

**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 Michael David Hurst, OCT, a member of the Ontario College of Teachers.

PANEL: Mel Greif, Chair
Alexander Bass, OCT
Dean Favero, OCT

BETWEEN:	)	Erica Richler,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -)	
)	
	)	Bernard Hanson,
	)	Cavalluzzo Hayes Shilton McIntyre
	)	and Cornish
MICHAEL DAVID HURST	)	for Michael David Hurst
(CERTIFICATE #406325))	
)	
	)	Julie Maciura,
	)	Steinecke Maciura LeBlanc,
	)	Independent Legal Counsel
)	
	)	Heard: February 18, 2010

REASONS FOR DECISION, DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on February 18, 2010 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated August 24, 2009 was served on Michael David Hurst, requesting his presence on September 21, 2009 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for February 18, 2010.

Michael David Hurst was in attendance.

THE ALLEGATIONS

The allegations against Michael David Hurst in the *Notice of Hearing*, (*Exhibit 1*) dated August 24, 2009, are as follows:

IT IS ALLEGED that Michael David Hurst 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 *Education Act*, Revised Statutes of Ontario, 1990, chapter E.2, and specifically sections 264(1)(c) and 265(1) thereof or the Regulations made thereunder, contrary to Ontario Regulation 437/97, subsection 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).

At the hearing on February 18, 2010, College counsel sought to withdraw the allegations of professional misconduct in paragraphs (b), (c) and (e) above, namely that the Member breached Ontario Regulation 437/97, subsections 1(7), 1(15) and 1(19). The Committee agrees that these allegations shall be withdrawn.

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

STATEMENT OF UNCONTESTED FACTS

1. Michael David Hurst (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 Catholic District School Board (the “Board”) and was a [XXX] teacher at [XXX], Markham (the “School”).
3. During the 2006-2007 academic year, the Member, using a cellular telephone device which included a camera (“cell phone camera”), took photographs of female [XXX] students of the School without their knowledge or consent.
4. The Member, despite a previous direction from the Principal of the School to refrain from such behaviour:
 - (a) continued to display his cell phone camera in the presence of his students;
 - and

(b) continued to take pictures of students with his cell phone camera.

5. Following a complaint, the York Region Children's Aid Society conducted an investigation and concluded that there was some cause for concern in the Member's behaviour in that the Member knew, or ought to have known, that the taking of those photographs was inappropriate.

6. The Member has been suspended from his teaching position by the Board since February 19, 2007.

PLEA OF NO CONTEST

7. By this document, the Member admits, for the purposes of this proceeding only, the truth of the facts and the exhibit referred to in paragraphs 1 to 6 above (the "Uncontested Facts").

8. The Member hereby acknowledges that the Uncontested Facts referred to in paragraphs 3 and 4 above constitute conduct which is professional misconduct, being more particularly breaches of Ontario Regulation 437/97 1(5) and 1(18- unprofessional).

9. 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 as set out in the Uncontested Facts being presented to the Discipline Committee;

- (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 hearing;
- (d) he understands that depending on the penalty ordered by the Discipline Committee, the decision of the Committee and a summary of its reasons, including reference to his name, may be published in the official publication of the College;
- (e) he understands that any agreement between his counsel and counsel for the College with respect to the penalty proposed in this document does not bind the Discipline Committee;
- (f) he understands and acknowledges that he is executing this Agreement voluntarily, unequivocally, and with the advice of legal counsel.

10. 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, chapter E. 23, 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 proceeding.

11. 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

12. 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 directs:

- (a) that the Member appear before 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) the Registrar of the Ontario College of Teachers to impose a term, condition or limitation (“term”) on the Member’s Certificate of Qualification and Registration, the fact of such term to be recorded on the Register of the College until such time as it is fulfilled, that the Member is to enrol in and complete, at his own expense, within three (3) months from the date of an Order by the Discipline Committee, a course of instruction regarding appropriate boundaries and boundary violation issues, pre-approved by the Registrar, and that the Member shall deliver directly to the Registrar, within thirty (30) days of completion of that course, written certification from the course provider that the Member has successfully completed the course; and
- (c) 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*, without the name of the Member.

DECISION

Having examined the Exhibits filed, and based on the plea of no contest, the *Statement of Uncontested 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 Michael David Hurst committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5) and 1(18 – unprofessional) as set out in the *Notice of Hearing*.

REASONS FOR DECISION

The Member admitted the truth of the facts and exhibits referred to in paragraphs 1 to 6 (the “uncontested facts”) of the *Statement of Uncontested Facts, Plea of No Contest, and Joint Submission on Penalty* (SUF - Exhibit 2). He acknowledged that the uncontested facts referred to in paragraphs 3 and 4 above constitute professional misconduct and pleaded no contest to the allegations of professional misconduct. The Committee accepted the Member’s plea of no contest and the facts in the *Statement of Uncontested Facts, Plea of No Contest, and Joint Submission on Penalty*.

The Member took cellular telephone photographs of female [XXX] students. This was done without their consent or knowledge. He was cautioned by his principal and told not to do this. The Member continued to display his cell phone camera in the presence of his students and continued to take pictures of students. The York Region Children’s Aid Society conducted an investigation and concluded that there was some cause for concern with respect to the Member’s behaviour. The Member was suspended from teaching by

his Board on February 19, 2007. By this behaviour, the taking of unauthorized photographs, contrary to the direction of his principal, the Member committed acts of professional misconduct, more particularly breaches of Ontario Regulation 437/97 subsections 1(5) and 1(18 – unprofessional).

PENALTY DECISION

The Committee accepts the joint submission on penalty and makes the following order as to penalty:

- a) the Member is to appear before 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) the Registrar of the Ontario College of Teachers is directed to impose a term, condition or limitation (“term”) on the Member’s Certificate of Qualification and Registration, the fact of such term to be recorded on the Register of the College until such time as it is fulfilled, that the Member is to enrol in and complete, at his own expense, within three (3) months from February 18, 2010, a course of instruction regarding appropriate boundaries and boundary violation issues, pre-approved by the Registrar, and that the Member shall deliver directly to the Registrar, within thirty (30) days of completion of that course, written certification from the course provider that the Member has successfully completed the course; and

- c) 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 reprimand acts as a specific deterrent to the Member and demonstrates that professional misconduct is taken seriously by the College. The course on appropriate boundaries and boundary violation issues serves the goal of remediation in providing the Member with tools to successfully return to the classroom. Publication, without name, satisfies the need to demonstrate transparency of the discipline process. It also informs the profession about appropriate boundaries for teachers. A message is sent to the public that professional misconduct will not be tolerated and will be dealt with appropriately.

Date: February 18, 2010

Mel Greif,
Chair, Discipline Panel

Alexander Bass, OCT
Member, Discipline Panel

Dean Favero, OCT
Member, Discipline Panel