

**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 David Andrew Carswell, a member of the Ontario College of Teachers.

PANEL:            John Tucker, Chair  
                      Alexander Bass, OCT  
                      Brent Hamelin, OCT

BETWEEN:	)	Christine Lonsdale,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -	)	
	)	
DAVID ANDREW CARSWELL	)	Patricia D’Heureux,
(CERTIFICATE #168419)	)	Cavalluzzo Hayes Shilton McIntyre
	)	& Cornish,
	)	for David Andrew Carswell
	)	
	)	
	)	Julie Maciura,
	)	Steinecke Maciura LeBlanc,
	)	Independent Legal Counsel
	)	
	)	Heard: October 25, 2010

**DECISION, REASONS FOR DECISION AND ORDERS**

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on October 25, 2010 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated July 6, 2010 was served on David Andrew Carswell, requesting his presence on July 27, 2010 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for October 25, 2010.

David Andrew Carswell was not in attendance, nor was counsel for the Member present.

## **THE ALLEGATIONS**

The allegations against David Andrew Carswell in the *Notice of Hearing*, (Exhibit 1) dated July 6, 2010, are as follows:

**IT IS ALLEGED** that David Andrew Carswell 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 *Education Act*, Revised Statutes of Ontario, 1990, chapter E.2, and specifically section 264(1)(c) thereof or the Regulations made thereunder, contrary to Ontario Regulation 437/97, subsection 1(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 contravened a law, the contravention of which has caused or may cause a student who is under the Member’s professional supervision to be put at or to remain at risk contrary to Ontario Regulation 437/97, subsection 1(17);
- (e) 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
- (f) he engaged in conduct unbecoming a Member, contrary to Ontario Regulation 437/97, subsection 1(19).

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* (Exhibit 2), which provides as follows:

### **STATEMENT OF UNCONTESTED FACTS**

1. David Andrew Carswell (the “Member”) was at all material times, 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 Simcoe County District School Board (the “Board”) as an elementary school teacher and was assigned to Ferndale Woods Elementary School in Barrie.
3. On or about 9 June 2009, following a trial, the Member was found guilty in the Ontario Court of Justice by Madam Justice N.A. Dawson of a charge that he on or about 31 March 2005 at the Town of Midhurst, Ontario, did possess child pornography to wit: computerized graphic images contrary to Section 163.1(4) of the Criminal Code (Canada). Judge Dawson found that the Member was in possession of fourteen images of child pornography. A copy of the Judgment is attached as Exhibit “B”
4. On or about 15 September 2009, the Member was sentenced to a term of six months to be served at home, followed by two years probation. In addition, the Member was ordered to do one hundred and sixty hours of community service and to stay away from

children under the age of sixteen years, unless he was supervised. A copy of the transcript of the Reasons for Sentencing is attached as Exhibit “C”.

2. The Certificate of Conviction issued by the Ontario Court of Justice on 30 July 2010, is attached as Exhibit “D”.

3. The Member has not appealed the conviction or sentence.

### **PLEA OF NO CONTEST**

4. 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 6 above (the “Uncontested Facts”).

5. The Member hereby acknowledges that the Uncontested Facts referred to in paragraphs 3 to 5 above constitute conduct which is professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(15), 1(16), 1(17), 1(18) and 1(19).

6. By this document the Member states that:

- a. he understands fully the nature of the allegations against him;
- b. he understands that by signing this document he is consenting to the evidence as set out in the Uncontested Facts being presented to the Discipline Committee;
- c. 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;

- d. he 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 his name, may be published in the official publication of the College;
  - e. he understands that any agreement between his counsel and counsel for the College with respect to the penalty proposed in this document does not bind the Discipline Committee;
  - f. he understands and acknowledges that he is executing this Agreement voluntarily, unequivocally, and with the advice of legal counsel.
7. 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 *Ontario 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 the Member as to the facts or findings in any other civil, criminal or administrative proceeding.
8. 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**

9. 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 revoke the Certificate of Qualification and Registration of the Member, which Certificate the Member is to immediately surrender to the Registrar; and
- b. 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 considered the evidence, onus and standard of proof, and the submissions made by Counsel for the College, and the Member, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that David Andrew Carswell committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(15), 1(16), 1(17), 1(18) and 1(19).

## **REASONS FOR DECISION**

The Member admitted the truth of the facts and exhibits referred to in paragraphs 1 to 7 (the "uncontested facts") of the *Statement of Uncontested Facts, Plea of No Contest, and Joint Submission on Penalty* (Exhibit 2). He acknowledged that the uncontested facts referred to in paragraphs 3 to 5 above constitute conduct that is professional misconduct and pleaded no contest to the allegations of professional misconduct. The Committee accepted the Member's plea of no contest and the facts in the *Statement of Uncontested Facts, Plea of No Contest, and Joint Submission on Penalty*.

Following a lengthy trial, the Member was found guilty of possession of child pornography. The conviction of the Member rested on thirteen child pornography images in his temporary Internet file and one live stored image. The Member admitted to the police on their attendance at his home that he had purchased child pornography in the two weeks prior to their attendance (Exhibit 2, Tab C, p.2, 3). He was sentenced to a term of six months to be served at home, followed by two years of probation. In addition the Member was ordered to do one hundred and sixty hours of community service and to stay away from children under the age of sixteen years unless he was supervised (Exhibit 2, Tab C).

The Committee finds that by being in possession of child pornography and being convicted for such possession, the Member committed acts of professional misconduct as alleged, more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(15), 1(16), 1(17), 1(18) and 1(19).

### **SUBMISSIONS ON PUBLICATION**

The Committee received submissions from Counsel for the College and a written submission from the Member with respect to publication of the Member's name in *Professionally Speaking/Pour parler profession*

Counsel for the College argued that the Member's name should be published. She submitted 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. Counsel submitted that publication of the name is the norm unless there are special circumstances. The test is to balance the risk of harm to the

Member and his family with that of ensuring that the public is protected and advised of the Member's conduct.

The Committee received a letter dated October 20, 2010 from the Member (Exhibit 4) requesting that his name not appear in the publication of findings which would be included in an upcoming issue of *Professionally Speaking/Pour parler profession*. The Member made this request because of concern for the safety of his wife and because of the effect that the publicity would have on her school and its surrounding community.

### **PENALTY**

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; 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 in the official publication of the College, *Professionally Speaking/Pour parler profession*.

### **REASONS FOR PENALTY DECISION**

The Committee determined that a member who has been convicted of possession of child pornography and who is subject to conditions which do not allow him to be in the company of children under the age of sixteen years, is not suitable to be in a position of trust and authority over children and must not be permitted to teach. In her Reasons for Sentence, the Honourable Justice N. Dawson stated with respect to the Member: "He is being sentenced to the offence he was charged with, which turned out to be fourteen

images... He did purchase child pornography which is a significant aggravating fact as it encourages the commercialization of child pornography and promotes the victimization of children. Additionally, it does not appear that he has insight into the offence that he committed or what aspects of his personality led him to commit the offences..." (Exhibit 2, Tab C, p. 53) Given these facts and the morally reprehensible nature of child pornography, the Member is not suitable to be in a position of trust and authority over children and therefore his Certificate of Qualification and Registration must be revoked.

The Committee ordered publication of the finding and order with the name of the Member in Publication of the Member's name in *Professionally Speaking/Pour parler profession*.

Child pornography is one of the most serious crimes in our society. The public must be informed that a member of the teaching profession who engages in this type of activity will suffer the most serious of consequences. An application was brought in the criminal proceedings seeking a ban on publication and exclusion of the public and named individuals, which application was denied. The Member's submission to the Committee in a letter dated October 20, 2010 (Exhibit 4), addressed concerns of vulnerability for his family. No evidence was provided in support of the Member's submission. The Committee concluded that the principles of general and specific deterrence and denunciation warrant publication of the Member's name.

Publication with name acts as a general deterrent and informs the profession that such behaviour will not be tolerated and will result in the harshest penalty, revocation. Publication serves the public interest by reassuring and informing the community that the profession acts decisively when matters of this nature are brought to its attention.

In conclusion, the Committee is confident that the penalty serves the interest of the public and the profession and denounces such behaviour.

Date: October 25, 2010

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John Tucker, Chair  
Chair, Discipline Panel

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Alexander Bass, OCT  
Member, Discipline Panel

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Brent Hamelin, OCT  
Member, Discipline Panel