

**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 Jeffrey Alan Cobden, a member of the Ontario College of Teachers.

PANEL: Hanno Weinberger, OCT, Chair
Darlene Mead, OCT
John Tucker

BETWEEN:	)	Caroline Zayid,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Daniela De Bartolo,
	)	Litigation Paraprofessional
- and -)	
)	
JEFFREY ALAN COBDEN	)	Mandy Wojcik,
(CERTIFICATE #288096)	)	Sack Goldblatt Mitchell LLP,
	)	for Jeffrey Alan Cobden
)	
)	
	)	Rebecca Durcan,
	)	Steinecke Maciura LeBlanc,
	)	Independent Legal Counsel
)	
	)	Heard: January 17, 2011

DECISION, REASONS FOR DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on January 17, 2011 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated May 31, 2010 was served on Jeffrey Alan Cobden, requesting his presence on June 14, 2010 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for January 17, 2011.

Jeffrey Alan Cobden was in attendance.

THE ALLEGATIONS

The allegations against Jeffrey Alan Cobden in the *Notice of Hearing*, (Exhibit 1) dated May 31, 2010, are as follows:

IT IS ALLEGED that Jeffrey Alan Cobden 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 or students physically, sexually, verbally, psychologically or emotionally, contrary to Ontario Regulation 437/97, subsection 1(7);
- (c) 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);
- (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); and
- (e) 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. Jeffrey Alan Cobden (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 Toronto District School Board (the “Board”) as an elementary teacher. During the 2000-2004 academic years, the Member was assigned to [XXX] School (“[XXX]”).
3. As a result of incidents which occurred at [XXX] in May 2002, the Member, on or about 29 May 2002, received a verbal warning that he was not to hit or tap students on the head with papers, books, or booklets. Further, he was instructed to refrain from such activities in the future.
4. On or about 14 January 2004, while teaching at [XXX], the Member hit a male [XXX] student in the classroom.
5. During the months of April and May 2004, the Member successfully completed courses of instruction with respect to Professional Refinements in Developing Effectiveness and Classroom Handling, and Teacher Effectiveness and Classroom Handling, respectively. At around that time, the Member also participated in anger management training and cognitive development sessions. Attached and marked as **Exhibit “B”** are copies of Certificates issued to the Member in respect of those courses.
6. During the 2004-2005 academic year, the Member taught at [XXX] School (“[XXX]”).

7. During the 2004-2005 academic year, the Board made a complaint to the Ontario College of Teachers concerning physical and verbal abuse of male and female students which was alleged to have taken place during the 2001-2002 and the 2003-2004 academic years as referred to in paragraphs 3 and 4 (“the College Complaint”). The Member received notice of the complaint after the 2004-2005 academic year - in or around 11 August 2005.

8. On or about 19 November 2004, the member was suspended by the Board for five days without pay in respect of the incident referred to at paragraph 4. At that time, the Member was advised that he was to confirm completion of anger management counselling and was told that he was subject to dismissal should there be any further recurrence of any type of inappropriate behaviour resulting in the mistreatment of children. A copy of the letter dated 19 November 2004 from the Superintendent of Education to the Member is attached as **Exhibit “C”**.

9. In or around May 2005, at [XXX], the Member blew a whistle loudly near a student in his [XXX] class.

10. On another occasion, during the month of May 2005, the Member demonstrated to his [XXX] class a theatrical and exaggerated spanking motion with a [XXX] male student.

11. On or about 8 June 2005, the Member was suspended by the Board for five days without pay with respect to the incidents described in paragraphs 9 and 10. Attached as **Exhibit “D”** is a copy of a letter dated 8 June 2005 from the Principal of [XXX] to the Member.

12. The Member admitted the physical abuse of students referred to in the College Complaint, and on or about 27 October 2005, the Member received a written caution from the Investigation Committee of the College with respect to that complaint. The caution required the Member to make every reasonable effort to employ appropriate classroom management strategies and to maintain appropriate student/teacher

boundaries. A copy of the Decision of the Investigation Committee of the Ontario College of Teachers dated 27 October 2005, along with a copy of the Memorandum of Agreement referred to in that Decision, is attached as **Exhibit “E”**.

13. During the 2007-2008 academic year, the Member was assigned to teach at [XXX] School (“[XXX]”). At that time, Student A was a female [XXX] year old [XXX] student [XXX].

14. On or about 28 January 2008, the Member tapped the shoulder of Student A while he was on classroom duty at [XXX].

15. By letter dated 25 April 2008, a copy of which is attached and marked as **Exhibit “F”**, the Principal of [XXX] and the Superintendent of Education wrote to the Member with respect to the incident referred to at paragraph 14 and recommended that the Member’s employment be terminated.

16. On or about 29 August 2008, the Member was dismissed by the Board.

PLEA OF NO CONTEST

17. 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 16 above (the “Uncontested Facts”).

18. The Member hereby acknowledges that the Uncontested Facts referred to in paragraphs 9, 10 and 14 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 1(5), 1(7), 1(15), 1(18-dishonourable) and 1(19).

19. 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.

20. 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.

21. 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

22. 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 directs:

(a) that the Member appear before the Committee immediately following the hearing of this matter to receive a reprimand and the fact of the reprimand is to be recorded on the Register of the Ontario College of Teachers (the “Register”);

(b) the Registrar to suspend the Certificate of Qualification and Registration of the Member for a period of three (3) months commencing on the date of the Order of the Discipline Committee relating to this matter and the fact of the suspension is to be recorded on the Register;

(c) the Registrar to impose the following terms, conditions, and limitations on the Member’s Certificate of Qualification and Registration, the fact of such terms, conditions, or limitations to be recorded on the Register until such time as they are fulfilled:

(i) the Member shall enrol in and successfully complete at his own expense, a course of instruction pre-approved by the Registrar regarding anger management; and

(ii) within thirty (30) days of his completion of the course outlined in (i) above, the Member shall provide to the Registrar a written certificate from the course provider stating that:

A. he or she has reviewed a copy of the Statement of Uncontested Facts, Plea of No Contest and Joint Submission on Penalty document made an exhibit at the hearing of this matter, and the Decision and Reasons of the Discipline Committee; and

B. the Member has successfully completed the course.

(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 considered the evidence, onus and standard of proof, 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 Jeffrey Alan Cobden committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(7), 1(15), 1(18-dishonourable) and 1(19).

REASONS FOR DECISION

The Member admitted the truth of the facts and exhibits referred to in paragraphs 1 to 16 (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 9, 10 and 14 above constitute conduct which is professional misconduct and pleaded no contest to the allegations of professional misconduct against him. 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*.

The Committee finds that over a period of time, extending from 2005 to 2008, the Member engaged in inappropriate physical discipline of students. In doing so, the Member committed acts of professional misconduct as alleged, more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(7), 1(15), 1(18 - dishonourable) and 1(19).

SUBMISSIONS ON PUBLICATION

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

Counsel for the College submitted that the Member's name should be published. College counsel stated that the Member had engaged repeatedly in the use of inappropriate physical discipline. Counsel noted that despite previous warnings from the Member's Board, he continued to use inappropriate physical discipline. Counsel indicated that the Memorandum of Agreement between the Member and the College dated October 14, 2005 did not order publication of the Member's name. College counsel stressed that publication of the Member's name is now required in order to send a stronger message to the Member. Publication of the Member's name would serve as a specific deterrent to the Member and act as a general deterrent to the profession.

Counsel for the Member requested that the Committee not publish the Member's name in the official publication of the College. Counsel noted that the Member's employment with the Board had been terminated in 2008 and he has not worked in the teaching profession since that time. Further, the Member is now facing a three-month suspension, which is a very serious consequence. According to Member's counsel, these penalties meet the goal of specific deterrence. Member's counsel suggested that general deterrence is met by publication of a summary of the facts without the Member's name.

PENALTY

The Committee makes the following order as to penalty:

1. the Member is to appear before the Committee immediately following the hearing of this matter to receive a reprimand and the fact of the reprimand is to be recorded on the Register of the Ontario College of Teachers (the “Register”);
2. the Registrar is directed to suspend the Certificate of Qualification and Registration of the Member for a period of three (3) months commencing on the date of the Order of the Discipline Committee relating to this matter and the fact of the suspension is to be recorded on the Register;
3. the Registrar is directed to impose the following terms, conditions, and limitations on the Member’s Certificate of Qualification and Registration, the fact of such terms, conditions, or limitations to be recorded on the Register until such time as they are fulfilled:
 - i. the Member shall enrol in and successfully complete at his own expense, a course of instruction pre-approved by the Registrar regarding anger management; and
 - ii. within thirty (30) days of his completion of the course outlined in (i) above, the Member shall provide to the Registrar a written certificate from the course provider stating that he or she has reviewed a copy of the Statement of Uncontested Facts, Plea of No Contest and Joint Submission on Penalty document made an exhibit at the hearing of this matter, and the Decision and Reasons of the Discipline Committee; and the Member has successfully completed the course.
4. 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 Committee found that the Member engaged in professional misconduct by engaging in inappropriate physical discipline of students, during the period from 2005 to 2008. However the Committee was provided with a Statement of Uncontested Facts demonstrating that the Member had engaged in similar and repeated conduct dating back to the 2001-2002 school year.

The Committee noted that despite the fact that the Member had previously been suspended, had been cautioned by the Investigation Committee of the College in 2005, and had taken courses with respect to appropriate classroom management strategies for such conduct, he continued to physically mistreat students. Further, the Member was terminated from his employment in August 2008 for mistreatment of students.

Considering the seriousness of the Member's behaviour and his pattern of ongoing physical mistreatment of students, the Committee determined that a serious sanction was required. A suspension of three months and publication of the Member's name are appropriate.

The reprimand by his peers and on behalf of his profession will act to further reinforce the inappropriateness of the Member's behaviour. 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 Committee expects that these sanctions, along with a course in anger management, will ensure that the Member does not engage in physical mistreatment of students in the future.

The Committee is satisfied that the penalty is appropriate in the circumstances and serves and protects the public interest.

Date: February 16, 2011

Hanno Weinberger, OCT
Chair, Discipline Panel

Darlene Mead, OCT
Member, Discipline Panel

John Tucker
Member, Discipline Panel