.

The Member's appeal of the conviction and sentence was dismissed by the Court of Appeal on December 14, 2006 and no rebuttal evidence on any of the facts was presented.

In absence of evidence to the contrary, the Committee accepts as proof the findings of fact contained in the *Brief of Court Documents* (Exhibit 5). The Member was convicted of nine counts of indecent assault on seven male students. He was sentenced to three years incarceration, ordered to [XXX] and to [XXX]. The Member's appeal of the conviction and sentence was dismissed by the Court of Appeal.

The Committee finds that the Member's convictions for indecent assault on students under his care is professional misconduct and contrary to Ontario Regulation 437/97 subsections 1(16), 1(17), 1(18) and 1(19). The Committee finds that by being found guilty of committing acts of indecent assault on seven students, the Member contravened laws relevant to his suitability to hold a certificate of qualification and registration, and has caused students to be put at risk contrary to Ontario Regulation 437/97, subsection 1(16) and 1(17). The Member engaged in conduct that would reasonably be regarded by members as disgraceful, dishonourable and unprofessional and engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsections 1(18) and 1(19).

#### PENALTY DECISION

Counsel for the College submitted that the appropriate penalty in the circumstances is revocation of the Member's certificate of qualification and registration, and publication of the findings of the Committee, with the name of the Member in *Professionally Speaking/Pour parler profession*.

With respect to penalty, the Member did not make a submission but when asked for one, in the eventuality of a finding of professional misconduct, stated that he wanted the status

quo with no publication as he felt that protected the public interest, pending further investigation and appeal. He also indicated that he had no intention of teaching in Ontario.

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, 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 name of the Member and without any facts which would identify the victims, in the official publication of the College, *Professionally Speaking/Pour parler profession*.

#### REASONS FOR PENALTY DECISION

The Member was convicted of nine counts of indecent assault against seven students. He was sentenced to three years incarceration, ordered to [XXX] and to [XXX]. The Member has breached the trust of the public and the profession and brought the profession into disrepute. Under these circumstances, the Committee ordered revocation of the Member's certificate.

The Committee further ordered publication with the Member's name in order to inform the public of its decision to revoke the Member's certificate, so that the public may be

reassured that such intolerable behaviour will be dealt with severely and appropriately by the profession. In this regard, the Committee is satisfied that the public interest is protected.

Publication with the name of the Member meets the objective of general deterrence and informs the profession that such behaviour will not be tolerated.

Following the hearing, the Discipline Committee received correspondence from the Member dated September 26, 2007 and October 10, 2007. The Committee did not consider this correspondence in arriving at its decision as it dealt with the criminal investigation and conviction of the Member, and not with the allegations that the College proceeded with in this case.

Dated: November 14, 2007

---

Gabrielle Blais  
Chair, Discipline Panel

---

Rosemary Fontaine  
Member, Discipline Panel

---

Brent Hamelin  
Member, Discipline Panel