

**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 André Charles Gagnon, a member of the Ontario College of Teachers.

PANEL: Annilee Jarvis, Chair
 Danny Anckle
 Alexander Bass

BETWEEN:)	
)	
	)	Cedric Lamarche,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -)	
	)	Natasha De Menna,
	)	Green & Chercover LLP,
ANDRÉ CHARLES GAGNON	)	for André Charles Gagnon
(CERTIFICATE #180096))	
)	
	)	Richard Steinecke,
	)	Steinecke Maciura LeBlanc,
	)	Independent Legal Counsel
)	
	)	Heard: September 21, 2009

REASONS FOR DECISION, DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on September 21, 2009 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated May 15, 2008, was served on André Charles Gagnon, (the “Member”) requesting his attendance before the Discipline Committee of the Ontario College of Teachers on June 10, 2008 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for September 21, 2009.

The Member attended the hearing via teleconference.

THE ALLEGATIONS

The allegations against André Charles Gagnon in the *Notice of Hearing*, (Exhibit 1) dated May 15, 2008 are as follows:

IT IS ALLEGED that André Charles Gagnon is guilty of professional misconduct as defined in section 30(2) of the *Ontario College of Teachers Act, 1996* (the “Act”), in that:

- (a) he failed to maintain the standards of the profession, contrary to Ontario Regulation 437/97, subsection 1 (5);
- (b) he failed to comply with the *Act* and the *Education Act*, Revised Statutes of Ontario, 1990, Chapter E. 2 and specifically section 264 (1) (c) thereof, or the Regulations made under those Acts, contrary to Ontario Regulation 437/97, subsections 1 (14) and (15);
- (c) he committed acts that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 437/97, subsection 1 (18); and
- (d) he engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1 (19).

AGREED STATEMENT OF FACTS

Counsel for the College advised the Committee that an agreement had been reached on the facts and introduced an *Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty (ASF – Exhibit 2)* which provides as follows:

1. Andre Charles Gagnon (the “Member”) is a member of the Ontario College of Teachers. Attached hereto and marked as **Exhibit “A”** is a copy of the Ontario College of Teachers Registered Member Information respecting the Member.
2. At all material times, the Member was employed by the District School Board Ontario North East (the “Board”) as a high school teacher at Roland Michener Secondary School (the “School”) in South Porcupine.
3. Between the approximate dates of February 2, 2006 and February 6, 2006, the Member acted as a chaperon to the Boy’s Senior Basketball Team (the “Team”) on a field trip from South Porcupine to Thunder Bay.
4. While on that field trip, the Member acted unprofessionally in that he:
 - (a) on or about February 2, 2006, while in Thunder Bay, failed to properly supervise students of the Team when he consumed alcohol in his hotel room;
 - (b) on or about February 3, 2006, while in Thunder Bay, consumed alcohol in the presence of the students of the Team;
 - (c) on or about February 4, 2006, permitted two of the students of the Team, who had a valid drivers licences, to drive the van, which was rented by the Board for the field trip (“the rented van”), while travelling between Thunder Bay and Kapuskasing.

(d) on or about 4 February 2006, while in Kapuskasing, failed to notice that two students of the Team, who had been present when a room check was conducted at approximately 11:00 p.m., were missing from the motel where the Team was staying until those students returned to the motel at approximately 2:00 a.m. on the following morning;

(e) on or about 5 February 2006, while in Kapuskasing, failed to notice that a 19 year old member of the Team had purchased and consumed alcohol while the Team was at a restaurant;

(f) on or about 5 February 2006, while in Kapuskasing, permitted a student of the Team, who had a valid drivers licence, to drive the rented van, while travelling between a restaurant and the motel where the Team was staying; and

(g) on or about 5 February 2006, while in Kapuskasing, failed to investigate an altercation which occurred between some members of the Team and failed to notice that a member of the Team had been injured in that altercation. As a result, the Member failed to seek medical treatment for that student.

5. Although he spoke to a vice-principal of the School on 5 February 2006 to advise that road conditions between Kapuskasing and South Porcupine had deteriorated and the road had been closed, the Member did not contact the school administration with respect to his absence until the afternoon of 6 February 2006.

6. The Member also failed to co-operate with the School's investigation of the matter by actively hiding his knowledge of, and participation in, the events referred to in paragraph 4.

7. The Member was suspended for five days without pay by the Board as a result of these incidents.

8. The Member is not currently teaching and resides in British Columbia.

PLEA OF NO CONTEST

9. By this document, the Member admits, for the purposes of this proceeding only, the truth of the facts and Exhibits referred to in paragraphs 1 to 8 above ("the Admitted Facts"). The Member hereby acknowledges that the facts referred to in paragraphs 4, 5, and 6 above, constitute professional misconduct and pleads no contest to the allegations of professional misconduct against him, being more particularly breaches of Ontario Regulation 437/97 1(5), (14), (15), (18 - unprofessional) and (19).

10. By this document, the Member states that:

- (a) he understands fully the nature of the allegations against him;
- (b) he understands that by signing this document, he is consenting to the evidence and Exhibits as set out in paragraphs 1 to 8 above, being presented to the Discipline Committee at the hearing of this matter;
- (c) he understands that by pleading no contest to the allegations, he is waiving the right to require the College to prove the case against him and the right to have a full hearing on these issues; and

(d) he understands and acknowledges that he is executing this Agreement voluntarily, unequivocally and with the advice of legal counsel.

11. The Member provides this plea of no contest pursuant to rule 3.02 of the Rules of Procedure of the Discipline Committee under protection of the Evidence Act, R.S.O. 1990, Ch. E23 for the purpose of this proceeding under the Ontario College of Teachers Act, 1996, S.O. 1996, Chapter 12 and for no other purpose. The Member's plea of no contest does not constitute an admission by the Member as to the facts or findings in any other civil, criminal or administrative proceedings.

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

JOINT SUBMISSION ON PENALTY

13. The Ontario College of Teachers and the Member jointly submit that the appropriate penalty to be imposed by the Discipline Committee in this matter would be that the Committee:

(a) directs that the Member appear before the Committee, in a manner to be determined by the Committee, immediately following the hearing of this matter, to receive a reprimand, and the fact of the reprimand is to be recorded on the Register of the Ontario College of Teachers;

(b) directs the Registrar of the Ontario College of Teachers to suspend the Certificate of Qualification and Registration of the Member for a period of three (3)

months commencing on the date of the hearing of this matter, and the fact of the suspension be recorded on the public register of the College;

(c) directs the Registrar of the Ontario College of Teachers to impose the following terms, conditions or limitations on the Member's Certificate of Qualification and Registration, the fact of such terms, conditions and limitations to be recorded on the Register of the College until such time as they are fulfilled:

(i) at least thirty (30) days before commencing work as a teacher at any public or private school in Ontario, the Member shall notify the Registrar of the Ontario College of Teachers (the "Registrar") of the date on which he intends to return to work as a teacher, and the name of his employer;

(ii) that at the same time that the Member provides the notification referred to in (c)(i) above, the Member shall also provide to the Registrar a written Certificate from a psychiatrist that he or she has reviewed a copy of the Agreed Statement of Facts document made an exhibit at the hearing of this matter, and the Decision and Reasons of the Discipline Committee relating to this matter, and that he or she has examined the Member no earlier than sixty (60) days before the intended date of return to work, and found that the Member is fit to return to work as a teacher on the specified date;

(iii) the Member, is to provide, within thirty (30) days of the hearing of this matter, proof that he has completed a Twelve Step Recovery Program such as Alcoholics' Anonymous;

(iv) the Member is to continue to participate further in that Program as may be deemed necessary by the Member's family physician. If requested, the Member will provide the Registrar with proof, satisfactory to the Registrar, of his compliance with this condition;

(v) prior to any return to a teaching position in Ontario for which a Certificate of Qualification and Registration is required, the Member shall enrol in and successfully complete at his own expense a course pre-approved by the Registrar, regarding appropriate boundaries and boundary violation issues; and

(vi) within thirty (30) days of his completion of the course referred to at paragraph (v) above, the Member shall deliver directly to the Registrar, a written certificate from the course provider stating:

A. that he or she has reviewed a copy of the Agreed Statement of Facts document made an exhibit at the hearing of this matter and the Decision and Reasons of the Discipline Committee relating to this matter; and

B. that the Member has successfully completed the course; and

(d) directs that there be publication of the findings and Order of the Committee in summary form, without the Member's name, in the official publication of the College, *Professionally Speaking/Pour parler profession*.

14. By this document, the Member acknowledges his understanding that any agreement between the College and the Member with respect to the penalty proposed in this document does not bind the Discipline Committee.

DECISION

Having examined the Exhibits filed, and based on the plea of no contest, the *Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty*, and the submissions made by counsel for the College and counsel for the Member, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that André Charles Gagnon committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(14), 1(15), 1(18 – unprofessional) and 1(19).

REASONS FOR DECISION

The Committee accepted the Member's plea of no contest and the *Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty*.

The Member admits the truth of the facts referred to in paragraphs 1 to 8 of the *Agreed Statement of Facts, Plea of No Contest, and Joint Submission on Penalty* and acknowledges that the facts referred to in paragraphs 4, 5 and 6 thereof constitute

professional misconduct and pleaded no contest to these allegations of professional misconduct.

In February 2006, the Member, while acting as chaperone to a boy's senior basketball team on a field trip, failed to properly supervise students. He consumed alcohol in his hotel room and in the presence of students of the team. On two occasions, he permitted students to drive the board's rented van. He failed to notice that a 19-year old team member purchased and consumed alcohol while the team was at a restaurant. The Member failed to investigate an altercation between team members and failed to seek medical treatment for a student who had been injured.

The Member did not meet board expectations in reporting his absence from school in a timely manner. He failed to co-operate with the school's investigation of the above events and subsequently was suspended for five days without pay.

The Committee determined that by his conduct, the Member committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(14), 1(15), 1(18 – unprofessional) and 1(19).

PENALTY DECISION

The Committee makes the following order as to penalty:

1. The Member is required to appear before the Committee to be reprimanded, following the hearing of this matter and the fact of the reprimand is to be recorded on the Register;

2. The Registrar of the Ontario College of Teachers is directed to suspend the Member's Certificate of Qualification and Registration for a period of three (3) months from September 21, 2009;

3. The Registrar is directed to impose the following terms, conditions or limitations on the Member's Certificate of Qualification and Registration, the fact of such terms, conditions and limitations to be recorded on the Register of the College until such time as they are fulfilled:

(i) at least thirty (30) days before commencing work as a teacher at any public or private school in Ontario, the Member shall notify the Registrar of the Ontario College of Teachers (the "Registrar") of the date on which he intends to return to work as a teacher, and the name of his employer;

(ii) that at the same time that the Member provides the notification referred to in 3.(i) above, the Member shall also provide to the Registrar a written Certificate from a psychiatrist that he or she has reviewed a copy of the Agreed Statement of Facts document made an exhibit at the hearing of this matter, and the Decision and Reasons of the Discipline Committee relating to this matter, and that he or she has examined the Member no earlier than sixty (60) days before the intended date of return to work, and found that the Member is fit to return to work as a teacher on the specified date;

(iii) the Member, is to provide, within thirty (30) days of the hearing of this matter, proof that he completed a Twelve Step Recovery Program such as Alcoholics' Anonymous prior to the hearing of this matter;

(iv) the Member is to continue to participate further in that Program as may be deemed necessary by the Member's family physician. If requested, the Member will provide the Registrar with proof, satisfactory to the Registrar, of his compliance with this condition;

(v) prior to any return to a teaching position in Ontario for which a Certificate of Qualification and Registration is required, the Member shall enrol in and successfully complete at his own expense a course pre-approved by the Registrar, regarding appropriate boundaries and boundary violation issues; and

(vi) within thirty (30) days of his completion of the course referred to at paragraph (v) above, the Member shall deliver directly to the Registrar, a written certificate from the course provider stating:

A. that he or she has reviewed a copy of the Agreed Statement of Facts document made an exhibit at the hearing of this matter and the Decision and Reasons of the Discipline Committee relating to this matter; and

B. that the Member has successfully completed the course; and

4. 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, without the name of the Member in the official publication of the College, *Professionally Speaking/Pour parler profession*.

REASONS FOR PENALTY DECISION

The Member consumed alcohol while chaperoning students on a field trip, and failed to properly supervise students, report incidents and co-operate with the board investigation. He did not take proper responsibility for the students in his care. On several occasions he showed disregard for the safety and well-being of the students. Parents expect, and professional conduct requires, that students will be appropriately supervised during school-related activities. The Committee determined that these actions are sufficiently serious to warrant suspension of the Member's certificate.

The reprimand in this case was an opportunity to reinforce to the Member the seriousness of his conduct and the expectations of the profession. The fact that the reprimand will be recorded on the Register serves as a specific deterrent to the Member.

In addition, the Committee determined that the Member complete a course in appropriate boundaries and boundary violation issues. This will serve to ensure that the Member is aware of appropriate behaviours and protocols for supervising students in a safe and responsible manner. This will help to assure the public that the issues which gave rise to the misconduct are being addressed.

Terms and conditions placed on the Member's certificate require that a psychiatrist confirm the Member is fit to return to work. In addition, the Member's family physician may deem that he participate further in the Twelve Step Recovery Program. These conditions and the required reports to the Registrar also serve the public interest.

Publication of the findings and order without the name of the Member acts as a general deterrent to the profession and reminds teachers of the obligations to students in their

care, both in and out of school. Publication also assures the public and the profession that conduct of this nature will be not be tolerated and bears significant consequences.

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

Date: October 8, 2009

Annilee Jarvis, OCT
Chair, Discipline Panel

Alexander Bass, OCT
Member, Discipline Panel