

**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 Achala Das Gupta, OCT, a member of the Ontario College of Teachers.

PANEL:            Brent Hamelin, Chair  
                      Robert Ryan  
                      Pauline Smart

BETWEEN:	)	
	)	Eli Mogil,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -	)	
	)	Kate Hughes,
ACHALA DAS GUPTA	)	Cavalluzzo Hayes Shilton McIntyre
(CERTIFICATE # 211122)	)	& Cornish LLP,
	)	for Achala Das Gupta
	)	
	)	Julie Maciura,
	)	Steinecke Maciura LeBlanc,
	)	Independent Legal Counsel
	)	
	)	Heard: November 5, 2009

**REASONS FOR DECISION, DECISION AND ORDERS**

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on November 5, 2009 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated January 8, 2009, was served on Achala Das Gupta, requesting her attendance before the Discipline Committee of the Ontario College of Teachers on February 10, 2009 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for November 5, 2009. Achala Das Gupta was in attendance.

## **THE ALLEGATIONS**

The allegations against Achala Das Gupta in the *Notice of Hearing*, (Exhibit 1) dated January 8, 2009 are as follows:

**IT IS ALLEGED** that Achala Das Gupta is guilty of professional misconduct as defined in section 30(2) of the *Ontario College of Teachers Act, 1996* (the “Act”), in that:

- (a) she failed to comply with her duty under the *Child and Family Services Act*, S. 72 (1) when she failed to report information respecting the possible physical abuse of one of her students;
- (b) she failed to maintain the standards of the profession, contrary to Ontario Regulation 437/97, subsection 1(5);
- (c) she abused a student or students physically, sexually, verbally, psychologically or emotionally, contrary to Ontario Regulation 437/97, subsection 1(7);
- (d) she failed to supervise adequately a person who is under her professional supervision, contrary to Ontario Regulation 437/97, subsection 1(11);
- (e) 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);
- (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);  
and

- (g) she engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19).

At the conclusion of the hearing on November 5, 2009, College Counsel sought to withdraw the allegations of professional misconduct contained in paragraphs (e) and (g) above, being alleged breaches of Ontario Regulation 437/97, subsections 1(14), 1(15) and 1(19). The Committee agrees that these allegations shall be withdrawn.

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. Achala Das Gupta (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”) and taught at the [XXX] level at [XXX] School (the “School”) in Toronto, Ontario.
3. On or about December 15, 2005, the Member failed to report to the Children’s Aid Society that one of her male students at the School had stated that he was being beaten at home.

4. On at least four (4) occasions during the 2005/2006 and 2006/2007 academic years, the Member, when disciplining her students, pulled them by the ear; hit one student in the head with a pointer; physically restrained a student by grabbing his wrist; and grabbed another student by the wrist, arm or hand when her instructions were not followed.
5. In April 2006, the Member left two of her students unsupervised in a hallway alcove at the school while she accompanied other students upstairs to the classroom.
6. Since May 1, 2008, the Member has been on the Board's Occasional Teacher List and has received regular and ongoing occasional teaching assignments from the Board. These assignments have included repeat calls from the same schools and Principals and there have been no further complaints about the physical disciplining of students.

#### **PLEA OF NO CONTEST**

7. By this document, the Member admits for the purposes of this proceeding only, the truth of the facts and exhibits referred to in paragraphs 1 to 6 above (the "Admitted Facts"). The Member hereby acknowledges that her conduct as described in paragraphs 3, 4, and 5 of the Admitted Facts constitutes professional misconduct and pleads no contest to the allegations of professional misconduct against her being more particularly, breaches of:

- (a) her duty under the *Child and Family Services Act*, S. 72 (1);
- (b) Ontario Regulation 437/97 subsection 1(5);
- (c) Ontario Regulation 437/97 subsection 1(7);
- (d) Ontario Regulation 437/97 subsection 1(11); and
- (e) Ontario Regulation 437/97 subsection 1(18) (unprofessional).

8. The Member states that:

- (a) she understands fully the nature of the allegations against her;
- (b) she understands that by signing this document she is consenting to the evidence as set out in the Admitted Facts and the exhibits above referred to being presented to the Discipline Committee;
- (c) she understands that by pleading no contest and signing this document, she is waiving the right to require the College to prove the case against her and the right to have a hearing; and
- (d) this plea of no contest is made voluntarily, unequivocally and with the benefit of independent legal counsel.

9. 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, c. E. 23, for the purpose of this proceeding under the *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.

#### **JOINT SUBMISSION ON PENALTY**

10. In light of the Admitted Facts and circumstances, 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 to impose the following terms, conditions or limitations on the Member's certificate:

- (i) the Member shall enroll in and complete at her own expense, within ninety (90) days of the date of this Order, a course of instruction, pre-approved by the Registrar, with an emphasis on positive discipline techniques and classroom management skills, and shall provide to the instructor of the course, a copy of this Statement of Uncontested Facts document made an exhibit at the hearing of this matter and the Decision and Reasons of this Discipline Committee;
- (ii) the Member shall provide to the Registrar proof of successful completion of the course referred to in 10(b)(i) above within thirty (30) days following such completion, which written certificate must evidence that the course provider reviewed a copy of this Statement of Uncontested Facts document made an exhibit at the hearing of this matter and the Decision and Reasons of the Discipline Committee;
- (iii) the Member shall successfully complete an Additional Basic Qualifications (“ABQ”) course which satisfies the curriculum requirements for any future fulltime assignment to be undertaken by the Member at the Elementary level, and shall provide proof to the Registrar, in writing, of same within thirty (30) days following such completion;
- (iv) the Member shall not return to a fulltime assignment until paragraph 10(b)(iii) has been complied with; and

(v) the Member shall review with a representative of the Elementary Teachers' Federation of Ontario ("ETFO") the reporting requirements by teachers to the relevant child protection agencies or governing bodies of any suspicion or cause for suspicion of student abuse or neglect. The Member shall, following such review and within thirty (30) days thereof, provide to the Registrar a letter obtained by the Member from the ETFO representative, verifying the date on which such review took place and confirming the Member's acknowledgment of her understanding of these reporting requirements;

(c) directs that the findings, and Order of the Committee, shall be published in summary form in the official publication of the College, without the name of the Member.

11. By this document, the Member acknowledges her 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.

## **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 Achala Das Gupta committed acts of professional

misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(7), 1(11), 1(18 - unprofessional) and failed to comply with her duties under the *Child and Family Services Act*, s.72(1).

## **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 and exhibits referred to in paragraphs 1 to 6 above and acknowledged that her conduct described in paragraphs 3, 4 and 5 of the Admitted Facts constitutes professional misconduct 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(11), 1(18 - unprofessional) and failed to comply with her duties under the *Child and Family Services Act*, s.72(1).

The Member failed to comply with her duties under the *Child and Family Services Act*, s.72(1) in that she failed to report to the Children's Aid Society that one of her male students at the School had stated that he was being beaten at home.

The Member abused students under her care on at least four occasions over two academic years. On one occasion the Member pulled a student by the ear. Another time, the Member hit a student on the head with a pointer. The Member also restrained a student by grabbing his wrist and grabbed another student by the wrist, arm or hand when her instructions were not followed. These actions, along with being abusive, are unprofessional and fail to meet the standards of the profession.

On a separate occasion the Member left two of her students unsupervised in the hallway alcove at the school while she accompanied other students upstairs to the classroom. By leaving the students alone, the Member failed to provide adequate supervision and her actions in so doing failed to meet the standards of the profession.

### **PENALTY DECISION**

The Committee makes the following order as to penalty:

1. The Member is required to appear before the Committee to be reprimanded, with the fact of the reprimand to be recorded on the Register of the College.
2. The Registrar is directed to impose the following terms, conditions or limitations on the Member's Certificate of Qualification and Registration, the fact of such terms to be recorded on the Register of the College until such time as they are fulfilled:
  - (i) the Member shall enroll in and complete at her own expense, within ninety (90) days of the date of this Order, a course of instruction, pre-approved by the Registrar, with an emphasis on positive discipline techniques and classroom management skills, and shall provide to the instructor of the course, a copy of this Statement of Uncontested Facts document made an exhibit at the hearing of this matter and the Decision and Reasons of this Discipline Committee;
  - (ii) the Member shall provide to the Registrar proof of successful completion of the course referred to (i) above within thirty (30) days following such completion, which written certificate must evidence that the course

provider reviewed a copy of this Statement of Uncontested Facts document made an exhibit at the hearing of this matter and the Decision and Reasons of the Discipline Committee;

- (iii) the Member shall successfully complete an Additional Basic Qualifications (“ABQ”) course which satisfies the curriculum requirements for any future fulltime assignment to be undertaken by the Member at the Elementary level, and shall provide proof to the Registrar, in writing, of same within thirty (30) days following such completion;
  - (iv) the Member shall not return to a fulltime assignment until paragraph (iii) has been complied with; and
  - (v) the Member shall review with a representative of the Elementary Teachers’ Federation of Ontario (“ETFO”) the reporting requirements by teachers to the relevant child protection agencies or governing bodies of any suspicion or cause for suspicion of student abuse or neglect. The Member shall, following such review and within thirty (30) days thereof, provide to the Registrar a letter obtained by the Member from the ETFO representative, verifying the date on which such review took place and confirming the Member’s acknowledgment of her understanding of these reporting requirements;
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, without the name of the

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

## **REASONS FOR PENALTY DECISION**

The reprimand of the Member and the fact that the reprimand will be recorded on the Register serves as a specific deterrent to the Member.

The Committee determined that the course of instruction with an emphasis on positive discipline techniques and classroom management skills will assist the Member in addressing the issues which have given rise to her misconduct and help to remediate and inform her of appropriate methods of classroom management and student discipline.

The need to complete an ABQ course which satisfies the curriculum requirements for any future fulltime assignment will assist the Member in her daily practice which will allow her to engage the students more effectively, thereby assisting with her classroom management.

The Member's review of the reporting requirements by teachers to the relevant child protection agencies or governing bodies of any suspicion or cause for suspicion of student abuse or neglect will ensure that the Member understands the specific reporting requirements as it pertains to the *Child and Family Services Act*.

Publication of the findings and order of the Committee, in summary, without the name of the Member, in *Professionally Speaking/Pour parler profession* provides a general deterrent to the profession, instructs the profession, and advises the public that this type of conduct, physical abuse, improper supervision will be dealt with appropriately. Publication of the findings serves to ensure the public that the members of the profession

are educated on the importance of reporting immediately any suspected abuse of children to the relevant child protection agencies or governing bodies. Publication also informs members of the profession of their duties to report.

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

Date: November 5, 2009

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Brent Hamelin, OCT  
Chair, Discipline Panel

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Robert Ryan, OCT  
Member, Discipline Panel

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Pauline Smart  
Member, Discipline Panel