

**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 Dina Calautti, OCT, a member of the Ontario College of Teachers.

PANEL: Dean Favero, OCT, Chair
 Robert Ryan, OCT
 Pauline Smart

BETWEEN:)	
	)	David Leonard,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans
	)	Senior Law Clerk
- and -)	
)	
DINA CALAUTTI	)	William Markle &
(CERTIFICATE # 281916)	)	Stephanie Carey,
	)	Markle & Phibbs LLP,
	)	for Dina Calautti
)	
)	
	)	Bonni Ellis,
	)	Steinecke Maciura LeBlanc,
	)	Independent Legal Counsel
)	
	)	Heard: April 26, 2010
)	

REASONS FOR DECISION, DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on April 26, 2010 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated June 2, 2009, was served on Dina Calautti, requesting her attendance before the Discipline Committee of the Ontario College of Teachers on June 17, 2009 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for April 26, 2010. Dina Calautti was not in attendance.

THE ALLEGATIONS

The allegations against Dina Calautti in the *Notice of Hearing*, (Exhibit 1) dated June 2, 2009, are as follows:

IT IS ALLEGED that Dina Calautti is guilty of professional misconduct as defined in sections 30(2) and 40(1.1) of the of the *Ontario College of Teachers Act, 1996* (the “Act”), in that:

- (a) she failed to maintain the standards of the profession, contrary to Ontario Regulation 437/97, subsection 1(5);
- (b) she abused a student or students physically, sexually, verbally, psychologically or emotionally, contrary to Ontario Regulation 437/97, subsection 1(7);
- (c) she 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) she contravened the 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) she contravened the law, the contravention of which has caused students under the member’s professional supervision to be put at or remain at risk contrary to Ontario Regulation 437/97, subsection 1(17);
- (f) she 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) she engaged in conduct unbecoming a Member, contrary to Ontario Regulation 437/97, subsection 1(19); and

- (h) she engaged in sexual abuse of a student or students of a nature defined in sections 1 and 40 (1.1) of the *Act*.

At the conclusion of the hearing on April 26, 2010, College Counsel sought to withdraw the allegations of professional misconduct contained in paragraphs (c), (g) and (h) above, being alleged breaches of Ontario Regulation 437/97, subsections 1(14), 1(15), 1(19) and sections 1 and 40 (1.1) of the *Act*.

PUBLICATION BAN

A non-publication order was issued on November 24, 2008 under subsection 486.4 of the *Criminal Code*, in the proceedings in the Ontario Court of Justice. The Committee is bound by and maintains this publication ban imposed in the matter of *Her Majesty The Queen v. Dina Calautti* by the Ontario Court of Justice. There shall be no publication of any information that might tend to identify the student involved in this matter.

Counsel for the College advised the Committee that an agreement had been reached on the facts and introduced a *Statement of Uncontested Facts, Plea of No Contest and Joint Submission on Penalty* (SUF– Exhibit 2) which provides as follows:

STATEMENT OF UNCONTESTED FACTS

1. Dina Calautti (the “Member”) is a member of the Ontario College of Teachers. 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 Dufferin-Peel Catholic District School Board (“the Board”) and was a [XXX] teacher at a school of the Board in [XXX], Ontario (the “School”).

3. Commencing on approximately November 2, 2007 until on or about November 9, 2007, the Member entered into an inappropriate personal relationship with a male student (the “Student”) at the School, including:

- (a) communicating with the Student in a sexually explicit and inappropriate manner by electronic means;
- (b) during these communications and specifically during the course of the week of November 5 to November 9, 2007 when the communications became more romantic and intimate, the Member invited the Student to kiss her. Attached hereto as **Exhibit “B”** is a printout of electronic exchanges between the Member and the Student.

4. On November 11, 2007, the Member sent an email to the Student advising him of her intention to end further internet communications with him.

5. On November 13, 2007, the Member was arrested and charged by Peel Regional Police with four (4) counts, namely the following charges contrary to the *Criminal Code of Canada*:

Count 1: luring a child, contrary to s. 172.1

Count 2: sexual exploitation, contrary to s.153 (a)

Count 3: sexual exploitation, contrary to s. 153 (b); and

Count 4: sexual assault, contrary to s. 271.

The Member provided a statement to police and was remorseful. The Member indicated that she knew that her communication with the Student was inappropriate but stated that she never had any intention of having an intimate relationship with the Student. Further,

they had never met outside of school and there had never been any physical sexual contact between them.

6. On November 24, 2008, the Member entered a plea of guilt to Count 1 – of knowingly communicating with the Student, knowing he was under 18, and knowing that there was a substantial likelihood that he would receive the communication as an invitation to some inappropriate conduct. A finding of guilt to the charge of Internet luring, contrary to Section 172.1 of the *Criminal Code* was made by Mr. Justice Keaney. An Order pursuant to Section 486.4 of the *Criminal Code*, prohibiting publication of information that could identify the Student, was imposed by the Court.

7. On January 15, 2009, in proceedings at sentencing before Mr. Justice Keaney and pursuant to the Member's plea of guilt to Count 1 as detailed in paragraph 6 above, the Member was granted a conditional discharge; placed on probation for a period of 12 months; ordered to keep the peace and be of good behaviour; attend at the court whenever required to do so; notify the probation office in advance of any change of name or address, or any change of employment or occupation; to report to a probation officer thereafter as often as that officer may require; to attend and actively participate in such counselling, including but not limited to marital counselling as her probation officer may recommend; to execute such releases or directions as are necessary for her probation officer to monitor her participation in such programs; to not associate, contact or hold any communication directly or indirectly with the Student or any member of his immediate family.

8. The other charges against the Member were withdrawn at the request of the Crown.

9. Certified copies of the Information of the Ontario Court of Justice and the Probation order dated January 15, 2009, are attached as **Exhibits “C”** and **“D”** respectively.

10. Transcripts of proceedings before the Ontario Court of Justice on November 24, 2008 and January 15, 2009 are attached as **Exhibits “E”** and **“F”** respectively.

PLEA OF NO CONTEST

11. By this document, the Member admits, for the purposes of this proceeding only, the truth of the facts and the exhibits referred to in paragraphs 1 to 10 above (the “Uncontested Facts”).

12. The Member hereby acknowledges that the Uncontested Facts referred to in paragraphs 3 and 6 above constitute conduct which is unprofessional. The Member hereby pleads no contest to the allegations of professional misconduct against her, being more particularly breaches of Ontario Regulation 437/97 1(5), 1(7), 1(16), 1(17) and 1(18).

13. By this document the Member states that:

- (a) she understands fully the nature of the allegations against her;
- (b) she understands that by pleading no contest to the allegations she is waiving her right to require the College to prove the case against her and the right to have a hearing;
- (c) she voluntarily decided to plead no contest;

- (d) she understands that depending on the penalty ordered by the Discipline Committee, the decision of the Committee and a summary of its reasons, including reference to her name, may be published in the official publication of the College;
- (e) she understands that any agreement between her counsel and counsel for the College with respect to the penalty proposed in this document does not bind the Discipline Committee; and
- (f) she understands and acknowledges that she is executing this Agreement voluntarily, unequivocally, and with the advice of legal counsel.

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

JOINT SUBMISSION ON PENALTY

15. 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) requires the Member to appear before the Committee to be reprimanded, with the fact of the reprimand to be recorded on the Register;
- (b) directs the Registrar of the Ontario College of Teachers to suspend the Member's Certificate of Qualification and Registration for a period of one (1) year, commencing on the date of the written decision in this matter;

- (c) 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 term, conditions and limitations to be recorded on the Register of the College until such time as they are fulfilled:
- (i) prior to returning to employment where a Certificate of Qualification and Registration is required, the Member shall complete a course of instruction at her own expense, by a practitioner, pre-approved by the Registrar, regarding maintaining appropriate boundaries in student-teacher relations, and within thirty (30) days of her completion of this course, she shall provide evidence to the Registrar, in writing, of her successful completion of same;
 - (ii) prior to the Member returning to employment, she shall also provide to the Registrar a written certificate from a psychologist indicating that he or she has reviewed a copy of the Decision and Reasons of the Discipline Committee relating to this matter and that he or she has examined the Member, at the member's expense, no earlier than sixty (60) days before the intended date of return to work, and found that the Member is able to return to full-time classroom duties without causing risk of harm or injury to students or the school community;

- (iii) prior to commencement of her employment, the Member shall provide a copy of the Decision and Reasons of the Discipline Committee relating to this matter to her employer and shall request that her employer conduct a performance appraisal following the completion of her first year of teaching. The member shall provide a copy of such performance appraisal to the Registrar within thirty (30) days of its completion or her receipt of same, whichever is the later.
- (d) directs that there be publication of the findings and Order of the Committee in summary form in the official publication of the College, *Professionally Speaking/Pour parler profession*. The parties have not agreed on whether or not the Member's name should be included and submissions will be made on that issue.

DECISION

Having examined the Exhibits filed, and based on the plea of no contest, the *Statement of Uncontested Facts, Plea of No Contest and Joint Submission on Penalty*, and the submissions made by counsel for the College and counsel for the Member, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that Dina Calautti committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(7), 1(16), 1(17), and 1(18).

REASONS FOR DECISION

The Committee accepted the Member's plea of no contest and the facts as outlined in the *Statement of Uncontested Facts*.

The Member admitted the truth of the facts referred to in paragraphs 1 to 10 above and acknowledged that her conduct described in paragraphs 3 and 6 of the Uncontested Facts is unprofessional and pleaded no contest to the allegations of professional misconduct, being more particularly, breaches of Ontario Regulation 437/97, subsections 1 (5), 1(7), 1(16), 1(17) and 1(18).

In November 2007, the Member entered into an inappropriate personal relationship with a [XXX] male student by electronic means. These electronic communications were inappropriate and sexually explicit. They occurred between November 5 and November 9, 2007. The Member was [XXX] teacher who taught [XXX] academic year. (Exhibit 3, Tab E)

The Member was arrested on November 13, 2007 and pleaded to and was found guilty of the charge of luring a child, contrary to Section 172.1 of the *Criminal Code*, being Internet Luring on November 24, 2008. On January 15, 2008 the Member was granted a conditional discharge and placed on probation for 12 months.

The Committee finds that the Member's conduct and her conviction for Internet luring of a student constitutes an act of professional misconduct, being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), and 1(7). The Member failed to maintain the standards of the profession by her actions and her own admission. The Member's decision to engage in romantic and intimate conversations with the student by electronic

means constitutes sexual abuse as defined in the *Act*, pursuant to Ontario Regulation 437/97, subsections 1(7).

The Member has contravened a law, the contravention of which is relevant to her suitability to hold a Certificate of Qualification and Registration and has caused students to be put at risk, pursuant to Ontario Regulation 437/97, subsections 1(16) and 1(17).

The Member's conduct was disgraceful, dishonourable, unprofessional and unbecoming a member contrary to Ontario Regulation 437/97, 1(18).

SUBMISSIONS RE: PUBLICATION

The parties had not agreed on whether or not the Member's name should be published and submissions were made on that issue.

Counsel for the Member asked that the Member's name not be published and requested a balanced approach and for the Committee to consider what is in the best interests of the Member. He noted that there was no physical contact, the incident occurred over a period of less than two weeks, and that during that time there were only a couple of days where the language was inflammable and questionable. He noted that the Member was under duress and vulnerable. Counsel asked the Committee to also consider the Member's personal health, the adverse publicity already endured, e.g. 2700 hits on the Internet regarding this incident, and the insight the Member has gained since the event occurred. In conclusion, Counsel noted that the Member was not a threat to the public.

Counsel for the College submitted that the name of the Member should be published and agreed that a balancing act is necessary regarding the Member's interests and the rights of the public. With respect to the Member's counsel reference to 2,700 hits on the Internet,

Counsel for the College pointed out that this matter is in the public domain and therefore the public has a right to know how the College dealt with it. College Counsel also asked the Committee to consider that the nature of the Member's misconduct, that it is serious enough to warrant a suspension and that non-publication of name only occurs where the misconduct is of a minor nature.

PENALTY

The Committee makes the following order as to penalty:

- (a) the Member is required to appear before the Committee to be reprimanded, within one (1) year of May 11, 2010, with the fact of the reprimand to be recorded on the Register;
- (b) the Registrar of the Ontario College of Teachers is directed to suspend the Member's Certificate of Qualification and Registration for a period of one (1) year, commencing on the date of the written decision in this matter;
- (c) the Registrar of the Ontario College of Teachers is directed to impose the following terms, conditions or limitations on the Member's Certificate of Qualification and Registration, the fact of such term, conditions and limitations to be recorded on the Register of the College until such time as they are fulfilled:
 - (i) prior to returning to employment where a Certificate of Qualification and Registration is required, the Member shall complete a course of instruction at her own expense, by a practitioner, pre-approved by the Registrar, regarding maintaining

appropriate boundaries in student-teacher relations, and within thirty (30) days of her completion of this course, she shall provide evidence to the Registrar, in writing, of her successful completion of same;

- (ii) prior to the Member returning to employment, she shall also provide to the Registrar a written certificate from a psychologist indicating that he or she has reviewed a copy of the Decision and Reasons of the Discipline Committee relating to this matter and that he or she has examined the Member, at the member's expense, no earlier than sixty (60) days before the intended date of return to work, and found that the Member is able to return to full-time classroom duties without causing risk of harm or injury to students or the school community;
- (iii) prior to commencement of her employment, the Member shall provide a copy of the Decision and Reasons of the Discipline Committee relating to this matter to her employer and shall request that her employer conduct a performance appraisal following the completion of her first year of teaching. The member shall provide a copy of such performance appraisal to the Registrar within thirty (30) days of its completion or her receipt of same, whichever is the later.

- (d) 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

In making its decision the Committee considered seriously the penalty submissions of both counsel.

The reprimand by her peers and on behalf of her profession, will act to further reinforce the inappropriateness of a relationship between the Member and the student, and the importance of respecting professional boundaries. More importantly, it acts as an official warning that such behaviour cannot be tolerated. The fact of the reprimand will remain on the Member's certificate for a period of three years and will serve as a general deterrent to the profession.

The Member's suspension of her certificate for one year is consistent with the seriousness of the misconduct and the aggravating and mitigating circumstances. The Committee viewed the Member's actions as serious in nature and took into consideration Judge Keaney's view that they were at the low end of the spectrum of the charge of Internet luring and constituted an error in judgment, rather than as criminal behaviour. Moreover, the Member received a conditional discharge, which means she will not have a criminal record. Her conditional discharge disappears after three years. Judge Keaney noted that the Member knew that she was in a position of trust and authority and had blurred student/teacher boundaries. He also took into consideration the extreme personal

difficulties that the Member faced. He further noted that the Member had a very favourable psychological assessment, there was no physical or sexual activity, and that she was at low risk for re-offence. (Exhibit 3, Tab F).

Were it not for the mitigating circumstances outlined above, the Committee might not have accepted the joint submission and sought revocation of the Member's certificate. The Committee was presented with case law to enable them to compare similar type cases and how they were dealt with by previous panels. Although none were identical to this situation, the penalty of suspension was within the range of acceptable penalties. Given that both counsel agreed on the proposed penalty, including that the suspension was appropriate, the Committee found it reasonable to agree with the joint submission. The Member engaged in an inappropriate relationship with a student. This constituted a serious breach of trust and crossed the appropriate boundary that must always be maintained between a student and a teacher. Enrolment in a course of instruction regarding maintaining appropriate boundaries in student-teacher relations will reinforce to the Member the importance of respecting boundaries.

Prior to the Member returning to employment, she must provide to the Registrar a written certificate from a psychologist indicating that the Member is able to return to full-time classroom duties without causing risk of harm or injury to students or the school community. This stipulation is intended to reassure the public that the Member will not repeat this behaviour.

The Member is required to request that her employer conduct a performance appraisal following the completion of her first year of teaching and submit it to the Registrar. This requirement serves as additional monitoring of the teacher/student relationship and the behaviour that is socially acceptable in the presence of students.

The Committee directed that there be publication in summary form, with the name of the Member in the official publication of the College, *Professionally Speaking/Pour parler profession*. Publication with name provides transparency and openness demanded by the public as well as provides specific deterrence to the Member and general deterrence to the profession. This case garnered much publicity and notoriety with an avalanche of news and press. The public will therefore want to know the outcome of these proceedings. In light of transparency the public is entitled to know how the Committee dealt with this matter. Given the seriousness of the misconduct and given the public's right to know, the Committee determined that publication of the name of the Member was appropriate.

The Committee found that the decision and penalty is reasonable in the circumstances and in the public interest.

Date: May 11, 2010

Dean Favero, OCT
Chair, Discipline Panel

Robert Ryan, OCT
Member, Discipline Panel

Pauline Smart
Member, Discipline Panel