

**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 Michael Robert Doucette, a member of the Ontario College of Teachers.

PANEL:           Rosemary Fontaine, Chair  
                    Mel Greif  
                    Annilee Jarvis

BETWEEN:	)	
	)	
	)	Awanish Sinha,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -	)	
	)	Janina Fogels,
MICHAEL ROBERT DOUCETTE	)	Cavalluzzo Hayes Shilton,
(CERTIFICATE #174072)	)	McIntyre & Cornish LLP,
	)	for Michael Robert Doucette,
	)	
	)	Christopher Wirth,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
	)	
	)	Heard: June 17, 2009

**REASONS FOR DECISION, DECISION AND ORDERS**

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on June 17, 2009 at the Ontario College of Teachers (“the College”) at Toronto.

There were two Notices of Hearing issued with respect to Michael Robert Doucette (“the Member”). The first *Notice of Hearing* is dated December 4, 2008 (Exhibit 1). The second Notice of Hearing is dated May 21, 2009. The hearing with respect to these two matters was subsequently set for June 17, 2009.

Michael Robert Doucette was in attendance at the hearing.

## **THE ALLEGATIONS**

The allegations against Michael Robert Doucette in the *Notice of Hearing, (Exhibit 1)* dated December 4, 2008, are as follows:

**IT IS ALLEGED** that Michael Robert Doucette is guilty of professional misconduct as defined in section 30(2) and 40 (1.1) 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 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 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).

The allegations against Michael Robert Doucette in the *Notice of Hearing*, (*Exhibit 2*) dated May 21, 2009, are as follows:

**IT IS ALLEGED** that Michael Robert Doucette is guilty of professional misconduct as defined in sections 30(2) of *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 verbally and physically, contrary to Ontario Regulation 437/97, subsections 1(7) and 1(7.1) as amended by Ontario Regulation 134/08;
- (c) 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);
- (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 June 17, 2009, counsel for the College sought to withdraw the allegations contained in paragraph (c) of both *Notices of Hearing*, being alleged breaches of Ontario Regulation 437/97, subsections 1(14), and 1(15). 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 3)*, which provides as follows:

1. Michael Robert Doucette (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 Hastings and Prince Edward District School Board (the “Board”).
3. With respect to the Notice of Hearing dated 4 December 2008, the Member was a [XXX] teacher at the [XXX] School ([XXX]) during the 2006-2007 academic year.
4. At the same time, A, B and C were female students at [XXX]. A was then [XXX] years of age and B and C were [XXX] years of age.
5. On or around 18 January 2007, the Member, while encouraging A to participate in a game during basketball practice in what he considered to be a jocular manner, brushed the buttocks of A with his right foot.
6. As a result of that incident, the Member received a disciplinary letter from the Board. The Member accepted that his action represented a momentary lapse in judgment and took full responsibility for it. At that time, he made a commitment to exercise better professional judgment in the future and to refrain from physical contact with students.

7. Later in the school year, the Member on one occasion put his hand on the shoulder of B during a discussion regarding a detention and, on or around 3 May 2007, the Member touched the back of C during a dance practice so as to place her on her mark.

8. An investigation was conducted by the Board in respect of the incidents referred to in paragraphs 5 and 7, and the Member was suspended by the Board, without pay, for two days. By letter dated 4 September 2007, a copy of which is attached as **Exhibit “B”**, the Superintendent of Human Resources of the Board wrote a disciplinary letter to the Member.

9. With respect to Notice of Hearing dated 21 May 2009, the Member was a Grade [XXX] teacher at [XXX] School ([XXX]) during the 2007-2008 academic year.

10. At the same time, D was an [XXX] year old male student of [XXX].

11. On or about 27 May 2008, the Member spoke aggressively to, and tousled the hair of D during an exhibition baseball game in Trenton.

12. By letter dated 9 June 2008, a copy of which is attached as **Exhibit “C”**, the Member was suspended by the Board for a period of five days without pay with effect from 3 June 2008.

### **PLEA OF NO CONTEST**

13. 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 12 above (“the Admitted Facts”). The Member hereby acknowledges that the facts referred to in paragraphs 5, 7 and 11 above, constitute 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 – physical), 1 (18 - unprofessional) and 1(19) in respect of Notice of Hearing dated 4 December 2008, and breaches of Ontario Regulation 437/97 1(5), 1(7), 1(7.1), 1(18 - unprofessional) and 1(19) in respect of Notice of Hearing dated 21 May 2009.

14. 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 and Exhibits as set out in paragraphs 1 to 12 above, being presented to the Discipline Committee at the hearing of this matter;
- (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 full hearing on these issues; and
- (d) he understands and acknowledges that he is executing this Agreement voluntarily, unequivocally and with the advice of legal counsel.

15. 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, Ch. E23 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 proceedings.

16. 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**

17. The Ontario College of Teachers and the Member jointly submit that the appropriate penalty to be imposed by the Discipline Committee in these matters would be that the Committee:

- (a) directs that the Member appear before the Committee immediately following the hearing of these matters 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 the Registrar to impose a term or condition on the Member's certificate that the Member is to enrol in and complete, at his own expense, within three (3) months from the date of an Order of the Discipline Committee, a course of instruction, pre-approved by the Registrar, regarding appropriate boundaries and boundary violation issues and that the Member shall deliver directly to the Registrar, within thirty (30) days of its completion, a written certificate from the course provider stating:
  - (i) that he or she has reviewed a copy of this document and the Decision and Reasons of the Discipline Committee; and
  - (ii) that the Member has successfully completed the course; and

- (c) 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 upon whether the Member's full name will be included in the publication and submissions will be made to the Committee on that issue.

18. By this document, the Member acknowledges his 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 Member's plea of no contest and the *Agreed Statement of 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 Michael Robert Doucette committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1 (7 – physical), 1 (18 - unprofessional) and 1(19) in respect of *Notice of Hearing* dated December 4, 2008, and breaches of Ontario Regulation 437/97 1(5), 1(7), 1(7.1), 1(18 - unprofessional) and 1(19) in respect of *Notice of Hearing* dated May 21, 2009.

## **REASONS FOR DECISION**

The Member admits the truth of the facts and Exhibits referred to in paragraphs 1 to 12 of the *Agreed Statement of Facts, Plea of No Contest, and Joint Submission on Penalty* and

acknowledges that the facts described in paragraphs 5, 7, and 11 thereof constitute professional misconduct and pleaded no contest to these allegations of professional misconduct. The Committee accepted the Member's plea of no contest and the facts contained in the *Agreed Statement of Facts, Plea of No Contest, and Joint Submission on Penalty*.

On various occasions between January 18, 2007 and May 27, 2008, the Member either spoke aggressively to or made physical contact with students. This behaviour constitutes professional misconduct in that the Member committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(7) and 1(7.1) (physical and verbal), 1(18 - unprofessional) and 1(19).

## **SUBMISSIONS WITH RESPECT TO PUBLICATION**

### **Submissions of College Counsel**

College Counsel submitted that publication should include the name of the Member unless there are full, clear, and prominent reasons not to publish or special circumstances such as identification of a student. Counsel further stated that publication with the name of the Member acts as a general and specific deterrent. Counsel also submitted that since the hearings are open to the public there is an expectation of full publication, including the member's name. Full publication supports the transparency of the proceedings and promotes public confidence in the process. Counsel indicated that not to publish the name would send a tacit message of tolerance for the Member's behaviour.

### **Submissions of Member's Counsel**

Counsel for the Member requested that the name of the Member not be published and indicated that each case must be considered on the facts and that there was no presumption in favour of publication. Member's Counsel submitted that publication of the Member's name would not advance the public interest because the public interest was served by the notation on the Public Register, the reprimand and the course work. She noted that the notation of misconduct would remain on the Register for a period of three years and since the hearing was a public and open proceeding, the goal of advancing the public interest was achieved.

Counsel further stated that there were no complaints prior to the matters before the Committee and no incidents following the issuance of the second Notice of Hearing. She stated that the conduct, incidental touch, was not sexual. There was no evidence of harm or ongoing safety concerns that would warrant the further penalty of publication. Counsel submitted that the Member had already experienced the penalty of two suspensions by his employer. She indicated that publication of the Member's name was not required as a specific deterrent as he had learned that physical contact of any type is inappropriate. The reprimand and the course would be sufficient. She stated that the gravity of his conduct has hit home to the Member. He has taken ownership of his actions and publication will not serve further deterrence. Counsel indicated that general deterrence was achieved by publication of the summary and findings without the name of the Member.

Counsel further asked the Committee to consider not publishing the Member's name in other media, such as the College's website, the College library, and on Quicklaw.

### **PENALTY DECISION**

The Committee makes the following order as to penalty:

- (a) The Member is required to appear before the Committee following the completion of the hearing of these matters to be reprimanded and the fact of the reprimand is to be recorded on the Register of the Ontario College of Teachers.
- (b) The Registrar is directed to impose a term or condition on the Member's certificate that the Member is to enrol in and complete, at his own expense, within three (3) months from the date of an Order of the Discipline Committee, a course of instruction, pre-approved by the Registrar, regarding appropriate boundaries and boundary violation issues and that the Member shall deliver directly to the Registrar, within thirty (30) days of its completion, a written certificate from the course provider stating:
  - (i) that he or she has reviewed a copy of this document and the Decision and Reasons of the Discipline Committee; and
  - (ii) that the Member has successfully completed the course; and
- (c) 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 Committee supports the joint submission on penalty with respect to the reprimand and the course on boundaries and boundary violation issues. The reprimand of the Member by his peers in respect of his inappropriate conduct serves to reinforce to the Member that his behaviour is deemed to be professional misconduct. The fact that the reprimand will be recorded on the Register for three years also serves as a specific deterrent to the Member. The course of instruction regarding appropriate boundaries and boundary violation issues will reinforce the Member's understanding of the requirement to maintain appropriate physical boundaries. It is expected that upon completion, the Member will apply the course concepts to his professional practice and interactions with students.

With respect to the issue of publication of the Member's name, the Committee considered the submissions of both counsel. The Committee concluded that publication of the findings and order of the Committee, in summary, without the name of the Member, in *Professionally Speaking/Pour parler profession* was appropriate. The nature of the Member's misconduct was not serious. There was no evidence presented that any of the students had suffered harm. There were no safety concerns identified. There was no evidence before the Committee of any prior or subsequent misconduct. The goals of penalty to remediate the Member, to provide specific and general deterrence, and to inform the profession that the College treats this type of behaviour seriously can be met without publishing the name of the Member. Publication of the findings and summary is sufficient to serve the public interest.

### **Issue of Publication in Other Media**

The Committee considered the request of Member's counsel regarding publication of the decision, including the Member's name in media forms other than *Professionally Speaking/Pour parler profession*. The Committee's jurisdiction with respect to publication comes from Section 30(5) of the Act which refers to publication in *Professionally Speaking/Pour parler profession*. The Committee determined it does not have the jurisdiction to restrict the College in its internal practices regarding publication following an open hearing.

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

Date: June 17, 2009

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Rosemary Fontaine  
Chair, Discipline Panel

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Mel Greif  
Member, Discipline Panel

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Annilee Jarvis  
Member, Discipline Panel