

**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 Kevin Edward Burrows, a member of the Ontario College of Teachers.

PANEL: Anne Vinet-Roy, Chair
Normand Fortin
Jacques Tremblay

BETWEEN:)	
	)	David Leonard,
	)	McCarthy Tétrault,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -)	
)	
KEVIN EDWARD BURROWS	)	Jenny Pho,
(CERTIFICATE #180014)	)	Thompson, MacColl & Stacy,
	)	for Kevin Edward Burrows,
)	
	)	Johanna Braden,
	)	Stockwoods,
	)	Independent Legal Counsel
)	
	)	Heard: June 13, 2005

REASONS FOR DECISION, DECISION AND ORDER (S)

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on June 13, 2005 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated April 18, 2005 was served on Kevin Edward Burrows, requesting attendance before the Discipline Committee of the Ontario College of Teachers on May 2, 2005 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for June 13, 2005.

Kevin Edward Burrows was in attendance at the hearing.

The Allegations

The allegations against Kevin Edward Burrows in the *Notice of Hearing*, (*Exhibit 1*) dated April 18, 2005 are as follows:

IT IS ALLEGED that Kevin Edward Burrows is guilty of professional misconduct as defined in section 30(2) 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 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 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
- (d) he engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19).

Agreed Statement of Facts

Counsel for the College advised the Committee that an agreement had been reached on the facts and introduced as *Exhibit 2*, an *Agreed Statement of Fact and Plea of No Contest*. (ASF – *Exhibit 2*)

The *Agreed Statement of Facts and Plea of No contest* provides as follows:

1. Kevin Edward Burrows (the "Member") is a member of the Ontario College of Teachers. Attached hereto is a copy of the Ontario College of Teachers Register Status Information respecting the Member. (ASF – *Exhibit 2, Tab A*)
2. Between the approximate dates of 1 September 1995 and 3 April 2003, the Member was a teacher at the Columbia International School, Tokorozawa, Saitama, Japan (the "School").
3. Between the approximate dates of January 2000 and 3 April 2003, the Member acted inappropriately and/or unprofessionally in that:
 - (a) using the laptop computer made available to him by the School, he accessed at an Internet news group available through his Internet provider and downloaded to the computer's hard disk and later burned onto computer compact discs for viewing, sets of pornographic material, including graphic sexual images of a person and/or persons under the age of eighteen years engaged in explicit sexual acts; and
 - (b) he purchased and/or maintained and/or owned and/or had in his possession pornographic images, including graphic sexual images of a person and/or persons under the age of eighteen years engaged in explicit sexual acts, which images were contained in magazines, video tapes and computer compact discs.
4. Between the approximate dates of January 2000 and 3 April 2003, the Member manufactured or transferred onto computer compact discs, pornographic images,

including graphic sexual images of a person and/or persons under the age of eighteen years engaged in explicit sexual acts.

5. In or around March 2003 the Member decided to return to Canada. On or about 31 March 2003 the Member shipped a total of 13 boxes of his personal belongings from Japan to Canada.
6. On or about 3 April 2003, the Member was informed that the boxes he had shipped from Japan to Canada contained approximately 1,400 pornographic images, including graphic sexual images of a person and/or persons under the age of eighteen years engaged in explicit sexual acts and approximately 5,000 images depicting child nudity or erotica, which images were contained on approximately five computer compact discs.
7. On or about 3 April 2003, the Member attempted to regain possession of his personal belongings, including the items referred to in paragraph 6 above from carriers to whom he had entrusted their transportation to Canada from Japan.
8. Thereafter, the Member was charged with importing child pornography and attempting to possess child pornography contrary to the Criminal Code of Canada. The Member was acquitted of the charges. However, on or about 9 June 2004, during his trial on these charges, the Member admitted while testifying under oath that:

(a) in his off hours and often while under the influence of alcohol, he used the laptop computer made available to him by the School, to access and download pornographic images, including graphic sexual images of a person and/or persons under the age of eighteen years engaged in explicit sexual acts, which he saved by transferring the said images to computer compact discs (see pages 38 – 39, 68 - 69 of the transcript);

(b) during the three year period between the approximate dates of 28 March 2000 and 28 March 2003, he collected, purchased and possessed pornography,

including graphic sexual images of a person and/or persons under the age of eighteen years engaged in explicit sexual acts, and that the collection included printed pornography, videotapes and computer compact discs (see pages 51 - 52, 73 and 75 of the transcript);

(c) he viewed the pornography, including some but not all of the graphic sexual images of a person and/or persons under the age of eighteen years engaged in explicit sexual acts, that he had saved on computer compact discs (see pages 41 – 42, 67 - 70 of the transcript); and

(d) he personally packed his belongings, which unknowingly included five computer compact discs containing pornography, including graphic sexual images of a person and/or persons under the age of eighteen years engaged in explicit sexual acts, prior to departing from Japan for Canada (see page 47 of the transcript).

9. A copy of the testimony of the Member which is referred to in the preceding paragraph is attached. (*ASF – Exhibit 2, Tab B*)

10. A psychological assessment of the Member was conducted by Dr. Robin J. Wilson, psychologist, in January 2004. In his report dated 12 January 2004, Dr Wilson noted that the Member had admitted to him that he had frequently downloaded pornographic material and had made compact discs containing that material. Further, the Member admitted being in possession of a considerable amount of pornographic material burned onto compact discs as well as photographs of underage girls. The Member admitted to Dr. Wilson a degree of personal concern regarding the acquisition of the pornographic material knowing that they were inappropriate. The reason for the Member having possession of the pornographic images was unclear. However Dr. Wilson found that the Member did not have any symptoms suggestive of paraphilic preferences and despite the possession of pictures of underage girls,

there was no evidence that the Member had ever engaged in sexual activities with minors. Dr. Wilson saw no clinically-defensible rationale for deeming the Member a risk to children. A copy of the report of Dr. Wilson is attached (*ASF – Exhibit 2, Tab C*)

11. In compliance with Dr. Wilson's recommendations, the Member has been receiving treatments for his depression through the Community Mental Health Program in St. Catharines. A copy of a letter from Richard Chrysler confirming this treatment is attached. (*ASF – Exhibit 2, Tab D*)

12. By this document, the Member pleads no contest to the facts stated above and acknowledges that the Discipline Committee may find that the conduct referred to in paragraphs 3, 4, 7 and 8 above constitutes professional misconduct, being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(14), 1(15), 1(18) and 1(19), as set out in the Notice of Hearing which is attached hereto. (*ASF – Exhibit 2, Tab E*)

13. By this document, the Member states that:

- (a) he understands fully the nature of the allegations that have been made against him;
- (b) he understands that by pleading no contest he is waiving his right to require the College to prove the case against him and the right to have a hearing; and
- (c) he states that this plea of no contest was made voluntarily, unequivocally and with the benefit of independent legal counsel.

14. In light of the facts and circumstances stated above, the Ontario College of Teachers submits that the Discipline Committee find the Member guilty of professional misconduct.

15. The parties have not agreed either upon the nature of the penalty to be imposed or upon publication. Submissions will be made to the Discipline Committee on both of those issues.

Member's Plea

By this document, the Member pleads no contest to the facts stated above and acknowledges that the Discipline Committee may find that the conduct referred to in paragraphs 3, 4, 7 and 8 above constitutes professional misconduct, being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(14), 1(15), 1(18) and 1(19), as set out in the Notice of Hearing which is attached hereto. (*ASF – Exhibit 2, Tab E*)

The Evidence

In addition to the evidence in the *Agreed Statement of Facts and Plea of No Contest*, the College called one witness, Constable George Douglas. The Member also testified before the Committee.

Evidence of Constable Douglas

Constable Douglas (“Douglas”) was a police officer with the Peel Regional Police and served for three and one-half years in the vice /child pornography unit, with expertise in investigating matters of pornography, in particular child pornography. He had also worked for the Ontario Provincial Police in the Organized Crime Division. He testified that he was one of the officers assigned to investigate the materials seized from the Member by Canada Customs. Douglas indicated that the materials seized included several photographs of underage girls in forms of undress, five compact disks containing

approximately 5,000 images classified by various types of pornography, with the majority of them being of graphic sexual images of persons under the age of eighteen, engaged in explicit sexual acts, as well as video tape of sexually explicit images of child nudity.

Douglas described in detail how the police viewed, categorized and determined the types of child pornography, according to specifically developed police procedures. The police officers viewed the five compact discs, classified the images into three categories – child nudity, child erotica and children engaged in sexual acts. The officers then printed a sampling of images in each category which formed part of the Crown brief at the Member's criminal trial. This Crown brief was introduced as Exhibit 3 for identification purposes only. College Counsel noted that the Member's Counsel had had an opportunity to view the Brief prior to it being introduced into evidence. Douglas presented the Brief to the Committee for viewing of the images, which had been downloaded by them from the Member's seized compact disks.

When cross-examined by Counsel for the Member, Douglas acknowledged that police officers also found materials in several boxes that were not pornographic, such as music compact disks, videos and various text files.

Evidence of the Member

In his examination-in-chief, the Member stated that he attended teachers' college in 1994, had taught briefly in Ontario around 1990-1991. After obtaining his certification as a teacher he worked for the Ministry of Education. While there he learned of a teaching position in Japan. He obtained a teaching position in Business and Computers at

Columbia International School in Japan, where he was also responsible for developing computer curriculum and other technological support. He remained at the school from September 1995 until April 2003.

As part of his testimony, the Member described certain cultural differences between Canada and Japan, particularly with respect to how prevalent pornography is in Japan. In his view, the Japanese culture does not distinguish between adult pornography and child pornography, and that pornography in general is readily available. For example he indicated that flyers advertising sex were distributed through the mail, pornographic magazines were in plain view at the local corner store and posters of a sexual nature could be seen everywhere. He also indicated that businessmen on the trains would openly be viewing pornographic magazines.

The Member stated that although he intended to stay only for a year or so in Japan, he stayed longer due to work opportunities that were presented to him and because he developed a relationship with a Chinese woman. He also stated that he believed that one who lives in Japan should live as the Japanese do. He stated that he tried to do this and embraced the culture of Japan.

The Member indicated that another significant cultural difference was that it was not uncommon for Japanese businessmen to be severely intoxicated in public and that excessive drinking was common. He stated that he himself drank heavily and regularly with friends and colleagues while in Japan but did not seek counselling for alcohol abuse until he returned to Canada. When asked by his counsel why he had not sought counselling in Japan, the Member indicated that he thought that counselling would be

difficult to find since drinking to excess was an acceptable part of Japanese culture and also that it would be difficult to communicate with a counsellor who spoke another language.

The Member testified that, as time went by, he started to access pornography, while intoxicated, through an Internet news group. At first the Member was using his own personal computer but when it broke, he began to use the school's laptop computer that had been made available to him on a sharing basis, to view and download pornography. When asked by his counsel if the school had a policy on the use of school computers, he said it had been decided at a staff meeting that no specific school policy would be put in place. He also testified that a colleague who had found pornographic images on the shared laptop, advised him to make sure not to leave any images on the hard drive because some of his other colleagues might be offended and because children could also access this shared computer.

In addition to viewing and downloading pornographic images, the Member also testified that he also purchased a grab bag at a corner store, which unbeknown to him, contained pornographic images. He also admitted that he had purchased videotapes containing pornographic images.

The Member indicated that while he was accessing, downloading and purchasing pornography, he was feeling more and more frustrated with his work and his personal life. He eventually decided to leave Japan because he did not believe school officials were giving him the recognition he deserved and the school would not give him time off to attend his sister's wedding in Canada. He indicated that the last few days prior to his

departure from Japan were hectic, that he attended a lot of farewell parties and subsequently had little time left to pack his belongings. He believed he had gotten rid of all of his pornographic materials. The Member said, "I threw away the stuff I knew about to get rid of my life in Japan". The Member said because he had so little time left to pack he just threw whatever was left on the shelves into boxes to be shipped to Canada by FedEx.

The Member stated that since coming back to Canada, he has found it difficult to adjust because he was not working full time, that he was seeking counselling and has almost stopped drinking. He indicated that his counselling has helped him to better understand his behaviour in Japan and wished he could have apologized in Japan. The Member ended his examination-in-chief by apologizing to the College for his past behaviour in Japan.

In cross-examination, College Counsel reviewed with the Member his background and education. The Member said he was presently 42 years old and that he was in his early 30's in the mid 1990's when he moved to Japan.

When asked about the difference between child pornography and adult pornography, the Member stated that there was no distinction between the two in Japan. He further indicated that he did not understand the difference between child and adult pornography until he returned to Canada. The Member said, "At the time I was in Japan, there was no distinction".

College Counsel asked the Member whether he had an interest in pornography. The Member replied that he was just curious and that it was available everywhere. He also

stated that he found the pornographic Internet news group through a magazine that he purchased. He further stated that he would access this news group and download certain images while intoxicated. He indicated that he did not know the nature of the pornography he was downloading. When asked by College Counsel if he was downloading certain images by certain types of pornography, the Member replied that he would download the whole news group content at once and would not necessarily know what was in it.

Submissions as to Penalty

Counsel for the College submitted that the appropriate penalty would be revocation of the Member's certificate of qualification and registration, as well as publication in summary of the order and findings with the Member's name.

College Counsel argued that immediate revocation was warranted due to the hard core nature of the pornographic images found in the Member's possession, and the length of time that the Member spent viewing, downloading and purchasing pornography. College Counsel argued that the sheer quantity of child pornography images in the Member's possession proves that the Member's reason for acquiring such material goes beyond curiosity. In Counsel's view, it is more of an interest and desire on the part of the Member to possess such material. Counsel stated that teachers are engaged on a daily basis with children and they have a tremendous trust in their teacher and the public has a right to expect this.

College Counsel further argued that in light of the fact that the Member grew up in Canada, was educated in Canada and had exposure to Canadian laws, is evidence that the

Member's argument that he did not know child pornography was wrong is incredible and unbelievable.

With regard to publication, Counsel for the College submitted that there are no special circumstances to be considered and therefore the order and findings should be published with the Member's name. He argued that the public interest would be best served through publication.

Counsel for the Member argued that the Member was caught between two cultures, Japanese and Canadian, and that the Member should not be judged by what he had done in Japan, where pornography and alcohol are widely available and accepted. She stated that the Member was embracing the Japanese culture and simply living his life as a Japanese. The Member's counsel reiterated that the Member had tried to get rid of the pornographic material in Japan, but that some pornographic images inadvertently ended up on compact disks that the Member sent back to Canada.

Counsel for the Member argued that the appropriate penalty would be a reprimand or a six-month suspension and that for a period of two years a condition be placed on the Member's certificate that he could only teach intermediate and senior grades and adult education. She argued there should be no publication because since December 2003 no complaints have been made against the Member and therefore there was no issue of protection of the public.

Decision as to Finding

Having examined the Exhibits filed, and based on the plea of no contest, the *Agreed Statement of Facts and Plea of no contest*, and the submissions made by counsel, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that Kevin Edward Burrows committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(14), 1(15), 1(18) and 1(19).

Penalty Decision

The Committee considered the submissions of both Counsel for the Member and Counsel for the College and makes the following order as to penalty:

1. The Registrar of the Ontario College of Teachers is directed to revoke immediately the Member's certificate of qualification and registration, which certificate the Member is to surrender immediately to the Registrar of the Ontario College of Teachers.
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 Decision

The Committee accepted the evidence contained in the *Agreed Statement of Facts and Plea of No Contest* (Exhibit 2).

By accepting the evidence in Exhibit 2, the oral evidence of Constable Douglas and of the Member, and the content of Exhibit 3 (Crown Brief), the Committee finds that revocation of the Member's certificate of qualification is warranted.

The Committee found the oral evidence presented by Constable Douglas to be credible and compelling. He gave his evidence in a straightforward manner and was knowledgeable in the area of child pornography, in light of his training and background. The Committee found the images contained in the Crown Brief to be very graphic images of child pornography of adults engaging in various sexual acts with pre-pubescent children, images of child erotica and child nudity.

The Committee considered the credibility of the Member's oral evidence and found inconsistencies and contradictions in his testimony. For example, when the Member was asked by College Counsel if he was downloading pornographic images and classifying them by type, the Member indicated he was downloading a whole file at once and did not classify them, nor did he view the content at that point in time. However, College Counsel referred the Member to page 70 of his testimony in the transcript of his criminal proceedings, wherein under oath, he admitted to viewing, downloading and sorting files by type of pornography.

The Member, in his oral testimony, indicated that he only viewed and downloaded pornography when he was intoxicated. However, when Dr. Wilson, a clinical and

forensic psychologist, met with the Member for a psycholegal assessment and treatment plan, the Member did not specifically address his drinking in relation to viewing, downloading and possessing pornographic material. Throughout the proceedings, the Member repeatedly argued that he only engaged in these activities while intoxicated and that he had sought counselling for alcohol abuse when he returned to Canada. Yet, in Dr. Wilson's report, the drinking issue appears to have been minimized and presented with no relation to his activities related to possession of child pornography. In addition, the Member indicated that he attended counselling while in Parry Sound. The Committee, however, was not presented with any evidence to support this.

The Committee found the Member's evidence that he did not know the difference between adult and child pornography, nor that possession of child pornography was illegal in Canada to be incredible, in light of the fact that the Member lived in Canada until his early thirties, prior to going to Japan and the fact that he was a Canadian university graduate. The Committee also found that the Member's argument that possession of such material in Japan is legal, is irrelevant.

The Committee considered the seriousness of the allegations. The fact that the Member was viewing, downloading and burning these images onto compact disk and purchasing child pornography and did so over a three-year period, is clearly an indication that the Member does not have a child's best interest in mind. In fact, the Committee felt that this type of behaviour perpetuates the sexual abuse of children and that such an individual should not be in a position of trust over children.

The Committee did not believe the Member's evidence that he was getting rid of his child pornography collection in Japan so he could "put that part of his life behind him and start a new life." Furthermore, the Committee was not presented with any evidence that the Member is seeking or has an intention to seek professional help to remediate himself. The Committee is therefore not convinced that the Member is no longer interested in child pornography and that he won't access it in the future. The Committee agreed with College Counsel that given the efforts made by the Member to access and purchase child pornography over a three-year period indicates that the Member was in fact interested in it, rather than being just curious.

For all of these reasons, the Committee concluded that the Member's certificate of qualification and registration should be revoked immediately. The Committee strongly feels that the Member engaged in conduct unbecoming a member and that his conduct is disgraceful, dishonourable and unprofessional and should not be in a position of trust with children.

Accordingly, the Committee is satisfied that revocation of the member's certificate of qualification and registration is the appropriate penalty and is in the public interest.

The Committee was not persuaded that embarrassment to the Member constituted a compelling reason not to publish the Member's name and concluded that the seriousness of the offence was a compelling reason to publish the Member's name within the summary of the decision in *Professionally Speaking/Pour parler profession*. The Committee felt that publication meets the objective of general deterrence to the

profession as well as the objective of specific deterrence to the Member and serves the public interest.

Dated: June 21, 2005

Anne Vinet-Roy
Chair, Discipline Panel

Normand Fortin
Member, Discipline Panel

Jacques Tremblay
Member, Discipline Panel