

**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 Carol Fiona Gruss, a member of the Ontario College of Teachers.

PANEL: Rosemary Fontaine, Chair
 Anne Marie Levesque
 Jacques Tremblay

BETWEEN:	)	Yasmin Nizami,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Jennifer Robinson
	)	Law Clerk
- and -)	
)	
CAROL FIONA GRUSS	)	Mandy Wojcik,
(CERTIFICATE # 407611)	)	Sack Goldbatt Mitchell LLP,
	)	for Carol Fiona Gruss
)	
	)	Johanna Braden
	)	Stockwoods LLP,
	)	Independent Legal Counsel
)	
	)	Heard: April 6, 2009

REASONS FOR DECISION, DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on April 6, 2009 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated September 24, 2008 (Exhibit 1) was served on Carol Fiona Gruss (the “Member”), providing her with notice that the Discipline Committee of the Ontario College of Teachers would meet on October 7, 2008 to set a date for a hearing, and specifying the charges. The Discipline Committee subsequently set April 6, 2009, as the date for the hearing on the merits.

The Member was not in attendance at the hearing.

THE ALLEGATIONS

The *Notice of Hearing* sets out the following allegations:

IT IS ALLEGED that Carol Fiona Gruss is guilty of professional misconduct as defined in section 30(2) of the *Ontario College of Teachers Act, 1996* (the “Act) and/or is incompetent as defined in section 30(3) of the Act, in that:

- (a) she failed to maintain the standards of the profession, contrary to Ontario Regulation 437/97, subsection 1(5);
- (b) she 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) she 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) she displayed a lack of knowledge, skill or judgment and/or a disregard for the welfare of her students of a nature or extent that demonstrates that the Member is either unfit to carry out her professional responsibilities or that the Member’s certificate should be made subject to terms, conditions or limitations.

On April 6, 2009, Counsel for the College advised the Committee that it would not be proceeding with allegations of professional misconduct as outlined in paragraphs (a), (b) and (c). Counsel advised that the College would be proceeding with the allegation of incompetence only as outlined in paragraph (d).

Counsel for the College advised the Committee that an agreement had been reached on the facts and introduced as *Exhibit 3, an Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty (ASF – Exhibit 3)* which provides as follows:

AGREED STATEMENT OF FACTS

1. Carol Fiona Gruss (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 York Region District School Board (the “Board”) and taught at the Grade 5 level at Thornhill Woods Public School in Thornhill, Ontario.
3. During the 2005/2006 academic years, the Member’s performance was assessed formally on two occasions and on each occasion, was deemed to be *unsatisfactory* in the areas of Commitment to Pupils and Pupil Learning, Professional Knowledge, Teaching Practice, and Leadership and Community. Attached hereto and marked as **Exhibits “B”** and **“C”** respectively, are the Summative Reports dated March 8, 2006 and June 27, 2006 prepared by the Principal who conducted those evaluations.

4. As indicated in the above Summative Reports, the Member's classroom management skills, her curriculum knowledge and delivery, her lesson planning and preparation, her effective teaching performance, her evaluation of student work and progress and her assessment practices all failed to meet the standards expected of a teacher with her training and experience.

5. The Member's employment with the Board was terminated on December 14, 2006.

PLEA OF NO CONTEST

6. 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 5 above (the "Admitted Facts"). The Member hereby pleads no contest to the allegation of incompetence in that she displayed a lack of knowledge, skill or judgment that demonstrates that her Certificate should be made subject to terms, conditions or limitations, as defined in Section 30(3) of the *Ontario College of Teachers Act, 1996*.

7. By this document the Member states that:

- (a) she understands fully the nature of the allegations against her;
- (b) she understands that by pleading no contest to the allegations, she is waiving her right to require the College to prove the case against her and the right to have a hearing;
- (c) she voluntarily decided to plead no contest; and

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

JOINT SUBMISSION ON PENALTY

8. In light of the admitted facts and circumstances and the Member's plea of no contest to the allegation of incompetence against her, the Ontario College of Teachers and the Member submit that the Discipline Committee find the Member to be incompetent and jointly submit that the appropriate penalty to be imposed by the Discipline Committee in this matter would be that the Committee:

- (a) 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 and conditions and limitations to be recorded on the Register of the College until such time as they are fulfilled:
 - (i) the Member shall enrol in, no later than September 2009 and then attend, at her own expense and complete, one Additional Basic Qualifications course and one Additional Qualifications course, which cover curriculum, lesson planning, instructional strategies and assessment of student learning;
 - (ii) within thirty (30) days of her completion of each of the two courses referred to in (i) above, the Member shall provide evidence to the Registrar in writing, of her successful completion of same;

- (iii) the Member shall advise the Registrar in writing within twenty (20) days of the date of this Order, of the details of her current placement on any occasional teaching lists, and shall advise the Registrar, in writing, within ten (10) days, of any future changes thereto;
- (iv) the Member shall advise the Registrar in writing within ten (10) days following any return to fulltime teaching duties of the date of such return, the name of her employer and the nature of her employment; and
- (v) if the Member commences full-time employment following the date of this Order, the Member shall provide to the Registrar a performance appraisal (as described in O. Reg. 99/02 to the *Education Act*, R.S.O. 1990, c. E. 2) within thirty (30) days of her receipt of same.

9. By this document, the Member acknowledges her 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

(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 based on the Member's plea of no contest, *the Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty* (Exhibit 3) and the submissions made by Counsel for the College and Counsel for the Member, the Committee makes the following decision. The evidence contained in Exhibit 3 does not support a finding of incompetence as defined in section 30(3) of the *Act*. Therefore, the allegation of incompetence is dismissed.

REASONS FOR DECISION

The parties agreed that during the 2005/2006 academic years, the Member's performance was assessed formally on two occasions and on each occasion, was deemed to be *unsatisfactory*. Although the Member's classroom performance may have been unsatisfactory, this was not proof of incompetence as defined in Section 30 (3) of the Act. The Committee recognized that there is a clear distinction between the Member's performance and the employer's expectations for employment, and the Member's right to hold a certificate of qualification and registration. The fact that the Member did not meet Board performance expectations does not alone demonstrate that she is incompetent such that her certificate of qualification and registration should be made subject to terms, conditions or limitations.

The Committee had strong concerns that the evidence provided was generally the observations and opinion evidence of teacher performance appraisals ("TPA") alone. The Committee also had strong concerns that only two TPA's were conducted and not the

usual three, and these TPA's were conducted over a short period of time by the same individual, the school principal. The Committee recognized the value of the principal's observations and opinions, and did not doubt her sincerity. However, the Committee found that that the evidence before the Committee was insufficient to discharge the burden of proof on the College in this case.

The Committee noted that the Member has been a member in good standing with the College since September 1996 and that there were no prior allegations of incompetence. The Committee also noted that, amongst other additional qualifications, the Member holds a Special Education, Specialist, Learning Disabilities (advanced).

The Committee can only determine the competence of the Member based on the evidence presented. In this matter the Committee did not receive sufficient evidence to determine incompetence of the Member. To make such a determination, the Committee required evidence such as lesson plans, examples of student evaluations, and improvement plans to be included in the Agreed Statement of Facts. Oral testimony to corroborate the information in the TPA's would have also been useful to the Committee. The Committee also concluded that the four-month period in 2006 in which the TPA's were conducted was too short a time period to determine the Member's competence, especially in the absence of the aforementioned corroborating evidence.

The Committee recognized that the Member did not meet all of the Board's expectations regarding performance. In light of the absence of clear, convincing and cogent evidence this does not prove to the Committee that the Member was incompetent.

An Agreed Statement of Facts attesting to unsatisfactory performance appraisals alone, without proof of incompetence contained therein, or receipt of further evidence in support will not necessarily result in a finding of incompetence.

Date: July 16, 2009

Rosemary Fontaine
Chair, Discipline Panel

Anne Marie Levesque
Member, Discipline Panel

Jacques Tremblay
Member, Discipline Panel