

**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 Lenny John Francisci, OCT, a member of the Ontario College of Teachers.

PANEL: Danny Anckle, Chair
 Alexander Bass, OCT
 John Tucker

BETWEEN:)	
	)	David Leonard,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -)	
)	
LENNY JOHN FRANCISCI)	)	Lenny John Francisci,
(CERTIFICATE #188395)	)	on his own behalf
)	
)	
	)	Bonni Ellis,
	)	Steinecke Maciura LeBlanc,
	)	Independent Legal Counsel
)	
	)	Heard: May 10, 2010

REASONS FOR DECISION, DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on May 10, 2010 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated May 9, 2008 (Exhibit 1) was served on Lenny John Francisci (the “Member”), providing him with notice that the Discipline Committee of the Ontario College of Teachers would meet on May 21, 2008 to set a date for a hearing, and specifying the charges. The Discipline Committee subsequently set May 10, 2010 as the date for the hearing on the merits.

Lenny John Francisci was in attendance.

THE ALLEGATIONS

The allegations against Lenny John Francisci in the *Notice of Hearing*, (Exhibit 1) dated May 9, 2008 are as follows:

IT IS ALLEGED that Lenny John Francisci is guilty of professional misconduct as defined in sections 30(2) and 40(1.1) 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 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 (15);
- (d) he contravened a law, the contravention of which is relevant to the Member’s suitability to hold a Certificate of Qualification and Registration contrary to Ontario Regulation 437/97, subsection 1(16);

- (e) he contravened a law, the contravention of which has caused students under the Member's professional supervision to be put at or to remain at risk contrary to Ontario Regulation 437/97, subsection 1(17);
- (f) 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);
- (g) he engaged in conduct unbecoming a Member, contrary to Ontario Regulation 437/97, subsection 1(19); and
- (h) he engaged in sexual abuse of a student or students of a nature defined in sections 1 and 40(1.1) of the *Act*.

PARTICULARS OF THESE ALLEGATIONS ARE AS FOLLOWS:

1. At all material times, the Member was a teacher at a school (the "School") of the Dufferin-Peel Catholic District School Board in Mississauga.
2. During the 2006-2007 academic year, the Member entered into an inappropriate and unprofessional personal relationship with a [XXX] female student of the School (the "Student").
3. During the period commencing approximately 24 April 2007 ending on or about 14 May 2007, the Member, being in a position of trust or authority towards the Student, did for a sexual purpose, touch the Student with his hands.
4. On or about 15 May 2007, a charge was laid against the Member that for a twenty-one day period ending on or about 14 May 2007, the Member being in a position of trust or authority towards the Student, in the City of Mississauga and elsewhere did for a sexual purpose touch the Student with his hands.
5. The charge referred to in paragraph 4 is presently before the court.

PUBLICATION BAN

A non-publication and non-broadcast order was issued under subsection 486.4 of the *Criminal Code*, in the proceedings in the Superior Court of Justice. The Committee is required to maintain this publication ban imposed in the matter of *Her Majesty The Queen v. Lenny Francisci* by the Superior Court of Justice. There shall be no publication of any information that might tend to identify the victim involved in this matter.

MEMBER'S PLEA

The Member pleaded guilty to the allegations set out in the *Notice of Hearing*.

THE EVIDENCE

Brief of Court Documents – Her Majesty the Queen v. Lenny Francisci (Exhibit 2)

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

1. Order of Mr. Justice Durno dated April 1, 2010
2. Certified copy of Indictment dated October 1, 2008
3. Transcript of Court Proceedings before the Mr. Justice Thomas at Brampton on November 9, 2009
4. Probation Order dated January 8, 2010
5. Fine Order/Victim Surcharge dated January 8, 2010
6. Transcript of Sentencing Proceedings before the Mr. Justice Thomas on January 9, 2010.

These Court Documents verify that on or about November 9, 2009, the Member pleaded guilty to and was found guilty of one count of sexual exploitation, being that he unlawfully did, being in a position of trust or authority towards a young person, did for a

sexual purpose, touch directly the body of a young person, with a part of his body, to wit: his hands, contrary to section 153(a) of the Criminal Code of Canada.

On January 8, 2010, the Member was sentenced to 45 days imprisonment, followed by a period of 12 months' probation. The Member was ordered to take such counselling, after an appropriate assessment, as recommended by the probation officer in consultation with the person or persons participating in the assessment, on the issue of boundaries of behaviour between female [XXX] and a [XXX] or teacher.

DECISION

(i) Onus and Standard of Proof

The College bears the onus of providing the allegations in accordance with the civil standard of proof, being the balance of probabilities using clear, cogent and convincing evidence.

(ii) Decision

Having considered the evidence, onus and standard of proof, and the submissions made by Counsel for the College, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that Lenny John Francisci committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(7), 1(14), 1(15), 1(16), 1(17), 1(18), 1(19) and that he engaged in sexual abuse of a student of a nature defined in sections 1 and 40 (1.1) of the *Act*.

REASONS FOR DECISION

The Member pleaded guilty to the allegations of professional misconduct set out in the *Notice of Hearing*.

Rules 13.05 and 13.06 of the *Rules of Procedure of the Discipline Committee of the Ontario College of Teachers* allow the Committee to accept as proof that an offence was committed by a person, where there is a finding of guilt and conviction in a Canadian court, provided that there is no evidence to the contrary and that no appeal has been granted.

In absence of evidence to the contrary, the Committee accepts the specific findings of fact contained in the *Brief of Court Documents* (Exhibit 2) that on or about November 9, 2009, the Member pleaded guilty to and was found guilty of one count of sexual exploitation and was subsequently sentenced to 45 days incarceration and placed on probation for twelve months.

There was no evidence presented of an Appeal by the Member of his conviction and/or sentence.

The Committee finds that the Member's conviction for sexual exploitation of one of [XXX] as outlined herein, constitutes an act of professional misconduct, being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(7), 1(14) and 1(15). By this conduct, the Member engaged in sexual abuse of a student of a nature defined in sections 1 and 40 (1.1) of the *Act*.

The Member's criminal conviction is relevant to his suitability to hold a Certificate of Qualification and Registration and has caused students to be put at risk, pursuant to Ontario Regulation 437/97, subsections 1(16) and 1(17).

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

PENALTY DECISION

The Committee makes the following order as to penalty:

1. The Registrar of the Ontario College of Teachers is directed to revoke the Certificate of Qualification and Registration of the Member; and
2. Pursuant to Section 30 (5) (3) of the Ontario College of Teachers Act, the findings and order of the Committee shall be published in summary, with the name of the Member in the official publication of the College, Professionally Speaking/Pour parler profession.

REASONS FOR PENALTY DECISION

During the 2006-2007 academic year, the Member entered into an inappropriate and unprofessional personal relationship with a [XXX] female student. During the period commencing approximately April 24, 2007, ending on or about May 14, 2007, the Member, who was in a position of trust and authority towards the student, touched the student with his hands for a sexual purpose.

The Committee finds the Member engaged in an inappropriate and unprofessional relationship with the student while she was under his care and supervision. During the school year the Member and the student were friendly and talked to each other frequently. He [XXX] once, even though this was against school policy; he also [XXX]

after the student told him [XXX]. For a period in late April and early May 2007, their relationship intensified and eventually became physical. On May 8, 2007, the Member and the student spent the night together at [XXX] where they engaged in a physical relationship which progressed to kissing, hugging and heavy petting. (Exhibit 2)

The relationship came to the attention of the police on May 14, 2007 when the student attempted suicide [XXX]. She was taken to hospital and ended up in the ICU in the hospital. (Exhibit 2)

The Member was subsequently found guilty in criminal proceedings in the Ontario Superior Court of Justice, of sexual exploitation of a [XXX] female, who was [XXX].

The Committee finds the Member's conduct is disgraceful and unbecoming a member of the profession. The Member abused the authority and trust vested in him in his role as a teacher, without regard for the well being of the student. The conduct of the Member was unacceptable and in conflict with the duty of a teacher to protect students. The Member, as a result of his conduct, has forfeited the privilege of holding a teaching certificate and being a member of the teaching profession. Revocation is the appropriate penalty for misconduct of this severity.

The Committee orders publication of the finding and order with the name of the Member.

The Committee considered the Member's request to withhold publication of his name for the sake of his children, some of whom are in the Ontario school system, and his wife who is also a teacher. The Committee determined that having a wife and children within the school system is not unusual and was not sufficient reason to not publish the

Member's name. Further, no evidence was presented that harm would occur as a result of publication.

The Committee felt there was compelling reasons to publish the Member's name. Publication of the findings and order of the Committee, in summary, along with the name of the Member, identifies to the profession the serious nature of the Member's misconduct and the consequences for such behaviour. Publication, in this case, acts as a general deterrent and informs the profession that such conduct will not be tolerated and will result in the harshest penalty.

Publication also serves the public interest by reassuring and informing the community that the profession acts decisively when matters of this nature are brought to its attention.

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

Dated: May 10, 2010

Danny Anckle
Chair, Discipline Panel

Alexander Bass, OCT
Member, Discipline Panel

John Tucker
Member, Discipline Panel