



the Committee determined that the Member failed to maintain the standards of the profession, contrary to Ontario Regulation 437/97, subsections 1(5), 1(7), 1(14), 1(15) 1(18) and 1(19).

On October 27, 2009, the Committee met to hear the submissions of the parties in order to render a decision and order as to penalty in this matter.

Martin Guibord was in attendance at the penalty hearing.

## **SUBMISSIONS FROM COUNSEL FOR THE COLLEGE**

In setting out the aggravating and attenuating factors related to the penalty, counsel for the College stressed the seriousness of the misconduct, the re-offence, the fact that the misconduct took place over a lengthy period of time and the harm inflicted on individuals. He further noted that the Member has not personally acknowledged his misconduct and that he has not admitted to any misconduct or demonstrated any remorse. The ultimate aim of the penalty is therefore to convince the Member, other members of the profession and the general public that the College is fulfilling its duty in this case.

In light of the acknowledged facts and circumstances, it is the opinion of counsel for the College that the appropriate penalty to be imposed by the Committee in this case would be:

- (a) to direct the Registrar to suspend the Member's Certificate of Qualification and Registration for a period of six months, beginning 30 days after the Committee's decision, and that the fact of the suspension be noted on the public register;
- (b) that the Member be reprimanded by the Committee, and that the fact of the reprimand be noted on the public register;
- (c) to direct the Member to submit a psychiatric report acceptable to the Registrar;
- (d) to order that the Committee's decision be published in *Professionally Speaking/Pour parler profession*, the official publication of the College, and that the Member's name be mentioned therein; and
- (e) to order that the Member be held liable for the travel expenses of a student and his mother incurred when they went to Toronto to attend the hearing.

The College maintains that such a penalty is required in order to protect the public interest, maintain the standards of the profession and promote public trust. In this way, there will be both specific and general deterrence.

As for the suspension, counsel for the College submitted a casebook containing decisions for the Committee to take into consideration when reaching its decision.

It is the opinion of the College that a six-month suspension is appropriate because consideration must be given to the seriousness of the professional misconduct, the re-offences, the frequency of the incidents and the lack of acknowledgement of the misconduct. Courses of instruction will not be sufficient to deter the Member. A suspension of this type offers a middle ground between a simple warning and revocation. It also gives the Member time for reflection.

The request by counsel for the College for a psychiatric report from an expert acceptable to the Registrar represents counsel's desire to confirm that the Member has been rehabilitated.

The recommendation by counsel for the College that the Member's name be published with a summary was a reminder to the Committee that publication is standard practice at the College and that it serves as a general deterrent. He also noted the fact that the Member's case is known in the region where he teaches and that publication will maintain public trust.

With regard to the expenses, counsel for the College argued that counsel for the Member had insisted on the student's testimony even if this was disruptive to the student's school life. At the hearing, however, counsel for the Member did not cross-examine the student. By assigning the travel expenses to the Member, the Committee is able to warn the profession that it is unreasonable to call a student to a hearing when no "cross-examination" of that student is intended. The College also advised the Committee that it has the discretion to impose these and other costs if it deems this to be appropriate.

At the beginning of the penalty hearing, counsel for the Member provided an expert psychiatric report from Dr. Dominique Bourget (Exhibit 47) and the Member's performance appraisal (Exhibit 49). Counsel for the College challenged the use of the term "expert" for the physician selected and the purpose of the consultation. He assessed the expert psychiatric report making use of the criteria set forth by Mr. Justice Sopinka in his text entitled *The Law of Evidence*, in particular the appropriate qualifications of the expert, the relevance, necessity and reliability. According to the College, the expert psychiatric report is an account of two interviews and not a psychiatric assessment. With regard to the performance appraisal, counsel for the College submitted that the acts of professional misconduct occurred prior to this appraisal and that it echos problems raised in the Discipline Committee's decision.

### **SUBMISSIONS FROM COUNSEL FOR THE MEMBER**

Counsel for the Member did not put forward any penalty; instead, she responded to the penalties put forward by counsel for the College. She submitted that the penalty must take the special circumstances into consideration and be proportional to the facts. She said that the Member acted in good faith based on his assessment of the facts. He believed that he had the right to act as he did. No formal restraint policy was available to guide the Member. He did not conceal his actions and witnesses confirmed that these actions were not caused by fits of anger. Nevertheless, the Member learned his lesson and now understands that he cannot act in this way. A psychiatric expert confirmed that the Member's judgment is adequate and that the risk of his re-offending is minimal. The Member has not used restraint since the incident, which occurred six years ago, and has pursued his career path, including classroom management training. A recent appraisal (April 2008) is generally satisfactory.

Counsel for the Member suggested that a six-month suspension is not appropriate because the Member has already been out of the classroom for 27 months; because it has been six years since the events at issue occurred; because the Member has taken a course on his own initiative (Exhibit 48); because he acted in good faith based on his assessment of the facts, believing that he had the right to act as he did; and because, from 2003 until the present time, there has been no other incident. A suspension would have a significant impact on the Member's family. Finally, the Member regrets that he crossed the boundaries. He has tried to manage his classroom within the parameters which he had been given. If there is a suspension, counsel for the Member requests that it be deferred to allow

for additional training. She further suggested that the suspension has already been served over the six-year period since the events occurred and during his 27 months outside the classroom; and she referred to the Maloney case, a decision by the College's Discipline Committee, which appears in a casebook that she submitted.

Counsel for the Member advised the Committee that the Member does not object to a verbal or written reprimand. She requests that any verbal reprimand be delivered on the same day so that another trip to Toronto will not be necessary.

Regarding publication, the Member agreed to publication of the summary but without his name. Publication of his name would have no deterrent effect and the public interest would be better served by publishing the summary. Publishing the Member's name would amount to punishment because the public would know his name. The Member is currently employed, and the effect would be punitive given all the other attenuating factors.

With regard to the expenses incurred by the student and his mother, the Member never demanded that the student be present. The counsel representing the Member during the hearing is now a judge and cannot testify. The College has no "specific list" for expenses and such a decision should be made only in exceptional circumstances.

Counsel for the Member also referred to the expert psychiatric report which she filed at the commencement of the penalty hearing. She submitted that the report is admissible as such and that all the rules for submission were followed. She insisted that the physician is an expert who has been practising for 20 years and that he had the privilege of reviewing the decision and interviewing the Member before finding that the Member does not suffer from any mental pathology or personality disorder, and that he demonstrates the intention to act competently and conscientiously in his teaching position. Furthermore, the physician is of the opinion that the Member poses no risk to students in the classroom, that his judgment is adequate and that the risk of re-offending is, for all practical purposes, minimal.

## **ADVICE OF THE INDEPENDENT LEGAL COUNSEL**

The independent legal counsel provided advice to the Committee after he had heard the submissions from the two parties. The expert psychiatric report was admitted upon consent and is part of the evidence. The Committee has the discretion to weigh this expert report according to the criteria for evidence assessment based on expert opinions and to give it the importance which the Committee determines to be relevant. The independent legal counsel presented and explained the criteria which, according to the Sopinka text, the Committee must consider in assessing the expertise of a witness or the evidence. He also referred to the *Mohan* decision by the Supreme Court of Canada, which states that expertise must be a necessity in assisting the triers of facts (the Committee) with the assessment of a case, in the sense that the technical or scientific explanation provided by the expert helps the Committee to understand the evidence and therefore to make its decision. He recommended that the Committee study the facts on which the report is based and that it do so in light of the evidence heard and in light of the reasons identified for the decision.

The independent legal counsel confirmed that the purpose of a penalty should never be to punish but to protect the public interest and maintain the standards of the profession and public trust. A penalty may have deterrent effects that are specific (for the Member) and general (for the profession). The Committee must take the full measure of both of these. It must also ensure the Member's rehabilitation (sometimes also called reparation). With regard to the aggravating and attenuating factors, the Committee must take into consideration the seriousness of the misconduct, the period during which it occurred, the absence (or not) of a prior disciplinary history and the admission of misconduct.

Counsel for the College summarized the arguments related to the penalty. There is no disagreement concerning the reprimand. With regard to publication, the College's standard practice is to publish the name with the summary in order to maintain public trust. Counsel for the member suggested some alternatives to the recommendation made by counsel for the College, that is, a deferred suspension or acknowledgement that the suspension has already been served. The conditions of a deferred suspension should be specific. The independent legal counsel submitted the following opinion regarding the recommendation that the Member submit a second psychiatric report acceptable to the Registrar: Is the requested condition related to the evidence submitted? No part of the evidence submitted referred to the Member's mental health. Does the requested condition allow the Registrar to administer the condition clearly?

According to counsel for the College, it will be difficult to assign the travel costs if there is no evidence regarding the matters debated by counsel for the parties.

Finally, with regard to suspension, the independent legal counsel advises the Committee to refer to the basic principles of penalties, that is, deterrence and rehabilitation. It must take all the facts and circumstances into account and identify their importance. Past decisions submitted to the Committee will be helpful in guiding the Committee with respect to the existing parameters.

## **DECISION ON PENALTY AND ORDERS**

The Discipline Committee makes the following order as to penalty:

1. The Committee directs the Registrar to suspend Martin Guibord's certificate for a period of six (6) months, beginning 30 days after the Committee's decision, and that the suspension be noted on the public register;
2. The Committee orders the Member to appear before the Committee to be reprimanded within six (6) months of the date of this decision on penalty, and that the fact that a reprimand has been given be noted on the public register for a period of three (3) years;
3. The Committee directs the Registrar to impose the following terms, conditions or limitations on the Member's Certificate of Qualification, which shall be recorded on the public register:
  - (a) Within six (6) months of the date of this order, the Member must, at this own expense and with the prior approval of the Registrar, enrol in a training course on ethics that focuses in particular on understanding and maintaining ethical and professional standards;
  - (b) Within thirty (30) days of the training, the Member must provide the Registrar with proof that he has completed the training indicated in paragraph (a) above.
4. The Committee orders that a summary of the decision and order of the Discipline Committee be published in the next regular issue of *Professionally Speaking/Pour parler profession* and that the Member's name, as it appears on the public register, be published.

## **REASONS FOR DECISION ON PENALTY AND ORDERS**

### **Suspension**

The Committee had regard to the fact that the purpose of the penalty is to protect the public, maintain the standards of the profession and promote public trust in the teaching profession. The Committee has determined that the Member committed acts of professional misconduct by abusing four students physically, verbally, psychologically or emotionally between August 8 and October 16, 2003. In so doing, the Member failed to maintain the standards of the profession and to comply with the *Ontario College of Teachers Act* and the *Education Act*. He committed acts that having regard to all the circumstances would reasonably be regarded by members as disgraceful, dishonourable or unprofessional. Similarly, he engaged in conduct unbecoming a member.

In the opinion of the Committee, the six-month suspension imposed on the Member must meet the objective of having a specific and general deterrence. The Member must be made to realize that his use of physical force was not in compliance with the standards of the profession. The purpose of the suspension is to convince the Member of the seriousness of the harm endured by the students whom he abused. The suspension imposed on the Member must help to deter other members of the profession from resorting to physical force or restraint outside the framework that has already been defined by the profession.

### **Reprimand**

The verbal reprimand which the Member will receive from his colleagues, together with its inclusion on the public register for three years, will be a deterrent for him. It will help him to realize the seriousness of his professional misconduct and the importance of maintaining the standards of the profession.

### **Training**

In its reasons, the Committee found that the Member's actions did not show a teacher facing imminent danger but rather a teacher focused on control and discipline in the classroom. Moreover, by having frequent recourse to force, the Member failed to comply with the *Act* and the *Education Act*, Revised Statutes of Ontario, 1990, Chapter E.2 and, in particular, with paragraph 264(1)(c) thereof and with the regulations under these acts, contrary to Ontario Regulation 437/97, subsections 1(14) and 1(15). The Committee therefore considered it advisable to direct the Member to take ethics

training so that he can explore this topic with an experienced practitioner and find help in making informed and responsible decisions vis-à-vis practices that comply with the professional code of ethics.

### **Publication**

The Discipline Committee directs that a summary of the decision and order of the Discipline Committee be published in the next regular issue of *Professionally Speaking/Pour parler profession* and that the Member's name, as it appears on the public register, be published.

The Committee considered the following when directing that the Member's full name be published:

- (a) the alleged actions were repetitive;
- (b) the alleged actions are serious and involve the use of inappropriate physical force against young students;
- (c) publication will be a specific deterrent for the Member and a deterrent for members of the profession in general to refrain from engaging in similar conduct.

The Committee is satisfied that such publication will also help to reassure the public about the transparency of the College's disciplinary process and the College's intolerance of such actions.

### **Travel Expenses**

The Committee rejected the College's submission that the Member be held liable for the travel expenses of a student and his mother. The College argued that counsel for the Member had insisted on the student's testimony even though this was disruptive to the student's school life. At the hearing, however, counsel for the Member did not cross-examine the student. Since the Committee is not in a position to know the original reasons of counsel for the Member concerning the student's testimony, it has decided to reject this proposal.

### **Psychiatric Report Acceptable to the Registrar**

In his submission, counsel for the College proposed that the Member submit a psychiatric report acceptable to the Registrar. The Committee has already received an expert psychiatric report

(Exhibit 47) aimed at assessing the Member and at giving an opinion on the risk he poses to students in a classroom. The Committee found that Mr. Guibord's mental health was never the subject of the allegations, the hearing or the decision. Since this condition is not relevant to the case, the Committee rejects this submission.

Date: December 2, 2009

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Gabrielle Blais  
Chair, Discipline Panel

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Rollande Lavictoire  
Member, Discipline Panel

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Jacques Pavesi, OCT  
Member, Discipline Panel