

**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
C. Robert Clements, a member of the Ontario College of Teachers.

PANEL: Annilee Jarvis, OCT, Chair
 Danny Anckle
 Irene Dembek, OCT

BETWEEN:	)	Eli Mogil,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Daniela DeBartolo,
	)	Litigation Paraprofessional
- and -)	
)	
C. ROBERT CLEMENTS	)	C. Robert Clements
(CERTIFICATE #266425)	)	was not present or represented
)	
)	
	)	Julie Maciura
	)	Steinecke Maciura LeBlanc,
	)	Independent Legal Counsel
)	
	)	Heard: August 25, 2011

DECISION, REASONS FOR DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on August 25, 2011 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated January 20, 2011 was served on C. Robert Clements, requesting his presence on May 25, 2011 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for August 25, 2011.

C. Robert Clements was not in attendance.

THE ALLEGATIONS

The allegations against C. Robert Clements in the *Notice of Hearing*, (Exhibit 1) dated January 20, 2011 are as follows:

IT IS ALLEGED that C. Robert Clements 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 under that Act, 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 may cause a student or students 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, and Plea of No Contest* (Exhibit 3), which provides as follows:

STATEMENT OF UNCONTESTED FACTS

1. C. Robert Clements (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 involved in a program called [XXX] in Belleville, Ontario.
3. At all material times, A was a [XXX] male.
4. On or about January 24, 2009, the Member invited and/or permitted A to visit his home where the Member engaged in the sexual touching of A in that the Member fondled the penis and testicles of A.
5. On or about October 14, 2009, the Member was found guilty of sexual assault on A, contrary to Section 271 of the *Criminal Code* (Canada).
6. On or about December 3, 2009, the Member was sentenced to twelve (12) months probation which included the following conditions in that he:
 - (a) is not to have contact and/or communication with A and/or his family;
 - (b) is not to be in the presence of any child under the age of 16 unless with the child’s parent(s) present at all times;
 - (c) is prohibited from possessing weapons for a period of ten (10) years; and

(d) is to attend treatment and counselling.

7. Attached hereto and marked as **Exhibit B** is a certified copy of the Ontario Court of Justice Information, dated February 12, 2009, with respect to that charge.

8. A certified copy of the Probation Order dated December 3, 2009, is attached as **Exhibit C**.

9. A certified copy of the Prohibition Order dated December 3, 2009, is attached as **Exhibit D**.

10. Copies of the transcripts of the Reasons for Judgment made on October 14, 2009, before Mr. Justice G. Griffin and of Sentencing of Mr. Justice Griffin on December 3, 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 paragraph 4 above, constitute conduct which is professional misconduct, and pleads no contest to the allegations of professional misconduct against him, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(15), 1(16), 1(17), 1(18) and 1(19).

13. 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 counsel for the College and himself 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 without the advice of legal counsel.

14. 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.

15. 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

16. 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 immediately revoke the Certificate and 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, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that C. Robert Clements 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).

The Committee wishes to note that if it had been alleged, the panel would also have made a finding under 1(7.3) (sexual).

REASONS FOR DECISION

The Member admitted the truth of the facts and exhibits referred to in paragraphs 1 to 10 (the “uncontested facts”) of the *Statement of Uncontested Facts, and Plea of No Contest* (Exhibit 3). He acknowledged that the uncontested facts referred to in paragraph 4 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, and Plea of No Contest*.

The Member was involved in a program called [XXX] in Belleville, Ontario. On or about January 24, 2009, the Member invited and/or permitted a [XXX] male student to visit his home where the Member fondled the penis and testicles of the student. In October 2009, the Member was found guilty of sexual assault on the student and was sentenced to twelve months probation.

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 finds that the Member’s actions and conviction for sexual assault of a student as outlined herein, constitutes an act 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).

SUBMISSIONS ON PUBLICATION

The Committee received submissions from Counsel for the College 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. Counsel noted that publication was appropriate because the Member sexually assaulted a student. Counsel submitted that the Member's deplorable and predatory behaviour should be given the most severe penalty, thus warranting publication of his name. He indicated that publication of the name serves as a specific deterrent to the Member and a general deterrent to the profession.

The Committee did not receive a submission on penalty from the Member who was neither present nor represented. The Committee is satisfied that Counsel for the College provided the Member an opportunity to make a submission with respect to publication with name.

PENALTY

The Committee makes the following order as to penalty:

1. The Registrar is directed to revoke the Certificate of Qualification and Registration of the Member; and
2. 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

The Member engaged in MSN chat with a [XXX] student and his friend, and invited them to his home. When they arrived, they talked and watched a movie. The Member offered the students alcohol and a bong, he engaged in conversation with them regarding their sex lives and he told the [XXX] student that he was a “very attractive lad... you’re very hot.” The Member took the [XXX] student out of the room in order to discuss school and started to unzip the student’s pants. The Member touched the student’s penis and testicles through his boxers. The student slapped the Member’s hand out of the way.

The Member engaged in inappropriate and unprofessional conduct with the student while that student was under his care and supervision. The Committee finds the Member’s conduct is disgraceful and unbecoming a member of the profession. The Member abused the authority and trust vested in him in his role as an advocate and mentor, without regard for the well being of the student. The Member’s behaviour is unacceptable and in conflict with the duty of a teacher to protect students. The Member, as a result of his conduct, has forfeited the privilege of holding a teaching certificate and being a member of the teaching profession. Revocation is the appropriate penalty for misconduct of this severity and protects the public interest.

The Committee orders publication of the findings and order with the name of the Member. The Committee felt there were compelling reasons to publish the Member’s name. In his role as a mentor and advocate for students at risk, parents and students would expect that he would behave in a responsible and respectful manner. The Member’s actions comprised a serious breach of trust, and publication with name is warranted and appropriate. The Committee determined that publication with the

Member's name is necessary in order to provide general deterrence to the teaching profession and specific deterrence to the Member.

Publication also 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 denounces such behaviour and is confident that the penalty serves the interest of the public and the profession.

Date: August 31, 2011

Annilee Jarvis, OCT
Chair, Discipline Panel

Danny Anckle
Member, Discipline Panel

Irene Dembek, OCT
Member, Discipline Panel