

**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 Philip Bin Jianping Hu, a member of the Ontario College of Teachers.

PANEL: Brent Hamelin, Chair
 John Tucker
 Hanno Weinberger

BETWEEN:)	
	)	Yasmin Nizami,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -)	
	)	Howard Goldblatt and
PHILIP BIN JIANPING HU	)	Mandy Wojcik,
(CERTIFICATE #429201)	)	Sack Goldblatt Mitchell LLP,
	)	for Philip Bin Jianping Hu,
)	
	)	Luisa Ritacca,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
)	
	)	Heard: February 5, 2009

REASONS FOR DECISION, DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on February 5, 2009 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated July 4, 2008, was served on Philip Bin Jianping Hu, requesting his attendance before the Discipline Committee of the Ontario College of Teachers on July 17, 2008 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for February 5, 2009.

Philip Bin Jianping Hu was in attendance at the hearing.

THE ALLEGATIONS

The allegations against Philip Bin Jianping Hu in the *Notice of Hearing*, (*Exhibit 1*) dated July 4, 2008, are as follows:

IT IS ALLEGED that Philip Bin Jianping Hu 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 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 1(15);
- (d) 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

- (e) 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. Philip Bin Jianping Hu (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 as an occasional teacher by the Toronto District School Board (the “Board”).
3. On or about 29 October 2002, while assigned to Brooks Road Public School, the Member touched a student’s forearm while attempting to redirect the student, causing the student to become upset.
4. By letter dated 8 November 2002, a copy of which is attached as **Exhibit “B”**, the principal advised the Member that the physical redirection of students was not acceptable. The principal further told the Member that for his own protection and educational growth, he should enrol in courses relating to classroom discipline and management as offered by the Board. Further, the Member was advised that any repeat of the action described would result in further discipline and the Member was expected to always behave as a professional. The Member received this letter in March 2004.

5. On or about November 2003, while assigned to William Tredway Public School, the principal had occasion to discuss with the Member the fact that he had inappropriately made physical contact with a student.

6. On or about 5 February 2004, while assigned to Dewson Street Public School, the Member touched a student's forearm while attempting to redirect the student.

7. By letter dated 23 March 2004, a copy of which is attached as **Exhibit "C"**, the Central Co-ordinating Principal of the Board wrote a disciplinary letter to the Member outlining for him the concerns of the Board that had arisen since his employment began. The specific incidents referenced including the October 2002, November 2003 and February 2004, incidents referred to in paragraphs 3, 5 and 6 above.

8. In that letter, the Central Co-ordinating Principal stated that, "you have demonstrated a clear pattern of using physical force to maintain discipline. It has been made clear to you on several occasions that this is completely unacceptable. You are required to maintain discipline in the classroom without resulting to physical force of any kind. If you require assistance in a classroom situation, you are to immediately contact the school's administration and request assistance." The Member was again warned that any further incidents of inappropriate behaviour would result in further disciplinary action.

9. On or about 5 May 2005, the Member, while assigned to Gledhill Public School, touched the hand of one student in order to redirect her. Following an investigation, which confirmed that the Member did touch the student's hand in that manner, the Member was advised, by letter dated 26 May 2005, a copy of which is attached as **Exhibit "D"**, that he would be blocked from all occasional teaching assignments with the

Board until 30 June 2005. Further, he was directed to enrol in a course in which he would receive instruction on effective classroom management strategies, and to provide to the Central Co-ordinating Principal proof of successful completion of that course. The Member completed such a course prior to his return to the classroom in September 2005.

10. On or about 14 January 2007, while assigned to the Island Public/Natural Science School, the Member was involved in another incident in which he inappropriately touched a student while attempting to redirect the student.

11. By letter dated 2 March 2007, a copy of which is marked as **Exhibit “E”**, the principal of the Island Public/Natural Science School advised the Member that it was evident that he continued to use physical contact to maintain discipline in the classroom. The Member was reminded that he had been reprimanded twice by the Board for that unacceptable behaviour. The Member was told that he was expected to immediately contact the school administration and request assistance if he could not manage a classroom situation. He was advised that any further incident would result in termination of his employment with the Board.

PLEA OF NO CONTEST

12. 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 11 above (“the Admitted Facts”). The Member hereby acknowledges that the facts referred to in paragraphs 3, 5, 6, 9 and 10 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), (7 - physical), (14), (15), (18 - unprofessional) and (19).

13. 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 11 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.

14. 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 *College of Teachers Act, 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.

15. 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

16. 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 immediately following the hearing of this matter to receive a reprimand, and the fact of the reprimand to be recorded on the Register of the Ontario College of Teachers;

- (b) directs the Registrar to impose a term or condition on the Member's certificate that the Member is to enrol in and complete, at his own expense, within three (3) months from the date of an Order of the Discipline Committee, a course of instruction, pre-approved by the Registrar, regarding appropriate boundaries and boundary violation issues and that the Member shall deliver directly to the Registrar, within thirty (30) days of its completion, a written certificate from the course provider stating:
 - (i) that he or she has reviewed a copy of this document and the Decision and Reasons of the Discipline Committee; and
 - (ii) that the Member has successfully completed the course; and

- (c) directs that there be publication of the findings and Order of the Committee in summary form in the official publication of the College, Professionally Speaking/Pour parler profession. The parties have not agreed upon whether the Member's full name will be included in the publication and submissions will be made to the Committee on that issue.

17. 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 Member's plea of no contest and 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 Philip Bin Jianping Hu committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(7 – physical), 1(14), 1(15), 1(18 - unprofessional) and 1(19) of the *Act* as set out in the *Notice of Hearing*.

REASONS FOR DECISION

The Member acknowledged that the Agreed Facts described in paragraphs 3, 5, 6, 9 and 10 of the *Agreed Statement of Facts, Plea of No Contest, and Joint Submission on Penalty* (ASF - Exhibit 2) constitute professional misconduct and pleaded no contest to these allegations of professional misconduct. The Committee accepted the Member's plea of no contest and the facts contained in the *Agreed Statement of Facts, Plea of No Contest, and Joint Submission on Penalty*.

The Committee determined that the Member's conduct did not comply with the standards of the profession or the Education Act. The Member acted in an unprofessional manner

on multiple occasions, over several years, by engaging in inappropriate physical contact with students while attempting to redirect them. Such conduct is unbecoming a Member of the profession.

SUBMISSIONS WITH RESPECT TO PUBLICATION

After reviewing the Agreed Statement of Facts, College Counsel submitted that publication should include the name of the Member to act as a general and specific deterrent. Counsel submitted that publication of the Member's name advises the public, and sends a clear message to the profession and the public that this type of conduct is unacceptable. Counsel further submitted that since the hearings are open to the public there is an expectation of full publication, with the name of the member. Full publication supports the transparency of the proceedings and promotes public confidence in the process.

Counsel for the Member requested that the name of the Member not be published. Member's Counsel submitted that publication of the Member's name was not necessary as the plea of no contest, the reprimand and course work provided the specific deterrent to the Member. Counsel further submitted that publication in summary provides the general deterrent.

PENALTY DECISION

The Committee makes the following order as to penalty:

- (a) The Member is required to appear before the Committee following the completion of the hearing of this matter to be reprimanded and the fact of

the reprimand is to be recorded on the Register of the Ontario College of Teachers.

(b) The Registrar is directed to impose the following term or condition on the Member's Certificate of Qualification and Registration, the fact of such term or condition to be recorded on the Register of the College until such time as it is fulfilled:

(i) that the Member shall enrol in and complete, at his own expense, within three (3) months from the date of this Order, a course of instruction, pre-approved by the Registrar, regarding appropriate boundaries and boundary violation issues and that the Member shall deliver directly to the Registrar within (30) days of its completion, a written certificate from the course provider stating that he or she has reviewed a copy of this document and the Decision and Reasons of the Discipline Committee; and that the Member has successfully completed the course.

(c) 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

The reprimand of the Member by his peers in respect of his inappropriate conduct serves to reinforce the necessity to maintain appropriate professional boundaries. It will further remind the member to uphold the standards of the profession and not to engage in

conduct unbecoming a member. The fact that the reprimand will be recorded on the Register also serves as a specific deterrent to the Member.

The majority of the Committee determined that the course of instruction in appropriate boundaries and boundary violation issues will assist the Member to understand the acceptable limits of student/teacher interaction.

With respect to the issue of publication of the Member's name, the Committee considered the submissions of both counsel.

The Committee concluded that publication of the findings and order of the Committee, in summary, with the name of the Member, in *Professionally Speaking/Pour parler profession*:

- serves both as a general and specific deterrent;
- enables the College to be accountable to the public; and
- sends a clear message to the profession that this type of behaviour is unacceptable.

Given that the Member had taken a classroom management course, and thereafter engaged in inappropriate physical contact with a student, the Committee determined that publication with the name of the Member strengthens the message to this member that this type of behaviour will not be tolerated.

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

Date: February 5, 2009

Brent Hamelin
Chair, Discipline Panel

Hanno Weinberger
Member, Discipline Panel