

**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 Myer William Kalin, a member of the Ontario College of Teachers.

PANEL:            Don Cattani, Chair  
                      Lynne Mastin  
                      John Wells

BETWEEN:	)	
	)	David E. Leonard,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -	)	
	)	Myer William Kalin was not
	)	present or represented by counsel
MYER WILLIAM KALIN	)	
(CERTIFICATE #136858)	)	
	)	
	)	Phil Tunley,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
	)	
	)	Heard: January 15, 2007

**REASONS FOR DECISION, DECISION AND ORDERS**

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on January 15, 2007 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated March 31, 2005 was served on Myer William Kalin, requesting attendance before the Discipline Committee of the Ontario College of Teachers on April 18, 2005 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for January 15, 2007.

Myer William Kalin was not in attendance at the hearing.

### The Allegations

The allegations against Myer William Kalin in the *Notice of Hearing*, (*Exhibit 1*) dated March 31, 2005, are as follows:

**IT IS ALLEGED** that Myer William Kalin 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, and the Regulations made under those Acts, contrary to Ontario Regulation 437/97, subsections 1 (14) and (15);
- (c) he contravened a law, the contravention of which is relevant to the Member’s suitability to hold a Certificate of Qualification and Registration contrary to Ontario Regulation 437/97, subsection 1(16);
- (d) he contravened a law, the contravention of which has caused students under the Member’s professional supervision to be put at or to remain at risk, contrary to Ontario Regulation 437/97, subsection 1(17);

- (e) 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
- (f) 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 Submissions on Penalty* (ASF - Exhibit 2). Counsel for the College advised the Committee that, although the Member was not present or represented by counsel at the hearing, this agreement had been reached with the Member through his counsel, Shore Davis McGarvey, as evidenced by their signature thereto.

The *Agreed Statement of Facts, Plea of No Contest and Submissions on Penalty* provides as follows:

1. Myer William Kalin (the “Member”) is a member of the Ontario College of Teachers. His Certificate is currently suspended for non-payment of fees. Attached hereto and marked as Exhibit “A” is a copy of the Ontario College of Teachers Registered Member Information respecting the Member.
2. The Member retired from his position as a high school teacher with the Ottawa-Carleton District School Board in November 1998, and subsequently taught in Asia.

3. During the year 2003 the Member was teaching in Japan.
4. On or about January 24, 2004, as he was re-entering Canada, the Member was stopped by Canadian Customs at the MacDonald-Cartier International Airport, Ottawa.
5. At that time, the Member was found to have in his possession four compact disks which contained approximately three hundred and fifteen images which met the definition of child pornography as set out in the *Criminal Code* (Canada). In addition, the Member had on his laptop computer several hundred images which also met the definition of child pornography as set out in the *Criminal Code* (Canada). Further, the Member had several hundred other images of young, nude males which did not meet the criteria of being classified as child pornography.
6. On or about October 5, 2006, the Member pleaded guilty to a charge, which was contained in an indictment issued in the Superior Court of Justice on October 17, 2005, that the Member on or about January 24, 2004, in the City of Ottawa, did possess child pornography in the form of graphic sexual images, contrary to Section 163.1(4) of the *Criminal Code* (Canada). A second charge contained in the Indictment with respect to the Member unlawfully attempting to smuggle prohibited goods into Canada was withdrawn by the Crown.
7. Attached and marked as Exhibit "B" is a certified copy of the Indictment dated October 17, 2005.

8. The guilty plea of the Member was accepted by The Honourable Madam Justice L. D. Ratushny on October 5, 2006 in the Ontario Superior Court of Justice at Ottawa.
  
9. On or about October 5, 2006, Madam Justice Ratushny imposed a sentence on the Member of a jail term of twelve months to be served in the community provided he comply with conditions including:
  - (a) that he not leave the Province of Ontario without first receiving the prior consent of his Conditional Sentence Supervisor;
  - (b) he is to remain within his place of residence for the first three months of the twelve month conditional sentence, commencing on October 5, 2006;
  - (c) that he was only to leave his residence for the purposes of personal medical emergencies, medical appointments and counselling appointments on a schedule approved in advance by the Conditional Sentence Supervisor;
  - (d) that he leave his place of residence at specified times for the purposes of purchasing necessities of life and for attending a faith ceremony;
  - (e) that he attend and comply with and complete all counselling as may be recommended by his Conditional Service Supervisor after being assessed and recommended for that counselling;
  - (f) that he submit to a police search of his computer at any time during the twelve month period;
  - (g) that he not possess any pornographic material during that twelve month period;

- (h) that he not possess any erotic images of children under the age of eighteen years;
- (i) that he not have encryptions software on his computer or otherwise possess encryption software;
- (j) that he is prohibited from being alone with any person under the age of fourteen years, for a period of ten years;
- (k) that he is prohibited from seeking, obtaining or continuing any employment or being a volunteer in a capacity that involves being in a position of trust or authority towards persons under the age of fourteen years, for a period of ten years; and
- (l) that he be prohibited from using a computer system for the purpose of communicating with a person under the age of fourteen years for a period of ten years.

10. Madam Justice Ratushny also issued an Order [XXX].

11. The Court also ordered that the Member pay a victim fine surcharge of \$100.00.

12. Attached and marked as Exhibits “C” and “D” respectively are certified copies of the Conditional Sentence Order dated October 5, 2006 and the Prohibition Order dated October 5, 2006.

13. A copy of the transcript of the Proceedings Relating to the Plea of Guilty before the Honourable Madam Justice L. D. Ratushny on October 5, 2006, is attached as Exhibit “E”.
14. The Member has not appealed the sentence that was imposed on him.

#### PLEA OF NO CONTEST

15. By this document, the Member does not contest the truth of the facts and exhibits referred to in paragraphs 1 to 14 above (the “uncontested facts”).
16. The Member does not contest that the uncontested facts and exhibits referred to in paragraphs 4, 5, 8, 9 and 10 above, constitute conduct which is unprofessional and pleads no contest to the allegations of professional misconduct against him being more particularly breaches of Ontario Regulation 437/97 1(5), 1(14), 1(15), 1(16), 1(17), 1(18) and 1(19).
17. By this document, through his counsel, the Member states that:
  - (a) he understands fully the nature of the allegations against him;
  - (b) 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;
  - (c) he voluntarily decided to plead no contest; and

(d) he understands and acknowledges that he has had the benefit of legal counsel and has voluntarily and unequivocally authorized his counsel to execute this agreement on his behalf.

18. In light of the uncontested facts and the Member's plea of no contest to the allegations of professional misconduct, the Ontario College of Teachers submits, and the Member does not contest, that the Discipline Committee should find the Member guilty of professional misconduct.

#### SUBMISSIONS ON PENALTY

19. The Ontario College of Teachers submits, and the Member does not contest, that the appropriate penalty to be imposed by the Discipline Committee in this matter would be that the Committee direct the Registrar of the Ontario College of Teachers to immediately revoke the Certificate of Qualification and Registration of the Member, which Certificate the Member is to immediately surrender to the Registrar of the Ontario College of Teachers.

20. The Ontario College of Teachers submits that there be publication of the findings and order of the Committee, in summary form, including the full name of the Member, in the official publication of the College. The Member opposes publication of the disposition and facts of this matter but makes no further submissions in this regard.

#### DECISION AS TO FINDING

Having examined the Exhibits filed, and based on the plea of no contest, the *Agreed Statement of Facts, Plea of No Contest and Submissions on Penalty*, and the submissions made by counsel for the College, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that Myer William Kalin committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5) 1(14) 1(15) 1(16) 1(17) 1(18) and 1(19), as set out in the *Notice of Hearing*.

#### REASONS FOR FINDING

The Member pleaded guilty and was convicted in the Superior Court of Justice for possession of graphic images depicting child pornography. Crown Counsel indicated at the Plea of Guilty Proceedings that the Member was found to be in possession of 711 images that met the Criminal Code definition of child pornography. (ASF-Exhibit 2, Tab E, page 6).

The Committee finds that the Member was guilty of professional misconduct by reason of this criminal conviction. Further, the Member did not contest the truth of the facts and exhibits referred to in paragraphs 1 to 14 of the *Agreed Statement of Facts*. (Exhibit 2) and did not contest that the facts and exhibits constituted professional misconduct.

#### PENALTY DECISION

The Committee makes the following order as to penalty:

1. The Registrar of the Ontario College of Teachers is directed to revoke immediately the Certificate of Qualification and Registration of the Member, which Certificate the Member is to surrender immediately to the Registrar;
2. 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, with the Member's full name, in the official publication of the College, *Professionally Speaking/Pour parler profession*.

#### REASONS FOR PENALTY DECISION

On October 5, 2006, Madam Justice L.D. Ratushny sentenced the Member to a 12-month jail term, to be served in the community, for possession of child pornography. The following conditions were among those imposed:

- (a) that he is prohibited from being alone with any person under the age of fourteen years, for a period of ten years;
- (b) that he is prohibited from seeking, obtaining or continuing any employment or being a volunteer in a capacity that involves being in a position of trust or authority towards persons under the age of fourteen years, for a period of ten years.

Madam Justice Ratushny also issued an Order [XXX].

The Committee determined that a member who pleaded guilty to and was convicted of possession of child pornography and who is subject to conditions which do not allow

him to be in the company of children should not be permitted to teach in Ontario or elsewhere and should have his Certificate of Qualification and Registration revoked.

The Member did not contest revocation of his certificate.

Counsel for the College requested publication of the findings and order of the Committee with the name of the Member. The Member opposed publication.

Under Section 30(5) (3) of the Act, the Committee may order publication of the finding and the order of the Committee with or without the name of the Member. The Committee orders publication of the finding and order with the name of the Member for the following reasons:

1. The Member has pleaded guilty in criminal proceedings to possession of a large number of images depicting child pornography. This is one of the most serious crimes in our society. The public must be informed that a member of the teaching profession who engages in this type of activity will suffer the most serious of consequences.
2. The Committee notes that throughout the criminal proceedings no publication ban was ordered. In the context of the criminal proceedings, the Member's name and offence are in the public domain.
3. The Member is [XXX] and is prohibited from being in the company of children under the age of 14 years. It is essential that the public be made aware of these conditions placed upon the Member.

4. Publication acts as a specific deterrent to the Member and as a general deterrent to members of the profession.

The Committee considered the Member's opposition to publication of the finding and order of the Committee, including the full name of the Member. While the Member opposed publication, no reasons were submitted.

The Committee is satisfied that the penalty is appropriate in the circumstances.

Date: January 15, 2007

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Don Cattani  
Chair, Discipline Panel

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Lynne Mastin  
federal Member, Discipline Panel

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John Wells  
Member, Discipline Panel