

**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
Dale Fisher, a member of the Ontario College of Teachers.

PANEL: Don Cattani, Chair
 Rosemary Fontaine
 Normand Fortin

BETWEEN:)	
	)	David Leonard,
	)	McCarthy Tétrault,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -)	
)	
DALE FISHER	)	Maurice Green,
(CERTIFICATE #243842)	)	Green & Chercover,
	)	for Dale Fisher
)	
	)	Brian Gover,
	)	Stockwoods,
	)	Independent Legal Counsel
)	
	)	Heard: October 5, 2004

REASONS FOR DECISION, DECISION AND ORDER(S)

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on October 5, 2004 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated June 3, 2004 was served on Dale Fisher, requesting attendance before the Discipline Committee of the Ontario College of Teachers on October 5, 2004 for a hearing, and specifying the charges.

Dale Fisher was in attendance at the hearing.

The Allegations

The allegations against Dale Fisher in the *Notice of Hearing*, dated June 3, 2004, are as follows:

IT WAS ALLEGED that Dale Fisher is guilty of professional misconduct as defined in section 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, the regulations or the bylaws, contrary to Ontario Regulation 437/97, subsections 1(14);
- (c) he failed to comply with the *Education Act*, R.S.O. 1990, c.E2 or the regulations made under that Act, contrary to Ontario Regulation 437/97, subsection 1(15);
- (d) he contravened a law that is relevant to the Member’s suitability to hold a certificate of qualification and registration, contrary to Ontario Regulation 437/97, subsection 1(16);
- (e) he committed an act 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

- (f) he engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19).

At the hearing, the Committee permitted the College to withdraw the allegations of professional misconduct as set out paragraphs (a), (b) and (f) in the Notice of Hearing, which alleged breaches of Ontario Regulation 437/97, subsections 1(5), 1(14) and 1(19).

Sealing of Records

On October 5, 2004, the Committee made an order that the materials contained in Tabs F through L inclusive of *Exhibit 2, Agreed Statement of Facts and Guilty Plea*, be sealed.

Agreed Statement of Facts

Counsel for the College advised the Panel that agreement had been reached on the facts and introduced as *Exhibit 2, an Agreed Statement of Facts and Guilty Plea. (ASF - Exhibit 2)*

The *Agreed Statement of Facts* provides as follows:

1. Dale Fisher (the "Member") is a member of the Ontario College of Teachers. Attached hereto is a copy of the Ontario College of Teachers Registered Member Information of the Member. (*ASF - Exhibit 2, Tab A*)
2. At all material times, the Member was employed by the Grand Erie District School Board' (the "Board") as a business teacher at North Park Collegiate and Vocational School (the "School").
3. On or about 14 August, 2000, while visiting an Internet chat room, the Member represented himself to be a young girl of approximately twelve years of age, who

was interested in having sex with men, and in the course of a “chat” with an adult male, the Member sent an electronic image of a nude prepubescent female in a seated position with her legs spread, focusing on the vaginal area, to the adult male.

4. On or about 10 September, 2000, while visiting an Internet chat room, the Member again represented himself to be a young girl of approximately twelve years of age, who was interested in having sex with men, and in the course of a “chat” with a male person, who described himself as being seventeen years old, the Member sent a different electronic image of the same nude prepubescent female in a seated position on a chesterfield with her legs spread, focusing on the vaginal area, to the male person. In that photograph, the female person had both her hands in the area of her vagina.
5. The person depicted in both the photographs referred to in paragraphs 3 and 4 above was a female under the age of eighteen years, and the dominant characteristic of both images was the depiction for a sexual purpose of the person’s sexual organs. Both images therefore fell within the definition of child pornography as set out in Section 163.1.(1)(a) of the Criminal Code of Canada.
6. The Member was charged with three counts of possession of child pornography and two counts of distribution of child pornography. Attached is a copy of the Information laid in respect of those charges. (*ASF – Exhibit 2, Tab B*)
7. On or around 5 October 2000, the Board suspended the Member, with pay.
8. On or about 1 January 2003, the Board changed the Member’s status to suspended without pay.
9. On or about 30 April 2003, the Member pleaded guilty before Mr. Justice W. B. Stead at Brantford, Ontario to two charges of distributing child pornography, and the remaining charges were withdrawn. Attached is a copy of the transcript of the proceedings on 30 April 2003. (*ASF – Exhibit 2, Tab B*)

10. On or about 15 September 2003, the Member was given a conditional discharge and was ordered to perform two hundred hours of community service. Attached are copies of the transcript of the sentencing proceedings on 15 September 2003, and the Probation Order dated 15 September 2003. *(ASF – Exhibit 2, Tabs D and E)*
11. Attached is a biography of the Member, which he prepared in January 2003. *(ASF – Exhibit 2, Tab F)*
12. Attached hereto is a document entitled “Events Giving Rise to the Allegations” prepared by the Member in January 2003. *(ASF – Exhibit 2, Tab G)*
13. Between the approximate dates of 13 October 2000 to 21 March 2003, the Member was under the care of Dr. Theresa Clark, psychiatrist. In a report, dated 10 April 2003, a copy of which is attached, Dr. Clark noted that the Member’s sexual proclivities are towards adult males, but she was satisfied, based on clinical grounds, that he is not a pedophile and is not dangerous to the public or to minors. *(ASF – Exhibit 2, Tab H)*
14. At the time of his trial, the Member presented to the Court a report of Matthew G. Yeager, Criminologist of Ottawa, Ontario, dated 30 April 2003, a copy of which is attached *(ASF – Exhibit 2, Tab I)*. Mr. Yeager set out in detail the offences to which the Member pleaded guilty and gave the background of the Member. Mr. Yeager also referred to a report of Dr. Graham D. Glancy, Forensic Psychiatrist, dated 27 March 2003, a copy of which is attached. *(ASF – Exhibit 2, Tab J)*
15. It was the conclusion of Mr. Yeager that the Member is at low risk to commit further criminal offences, including sexual violations and he could be safely managed under community supervision. Mr. Yeager noted that the Member had no prior criminal record and no prior sexual offences.
16. In his report, Dr. Glancy concluded that the Member did not suffer from pedophilia or any other paraphilia and had a very low risk of general or sexual recidivism. Further, Dr. Glancy described the circumstances of this case as being most unusual

and there was no evidence of any sexual deviation. He predicted that the risk of recidivism is almost zero.

17. Attached is a series of letters which were prepared between January and March 2003, in support of the Member and which were filed with the court attesting to the good character of the Member. *(ASF - Exhibit 2, Tab K)*
18. While he was a teacher at the School, the Member was the subject of reviews both as a teacher and as head of his department. Attached are copies of some of the performance reviews received by the Member up to 29 June 1995. *(ASF - Exhibit 2, Tab L)*
19. On or about 30 September 2003, the Member retired from the Board.

By this document, the Member, Dale Fisher, accepts that the matters referred to in paragraphs 3, 4, 5, 9 and 10 above constitute conduct which is disgraceful, dishonourable and unprofessional and pleads guilty to the allegations of professional misconduct against him being more particularly, breaches of Ontario Regulation 437/97 subsections 1(15), (16), and (18), as set out in the Notice of Hearing which is attached hereto. *(ASF - Exhibit 2, Tab M)*

The Member states that:

- a. he understands fully the nature of the allegations;
- b. he understands that by pleading guilty to the allegations, he is waiving the right to require the College to prove the case against him and the right to have a hearing; and
- c. he voluntarily decided to plead guilty.

In light of the admitted facts and circumstances, the Ontario College of Teachers and the Member submit that the Discipline Committee find the Member guilty of professional misconduct.

Member's Plea

The Member, Dale Fisher, accepts that the matters referred to in paragraphs 3, 4, 5, 9 and 10 above constitute conduct which is disgraceful, dishonourable and unprofessional and pleads guilty to the allegations of professional misconduct against him being, being more particularly breaches of Ontario Regulation 437/97 subsections 1(15), (16), and (18) as set out in the *Notice of Hearing*.

Joint Submission as to Finding

In light of the admitted facts and circumstances, the Ontario College of Teachers and the Member submit that the Discipline Committee find the Member guilty of professional misconduct, more particularly breaches of Ontario Regulation 437/97 subsections 1(15), (16), and (18) as set out in the *Notice of Hearing*.

Decision as to Finding

Having examined the Exhibits filed, and based on the guilty plea, the *Agreed Statement of Facts and Guilty Plea*, and the submissions made by counsel, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that Dale Fisher committed acts of professional misconduct as alleged, more particularly breaches of Ontario Regulation 437/97, subsections 1(15) and (16). The Committee also finds that with respect to subsection 1(18), he committed an act that having regard to all

the circumstances, would reasonably be regarded by members as dishonourable and unprofessional.

Penalty

Both counsel submitted that the findings and order of the Discipline Committee be published in summary, with the name of the Member, in the official publication of the College.

Counsel were not in agreement with respect to the nature of the penalty to be imposed.

College counsel submitted that the appropriate penalty was revocation of the Member's certificate. He submitted that revocation of the Member's Certificate would:

1. serve as a general deterrent to members of the College;
2. serve to protect and maintain the high standards of the profession and
3. maintain the public's confidence in the teaching profession.

Counsel for the Member argued that revocation of the Member's certificate would be too high of a penalty, given the circumstances of this case. He noted that protection of the public was not an issue, as the behaviour did not involve students or young people. Counsel urged the Committee to be fair in assessing penalty and asked that they consider the facts of the case. Counsel indicated that the Member was not a threat to the public, and given the Member's past contributions to the profession and his adherence

to the terms of his probation, counsel submitted that a reasonable penalty would be a suspension of the member's certificate for three to twelve months.

Penalty Decision

After considering the submissions of both counsel, the Committee makes the following order as to penalty:

1. The Registrar is directed to suspend the Member's certificate of qualification and registration for 22 months from the date of October 5, 2004, which certificate the Member is to surrender immediately to the Registrar.
2. Pursuant to Section 30(5) (iii) of the *Ontario College of Teachers Act*, the findings and order of the Discipline Committee are to be published in summary, including the Member's name, in the official publication of the College, *Professionally Speaking/pour parler profession*.

Reasons for Decision

The Committee considered the allegations in this case to be very serious. The Member, on two occasions, sent an electronic image of a nude prepubescent female to two adult males, while visiting a chat room.

The Member was charged with three counts of possession of child pornography and two counts of distribution of child pornography. He pleaded guilty to two charges of distributing child pornography and the remaining charges were withdrawn. He was found guilty, given a conditional discharge and ordered to perform 200 hours of community service.

The judge in the criminal proceedings indicated that the distribution of child pornography in this particular case was at the low end of the spectrum. (*ASF – Exhibit 2, Tab D, page 6*). However, distribution of child pornography, particularly by a teacher, is viewed by the public as very serious in nature.

The distribution of child pornography and the production of child pornography frequently involves direct child abuse in one form or another. In this case, the distribution of these two electronic images by the Member, perpetrated the exploitation of the child who was depicted in the images and thus the harm to that child was exacerbated. Further, there is a risk that other people would continue to pass these images on.

The Committee recognizes the seriousness of a teacher distributing child pornography. Teachers are charged with the protection, education and promotion of children. Distribution of child pornography is inconsistent with the role of a teacher.

Because of the seriousness of the Member's conduct, the Committee felt that a strong message needed to be sent to the profession that this type of conduct will not be tolerated.

However the Committee, in making its decision, considered the following:

1. The Member sent an image on two occasions to two adult males. These two images were the only evidence of child pornography in the Member's possession.
2. The activity did not involve any students of the Member or any other children.
3. There was no evidence that the Member used the images as a grooming tool or to promote the abuse of children.
4. The Member was certified as a teacher in 1979. (*ASF - Exhibit 2, Tab A*). There was no evidence that the Member had ever engaged in conduct that would be considered unprofessional prior to the criminal charges being laid in October of 2000.
5. The Member was given a conditional discharge by the criminal court.
6. Two medical practitioners found that the Member is not a pedophile and is not dangerous to the public or to minors. (*ASF - Exhibit 2, Tab H & J*).
7. One of the medical practitioners stated, "This is one of the cases where I can confidently predict that the risk of recidivism is almost zero." (*ASF - Exhibit 2, Tab J*).
8. The Member is compliant with the terms and conditions of his probation order.

For these reasons, instead of revoking the Member's certificate of qualification and registration, the Committee ordered the suspension of his certificate of qualification and

registration for 22 months, with the knowledge that the maximum suspension that can be imposed is 24 months.

In these circumstances, the Committee is satisfied that this decision serves and protects the public interest and sends a strong message to the profession that the distribution of child pornography is an extremely serious matter.

Date: October 20, 2004

Don Cattani
Chair, Discipline Panel

Rosemary Fontaine
Member, Discipline Panel

Normand Fortin
Member, Discipline Panel