

**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 Richard John De Marchi, a member of the Ontario College of Teachers.

PANEL: Darlene Mead, OCT, Chair
Pauline Smart
Jacques Tremblay, OCT

BETWEEN:	)	David Leonard,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Jennifer Robinson,
	)	Law Clerk
- and -)	
)	
RICHARD JOHN DE MARCHI	)	William Markle & Stephanie Carey,
(CERTIFICATE #450948)	)	Markle & Phibbs,
	)	for Richard John De Marchi
)	
)	
	)	Julie Maciura,
	)	Steinecke Maciura LeBlanc,
	)	Independent Legal Counsel
)	
	)	Heard: April 27, 2011

DECISION, REASONS FOR DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on April 27, 2011 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated June 7, 2010 was served on Richard John De Marchi, requesting his presence on June 14, 2010 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for April 27, 2011.

Richard John De Marchi was in attendance.

THE ALLEGATIONS

The allegations against Richard John De Marchi in the *Notice of Hearing*, (Exhibit 1) dated June 7, 2010, are as follows:

IT IS ALLEGED that Richard John De Marchi 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).

At the hearing on April 27, 2011, College counsel sought to withdraw the allegations of professional misconduct in paragraphs (a), (b) and (c), namely that the Member breached Ontario Regulation 437/97, subsections 1(5), 1(7) and 1(15). 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 and Plea of No Contest* (Exhibit 2), which provides as follows:

STATEMENT OF UNCONTESTED FACTS

1. Richard John De Marchi (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 Dufferin-Peel Catholic District School Board (the “Board”) and was an elementary teacher at [XXX] School (the “School”), in Mississauga ([XXX]), Ontario.
3. Student #1 and Student #2 were female students at the School during the 2005/2006 and 2006/2007 academic years, during which time they were in [XXX] and [XXX], respectively.
4. Student #1 and Student #2 attended a high school of the Board following their graduation from the School in June 2007.
5. The Member taught Student #1 and Student #2 during both their [XXX] and [XXX] years, and towards the end of their [XXX] year, developed a close friendship with

both families, which included invitations to Student #1 and Student #2's homes for family dinners.

6. The Member was an assistant [XXX] of a [XXX] to which Student #1 belonged and which Student #1's [XXX]. Student #2 was also on the [XXX] and Student #2's [XXX] of the [XXX].

7. From approximately April 2007 to June 2008, the Member made personal comments to and about Student #1, including:

- (a) "Look in the mirror, I don't need to tell you, you already know you're smart, funny and athletic";
- (b) "I don't want this day to end, but it has to", in reference to a day at a [XXX];
- (c) "If there is anything you need, I'm here", a comment made to all the Member's students;
- (d) "When you're old enough and ready, can I take you to a club?"
- (e) "Whether I do or don't have someone in my life, you will always be special", a comment made to Student #1 in the presence of Student #1's mother.

8. The Member gave gifts to Student #1 and Student #2, including an umbrella. To Student #1 he gave a stuffed teddy bear, a pen and pencil set, two scarves, and chocolates. These gifts were given for a birthday and at Christmas with the permission of Student #1 and Student #2's parents.

9. The Member appeared over-protective of Student #1, and on one occasion remarked to her mother – "Your daughter is killing me, she's too over-friendly with the boys". Student #1's mother had previously asked the Member to keep an eye out for her daughter.

10. In May 2008, on learning that a Grade 12 male student had invited Student #1, who was then in [XXX], to the prom, the Member said words to the effect – “If I ever see that boy, I will fucking kill him.” This comment was said in the kitchen of Student #1’s home with the mother and father present and reflected the Member’s concern for Student #1.

11. In July 2008, the Member was charged by Peel Regional Police with uttering a death threat. Following a criminal trial before the Honourable Mr. Justice Casey of the Ontario Court of Justice, the Member was acquitted of the charge on December 16, 2009.

12. The Member was suspended, with pay, by the Board, pending the disposition of the criminal proceeding. He was subsequently suspended, without pay, from April 28, 2010 to May 31, 2010. The Member filed a grievance but accepted the suspension rather than delay his return to the classroom.

13. The Board returned the Member to work as a supply teacher on June 1, 2010 for the remainder of the 2009/2010 academic year, and commencing September 2010, the Member was placed at a different school of the Board.

14. The Member, as part of the grievance settlement, underwent mandatory counselling through the Board’s Employee Assistance Program and successfully completed a boundary course as is evidenced by the Certificate of Completion and course outline attached as **Exhibit “B”**.

PLEA OF NO CONTEST

15. 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 14 above (the “uncontested facts”).

16. The Member hereby acknowledges that the uncontested facts referred to in paragraphs 7, 8, 9 and 10 above, constitute 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 1(18 - unprofessional) and 1(19).

17. 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.

18. 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.

19. 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.

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 Richard John De Marchi committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(18 – unprofessional), and 1(19).

JOINT SUBMISSION ON PENALTY

Counsel for the College advised the Committee that an agreement had been reached on the appropriate penalty and introduced a *Joint Submission on Penalty* (Exhibit 3), which provides as follows:

1. 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 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;

- (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 is to be published and submissions will be made to the Committee on that issue.

REASONS FOR DECISION

The Member admitted the truth of the facts and exhibits referred to in paragraphs 1 to 14 (the "uncontested facts") of the *Statement of Uncontested Facts and Plea of No Contest* (Exhibit 2). He acknowledged that the uncontested facts referred to in paragraphs 7, 8, 9 and 10 above, constitute conduct that is unprofessional 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 and Plea of No Contest*.

The Committee finds that the Member engaged in behaviour that goes beyond the expected boundary between teacher and student. In his dual role as teacher of Students #1 and #2 and [XXX] of a [XXX] in which the Students and their families were involved, over a period of time, the Member took on a role that should have been the responsibility of the parents. The Member developed a close friendship with two students and their parents. With the permission of the parents, the Member gave gifts to Student #1 and Student #2. He also became overly protective of Student #1 and made personal and inappropriate comments to and about her and her relationships. In doing so, the Member

committed acts of professional misconduct as alleged, more particularly breaches of Ontario Regulation 437/97, subsections 1(18 - unprofessional) 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 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 stated that as hearings were open to the public, publication of the name of the Member would promote transparency and openness and foster public confidence in the process.

Counsel for the Member requested that the Committee not publish the Member's name in the official publication of the College. Counsel stated that the facts are at the very low end of the scale and the appropriateness of penalty should be based on the facts. He indicated that there was a risk that the families might be identified if the Member's name was published. Counsel also indicated that the Member was married to a teacher in the same system and publishing his name might cause his wife embarrassment. Counsel indicated it is not necessary to publish the Member's name to achieve the goal of general deterrence. Counsel indicated that the Member was well intentioned and well meaning and he thought he was doing the right thing. According to Member's Counsel, the Member is highly regarded professionally, as evidenced by a Summative Report dated November 7, 2006 in which the Member received an overall performance rating of "Exemplary" and a letter of support from his current principal dated April 26, 2011. In

addition, Counsel provided copies of other cases that had been before the Discipline Committee in support of not publishing 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 Committee directs that there be publication of the findings and Order of the Committee in summary form, without the name of the Member, in the official publication of the College, *Professionally Speaking/Pour parler profession*.

REASONS FOR PENALTY DECISION

The Committee finds that the nature of the Member's misconduct is at the low end of the scale. The reprimand by his peers is a sufficient deterrent to the Member. The fact of the reprimand will remain on the Member's certificate for a period of three years and will serve as a specific deterrent. Remediation has been served by the fact that the Member has undergone mandatory counselling and has satisfactorily completed a training course in Ethical Practices and Boundaries.

Publication of the findings in *Professionally Speaking/Pour parler profession*, without the name, satisfies the need for transparency and openness and serves as a general deterrent to the profession. Publication of the name is not required for specific deterrence as the Member has been educated about the boundaries between teachers and students by the consequences of his own boundary violations that included criminal proceedings (in which the Member was acquitted) and investigations by the Board and the College.

The Committee determined not to publish the Member's name for the following reasons:

- this was a minimal boundary violation
- publication of his name would be disproportionate to the nature of the misconduct
- the Member has taken a course in boundary violations and received counselling
- there is little risk of repetition
- the Member has successfully returned to the classroom as evidenced by his current principal's letter of support and publication might have an adverse effect on his teaching success.

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

Date: April 28, 2011

Darlene Mead, OCT, Chair
Chair, Discipline Panel

Pauline Smart
Member, Discipline Panel

Jacques Tremblay, OCT
Member, Discipline Panel