

**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 Kelvin Brown, a member of the Ontario College of Teachers.

PANEL: Lynne Mastin, Chair  
Dean Favero  
Jacques Tremblay

BETWEEN:	)	
	)	
	)	Caroline Zayid,
	)	McCarthy Tétrault LLP,
ONTARIO COLLEGE OF TEACHERS	)	for Ontario College of Teachers,
	)	assisted by Trevor Evans,
- and -	)	Senior Law Clerk
	)	
KELVIN BROWN)	)	Kelvin Brown was not
(CERTIFICATE #469470)	)	present, nor was he represented
	)	
	)	
	)	Scott Hutchison,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
	)	
	)	Heard: February 6, 2007

**REASONS FOR DECISION, DECISION AND ORDER**

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on February 6, 2007 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated May 6, 2005 (Exhibit 1) was served on Kelvin Brown (the “Member”), providing him with notice that the Discipline Committee of the Ontario College of Teachers would meet on June 7, 2005 to set a date for a hearing, and specifying the charges. The Member did not attend on June 7, 2005. The Discipline Committee set February 6, 2007 as the date for the hearing on the merits.

The College tendered an *Affidavit of Audley Trevor Evans* sworn April 17, 2006 (Exhibit 2) and a *Supplementary Affidavit of Audley Trevor Evans* sworn January 31, 2007 (Exhibit 3), setting out the efforts by the College to ensure that the Member had proper notice of the hearing. The Committee was satisfied by the details outlined in Mr. Evans’ Affidavits, that the Member had proper notice of the date, time and place of the hearing and proceeded in his absence.

The matter was scheduled to commence at 9:00 a.m. The Member did not appear at the hearing, nor was he represented by counsel. The Committee waited until 9:30 a.m. to commence the proceedings.

## THE ALLEGATIONS

The allegations against Kelvin Brown in the *Notice of Hearing*, (Exhibit 1) dated May 6, 2005 are as follows:

**IT IS ALLEGED** that Kelvin Brown is guilty of professional misconduct as defined in section 30(2) of the *Ontario College of Teachers Act* (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 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);
- (c) 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);
- (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).

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

1. Kelvin Brown (the "Member") is a member of the Ontario College of Teachers.
2. Prior to October 2003, when he went on a leave of absence, the Member was employed by the [XXX] as a [XXX] instructor.
3. In or around November 2003, the Member commenced employment as an occasional teacher with the [XXX].

4. During the months of February, March and April 2004, [XXX] was a female person who was approximately [XXX] years of age.
5. At all material times, the Member was in a position of trust and authority in relation to [XXX].
6. Between the approximate dates of February 2004 and April 2004, in the City of [XXX] the Member acted inappropriately towards [XXX] by committing a sexual assault or assaults on her.
7. Between the approximate dates of February 2004 and April 2004, in the City of [XXX], the Member being in a position of trust and authority towards [XXX], a young person, acted inappropriately towards [XXX] in that he did for a sexual purpose touch directly the body of [XXX], with a part of his body, specifically his hands.
8. On or about 23 April 2004, the Member was charged by the [XXX] Police Service that he, in the City of [XXX]:
  - (a) did commit a sexual assault on [XXX] contrary to the section 271 of the *Criminal Code* (Canada); and
  - (b) being in a position of trust or authority towards [XXX], a young person, did for a sexual purpose, touch directly the body of [XXX], a young person, with a part of his body to wit: his hands, contrary to section 153(1)(a) of the *Criminal Code* (Canada).

9. The charges referred to in paragraph 8 above have not yet been heard by the Court.

#### MEMBER'S PLEA

As the Member was not present, nor represented by Counsel, the Committee proceeded on the basis that the Member denied the allegations set out in the *Notice of Hearing*. The Chair, on behalf of the Member, entered a plea of not guilty to the allegations.

#### THE EVIDENCE

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

*Registered Member Information* (Exhibit 4)

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

*Brief of Court Documents – Her Majesty the Queen v. Kelvin 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 *Information* sworn April 23, 2004
- B. Probation Order re Kelvin Brown dated November 30, 2005
- C. Ontario Court of Justice - Transcript of Reasons for Judgment of the Honourable Madam Justice D. Hackett dated August 24, 2005
- D. Ontario Court of Justice - Transcript of Reasons for Sentence of the Honourable Madam Justice D. Hackett dated November 30, 2005
- E. Superior Court of Justice (Summary Conviction Appeal) (Toronto Region) – R v. Brown – Certified copy of Order of Mr. Justice Gans dated September 29, 2006
- F. Summary Conviction Appeal, File No. 244/05 – Summary Conviction Appeals – Endorsement Sheet: May 31, 2006 – October 2, 2006.

These Court Documents verify that:

1. On or about August 24, 2005 the Member was convicted of one count that he did commit a sexual assault on [XXX] contrary to the section 271 of the *Criminal Code* (Canada); and
2. being in a position of trust or authority towards [XXX], a young person, did for a sexual purpose, touch directly the body of [XXX], a young person, with a part of his body to wit: his hands, contrary to section 153(1)(a) of the *Criminal Code* (Canada).
3. On or about November 30, 2005, a sentence of five months incarceration was imposed on the Member, with two years probation following incarceration.
4. Although the Member started an appeal of the conviction and sentence it was dismissed as abandoned. (Exhibit 5, Tab E).

## 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, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that Kelvin Brown committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(14), 1(15), 1(16), 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 Committee accepts the specific findings of fact contained in the *Brief of Court Documents* (Exhibit 5) that:

On or about August 24<sup>th</sup>, 2005, the Member was convicted of sexual exploitation of [XXX], a [XXX] year old female, contrary to S.153(1) of the Criminal Code. At all material times, the Member was in a position of trust and authority with respect to [XXX].

On or about the 30<sup>th</sup> day of November 2005, the Member was sentenced to five months incarceration and was placed on probation for two years. He was ordered to [XXX] and to [XXX]. He was also prohibited from being in areas where people under the age of 14 are likely to frequent, being involved in employment or engaging in volunteer work with persons under the age of 14, for a period of ten years. The Member was also ordered to attend and actively participate in a counselling program for sexual abuse.

The Member appealed the conviction and sentence, but his appeal was dismissed by order of The Honourable Mr. Justice Gans on September 29<sup>th</sup>, 2006.

In absence of evidence to the contrary, the Committee accepts as proof, the findings of fact by The Honourable Madam Justice, D. Hackett, resulting in the criminal conviction of the Member.

The Member committed two acts of sexual interference which Justice Hackett described as “acts of grooming” and as “intentional planned acts to try to prepare [XXX] to be caught in his web of criminal self-gratification.” (Exhibit 5, Tab D, Sentence Proceedings, Page 4). The judge also noted that “there is no mitigating factor of insight or acknowledgement of responsibility”. (Exhibit 5, Tab D, Sentence Proceedings, Page 8).

The Committee notes that the Member took advantage of his position of trust and the vulnerability of [XXX] and has not acknowledged his wrongdoing.

The Committee finds that the Member's conviction of sexual exploitation as outlined herein constitutes acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(14), 1(15), 1(16), 1(18) and 1(19).

## PENALTY DECISION

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 victim, including the name of the Member's school board or municipality in the official publication of the College, *Professionally Speaking/Pour parler profession*.

## REASONS FOR PENALTY DECISION

The Member was convicted of sexual exploitation of a minor. He was ordered to [XXX] and to [XXX]. As well, the Member is prohibited from being involved in employment or

engaging in volunteer work with persons under the age of 14 for a period of ten years.

The

Member has breached the trust of the public and the profession. Under these circumstances, the Committee was compelled to revoke the Member's certificate of registration. The Committee ordered publication with the Member's name in order to protect the public and to inform the public of the terms and conditions of the Member's conviction.

Publication with the name of the Member also meets the objective of general deterrence to members of the profession as well as the objective of specific deterrence to the Member.

Dated: March 19, 2007

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Lynne Mastin  
Chair, Discipline Panel

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Dean Favero  
Member, Discipline Panel

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Jacques Tremblay  
Member, Discipline Panel