

**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 Cato, a member of the Ontario College of Teachers.

PANEL: Don Cattani, Chair
 Ted Coulson
 Amin Saab

BETWEEN:)	
)	
	)	Brian Wasyliw,
	)	McCarthy Tétrault LLP,
ONTARIO COLLEGE OF TEACHERS	)	for Ontario College of Teachers,
	)	assisted by Trevor Evans,
- and -	)	Senior Law Clerk
)	
KEVIN CATO	)	Joshua Phillips,
(CERTIFICATE #268407)	)	Green & Chercover LLP,
	)	for Kevin Cato,
)	
)	
	)	Christopher Wirth,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
)	
	)	Heard: October 25, 2006

REASONS FOR DECISION, DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on October 25, 2006 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated October 11, 2005 was served on Kevin Cato, requesting attendance before the Discipline Committee of the Ontario College of Teachers on November 1, 2005 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for October 25, 2006.

Kevin Cato was in attendance at the hearing.

THE ALLEGATIONS

The allegations against Kevin Cato in the *Notice of Hearing, (Exhibit 1)* dated October 11, 2005 are as follows:

IT IS ALLEGED that Kevin Cato 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 abused a student physically, sexually, verbally, psychologically or emotionally, contrary to Ontario Regulation 437/97, subsections 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 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);
- (e) he engaged in conduct unbecoming a Member, contrary to Ontario Regulation 437/97, subsection 1(19); and
- (f) he engaged in sexual abuse of a student or students of a nature defined in sections 1 and 40(1.1) of the Act.

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 Facts, Plea of No Contest and Joint Submission on Penalty. (ASF – Exhibit 2)*

The *Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty* provides as follows:

1. Kevin Cato (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 of the Member.
2. At all material times the Member was employed by the York Region District School Board (“the Board”) as a high school teacher.

3. Between the approximate dates of September 2000 and February 2003, the Member was a history teacher at Dr. G.W. Williams Secondary School (“GWSS”) in Aurora.

4. During the 2000-2001 academic year [REDACTED], was a female grade 10 student in the Member’s class at GWSS.

5. On or about May 2, 2001, the Member acted inappropriately towards [REDACTED] in that during consensual horseplay, he twice struck her with a metre stick in the classroom, causing a small bruise to the student. As a result of this incident, the Member was suspended without pay for two days and received a reprimand. A copy of the letter of reprimand, dated May 9, 2001 is attached as **Exhibit “B”**.

6. On or about April 15, 2002 the Member acted inappropriately in that he failed to perform an assigned supervisory duty at GWSS in that he:

- (a) attended at the classroom of an absent teacher as requested, but then encouraged the students to leave by telling them that he would not mark them absent; and
- (b) told the students that he was unable to open the door to the classroom without attempting to obtain assistance from the office;
- (c) following the incident referred to in the previous paragraph, the Member then told the vice-principal that the students of the absent teacher had not attended class.

7. As a result of the incident referred to in paragraph 6, the Member received a letter of reprimand. A copy of that letter dated April 19, 2002 is attached as **Exhibit “C”**.

8. On or about October 30, 2002 the Member acted inappropriately by engaging in uncooperative behaviour in that while in the library of GWSS, he failed to co-operate with a teacher-librarian by engaging in matters outside of the required assignment including talking on the telephone, talking to a student not in his class and having coffee in the library.

9. As a result of the incident referred to in paragraph 8, the Member was suspended without pay for two days and received a reprimand. A copy of the letter of reprimand dated November 15, 2002 is attached as **Exhibit “D”**.

10. In or around February 2003 the Member was transferred to Alexander Mackenzie High School (“AMHS”) in Richmond Hill, where he taught anthropology and history. In addition, the Member was the coach of the girls’ hockey team, the girls’ football team and the boys’ football team.

11. At all material times [REDACTED] was a 17-year-old female student of the Member at AMHS.

12. Prior to and during the 2003-2004 academic year the Member acted inappropriately towards [REDACTED] in that he:

- (a) engaged in communication with [REDACTED], who had asked to be a member of a women’s flag football league which was outside of the school, by telephoning her to encourage her to attend practices;

(b) during the course of a discussion initiated by [REDACTED], told [REDACTED] that his brother thought that she and a friend of hers were good looking and that the Member was a lucky guy to be teaching high school.

13. On or before March 17, 2003, during his introduction to Anthropology class, the Member:

- (a) in response to a student's question, commented about the "beautiful women" in his class and why it was inappropriate for him to date them but that it would only be appropriate for him to date women at least twenty-five years old;
- (b) in response to a request by a female student to have him review her marks on a test, asked her about her personal life; and
- (c) asked a student, in reference to a female student who was bending over, "Do you look at that? Don't you think grown men look at that?"

14. As a result of the incidents referred to in paragraph 13, the Member was issued a letter of reprimand. A copy of that memorandum dated March 19, 2003 is attached as **Exhibit "E"**.

15. During the 2003-2004 academic year, the Member acted inappropriately towards students at AMHS by:

- (a) putting his arm around female students during casual conversation;
- (b) making inappropriate remarks to students which included his:

- (i) out of frustration, stating to members of the girl's hockey team, after the referee had made a bad call during a hockey game which caused the team to lose the game and the play-offs, "You girls got fucking robbed", for which comment the Member immediately apologized to the team;
 - (ii) saying, "Damn she's hot", about a young woman who walked by the change room of the girl's hockey team;
 - (iii) telling female students that he goes to bars "to get girls";
 - (iv) upon learning that a female friend of a member of the girl's hockey team was seventeen years old said, "Jeez, I was just wondering. She was kind of cute though";
 - (v) making comments about a particular student and her mother having "controlling behaviours" regarding their respective boyfriend and husband, but those comments were made in the course of a discussion with the student about personal issues.
- (c) failing to discourage inappropriate comments by members of the boy's football team during practices in the Fall of 2003;
- (d) failing to discourage inappropriate comments by female students; and
- (e) while responding to concerns of female students, engaged in discussions with them which he now recognizes to be inappropriate.

PLEA OF NO CONTEST

16. By this document, for the purpose of this proceeding only, the Member admits the truth of the facts and exhibits referred to in paragraphs 1 to 15 above (the “Admitted Facts”). The Member hereby acknowledges that his conduct as described in paragraphs 5, 6, 8, 12, 13 and 15 of the Admitted Facts, constitutes conduct that is unprofessional and pleads no contest to the allegations of professional misconduct against him being more particularly, breaches of Ontario Regulation 437/97 subsections 1 (5) and (19).

17. 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 to the particulars as set out herein, he is waiving his right to require the College to prove the case against him and the right to have a hearing into those allegations;
- (c) he voluntarily decided to plead no contest; and
- (d) he states that this plea of no contest was made voluntarily, unequivocally and with the benefit of legal counsel.

18. In light of the admitted 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

19. 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 Discipline Committee:

- (a) requires the Member to appear before the Committee immediately following the completion of the hearing of this matter, to be reprimanded and that the fact of the reprimand be recorded on the Register of the Ontario College of Teachers; and
- (b) direct the Member to enroll in and complete, at his own expense, within ninety (90) days of the date of this order, a course of instruction, pre-approved by the Registrar, regarding appropriate boundaries and boundary violation issues and the Member shall deliver directly to the Registrar, proof of the successful completion of the course within thirty (30) days of its completion.
- (c) 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 upon whether the Member's full name will be published and submissions will be made to the Committee on whether the name of the Member should be published.

20. By this document, the Member acknowledges his understanding that any agreement between the College and the Member with respect to the penalty proposed in this document does not bind the Discipline Committee.

College Counsel argued that a decision to publish would serve and protect the public interest. The general deterrence of publication, including the member's name serves to promote public confidence that the College treats inappropriate behaviour of members seriously. Inclusion of the member's name acts as a specific deterrent to the member who must acknowledge his behaviour in a public way and accept the need to change.

Counsel for the Member noted that it was within the Committee's discretion to publish or not to publish. He emphasized that each case should be considered under its own facts and there should be no prior presumption to publish or not to publish a member's name. He indicated that publication of the Member's name would have the effect of further humiliating the Member and impeding his attempts to re-establish his career.

Publication of the Member's name, in this case, would not advance the public interest or act as a specific or general deterrent.

DECISION AS TO FINDING

Having examined the Exhibits filed, and based on the plea of no contest, the *Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty*, 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 Cato committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97, subsections 1(5) and 1(19).

PENALTY DECISION

The Committee accepts the Joint Submission on Penalty and makes the following order as to penalty:

1. The Member is to appear before the Committee immediately following the completion of the hearing of this matter, to be reprimanded and the fact of the reprimand will be recorded on the Register of the Ontario College of Teachers.
2. The Member must enrol in and complete, at his own expense, within ninety (90) days of the date of this order, a course of instruction, pre-approved by the Registrar, regarding appropriate boundaries and boundary violation issues and the Member shall deliver directly to the Registrar, proof of the successful completion of the course within thirty (30) days of its completion; and
3. 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 AND PENALTY

The Committee accepted the evidence contained in the *Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty*. During the period of 2001 to 2004, the Member, on numerous occasions, used inappropriate comments, including comments of a sexual nature, to and about female students. As well, the Member pleaded no contest with regard to an incident with a female student, where, during consensual horseplay, he

twice struck her with a metre stick, causing a small bruise to the student. The Member also failed to discourage students, both male and female, from making inappropriate comments. The Member, on two occasions, failed to perform supervisory duties as assigned.

The Committee finds that these facts constitute professional misconduct on the part of the Member, more particularly breaches of Ontario Regulation 437/97, subsections 1(5) and 1(19).

In accepting the joint submission on penalty, the Committee acknowledged that the Member had pleaded no contest to professional misconduct and had agreed to be reprimanded by the Committee and to enroll in and complete a course of instruction regarding appropriate boundaries and boundary violation issues. This condition imposed by the Committee should enable the Member to acquire new skills and behaviours to apply in the classroom.

The reprimand will serve as a specific deterrent not to engage in similar activities in the future.

Publication of the findings and order of the Committee, in summary, along with the name of the Member, provides both a specific deterrent to the Member and a general deterrent to the profession while serving the public interest. In this particular case, the Member had not responded to previous cautions concerning his professional conduct issued by his employer. The Committee, in publishing the name of the Member, hopes that the

Member will acknowledge and accept responsibility for his actions and begin the process of rehabilitation.

Dated: October 25, 2006

Don Cattani
Chair, Discipline Panel

Ted Coulson
Member, Discipline Panel

Amin Saab
Member, Discipline Panel