

**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 Mary E. Michelle Dayfoot, a member of the Ontario College of Teachers.

PANEL: Annilee Jarvis, Chair
 Rosemary Fontaine
 John Tucker

BETWEEN:)	
	)	Paul West,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Jennifer Robinson,
	)	Law Clerk
- and -)	
	)	Kate Hughes,
MARY E. MICHELLE DAYFOOT	)	Cavalluzzo Hayes Shilton
(CERTIFICATE #157369)	)	McIntyre & Cornish LLP
	)	for Mary E. Michelle Dayfoot
)	
)	
	)	Luisa Ritacca,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
)	
	)	Heard: May 21, 2008

REASONS FOR DECISION, DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on May 21 2008 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated January 10, 2008, was served on Mary E. Michelle Dayfoot, requesting her attendance before the Discipline Committee of the Ontario College of Teachers on January 21, 2008 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for May 21, 2008.

The Member was in attendance.

THE ALLEGATIONS

The allegations against Mary E. Michelle Dayfoot in the *Notice of Hearing*, (*Exhibit 1*) dated January 10, 2008, are as follows:

IT IS ALLEGED that Mary E. Michelle Dayfoot is guilty of professional misconduct as defined in subsection 30(2) of the *Ontario College of Teachers Act, 1996* (the “Act”), in that:

- a) she failed to maintain the standards of the profession, contrary to Ontario Regulation 437/97, subsection 1(5);
- b) she abused a student or students physically, sexually, verbally, psychologically or emotionally, contrary to Ontario Regulation 437/97, subsection 1(7);
- c) she failed to comply with the *Act* and the *Education Act*, Revised Statutes of Ontario, 1990, chapter E.2, and specifically section 264(1) thereof or the Regulations made under those Acts, contrary to Ontario Regulation 437/97, subsections 1(14) and (15);
- d) 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);

- e) she engaged in conduct unbecoming a Member, contrary to Ontario Regulation 437/97, subsection 1(19); and
- f) she has displayed in her professional responsibilities a lack of knowledge, skill or judgment or disregard for the welfare of a student or students of a nature or extent that demonstrates that the Member is unfit to carry out her professional responsibilities or that the certificate held by the Member under the *Act* should be made subject to terms, conditions or limitations.

At the hearing on May 21, 2008, College counsel sought to withdraw the following allegations of professional misconduct contained in the *Notice of Hearing*: breaches of Ontario Regulation 437/97, subsections 1(14) and 1(15) and allegations of incompetence as defined in section 30(3) of the *Act* and outlined in paragraphs (c) and (f) above. The Committee agrees that these allegations shall be withdrawn.

AGREED STATEMENT OF FACTS

Counsel for the College advised the Committee that an agreement had been reached on the facts and introduced an *Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty (ASF – Exhibit 2)* which provides as follows:

1. Mary E. Michelle Dayfoot is a member of the Ontario College of Teachers (the “Member”). 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 as a teacher of students with Autism Spectrum Disorder.

3. On August 25, 2007, the Member successfully completed a 3-day course on Special Education Strategies offered by the Elementary Teachers' Federation of Ontario, and has provided proof thereof to the Registrar as evidenced by the attached **Exhibit "B"**.

4. The Member was returned to her teaching duties as of February 11, 2008.

UNCONTESTED FACTS AND PLEA OF NO CONTEST

5. The Member, for the purposes of this proceeding only, does not contest the following facts:

During the 2005/2006 academic year, the Member:

- (a) used inappropriately loud and aggressive language when addressing her students;
- (d) applied unnecessary and unacceptable physical discipline, including using her body weight to restrain a male student when dealing with his aggression;
- (c) used inappropriately loud and aggressive language when addressing a parent who she believed to be in violation of the safe drop-off of a student at the school; and
- (d) disregarded a direction from her Principal to remain off school grounds following her suspension from the school.

6. The Member does not contest, for the purposes of this proceeding only, that the facts described in paragraph 5 above constitute professional misconduct, more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(7), 1(18) and 1(19), and pleads no contest to these allegations of professional misconduct.

7. 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 paragraphs 1 to 5 above, including the referenced exhibits, being presented to the Discipline Committee at the hearing of this matter;
 - (c) she understands that by pleading no contest to the allegations referred to in paragraph 6 above, she is waiving the right to require the College to prove the case against her and the right to have a full hearing on these issues; and
 - (d) she states that this plea of no contest was made voluntarily, unequivocally and with the benefit of independent legal counsel.
8. 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

9. 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 of the Ontario College of Teachers to impose the following terms, conditions or limitations on the Member's certificate of qualification and registration, the fact of such terms, conditions and limitations to be recorded on the Register until such time as they are fulfilled:
- (i) the Member will provide to the Registrar within twelve (12) months of the date of the hearing of this matter, a performance appraisal (as described in O. Reg. 99/02 to the *Education Act*, R.S.O. 1990, c. E. 2). If such appraisal has not been conducted within the prescribed twelve (12) month period, the Member shall make a written request to her employer to conduct such a performance appraisal within six (6) months from the date of such written request, and shall provide to the Registrar a copy of her written request and the response. Should the Member change employers, she shall immediately take all reasonable steps to obtain such an undertaking from her new employer;
 - (ii) the Member shall advise the Registrar within thirty (30) days of the completion of her performance appraisal, and shall provide a copy of the performance appraisal to the Registrar as soon as it is provided to her;
 - (iii) the Member shall advise the Registrar immediately should the request to the employer, referred to in paragraph (i) above, not be granted; and
- (c) directs that there be publication of the findings and Order of the Committee in summary form, including the name of the Member, in the official publication of the College.

10. 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 *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 Mary E. Michelle Dayfoot committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(7), 1(18) and 1(19), as set out in the *Notice of Hearing*.

REASONS FOR DECISION

The Member pleaded no contest to the allegations of professional misconduct and acknowledged that the facts as described in paragraph 5 (the “Uncontested Facts”) of the *Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty* (ASF - Exhibit 2) constitute professional misconduct.

The Committee accepted the Member’s plea of no contest and accepts that the facts contained in the *Agreed Statement of Facts, Guilty Plea, and Joint Submission on Penalty* constitute professional misconduct.

The Member used inappropriately loud and aggressive language when addressing her students and applied unnecessary and unacceptable physical discipline with a student contrary to Ontario Regulation 437/97, subsection 1(5), 1(7), 1(18) and 1(19). She used inappropriately loud and aggressive language when addressing a parent contrary to Ontario Regulation 437/97, subsection 1(5), 1(18) and 1(19). She disregarded a direction from her principal contrary to Ontario Regulation 437/97, subsection 1(18).

Teachers should know that using physical force and aggressive language is not effective or acceptable in managing behaviour. Teachers must be able to demonstrate patience, respect for others and self-control.

PENALTY DECISION

The Committee accepts the joint submission on penalty and makes the following order as to penalty:

- (a) the Member is required to appear before the Committee immediately following the completion of the hearing into this matter to be reprimanded, and the fact of the reprimand is to be recorded on the Register;
- (b) the Registrar of the Ontario College of Teachers is directed to impose the following terms, conditions or limitations on the Member's certificate of qualification and registration, the fact of such terms, conditions and limitations to be recorded on the Register until such time as they are fulfilled:

- (i) the Member will provide to the Registrar within twelve (12) months of the date of the hearing of this matter, a performance appraisal (as described in O. Reg. 99/02 to the *Education Act*, R.S.O. 1990, c. E. 2). If such appraisal has not been conducted within the prescribed twelve (12) month period, the Member shall make a written request to her employer to conduct such a performance appraisal within six (6) months from the date of such written request, and shall provide to the Registrar a copy of her written request and the response. Should the Member change employers, she shall immediately take all reasonable steps to obtain such an undertaking from her new employer;
 - (ii) the Member shall advise the Registrar within thirty (30) days of the completion of her performance appraisal, and shall provide a copy of the performance appraisal to the Registrar as soon as it is provided to her;
 - (iii) the Member shall advise the Registrar immediately should the request to the employer, referred to in paragraph (i) above, not be granted; and
- (c) 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 PENALTY DECISION

The reprimand, its posting on the Register and publication of the findings and order of the Committee, in summary, with the name of the Member, in *Professionally Speaking/Pour parler profession*, serve as a specific deterrent to the Member and a general deterrent to the profession. This sends a message that appropriate behaviour is expected from members of the College.

The provision of the teacher performance appraisal serves as a monitoring component of the penalty and protects the public interest.

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

Date: June 9, 2008

Annilee Jarvis
Chair, Discipline Panel

Rosemary Fontaine
Member, Discipline Panel

John Tucker
Member, Discipline Panel