

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 William Johan Fabel, OCT, a member of the Ontario College of Teachers

MINORITY DECISION (LYNNE MASTIN)

I have had the benefit of reading the majority decision in this matter. With respect to the 61 incidents of professional misconduct alleged by the College, I concur with the majority decision on 44 of those incidents, and disagree with respect to 13 of them.

Of those 13 incidents, I make different findings of fact for some of them. For the others, I make the same findings of fact as the majority, but reach a different conclusion on whether these facts constitute professional misconduct. The details are as follows.

CONDUCT WITH STUDENTS

#1 [XXX]: “... I'll burn you so bad you'll wish you died as a child”

#5 Using “I'll burn you so bad” as a stock phrase in classroom discipline

On these related allegations, I disagree with the majority of the Committee that the Member did not use the specific phrase, “...I'll burn you so bad you'll wish you died as a child.” As the majority itself notes, [XXX] witnessed the incident in question and corroborated Ms. [XXX]'s testimony that this phrase was used. Melissa Tessier, by contrast, was not present when the incident occurred.

The fact that the incident with Ms. [XXX] was dealt with by the school administration is irrelevant as to whether the Member's behavior meets the standard for teachers of Ontario.

While I agree with the majority that the Member used the phrase “I'll burn you so bad” as a disciplinary stock phrase in the classroom, I disagree that the Member's behavior does not constitute professional misconduct. Whether or not students believed that the Member would literally burn them is irrelevant. What is at issue is whether it is reasonable to conclude that

students would feel threatened by the Member's use of this phrase. In my view, students would feel threatened. It is totally unacceptable that a teacher would speak to a Grade [XXX] student, or any student, in this manner. The expectations of teachers and the public as to the standard of communication between a teacher and student are higher than what the Member demonstrated.

I find that the Member's conduct constitutes verbal, psychological or emotional abuse of students (Ont. Regulation 437/97, s.1(7)); and that such conduct would reasonably be regarded by members as unprofessional (Ont. Regulation 437/97, s.1(18)). I also find that the Member is incompetent in that he displayed a disregard for the welfare of students to an extent that demonstrates that the Member is either unfit to carry out his professional responsibilities or that the Member's certificate should be made subject to terms, conditions or limitations (s.30(3)).

#13 In-class criticism of the attire of female teachers.

I agree with the majority's finding of fact that the Member participated in classroom discussions that were critical of the attire of some of the female teachers at school. However, I disagree with the majority in that I find the evidence does support a finding of professional misconduct.

As the majority notes, there was evidence of comments by the Member that several young teachers dressed inappropriately, "like saran wrap, and you know-it doesn't leave anything to the imagination" (Transcript of evidence of [XXX], November 22, 2006, p. 210, lines 11-18). This was confirmed by the Member's own witness, [XXX] (Transcript of evidence, September 28, 2007, p. 53, lines 15-18 and p. 55, lines 6-18).

Another of the Member's witnesses, [XXX], when examined by College counsel, testified as follows.

Q. Did you ever hear Mr. Fabel say anything negative about any other teacher?

A. He said some of the teachers dressed inappropriately, some of the young teachers and—

Q. By "inappropriately", do you recall what he specifically said?

A. Very—too short skirts for a teacher, too tight of a blouse, because we, us, we made comments, very rude comments about some of the women teachers, and he's like, Yeah,

they do dress very inappropriate for teaching at a Catholic high school. (Transcript of evidence of [XXX], September 27, 2007, p. 174, lines 10-20).

...

Q. So you mentioned that Mr. Fabel indicated that some of the—in his view, some of the teachers dressed inappropriately, and I—and I—you're saying it's—it's suggestively, is that the word you used?

A. Yes.

Q. And what do you understand suggestively to mean?

A. I feel bad to say it. Not very classy, you know.

Q. Suggestive what?

A. Dressed too sexually for having lots of high school boys around them, you know, hormones and everything. (Transcript of evidence of [XXX], September 27, 2007, p. 175, line 15 to p. 175, line 3.)

Another witness called by the Member, [XXX], testified as follows.

Q. ...And do you remember in some of these class discussions about other teachers a class discussion about the way some of the other teachers in the school dressed?

A. Yes.

Q. And do you remember Mr. Fabel suggesting to the class that he disapproved about the way some of the teachers in the school dressed?

A. Yes.....

Q. All right. So you were telling us that you remember Mr.—Mr. Fabel telling the class that he disapproved of some of the way—the way in which some of the teachers dressed at the school?

A. Yes.

Q. And to you remember in particular Mr. Fabel telling the class that he thought some of the young female teachers dressed suggestively?

A. And you understood that to mean that Mr. Fabel thought some of the young female teachers dressed in a way that was too sexual?

A. Too—yeah, too sexually for Grade 12 boys to look at. (Transcript of evidence of [XXX], October 24, 2007, p. 167, lines 8-16 and p. 168, lines 6-19.)

The Member's expression of his disapproval of the dress of his colleagues and his description of their attire are unacceptable. The Member should not have allowed students to make "very rude comments" about any teachers. The Member should have shut down the conversation immediately and informed students that this type of discussion was not allowed in his classroom. Instead of doing so, the Member agreed with the students and added his own comments. The Member's behavior displays a lack of respect for the teachers he was referring to and undermines the respect that students should hold for their teachers. If the Member believed that these young teachers were dressing inappropriately, he should have expressed this to the principal in order that she could deal with the situation.

I find that the Member failed to maintain the standards of the profession (Ont. Regulation 437/97 s.1(5)); is in breach of s. 264(1)(c) of the *Education Act* by failing to inculcate by precept and example the highest regard for loyalty (Ont. Regulation 437/97, s. 1(15)); is in breach 264(1)(d) of the *Education Act* by failing to assist in developing cooperation and coordination of effort among the members of the staff of the school (Ont. Regulation 437/97, s.1(15)); has conducted himself in a manner that would reasonably be regarded by members as unprofessional (Ont. Regulation 437/97, s.1(18)); and has engaged in conduct unbecoming a member (Ont. Regulation 437/97, s.1(19)). I also find that the Member is incompetent in that he displayed a lack of judgment of a nature or extent that demonstrates the Member is either unfit to carry out his professional duties or that the Member's certificate should be made subject to terms, conditions and limitations (s.30(3)).

#59 Telling his students that he had just disciplined a student for skipping class by stating that "something that wide and poorly dressed can't be missed"

I find as a matter of fact that the Member did make a derogatory comment about [XXX]'s size to

his students. I also find that this incident supports a finding of professional misconduct.

I do not accept the Member's version of what he said about the incident. His evidence was:

...I said, Listen. I said, Just a word to the—to the—to the wise—words that are along these lines. I—I don't remember exact words—if you're going to be walking in the hallway, you know, essentially out of class, don't draw attention to yourself, either by being out of uniform or making noise. And I said, Because, like—basically, like, a large group will not go unnoticed. (Transcript of evidence of William Fabel, April 17, 2008, page 56, lines 13-20.)

Given [XXX]'s evidence, it is not logical to conclude that the Member used the adjective "large" with respect to the number of students in the hallway, rather than with respect to describing [XXX]. [XXX]'s evidence was as follows.

This is in Grade [XXX], [XXX] class, and he would always joke with the class, obviously, about fat people. And he said something about How can I forget someone so large and in charge? Apparently, he made a uniform infraction earlier that day, and one of the boys in class said, "[XXX]" and he-like he didn't give out her name, [XXX], and then one of the boys said, "[XXX]". And he said, Yeah, yeah. That's who we're talking about. And the whole class just laughed, because she was an overweight student, and everyone pretty well knew who she was. And that night I informed her about what happened.

[XXX]'s evidence, while hearsay, was slightly different than that of [XXX]. Her understanding from [XXX] was as follows.

Q. Okay, what did [XXX] tell you?

A. "She told me that Mr. Fabel was saying stuff about how he caught students in the hallway, and that—made a comment towards one of the students, "that something that wide and that poorly dressed couldn't be missed."

Q. Is that exacting what she said to you?

A. Yes.....

Q. Did you do anything to ascertain whether it was true?

A. Yeah, I asked another student from the class that did not converse at all with [XXX], and the other student verified pretty much the exact same statement that was made. (Transcript of evidence of [XXX], March 9, 2006, page 397, lines 5-16 and page 398, lines 6-11.)

There is no evidence from the Member that he explained to Ms. [XXX] what he actually had said, but Ms. [XXX] testified as follows.

A: Mr. Celestino told Mr. Fabel what I had said, and what the other students were saying, and Mr. Fabel denied that that ever said, that it must have been taken out of context, or that it was misunderstood by the students, and that—he asked me if I was in one of his classes, or if I was taking one of his classes, and I had said no, and he said, “Okay, well, I won’t hold this against you or anything like that.” And he shook my hand and then he left the room.

Q. So you said Mr. Fabel said the class must have taken it out of context?

A. Yes.

Q. Did he tell you what he did say?

A. No. (Transcript of evidence of [XXX], March 9, 2006, page 400 lines 12-25.)

Ms. [XXX]’s evidence was that Mr. Fabel stated that, “it must have been taken out of context.” Similar words were used by the Member to explain his conduct on many occasions during his testimony. I find on the balance of probabilities that the Member did make a statement to his students that was demeaning of [XXX]’s physical appearance. While not determinative with respect to my finding, I note that there is other evidence that the Member made comments to his students about the his ex-wife being fat and using derogatory descriptions of her such as “whale”, “ugly”, “fat cow”, “Hippo”, “Jabba the Hut”, “Fat” and “Rhino at the Zoo” (see incident #56, as considered by the majority).

It is unacceptable for a teacher to make any comment about a student’s physical appearance. The Member’s flippant remark about Ms. [XXX]’s appearance is disgraceful.

The Member’s statement to Ms. [XXX] - “Okay, I won’t hold this against you or anything like that” - is telling. He gives the impression that he is the offended party and not Ms. [XXX]. Even

if I accepted the Member's testimony as accurate, which I do not, his interaction with an upset student is less than commendable.

I find the Member failed to maintain the standards of the profession (Ont. Regulation 437/97, s. 1(5)); that his conduct constitutes verbal, psychological and emotional abuse of a student (Ont. Regulation 437/97, s.1(7)); that he is in breach of the s. 264(1)(c) of the *Education Act* by failing to inculcate by precept and example the highest regard for humanity (Ont. Regulation 437/97, s. 1(15)); that his conduct that would reasonably be regarded by members as unprofessional (437/97) s.1(18)); and that his conduct was unbecoming a member (Ont. Regulation 437/97, s.1(19)). I also find that the Member is incompetent in that he displayed a lack of judgment and disregard for welfare of students of a nature or extent that demonstrates that the Member is either unfit to carry out his professional duties or that the Member's certificate should be made subject to terms, conditions or limitations (s.30(3)).

HARASSMENT, INTIMIDATION AND DISRESPECTFUL TREATMENT OF COLLEAGUES

I find as a matter of fact that the Member engaged in disrespectful treatment of three of his colleagues, and that the disrespect reached the level of professional misconduct. Those three colleagues are Melissa Tellier, Deanna Piazza and Marissa Lipari.

(a) Alleged Incident Involving Melissa Tellier

There was one incident involving Melissa Tellier. The evidence of the Member and Ms. Tellier regarding the incident was very different. While the majority resolved this conflicting evidence in favour of the Member, I find in favour of Ms. Tellier and also find, on the balance of probabilities, that the incident occurred as she alleged.

#20 Saying to Melissa Tellier during literacy testing, "With tits that size, you'll be a horrible mother one day"

Ms. Tellier testified about an incident that took place in the gym at [XXX]'s while she was invigilating a literacy test. She stated that while she was bent over to assist a student, the Member came up behind her and made the following statement: "With tits that size, you'll be a horrible mother one day." She spun around to see who it was. She testified that at that time she had no idea who Mr. Fabel was. After the test she went to the prep room. Her colleagues noticed

that she was upset and she told them what happened. They said that she should report it, but the witness told them, “No, I’m not going to report this, and I’m just going to let it go.” (Transcript of evidence, July 4, 2007, page 102, line 1 to page 104, line 6.)

Ms. Tellier stated that she did not report the incident because, in her words:

I was brand new. I had—I was fresh out of teachers college. I was a single female, new at the school, knew nobody at the school. I just let it go, and I thought it’s going to be water off my back and I’ll let it go. And I’m just going to try to avoid this man as much as possible. I have no idea why you said this to me. I have no idea what grounds you had to come and say this to me. I just ignored him and ignored the whole fact. (Transcript of evidence of Melissa Tellier, July 4, 2007, page 103, lines 13-21.)

Ms. Tellier testified that she only became aware of who the Member was after the incident involving [XXX]. She testified that, “...I proceeded to open up a year book to see who Mr. Fabel was, because I wasn’t sure who he was. It was then when I realized who he was.” (Transcript of evidence, July 4, 2008, page 123, lines 9-13.)

Ms. Tellier was asked by College counsel how the comment made her feel. Her answer was:

I felt degraded. I was shocked that anyone that would say that to me. I had no idea who he was, and for someone to say that to me, that’s very degrading as a professional, but also as a woman. I thought I dressed professionally, and to say that, it—it hurt that someone would say to me, someone that I didn’t even know. (Transcript of evidence, July 4, 2007, page 102 line 25 to page 103, lines 1-7.)

The Member denies the allegation. He was asked under cross-examination by College counsel what motive Ms. Tellier could have for making this allegation.

Q. What about Melissa Tellier? What were the issues? Why did she have issues with you?

A. I don’t even know Melissa Tellier other than the fact that she hangs around with that particular group of individuals.

Q. Okay. So again it's guilt by association?

A. Well, it's not guilt by association, ma'am. You know, when you're friends you have a tendency to have the same value sets and the—and the same, you know, I guess aspirations, et cetera, and when you—when you have a friend that's under assault by somebody, you tend to, you know, commiserate with them, [emphasis added] give them advice on how to handle things and then you, sooner or later, psychologically you're going to ally yourself with them. This was a group that went out and drank almost every week together, socialize. (Transcript of evidence, April 22, 2008, page 253, lines 16-25.)

The Member's explanation as to why Ms. Tellier would falsely testify against him is revealing. He is acknowledging that someone, or perhaps more than one teacher with whom Ms. Tellier socialized, felt that they were "under assault by somebody", that "somebody" presumably being the Member. He assumes that this situation caused Ms. Tellier to sympathize with them and support them by making up the alleged incident.

The Member's assumption about Ms. Tellier does not support his testimony at other times as to why certain teachers wanted to get rid of him, namely:

1. he was not a Roman Catholic (transcript of evidence, April 22, 2008, page 245, line 21);
2. he did not take part in "that illegal strike" (transcript of evidence, April 22, 2008, page 245, line 23);
3. he served in the Canadian Forces (transcript of evidence, April 16, 2008 page 145 line 23 to page 467 line 15); and
4. he was labeled as a "right-winger" (transcript of evidence, April 16, 2008 page 48 lines 5-11).

On the contrary, the Member is claiming that the reason that certain teachers wanted to get rid of him was that they felt "under assault".

The Member's counsel submitted that Ms. Tellier's evidence is "not sufficiently reliable (strong and unequivocal) to be the basis for a finding of misconduct" for four reasons.

First, Ms. Tellier did not actually see Mr. Fabel make this statement as he was behind her at the time. She testified that she did not identify Mr. Fabel as the individual who made the statement until six months later.

Q. So you couldn't actually see him?

A. As he stepped going towards the front of the row, I looked up to see who had said this, and he was looking back snickering. I saw his face. I proceeded to help the student...

Q. How did you tell your friends about it if you didn't know who he was?

A. I just described him. I described who was in there, and they also saw who was in there. They were in there also.

Q. Right. But when you went back—you went back to the prep room and you told your friends in the English department what had happened, you're telling us you didn't know who he was?

A. No.

Q. Right. And nobody identified him for you at that time?

A. They said—they went through a few different people that were there, and I said I don't know who it was. I'm just forgetting about it. (Transcript of evidence of Melissa Tellier, July 4, 2007, page 144, line 19-23, and page 145, line 19 to page 146, line 8.)

Second, counsel notes that Ms. Tellier did not tell the Board about the details of this incident when she was interviewed by the Board in November 2002. Under cross-examination Ms. Tellier was asked:

Q. And so what you are telling us is that with College counsel, you decided that you weren't going to tell them the whole story?

A. Not tell the whole story?

Q. Yes. You were just going to tell them that there was something negative about your breasts?

A. I didn't want to make any comments, period, on it, and then I was told that comment had been made in regards to here. So I knew I would have to tell the whole story.

Q. Right. But you're telling us you haven't told the whole story until today?

A. To anybody else, correct.

Q. No, to anybody?

A. Except for you today, correct. It's an embarrassing story. Why would I keep telling it over and over again? (Transcript of evidence, Melissa Tellier, July 4, 2007, page 139, lines 12 through Page 140, line 3.)

Ms. Tellier's evidence revealed that she did not intend to reveal this "degrading" and "embarrassing" incident to the School Board and to the College, but was forced to do so because of Marisa Lipari's reference to it in her diary.

Third, the Member's counsel notes that Ms. Tellier's evidence is different than the version of events recorded in Ms. Lipari's diary. Ms. Lipari's diary states that Ms. Tellier told her the offending comment was, "you don't have to listen to her, she has no tits." (Exhibit 3, Tab 2(b)).

Marisa Lipari was one of the colleagues with whom Ms. Tellier spoke in the prep room after the incident. Under cross-examination, Ms. Tellier was asked as follows.

Q. Okay. And my question to you is, is it possible that you told Marisa Lipari this version as it's recorded?

A. No, I told her the same remark that I told you.

Q. Okay. So Marisa Lipari, then is mistaken in recording it in this manner? That's just what you have said.

A. For this specific event, yes.

Q. Okay. And she also says, “She informed me she would be doing something about this. I wished her luck.” Did you tell Marisa Lipari that?

A. That I was doing nothing about it?

Q. Yes, that you would do something about it.

A. I was doing nothing about it. I was letting it go.

Q. So I guess that you’re telling us is that Marisa Lipari—this recording is actually quite inaccurate?

A. For this specific one, yes.

...

Q. And you want this panel to believe that this incident happened and you told your friends about it, and you talked about it, but you didn’t bother going to find out who it was for six months?

A. It’s an embarrassing issue as a woman, why would I keep bringing it up?

Q. Why? Why? Because it upset you?

A. It’s embarrassing.

Q. Did it upset you?

A. Did it upset me? Yes.

Q. It upset you. You talked to your friends about it, but you didn’t even bother finding out who it was?

A. I let it go. (Transcript of evidence of Melissa Tellier, July 4, 2007, page 136, lines 9 to page 137, line 4 and page 146, lines 9-22.)

Ms. Lipari’s diary has several inconsistencies when compared to other witnesses’ testimony. It appears that, contrary to her testimony, Ms. Lipari wrote a number of her entries much later than within a day or two of when the incidents occurred. Ms. Lipari used phrases such as “This

continued on four different occasions”, “He often let class out early”, “On many occasions he would leave at the beginning of fourth”, “[XXX] came to me later in the semester”. (underline mine). The underlined phrases are not ones that would be used if the event was recorded within a couple of days of an incident. This may account for the inconsistencies between her diary and several witnesses’ testimony. Events that Ms. Lipari recorded in her diary that involved third parties are not as accurate as several of the incidents that she recorded that happened to her. In this instance, Ms. Tellier’s account of what happened is what should be relied upon as she is the one to whom the incident allegedly happened.

The fourth argument made by Member’s counsel with respect to Ms. Tellier’s credibility is that none of the students writing the EQAO exam, presumably in silence, were called to corroborate her evidence.

Ms. Tellier testified that she did not report the incident at the time for the reasons set out above, making it difficult to ascertain who the student was that she was assisting at the time of the alleged remark. It would have been helpful, however, if the College had called this student as a witness.

This allegation revolves around credibility. Who is to be believed, Ms. Tellier or the Member?

From the Member’s perspective, why would he make such an inappropriate remark to a fellow colleague with whom he was not acquainted? There cannot be a rational reason for this to have happened. However, there was other evidence that Member made derogatory statements about other colleagues, one of whom he did not know (Marisa Lipari, alleged incidents #28 and #29), for no apparent reason. There is also evidence that the Member would express his opinions loudly in public areas such as the prep room to no one in particular (alleged incidents #30 and #31).

On several occasions the Member testified that statements made by him were taken out of context. It was revealed in the evidence of the Member and Mrs. Fabel that during the winter of 2001-2002, Mrs. Fabel was a breastfeeding mother on maternity leave from [XXX]’s. This situation would provide some context for why the Member could make a reference to a colleague’s “tits” as being unsuitable for a mother.

From Ms. Tellier's perspective, why would a young teacher in a one-semester placement at [XXX]'s, with no permanent position at the Board, risk her future by inventing such a "degrading" and "embarrassing" story about an experienced staff member with whom she was not even acquainted?

Ms. Tellier was a novice teacher, who spent only one semester at [XXX]'s School. How close a bond could she have created with "that particular group of individuals" and why would she put her entire career at risk by perjuring herself for a group of teachers that she worked with for one semester? In addition, she was not employed at [XXX]'s in the fall of 2002 when the Member was suspended. She would have been in university at the time of "that illegal strike", so the Member's other argument as to why some teachers wanted to get rid of him would not apply to Ms. Tellier.

The Member's explanation as to why Ms. Tellier would lie on the witness stand is simply not credible in light of his other evidence as to why certain teachers did not like him.

In addition, the Member's acknowledgement that certain teachers felt "under assault by somebody" reveals the tense relations that existed at the school and reveals that the Member was aware of the impact of his behaviour on some female staff.

Based upon the evidence and for the reasons set out above, I find that on the balance of probabilities this incident occurred. I find the Member's statement to Ms. Tellier to be harassment of a colleague.

As such the Member's actions constitute professional misconduct in that he failed to maintain the standards of the profession (Ont. Regulation 437/97, s. 1(5)). I also find that he breached s. 264(1)(c) of the *Education Act* by failing to inculcate by precept and example the highest regard for loyalty (Ont. Regulation 437/97, s. 1(15)); breached s. 264(1)(d) of the *Education Act* by failing to assist in developing cooperation and coordination of effort among the members of staff of the school (Ont. Regulation 437/97, s. 1(15)); engaged in conduct that would reasonably be regarded by members as unprofessional (Ont. Regulation 437/97, s.1(18)); and engaged in conduct unbecoming a member (Ont. Regulation 437/97, s.1(19)).

(b) Alleged Incidents Involving Deanna Piazza

There was evidence regarding four incidents involving the Member and Ms. Piazza. Three of these incidents, namely incidents 32, 33 and 34, do not, when considered individually, amount to professional misconduct. However, these incidents, when considered all together, nevertheless show a pattern of disrespectful treatment by the Member towards Ms. Piazza. It is in light of this pattern of disrespectful treatment that I conclude that, with respect to incident 35, the Member committed professional misconduct as alleged, for the reasons outlined below.

#32 Challenging Deanna Piazza as to why she was chosen for a position without adequate competition and claiming that she was only chosen because she was “non-threatening”.

This incident, which occurred in December 2001 was the first of several encounters between Deanna Piazza and the Member. It revolved around a conversation between the Member and Ms. Piazza about her new job as the life skills teacher. Ms. Piazza’s recollection of the conversation and the Member’s is quite different.

Ms. Piazza recalled that the Member asked her several times, “Why did they choose you?” Ms. Piazza responded, “I don’t know.” Ms. Piazza stated that the Member: “persisted to ask again, and so my response was ‘I don’t know. If you want to know, then go to administration and ask.’” She said that the Member responded, “I think they gave it to you because you’re non-threatening.” (Transcript of evidence of Deanna Piazza, July 5, 2007, Page 7, line 4 to Page 9, line 11.)

When asked how she felt about the exchange, Ms. Piazza stated, “Embarrassed. In fact, I said to him, ‘You are embarrassing me in front of our colleagues. You’re being very unprofessional.’” (Transcript of Deanna Piazza, July 5, 2007, page 10, lines 3-5.)

When asked by College counsel why she thought the Member was being unprofessional, Ms. Piazza stated as follows.

It wasn’t simply because he asked the question. I guess it was just his demeanor and his tone, his attitude, as though I had to answer to him, that I found to be unprofessional, and

also the fact that he said that I was non-threatening. Didn't quite understand that so....
(Transcript of evidence, July 5, 2007, page 10, lines 10-15.)

Under cross-examination Mr. Bloom asked Ms. Piazza the following questions.

Q. And do you recall Mr. Fabel asking you whether the position had been posted?

A. No.

Q. Don't recall that?

A. I don't recall that question being asked.

Q. And I'm sorry, I'm not recalling your answer. Did you tell us this morning that you weren't-- didn't remember whether it had been posted or not?

A. No, I didn't say that. I don't believe I said that.

Q. Had the position been posted?

A. Not to my knowledge. (Transcript of evidence of Deanna Piazza, July 5, 2007, page 44, lines 2-14.)

The Member, when examined by Mr. Bloom, stated that he had asked Ms. Piazza if the job had been posted. His evidence was as follows.

I don't recall it being posted. You know, was—was it actually posted up? It wasn't—I wasn't intending to, you know, demean her or belittle her or anything like that. I was happy she got the job, and from what I remember, she said, No, it wasn't posted here. It was post—you know, words to that effect, it was posted somewhere else in the school. And I said, Oh, okay, and I said, Well, I think you—I think you'll make a good person in there, I said, you know, working in the special ed. And she said, Why? And I said, Because, I said, you're – you're a very nonthreatening, you know, person. I said, You're, you know—I meant, you know, You're nonthreatening. You won't scare the kids. You won't upset the applecart. (Transcript of evidence of William Fabel, April 16, 2008, Page 110, line 14 to page 111, line 19.)

Under cross-examination Ms. Langford asked the Member:

Q. You said you also had some issues with the board for not posting jobs.

A. Yeah. There were—there were a couple of incidents where they were either posted late or they were posted and—and they had either fallen off the board or somebody had removed them.

The Member admitted that he had an issue with job postings at the school and that he had asked the question because “I just wanted to confirm whether or not the-the job had actually been posted. I might have missed it. It was just a –again, it was a much to do about nothing. It was just, Was it posted? I didn’t see it.” (Transcript of evidence, April 23, 2008, page 13, line 24 to page 14, line 3.)

Ms. Piazza did not recall Mr. Fabel asking her if the job had been posted, but rather the question was “Why did they choose you?” Either of the questions, if repeated several times to Ms. Piazza, gives the impression not of idle curiosity as suggested by Mr. Fabel, but appears to reflect Mr. Fabel’s admitted issues around job postings.

The Member’s comment, “It was just a-again, it was a much to do about nothing,” appears to reflect his attitude rather than that of the witness, as he felt the need to pursue his questioning.

The Member claimed that he was complimenting Ms. Piazza when he stated that she was non-threatening. Ms. Piazza did not recall the Member congratulating her on her new position and did not recall him saying that she was non-threatening to students, but merely non-threatening. In light of the Member’s earlier questioning about how she got the new job, it is not unreasonable for Ms. Piazza to feel that he was not being complimentary. If the conversation was meant to be congratulatory and was accurately recounted by the Member, it is incredible to believe that Ms. Piazza could so completely misinterpret the conversation as to think that the Member was being unprofessional in his comments towards her.

Neither College Counsel nor Defence Counsel subpoenaed the other witnesses to the event.

In light of the Member’s acknowledgement of his issues around the Board’s general hiring practices and particularly non-posting of positions, I find that the incident as related by Ms. Piazza is more likely on a balance of probabilities to have occurred the way she described it, rather than the way the Member described it.

These facts do not, on their own, support a finding of professional misconduct. However, it is likely that this conversation began the breakdown of a professional relationship between two colleagues, causing Ms. Piazza to be intimidated by the Member as set out in alleged incidents 33, 34, 35 and 37.

#33 Joking with a male teacher “Are you scared of me? Some of our colleagues are.”

Deanna Piazza reported that the Member made this comment to an unidentified male colleague in the staffroom “and he kind of chuckled and walked out.” (Transcript of evidence of Deanna Piazza, July 5, 2007, page 21, lines 15-17.)

Under cross-examination Ms. Piazza testified that she felt the comment was directed at her because she was seated at a computer in close proximity to them when the comment was made.

Q. In fact, he didn't even mention you.

A. Right, but he looked at me on his way out and said it so that I could hear. I was close enough that I could hear, so that's what also gave me the impression that he was addressing that type of comment towards me.

Q. And we're talking about the threat. So is there a particular threat that you thought was implied...

A. I was threatened by him, period.

Q. You were threatened by him making a joke?

A. I didn't find it amusing.

The Member was not questioned about the incident.

This incident, alone, does not support a finding of professional misconduct. However, taking into consideration the Member's assertion that there was a perception by one or more teachers that they were “under assault by somebody” (Transcript of evidence of William Fabel, April 22, 2008, page 253, lines 16-25), this incident does reinforce that the Member was aware of the fearful reaction he was creating in certain colleagues with comments that he made and that he seemed to find it amusing.

#34 Undermining the authority of colleagues by barging into other teachers' classrooms to discipline students, without invitation

Deanna Piazza (Transcript of evidence, July 5, 2007, page 12, line 6 to page 15 line 6) and Mary Beth MacDougall (Transcript of evidence July 4, 2007, p. 35, l. 5-22 to page 37, line 16) both described a single incident of the Member entering their classroom. The circumstances are very similar: the bell had not rung to signal the start of class and students were still arriving. In each instance, neither teacher had seen the student enter the classroom, but heard the Member proceed to discipline a student for a uniform infraction.

Both witnesses felt that the Member lacked professional courtesy in his handling of each situation.

I find on the balance of probabilities that, based upon very similar evidence by two witnesses and the Member's admission that the incident with Ms. Piazza did occur, that both incidents occurred. In the case of Ms. MacDougall, although the Member's behavior was inappropriate and demonstrated a lack of professional consideration for a colleague, I agree with the majority that the incident does not, by itself, rise to the level of professional misconduct.

In both cases, although the Member's behavior was inappropriate and demonstrated a lack of professional consideration for a colleague, I agree with the majority that neither case arises to the level of professional misconduct. However, with respect to Ms. Piazza and as noted above, the incident nevertheless demonstrates a pattern of disrespectful behavior by the Member towards Ms. Piazza, and is directly relevant to assessing the credibility of the Member's testimony with respect to incident 35 (discussed below).

It is worth noting the evidence of Ms. Piazza's reaction to the incident. She testified as follows.

A: I was shocked at first. I think by the time I worked through that initial shock, I felt embarrassed. I felt that, you know, this is my job to do and I was concerned about the student. She should have been in uniform yes, however, the method that he chose to get that across to her, I didn't find that was necessary or acceptable.

Q. How would you have preferred Mr. Fabel to have handled the situation?

A. With professional courtesy.

Q. What would that mean?

A. He could knock at the door, or somehow let me know that he wanted to speak to a student and I would be happy to send the student out. (Transcript of evidence, July 5, 2007, page 14, lines 10-23.)

Principal Georges testified that Ms. Piazza had come to the administration regarding the incident, but did not want to speak directly to the Member on her own, saying, “I am not comfortable speaking with Mr. Fabel, Mrs. Georges, you really don’t know him. There had been instances in the past where he’s made me feel somewhat uneasy. I’m not comfortable meeting with him.” (Transcript of evidence of Theresa Georges, March 7, 2006, page 55, lines 15-19). Nor did Ms. Piazza wish to speak to Mr. Fabel through a mediator such as Principal Georges or an OECTA representative, because, “[s]he wasn’t comfortable going to that level.” (Transcript of evidence of Theresa Georges, March 7, 2006, page 55, line 20 to page 56, line 3.)

Ms. Georges then suggested, “Well, another option could be that you would write him. That is another very concrete form of communication. Communicate to Mr. Fabel your concerns in writing.” (Transcript of evidence of Theresa Georges, March 7, 2006, page 56, lines 3-7.)

As a result of Ms. Georges’ advice, Ms. Piazza communicated her concerns by letter to the Member, received a response letter from the Member and which resulted in a second letter from Ms. Piazza to the Member. (Exhibit 3, Tab 15)

#35 Deanna Piazza: Stating within earshot of a female colleague “I’d like to ship her off to the Third World and have the boys take care of her”.

This incident occurred approximately three weeks after the exchange of letters between Ms. Piazza and the Member.

College counsel asked Ms. Piazza:

Q. Following up this exchange of letters, how did your relationship with Mr. Fabel continue?

A. I did my best to stay away from him. It was difficult in that I had a classroom next to him, but I certainly did my best to stay away, but for the most part, I would say that it didn't go very well.

Q. All right. Were there specific incidents that you're referring to when you say your relationship didn't go well?

A. There was a time shortly before I believe he was suspended in November...I heard people entering the building. I turned to see who it was, and it was Mr. Fabel and his wife, who also taught at the school, and as I was trying to deal with this key issue, I heard him say: "I'd like to ship her off to the Third World and have the boys take care of her", to which Michelle responded with a "shh" and he said, "I don't care. She has an F'ing attitude. He didn't say "F'ing". Deanna Piazza, July 5, 2007, page 19, line 20 to page 20, line 19

The Member does not deny making the comment.

The Member provided a different context for making these comments when examined by his counsel.

Q. Okay. Do you have any recollection with respect to what Ms. Piazza is talking about?

A. I assume – like, I think she's referring to a discussion that I was having with Michelle that began in the car on the way to work and ended when we, I think, got to our-my room, I mean, somewhere in that hallway, but we were – and we were discussing something that was on the radio.

Q. Certainly you had an opportunity to think about this over a period of time?

A. Yes.

Q. What's your best sense as to who you were referring to?

A. The – the only incident that springs to mind or comes to mind, it doesn't spring to mind, would be there was – 2002 is when the Americans and the Canadians, the coalition, were beginning to get into areas that they now occupy in Afghanistan and Iraq; and I

remember getting upset at a commentary on the radio on the way in from the NDP, and I believe it was the NDP defence critic, Dawn Black, and – yeah, we were discussing the issue, my wife and I, and she’s not really into the geopolitical things as I am, and as we were coming up the hall, I may have said, Yeah, I would like to ship that one off to the, you know, to the third world, referring to Dawn Black, not referring to Deanna Piazza. (Transcript of evidence of William Fabel, April 16, 2008, Page 124, line16 to page125, line 23.)

Ms. Langford’s cross-examination of the Member with respect to this incident examined two aspects of this statement. First, she questioned the Member’s choice of comments when someone disagrees with his position.

Q. So this comment, sir, I would like to ship her off to the Third World and have the boys take care of her there, is that the sort of comment, sir, you typically make when you don’t agree with someone else’s opinion?

A. No.

Q. You agree with me it’s a particularly harsh comment to make about someone whose views you disagree with?

A. It was in response to some particularly harsh commentary that I had heard that morning, yes.

Q. I assume, sir, that as a teacher you understand that people are entitled to hold different views from yours?

A. I encourage people to hold their opinions and espouse them.

Q. When they are opining on views that are particularly near and dear to you, sir, do you get impatient?

A. No.

Q. And so when we’ve talked about some harsh comments that you’re alleged to have made, do you consider this comment, I would like to ship her off to the Third World and

have the boys take care of her, is that something on your dial that you consider to be harsh or not, just so we know where your standard is, sir?

A. I guess I consider it to be harsh, sure. (Transcript of evidence of William Fabel, April 23, 2008, page 34, line 16 to Page 35, line 19.)

Second, the cross-examination examined the Member's assertion that he was referring to the NDP defence critic, Dawn Black and not Deanna Piazza

Q. So, sir, you would like us to or the panel to accept that when you made the comment – I take it, sir, you acknowledge you made the comment?

A. Words to that effect, yeah.

Q. And so you would like the panel to conclude that when you made that comment, you were referring to Dawn Black and not Mrs. Chittaro (Piazza)?

A. Yes, yes. . William Fabel, April 23, 2008, Page 33 lines 9 to16

Q. And, sir, this radio—this radio show that you were listening to, this is in 2002 we're talking about right?

A. I believe so, yeah.

Q. So are you aware, sir that Dawn Black was not the NDP defence critic at that time?

A. I'm not aware if she was the defence critic. I know she has—she spoke on matters of defence. I, again, the name comes to mind as the person who was on the show. Now, what post she had at that point in time, I don't really recall.

Q. It's my information, sir, that she was not a sitting member of parliament at that time.

A. Okay.

Q. In fact, she was not a sitting member of parliament between 1993 and 2006.

A. Okay.

Q. You still maintain that it was her you were referring to and not Mrs. Chittaro?

A. I—yeah. I was referring to the person on the radio show. The name that stuck in my mind was Dawn Black. Now, if you're asking for an absolute one hundred percent on that, then I would concede that I'm not clear as to the name, but it is in relation to a talk show that we were listening to on the way in. (Transcript of evidence of William Fabel, April 23, 2008, page 35 line 20 to Page 36, line 20.)

Mrs. Fabel testified as well. She stated that she made the comment to her husband, "Why does she keep staring at us?" (Transcript of evidence of Michelle Ann Fabel, April 15, 2008, page 66, lines 16-17.) Under cross-examination Mrs. Fabel stated that the Member replied, "I don't know. Just keep moving." (Transcript of evidence of Michelle Ann Fabel, April 15, 2008, page 150, lines 10-11.)

I do not accept the Member's explanation for his comments. As the Member's own counsel pointed out, the Member had an opportunity to think about this over a period of time. His explanation for the comment was very specific, referring to a discussion on the radio by Dawn Black about the mission in Afghanistan, which turned out to be incorrect.

In addition, if the conversation was about Dawn Black, why would Mrs. Fabel feel the need to say "shh" to him and for the Member to respond, "I don't care. She has a fucking attitude."

I note that:

1. it stretches believability that the Member would remember a casual conversation with his wife that had taken place approximately five and one-half years prior to his testimony;
2. the explanation that the Member was referring to Dawn Black was not borne out by the facts;
3. Mrs. Fabel's question to Mr. Fabel "Why does she keep staring at us" provides context to his remarks, making it more logical that the comment was said about Ms. Piazza and not Dawn Black; and
4. The recent exchange of letters between Mr. Fabel and Ms. Piazza, coupled with the Member's disrespectful behavior towards Ms. Piazza as occurred in incidents

32 and 33, constitute another significant part of the context, also making it more logical that the comment was made about Ms. Piazza and not about Dawn Black.

Based upon the evidence and for the reasons set out above, I find that on the balance of probabilities this incident occurred as described by Ms. Piazza.

I find the Member's statement to Ms. Piazza to be intimidation, harassment and disrespectful treatment of a colleague. As such the Member's statements would reasonably be regarded by members as professional misconduct by failing to maintain the standards of the profession (Ontario Reg. 437/97, s. 1(5)). These statements also constitute a breach of s. 264(1)(c) of the *Education Act* by failing to inculcate by precept and example the highest regard for loyalty (Ont. Regulation 437/97, s. 1(15)); and of s. 264(1)(d) of the *Education Act* by failing to assist in developing cooperation and coordination of effort among members of staff of the school (Ont. Regulation 437/97, s. 1(15)). I further find that the Member's conduct would reasonably be regarded by members of the profession as unprofessional (Ont. Regulation 437/97, s. 1(18)) and be considered conduct unbecoming a member (Ont. Regulation 437/97, s.1 (19)).

(c) Alleged Incidents Relating to Marisa Lipari

There were several alleged incidents involving Marisa Lipari and the Member.

#23 Referring to the Board as “fucking ineffective” in the library in front of other teachers

#24 Referring to the administration as “the idiots who run this place” in front of other teachers

#25 Calling the Vic-Principal “one of the three stooges” and an example of “the fucking administration that doesn't know what they're doing” in the library in front of other teachers

#26 Ranting about the Principal in the library in front of other teachers stating that she was “someone who could not find her ass with her own two hands” in the library in front of other teachers

#27 Stating that the teachers in the school were ineffective and he was the “only person who was relevant or who taught relevance and prepared kids for university” in the library in front of other teachers

#28 Stating in reference to a religion teacher “here's another one who got in on the religion ticket, she probably has no qualifications, and all she does-all she's going to do is

read from the fucking Bible and show fucking videos” in the library in front of other teachers.

#29 Stating as a teacher left the library “See we can get rid of the trash without the cleanup help.”

These alleged incidents will be considered together as they all relate to one event in the library of [XXX]’s. Ms. Lipari testified that this was her first encounter with the Member during her first semester at [XXX]’s in spring of 2001. She stated that she was working in the library during the custodial staff strike, when the Member entered. She said hello, however, he did not respond, but rather looked at her “as though it was an alien remark” and then sat down directly in front of her. There were approximately 20 other computers available. (Transcript of evidence of Marisa Lipari, March 7, 2007, page 108, lines 19-22 & Exhibit 3 Tab 2(a).)

Ms. Lipari testified that another female (now known to be Mrs. Fabel) joined the Member and the Member made some belittling remarks to the female, calling her stupid and useless. The Member then began hitting the computer that he was sitting at and stating that “this is an example of the fucking ineffectiveness of our school board and the idiots who run this place.” She did not hear what the word “this” was referring to. His tone of voice was very angry, and his demeanour was angry, abrasive and loud (Transcript of the evidence of Marisa Lipari, March 7, 2007, page 110, line 15 to page 111, line 1.)

When a male Vice-Principal came on the p.a. saying “there is a phone call for ‘you’”, but did not state the person’s name, the Member stated, “there’s an example of, you know, this-this fucking administration that doesn’t know what they’re doing.” The Member referred to the male Vice-Principal as “one of the three stooges.” Ms. Lipari further testified that the Member was “ranting ranting about Mrs. Kennedy, who was our principal. He stated that she was someone who could not find her ass with her own two hands.” (Transcript of the evidence of Marisa Lipari, March 7, 2007, page 11, lines 6-19).

College counsel asked Ms. Lipari:

Q. Did Mr. Fabel say anything to you or about you in the library that day?

A. At one point, he began complaining, again, about the school board and Mrs. Kennedy and her ineptness, and he was talking about the ineffectiveness of other teachers and how

he was the only person who was relevant or taught relevance and prepared kids for university.

And as he was saying this, he got up, and he walked around and was standing behind me, and he was looking down at—I realized—I looked up to see what—kind of where he had gone, and he was looking down at my religion textbook that was next to me.

Q. And were you teaching religion at the time?

A. Yes, I was.

Q. So the religion textbook that was next to you was a course material?

A. Yes. And as he was staring down at the religion textbook, he says, Here's another one who got in on the religion ticket.....She probably has no qualifications, and all she does—all she's going to do is read from the fucking bible and show fucking videos. (Transcript of evidence of Marisa Lipari, March 7, 2007, page 112, line 17 to page 113, line 19.)

When asked by College Counsel how these comments made her feel, Ms. Lipari responded, “I-I was shocked. I was frozen. I thought, Oh my God, he's talking about me, and I knew I had to get out of the library. I didn't feel safe.” (Transcript of evidence of Marisa Lipari, March 7, 2007, page 113, lines 22-24.)

Ms. Lipari testified that she packed up her belongings and proceeded to walk out of the library when the Member commented, “See we can get rid of the trash even without the cleanup staff.” (Transcript of evidence of Marisa Lipari, March 7, 2007, page 114, lines 23-25.)

The Member's evidence was that he spent time in the library during the custodial strike and would have “personal and private conversations” with his wife and Sam Cipparone. (Transcript of evidence of William Fabel, April 16, 2008, page 88, lines 1-12.)

The Member acknowledged that at some point during the month of April he was angry with the administration over their handling of his wife's pending maternity leave and recalled making negative comments about them in the library. The Member testified that his wife had come from a specialist's appointment and was told that she had to leave work immediately as the baby's

heart rate was slowing down and she needed to leave work immediately. Mrs. Fabel had gone to the principal, Mrs. Kennedy, and was told that she couldn't leave because they hadn't interviewed her replacement yet. He testified that when his wife "returned to the library she was an absolute mess. She was crying. She was shaking." (Transcript of the evidence of William Fabel, April 16, 2008, page 93, lines 10 to page 94, line 10, and page 94, lines 5-6.)

In response to the allegation that he made disparaging comments about the administration, the Member responded that he may have made "comical, but not uncharitable" remarks in relation to an incident in which Ms. Kennedy made a series of announcements regarding her lost key chain. "I think that I may have said something like, you know, what is she doing? Like, I mean, she—or words to the effect, you, know, what-what's going on here? She keeps interrupting us over a set of keys. Why doesn't she just go and look for the keys? Comments like that...." (Transcript of the evidence of William Fabel, April 23, 2008, page 24, lines 15-21.)

The Member's testimony that on the one hand he was angry with the administration over their handling of his wife's pending maternity leave and at the same time he was making "comical but not uncharitable" remarks about the principal is not believable. The incident with his wife's maternity leave could not have been the same incident that Ms. Lipari referred to.

In response to Ms. Lipari's testimony that the Member made disparaging comments about faculty members who taught religion, he stated that he was disappointed with his colleagues for other reasons. He related how Mr. Rovers, the head of the religion department, had made a comment to the Member's mother-in-law about his recent marriage to Mrs. Fabel: "Well, we'll see how long that lasts."

He was also critical of the religion department's handling of various issues such as "giving students a zero, if they missed the retreat, when the Ministry states that we cannot give zeros out if you miss. You have to give an alternative assignment."

The Member testified that, "the other thing is that the religion department and the social science department which—and—and I didn't have any part of this. It was between the department heads. It was like a turf war. They were trying to steal courses from each other." (Transcript of evidence of William Fabel, April 23, 2008, page 26, lines 3 to page 27, line 21.)

The Member also confirmed under cross-examination that he was subject to inappropriate comments due to the fact that he was not a Catholic. He was frustrated by the Board's policies that students had to take religious education courses rather than courses that might assist them in post-secondary studies. (Transcript of evidence of William Fabel, April 23, 2008, page 25, lines 9-22.)

The Member believed the reason he was not chosen as department head of the social sciences department was that he was not Catholic. He related a conversation that he had with Joe Berthiaume, superintendent of personnel for the Board, who stated that he did not get the job because he lacked "special qualifications", meaning he was not Roman Catholic. (Transcript of the evidence of William Fabel, April 16, 2008, page 20, line 21 to page 21, line 25.)

Finally, the Member testified that two of the teachers with whom he had long-standing tensions (made worse by the political protest) were Donna Snow and Rejean Dufresne, both members of the religion department. (Transcript of evidence of William Fabel, April 16, 2008, page 49, lines 2-16.)

Despite this evidence, the Member refused to acknowledge that these issues caused him to feel any animosity towards the religion department in general. He did not recall making any negative comments about the religion department in the library. (Transcript of evidence of William Fabel, April 23, 2008, page 28, line 20 to page 29, line 16.)

With respect to Ms. Lipari's evidence that the Member noticed her religious textbook beside her, the Member testified that initially he thought that Ms. Lipari was an English teacher. His evidence was:

A: "I remember I—I think she had one of the—the novels that the kids were expected to read in her possession with her—with her, you know, general materials.

Q. One of the novels that the kids were expected to read in class?

A. I—I would have no idea. It's just one of the—one of the novels that you see as a teacher. You know, when kids bring their books from class to class you see the—the

other textbooks. This was one of the books. (Transcript of the evidence of William Fabel, April 16, 2008, page 90, line 13 to page 91, line 1.)

I do not accept the Member's assertion that he thought Ms. Lipari was an English teacher because he saw a novel with her. Ms. Lipari stated that she was doing preparation work for her religion class, and that the Member noticed her religion textbook, when the Member allegedly made his disparaging comments. She was not an English teacher so why would she have an English textbook with her? The Member's evidence about what he assumed Ms. Lipari taught is both too similar to Ms. Lipari's statement that he recognized her religion textbook and at the same time too directly contradictory as to what book he saw with her. The Member's testimony is not logical or plausible.

With respect to Ms. Lipari's evidence that the Member made the comment as she was leaving the library, "See you can get rid of the trash, even without the cleaning staff", the Member testified that he may have made the comment in response to observing others taking whatever waste that they had produced with them when they left the library. (Transcript of evidence of William Fabel, April 16, 2008, page 89, lines 17-22.)

I do not accept the Member's explanation as to why he might have made this statement. Ms. Lipari testified that the only people in the library were the Member, Mrs. Fabel and Mr. Cipparone, so which teachers would the Member have been referring to?

#21 Marisa Lipari: "Shut the fucking radio off."

Ms. Lipari testified that the Member came into her classroom on several occasions at approximately 8 a.m. and yelled at her to turn off the radio. She testified that she was listening to a "drive-in news" program, the radio was set at a moderate volume and her door was shut. On the first occasion she asked the teacher in the classroom to the north of her if the radio was bothering her and that teacher replied that she could not even hear it. On the fourth occasion, Ms. Lipari testified that the Member "once again entered my class uninvited and unannounced, however this time he told me to 'shut the F***ing radio off.'" (Exhibit 3, Tab 2 (b) paragraph 2 and transcript of the evidence of Marisa Lipari, March 7, 2007, page 121, lines 4-11.)

Ms. Lipari testified that she did not respond to the Member because “he just stormed in and left”. (Transcript of the evidence of Marisa Lipari, March 7, 2007, page 120, lines 6-11.) Ms. Lipari also testified as follows about why she did not speak to the Member:

Because I was afraid of him. He had created a climate of fear...When Mr. Fabel walked down the hallway, he did not walk, he stomped. He made his presence known in the staff room. He would come in and not put his books down, but slam his books down. If he had an issue, he would not quietly talk to someone next to him, or whoever, about it. He would shout and scream and swear about—about it. So there was definitely a climate of – just as an aggressive person, someone who is not professional, someone who is not reasonable, and I felt fearful of approaching him. (Transcript of the evidence of Marisa Lipari, March 7, 2007, page 122, lines 2-15.)

The Member denies the allegation.

The Member testified that both he and his wife had issues with music being played by a group of teachers in the staff prep rooms. In September, 2002 the Member emailed the new principal, Mrs. Georges, and complained about this issue and others. He asked her to address these problems at the first staff meeting. Defence counsel asked the Member:

Q. And do you recall any incident in that school year and in the second semester of that school year where there was an issue with a teacher whose classroom was next to yours?

A. Yes, there was one incident. I was conducting a test, it was with—.....

Q. Okay. And with which teacher did that occur?

A. I believe it was with Mr. Rovers.

Q. And Mr. Rovers—Mr. Rovers was in which department?

A. He was the head of the religious studies department.

Q. And where was Mr. Rovers’ classroom in relation to your classroom?

A. He would have been in, I believe, 417, which was one room down, just the next one down the hall from mine.

Q. And which was your classroom number?

A. I--I was in 415 North.

Q. And where was Ms. Lipari's classroom in relation to your classroom?

A. I believe she was on—at the end classroom on the opposite side of the hall, down toward the exit doors going out to the parking lot. (Transcript of the evidence of William Fabel, April 16, 2008, page 96, line 4 to page 97, line 8.)

However, Ms. Lipari's evidence as to the location of her classroom was the following.

Q. All right. Let's—let's talk about the other incident, the June 11th incident. This is an incident where you say you were talking to Mr. Rovers?

A. Yes, my department head.

Q. And I gather that his room was also on the same hallway as yours and Mr. Fabel's?

A. He actually took over my room period 2.

Q. So he was actually in your classroom?

A. It was our classroom.

Q. He was in the classroom that you normally used?

A. Yes. I was on prep. (Marisa Lipari, March 8, 2007, page 105, lines 10-22)

When asked under cross-examination to explain Ms. Lipari's testimony about the radio incident, the Member attributed it to a conspiracy theory amongst this group of teachers who were interested in playing music in the staff prep areas.

Q. So Ms. Lipari misremembers?

A. I guess you could put it that way, yes. This particular group of teachers was becoming more and more incensed over what they thought was their right to play music versus the rights of other staff members to a quiet work area.

Q. Was Marisa Lipari one of those teachers that you perceive to have become more and more incensed?

A. Well, she was – again, I mean, you’re talking about a group of individuals who socialized. Not you know—you know there were a couple of these components that slid in and slid out periodically within this same group, okay. They shared, from at least my observations, they shared the same or similar values and similar beliefs about teaching and similar, you know, beliefs about allowing the students to call them by their first name and things like that. I mean this was a cohesive group.

Q. So, what you’re telling me is that you have no specific recollection of Mrs. Lipari ever getting incensed. What you recall is that she hung around with some people who did?

A. Yes.

Q. So it’s the group thing again. That’s your—that’s your theory—

A. Well, if you want to characterize it as a group thing, fine. Then, yeah.

Q. Well, I think that’s the way you’re characterizing it, sir.

A. Well, you know, group thing is—is one possible--plausibility. The other thing is, you know, your friend is in—is in trouble. Like I explained yesterday, you know, your friend’s having a problem. So your—your friend’s problem becomes your problem [emphasis added]. (Transcript of the evidence of William Fabel, April 23, 2008, page 72, lines 2-25 to page 73, line 13.)

The Member is inferring that Ms. Lipari invented the incident to support her friends who wanted to play music in the prep areas. This explanation is not believable.

The Member’s evidence reveals:

1. he was unhappy with Mr. Rover’s comment about his marriage to his mother-in-law;
2. he had an incident concerning the playing of a radio with Mr. Rovers in the same classroom that Mr. Rovers shared with Ms. Lipari during the same time frame;

3. he had issues with music being played by a certain group of teachers in the prep areas; and
4. his evidence was incorrect as to the location of Ms Lipari's classroom in relation to his classroom.

The Member came into the room without knocking. It is logical that he believed that it was Mr. Rovers, with whom he had personal issues, playing the radio, as it appears the Member was under the impression that it was solely Mr. Rovers' classroom. The balance of probabilities would support that these incidents did occur as alleged by Ms. Lipari.

In sum, I accept Ms. Lipari's evidence with respect to incidents 21, 23, 24, 25, 26, 27, 28 and 29. Ms. Lipari testified that the incident in the library was recorded in her diary two days after the event at the suggestion of the principal, Ms. Kennedy. As I stated above (regarding alleged incident 20), Ms. Lipari's diary has several inconsistencies when relating matters that allegedly occurred to other witnesses. However, this could be explained by the possibility that Ms. Lipari wrote a number of her entries later than within a day or two of when the incidents occurred. This may account for the inconsistencies between her diary and several witnesses' testimony. It is also conceivable that when Ms. Lipari realized that the Member was to be investigated, Ms. Lipari recorded a number of events that she had heard over the period that she was teaching at [XXX]'s. If this was the case, it is not surprising that there were inconsistencies between her memory and that of the witnesses involved in the alleged incidents. Nevertheless, I accept that Ms. Lipari wrote her account of what happened to her in the library within a day or two of the event.

The Defence argued in its written submissions that, "Ms. Lipari was strongly motivated to have the administration take steps against Mr. Fabel. This motivation is evident in the documents which she provided to the school administration and which were clearly central to the School Board case against Mr. Fabel." The Defence does not articulate what these motives were.

Ms. Lipari's motives, if there were any, were probably related to her fear of Mr. Fabel. Her first encounter with him in the library, when they did not know each other, would be reason enough for any female teacher to be, at the least, wary of the Member and at the worst, fearful of the

Member. The incidents of the Member coming into her classroom and yelling at her to turn off the radio would reinforce these fearful feelings.

I find that the Member's comments towards Ms. Lipari are intimidating, harassing, and show a lack of respect for a colleague. In the first instance, in the library, the Member made denigrating comments about Ms. Lipari and the religion department to colleagues in a hostile and aggressive manner. On several occasions, the Member came into her classroom without knocking and ordered Ms. Lipari to turn off the radio in an aggressive and authoritative manner.

For these reasons, with respect to the alleged incidents 21, 23, 24, 25, 26, 27, 28 and 29, I find the Member failed to maintain the standards of the profession (Ont. Regulation 437/97, s 1(5)); breached s. 264(1)(c) of the *Education Act* by failing to inculcate by precept and example the highest regard for loyalty (Ont. Regulation 437/97, s. 1(15)); breached s. 264(1)(d) of the *Education Act* by failing to assist in developing cooperation and coordination of effort among the members of staff of the school (Ont. Regulation 437/97, s. 1(15)); engaged in conduct that would reasonably be regarded by members as unprofessional (Ont. Regulation 437/97, s.1(18)) and unbecoming a member (Ont. Regulation 437/97, s. 1(19)).

DATED: April 30, 2010

Lynne Mastin, Panel Member