

**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 David Alan Ditchfield, a member of the Ontario College of Teachers.

PANEL:           Rosemary Fontaine, Chair  
                      Jacques Tremblay  
                      John Tucker

BETWEEN:	)	
	)	David Leonard,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -	)	
	)	
DAVID ALAN DITCHFIELD)	)	David Alan Ditchfield was not
(CERTIFICATE #209094)	)	present, nor was he represented
	)	
	)	
	)	Christopher Wirth,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
	)	
	)	Heard: August 18, 2008

**REASONS FOR DECISION, DECISION AND ORDERS**

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on August 18, 2008 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated November 23, 2005 (Exhibit 1) was served on David Alan Ditchfield (the “Member”), providing him with notice that the Discipline Committee of the Ontario College of Teachers would meet on January 16, 2006 to set a date for a hearing, and specifying the charges. The Discipline Committee set August 18, 2008 as the date for the hearing on the merits.

The College tendered an *Affidavit of Audley Trevor Evans* sworn August 13, 2008 (Exhibit 4) setting out the efforts by the College to ensure that the Member had full disclosure and had proper notice of the hearing. The Committee was satisfied by the details outlined in Mr. Evans’ Affidavit that the Member, through his counsel, had proper notice of the date, time and place of the hearing and that the Member’s Counsel had acknowledged receipt of all disclosure materials which had been sent to him. The Member’s counsel indicated that the Member would not be contesting the proceedings. Subsequently, the Member did not appear at the hearing, nor was he represented by counsel. The Committee commenced the proceedings at 10:48 a.m. in the Member’s absence.

## **THE ALLEGATIONS**

The *Notice of Hearing* sets out the following allegations:

**IT IS ALLEGED** that David Alan Ditchfield is guilty of professional misconduct as defined in sections 30(2) of the *Ontario College of Teachers Act* (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 *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);
- (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 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).

**PARTICULARS OF THESE ALLEGATIONS ARE AS FOLLOWS:**

1. David Alan Ditchfield (the "Member") is a member of the Ontario College of Teachers.
2. Between the approximate dates of 5 October 2004 and 27 January 2005, the Member, who resides in the Township of Leeds and Thousand Islands, by means of a computer, communicated with a person, (hereinafter referred to as "Sarah") whom he believed to have been a female person under the age of fourteen years, and during that communication he:

- (a) masturbated himself and permitted that act to be viewed via a web camera by “Sarah”;
  - (b) informed “Sarah” that he would like to have sexual relations with her and to engage her in other forms of sexual touching with him;
  - (c) asked “Sarah” to meet him in Toronto and suggested that they meet at a motel;
  - (d) purchased female underwear and informed “Sarah” that he intended to give it to her and have her try it on for him;
  - (e) asked “Sarah” to send photographs of herself to him; and
  - (f) arranged to have telephone conversations with “Sarah”.
3. On or about 27 January 2005, at the Township of Leeds and Thousand Islands, the Member had in his possession a firearm, specifically a Mossberg 410 bolt action shotgun, without being the holder of a licence for possession of that firearm.
4. On or about 28 January 2005, the Member was arrested by the Ontario Provincial Police in relation to the activities referred to in paragraphs 2 and 3 above, and following his arrest attempted to escape lawful custody.
5. On or about 28 January 2005, at the Township of Leeds and Thousand Islands, an Information was laid against the Member, by the Ontario Provincial Police, containing the following charges:
- (a) On or about 28 January 2005 at the Township of Leeds and Thousand Islands did escape from lawful custody at 40 Sumac Lane, Seeley’s Bay, after being lawfully arrested, contrary to section 145(1)(a) of the *Criminal Code* (Canada); and

- (b) between 5 October 2004 and 27 January 2005, at the Township of Leeds and Thousand Island did by means of a computer within the meaning of section 342.192 of the *Criminal Code* (Canada) did communicate with a person who he believed was under the age of 14 years, for the purpose of facilitating the commission of an offence contrary to section 172.1(c) of the *Criminal Code* (Canada).

6. On or about 17 February 2005, an Information was laid against the Member, by the Ontario Provincial Police, containing the following charges:

- (a) that on or about 27 January 2005, at the Township of Leeds and Thousand Islands, he did escape from lawful custody at 40 Sumac Lane, Seeley's Bay after being lawfully arrested, contrary to section 145(1)(a) of the *Criminal Code* (Canada);
- (b) that between 5 October 2004 and 27 January 2005, at the Township of Leeds and Thousand Islands, he did by means of a computer within the meaning of section 342.1(2) of the *Criminal Code* (Canada) communicate with a person who he believed was under the age of fourteen years, for the purpose of facilitating the commission of an offence contrary to section 172.1(c) of the *Criminal Code* (Canada);
- (c) that between 5 October 2004 and 27 January 2005, at the Township of Leeds and Thousand Islands, he did by means of a computer within the meaning of section 342.1(2) of the *Criminal Code* (Canada), communicate with a person who he believed was under the age of fourteen years, for the purpose of facilitating the commission of an offence contrary to section 172.1(c) of the *Criminal Code* (Canada);
- (d) that between 5 October 2004 and 27 January 2005, at the Township of Leeds and Thousand Islands, he did by means of a computer within the meaning of section 342.1(2) of the *Criminal Code* (Canada) communicate with a person who he believed was under the age of fourteen years, for

the purpose of facilitating the commission of an offence contrary to section 172.1(c) of the *Criminal Code* (Canada);

- (e) that between 5 October 2004 and 27 January 2005, at the Township of Leeds and Thousand Islands, he did for a sexual purpose invite “Sarah” a person under the age of fourteen years to touch indirectly with a part of his body to wit: his penis, the body of David Ditchfield contrary to section 152 of the *Criminal Code* (Canada);
- (f) that between 5 October 2004 and 27 January 2005, at the Township of Leeds and Thousand Islands, he did for a sexual purpose touch “Sarah” a person under the age of fourteen years indirectly with a part of his body, to wit: his penis contrary to section 151(a) of the *Criminal Code* (Canada);
- (g) that between 5 October 2004 and 27 January 2005, at the Township of Leeds and Thousand Islands, he wilfully did an indecent act, to wit: masturbate, at 40 Sumac Lane, Seeley’s Bay, with intent thereby to offend “Sarah” contrary to section 173(1)(b) of the *Criminal Code* (Canada); and
- (h) that on or about 27 January 2005, at the Township of Leeds and Thousand Islands, he did possess a firearm, to wit: a Mossberg 410 bolt action shotgun, without being the holder of a licence under which he may possess it, contrary to section 91(1) of the *Criminal Code* (Canada).

7. The said charges against the Member are still before the courts.

### **MEMBER’S PLEA**

As the Member was not present, nor represented by Counsel, the Committee proceeded on the basis that the Member denied the allegations set out in the *Notice of Hearing*. The Chair, on behalf of the Member, entered a plea of not guilty to the allegations.

## THE EVIDENCE

Counsel for the College entered into evidence the following additional documents:

### Registered Member Information

David Alan Ditchfield is a member of the Ontario College of Teachers as shown on the *Registered Member Information*. (Exhibit 2)

### Brief of Court Documents – Her Majesty the Queen v. David Ditchfield (Exhibit 3)

A *Brief of Court Documents* with respect to the criminal proceedings against the Member was submitted into evidence. This *Brief* consisted of:

- A. Certified copy of Indictment dated January 26, 2006
- B. Transcript of Reasons for Decision of the Honourable Mr. Justice P. Lalonde on November 7, 2007
- C. Transcript of Reasons for Sentence before the Honourable Justice P. Lalonde on April 16, 2008
- D. Certified copy of Conditional Sentence Order
- E. Certified copy of Probation Order
- F. Certified copy of Order to [XXX] dated April 16, 2008
- G. Certified copy of Prohibition Order dated April 16, 2008.

These Court Documents verify that on or about November 7, 2007 the Member was convicted of the following criminal offences:

- (a) that on or about 27 January 2005, at the Township of Leeds and Thousand Islands, he did escape from lawful custody at 40 Sumac Lane, Seeley's Bay after being lawfully arrested, contrary to section 145(1)(a) of the *Criminal Code* (Canada);

- (b) that between 5 October 2004 and 27 January 2005, at the Township of Leeds and Thousand Islands, he did by means of a computer within the meaning of section 342.1(2) of the *Criminal Code* (Canada) communicate with a person who he believed was under the age of fourteen years, for the purpose of facilitating the commission of an offence contrary to section 172.1(c) of the *Criminal Code* (Canada);

On April 16, 2008 the Member was sentenced to a term of imprisonment of 18 months to be served in the community under house arrest and a period of probation of three years. (Exhibit 4, Tab C, p. 85) He was ordered to [XXX]. (Exhibit 4, Tab 4, p. 60) The Member was also prohibited under s.161 of the Criminal Code of Canada from being in the presence of persons under the age of 14 years unless accompanied by an adult who is 21 years or older. This order is to remain in effect for 10 years. (Exhibit 4, Tab D). In addition, restrictions on the Member's computer usage were ordered.

## **DECISION**

### **(i) Onus and Standard of Proof**

The College bears the onus of proving the allegations in accordance with the standard of proof set out in *Re Bernstein and College of Physicians and Surgeons of Ontario* (1977) 15 O.R. (2d) 477. The standard of proof applied by the Committee, in accordance with the *Bernstein* decision, was a balance of probabilities with the qualification that the proof must be “clear and convincing” and based upon “cogent evidence” accepted by the Committee. The Committee also recognized that the more serious the allegation to be

proved, the more cogent must be the evidence. The Committee considered the allegations in this case to be very serious and assessed the evidence on that basis.

**(ii) 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 David Alan Ditchfield committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(14), 1(15), 1(16), 1(18) and 1(19).

**REASONS FOR DECISION**

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.

In absence of evidence to the contrary, the Committee accepts the specific findings of fact contained in the *Brief of Court Documents* (Exhibit 4) that on or about November 7, 2007, after a trial, the Member was found guilty of one charge of escaping from lawful custody after being lawfully arrested contrary to section 145(1)(1) of the *Criminal Code* (Canada) and one count of communicating with a person who he believed was under the age of 14 years for the purposes of facilitating the commission of an offence contrary to section 172.1 (c) of the *Criminal Code* (Canada).

There was no evidence presented of an Appeal by the Member of his conviction and/or sentence and the time for doing so has expired.

The Committee finds that the Member's conviction for internet luring of a person under the age of 14 years of age, as outlined herein constitutes acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(14) and 1(15).

The Member's criminal convictions contravened laws, the contraventions of which are relevant to his suitability to hold a Certificate of pursuant to Ontario Regulation 437/97, subsection 1(16).

The Member's conduct was disgraceful, dishonourable, unprofessional and unbecoming a member contrary to Ontario Regulation 437/97, 1(18) and 1 (19).

## **PENALTY DECISION**

The Committee makes the following order as to penalty:

1. The Registrar of the Ontario College of Teachers is directed to revoke the Certificate of Qualification and Registration of the Member, which Certificate the Member is to surrender immediately to the Registrar; of the Ontario College of Teachers; and
2. 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 name of the Member in the official publication of the College, Professionally Speaking/Pour parler profession.

## **REASONS FOR PENALTY DECISION**

From October 5, 2004 until January 27, 2005, the Member used a computer to chat with someone who he believed was a 13-year old girl, named “Sarah” in an internet chatroom, “littlegirlsfordaddy”. In reality, the Member was conversing with an OPP officer in a sting operation.

On multiple occasions, these chats involved lewd conversations, and captured on the Member’s web cam full video shots of the Member masturbating to completion. The Member encouraged “Sarah” to do likewise and offered to instruct her in the mechanics of masturbation. The Member suggested that he and “Sarah” meet at a hotel. Before the meeting could be arranged, the Member was arrested on January 27, 2005.

The Committee determined that no member of society should be engaged in this type of behaviour, particularly teachers. The Member was qualified as an elementary teacher, supervisory officer, and director of education. At the time of his arrest, the Member worked as a manager of the Information Technology Department in the Faculty of Education at Queen’s University. (Exhibit 3, Tab C, page 72). The Committee found the nature of the Member’s offences to be very serious. The possible risk to students, given that the Member could return to active teaching, or be in charge of a school or board, was of grave concern to the Committee. Child luring is a serious offence and must be dealt with seriously.

The Committee determined that the Member’s certificate must be revoked. Children are frequent users of the internet. They are vulnerable members of society and must be safeguarded against predators who use the internet to lure them in a situation where they

can be sexually exploited and abused. The offence requires a denunciation and a deterrent.

Publication of the findings and order of the Committee, in summary, with the name of the Member, in *Professionally Speaking/Pour parler profession* provides both a specific deterrent to the Member and a general deterrent to the profession while advising and serving the public interest. It also reassures the public that the College will not tolerate such behaviour and will ensure that this type of misconduct is dealt with appropriately.

In conclusion, the Committee is confident that the penalty serves the interests of the public and the profession.

Dated: August 19, 2008

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Rosemary Fontaine  
Chair, Discipline Panel

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Jacques Tremblay  
Member, Discipline Panel

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John Tucker  
Member, Discipline Panel