

**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 Louis King, also known as Philip Louis Roy, a member of
the Ontario College of Teachers.

PANEL: Nancy Hutcheson, Chair
Diane Leblovic
Dick Malowney

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| BETWEEN: |) | |
| |) | David Leonard, McCarthy |
| |) | Tétrault, for Ontario College of |
| ONTARIO COLLEGE OF TEACHERS |) | Teachers, assisted by Trevor Evans, |
| |) | Senior Law Clerk |
| - and - |) | |
| |) | |
| PHILIP LOUIS KING, also known as |) | Philip Louis King, on his own |
| PHILIP LOUIS ROY |) | behalf |
| (CERTIFICATE #279444) |) | |
| |) | Christopher Wirth, Stockwoods, |
| |) | Independent Legal Counsel |
| |) | |
| |) | Heard: December 8, 2003 |

REASONS FOR DECISION, DECISION AND ORDER(S)

This matter came on for hearing before a panel of the Discipline Committee on
December 8, 2003 at the Ontario College of Teachers at Toronto.

A *Notice of Hearing* dated September 3, 2003 was served on Philip Louis King, also known as Philip Louis Roy, requesting attendance before the Discipline Committee of the Ontario College of Teachers on October 1, 2003 to set a date for hearing, and specifying the charges. The hearing date was set for December 8-9, 2003.

The Member was present at the hearing and was not represented by counsel.

The Allegations

The allegations in the Notice of Hearing include allegations of both professional misconduct and incompetence against the Member. The allegations arose as a result of the Member accessing and/or viewing various websites relating to pornography on both a laptop and a desktop computer on school property. These attempts to access and/ or view these various websites, including child pornography websites, occurred during the period September 19, 2001 to January 8, 2003. The computers used by the Member had been assigned to him by Delia School of Canada, a private school in Hong Kong, where he was employed as a Senior Kindergarten teacher.

IT WAS ALLEGED that Philip Louis King, also known as Philip Louis Roy, is guilty of professional misconduct as defined in section 30(2) of the Act, and/or is incompetent as defined in section 30(3) of 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, or

the Regulations made under those Acts, contrary to Ontario Regulation 437/97, subsections 1 (14) and (15);

- (c) he contravened laws and that contravention is relevant to his suitability to hold a certificate of qualification and registration contrary to Ontario Regulation 437/97, subsection 1(16);
- (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);
- (e) he engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1 (19); and
- (f) he displayed a lack of knowledge, skill or judgment and/or a disregard for the welfare of students of a nature or extent that demonstrates that the Member is either unfit to carry out his professional responsibilities or that the Member's certificate should be made subject to terms, conditions or limitations.

At the hearing, College Counsel withdrew the allegations contained in (c) and (f) above.

Member's Plea

The Member pleaded not guilty to the allegations of professional misconduct against him, being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(14), 1(15), 1(16), 1(18) and (19) as set out in the *Notice of Hearing*, despite having signed an *Agreed Statement of Facts*, which include a statement that he understands the nature of the allegations being made against him and that by signing this document he is consenting to the evidence being presented to the Discipline Committee.

Agreed Statement of Facts

Counsel for the College advised the Panel that agreement had been reached on the facts and introduced an *Agreed Statement of Facts*, (Exhibit 2), dated November 27, 2003, and signed by the Member, which provides as follows:

1. Philip Louis King (Roy), (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 Registry Status Information on the Member.
2. At all material times the Member was employed under contract as a Senior Kindergarten teacher by the Delia School of Canada, a private school located in Hong Kong (the "School"). At the time that Mr. King was under contract at the School, approximately 800 students attended the School. Regular hours at the School were from 8:30 a.m. to 4:00 p.m. on weekdays.
3. The Member commenced employment at the School in August 2001.
4. When he commenced his teaching duties at the School, the Member was assigned a desktop computer with source no. 192.168.7.132 (the "Desktop") and a laptop computer with source no. 192.168.7.71 (the "Laptop"). Further, he was assigned the username "dscepking" for use on the Internet. He conducted his classes in Room 113 at the School.
5. During the course of his employment at the School, the Member was advised of the Internet : Safe and Responsible use Policy of the School that provided, *inter alia*, that the School would be placing restrictions on the use of its Internet/intranet system to ensure that the use of the system was in accordance with the educational purpose of the system.
6. In August 2002, all staff members of the School, including the Member, were given a copy of the Information Technology Manual of the Delia School of Canada (the "Manual"). A copy of a portion of the Manual is attached hereto

and marked as Exhibit “B”. In the Manual at Section D on page 93, the School identified material that staff and students were prohibited from accessing on the Internet. That section reads as follows:

“D. PROTECTION AGAINST ACCESS TO INAPPROPRIATE MATERIAL

1. Inappropriate material.
 - a. The School has identified the following types of material as Prohibited, Restricted, and Limited Access Material.
 - i. Prohibited Material. The students or staff may not access prohibited material at any time, for any purpose. This material includes material that is obscene, child pornography, material that is considered harmful to minors. The school designates the following types of materials as Prohibited: Obscene materials, child pornography, material that appeals to a prurient or unhealthy interest in, or depicts or describes in a patently offensive way violence, nudity, sex, death or bodily functions, material that has been designated as for “adults” only, and material that promotes or advocates illegal activities.”

7. On page 94 of the Manual, under the heading, “Technology Protection Measure(s), it was stated at paragraph 2 (a) that:

The School has selected a Technology Protection Measure(s) for use with the School Internet/Intranet system and has specified the manner in which the Technology Protection measure will be configured. This selection and configuration is described in full in Exhibit A [not reproduced or attached]. The Technology Protection Measure will always be configured to protect against access to material that is obscene, child pornography, and material that is harmful to minors. The school may, from time to time, reconfigure the Technology Protection Measure to best meet the educational needs of the school and address the safety needs of the students.

8. On or about 15 November 2002, Jason Walter, the Information Technology Manager of the School (the "IT Manager") advised all staff of the School that the IT department would begin installing hardware-based firewalls on that day.
9. A firewall is a computer program or hardware device that filters the information coming through an Internet connection into a network or computer system. If an incoming packet of information is flagged by the filters, it would not be allowed through the firewall into the protected network or computer system. A firewall also protects a network from unauthorized remote access of a computer or computer network.
10. A staff conference was held at the School on 20 November 2002, at which time all staff members were informed about the firewall and its purpose. On or about 25 November 2002, all staff members of the School were informed that the School had instituted a web filtering steering committee, and that access to web sites would be filtered by use of a web filter called SonicWALL.
11. At the 25 November 2002 meeting, the IT Manager advised the staff of the purpose of SonicWALL, which included content filtering so as to ensure that the students had a safe and educational Internet learning experience. The IT Manager outlined the categories of materials that would be filtered, as set out in paragraph 6 above and Exhibit "B".
12. On or about 2 December 2002, all staff members were given a questionnaire with respect to web filtering: "Technology Protection Measure." A copy of that questionnaire is attached hereto and marked as Exhibit "C".
13. In early December 2002, all staff members were provided with a document entitled "Technology Protection Measure: Web Filtering Policy for Delia School of Canada". That policy was designed and based on the results of the web filtering survey completed by the teaching staff. A copy of that document is attached hereto and marked as Exhibit "D".

Websites Accessed by the Member

14. On or about 3 January 2003, the IT Manager at the School was alerted by SonicWALL of an attempt to access a website that contained sexual acts and gross depictions (graphics or text - as defined on page 2 of Exhibit "D"), which is prohibited material as set out in the Manual. Attached hereto and marked as Exhibit "E" is a copy of the alert received by the Information Technology Department of the School. The alert showed that an attempt had been made to access www.gentle-angels.com/sb at 18:53 hours on that date. The source number of the computer which had triggered the alert was 192.168.7.132, the Member's Desktop computer. It was the Member who attempted to access this prohibited website.
15. As a result of the activity described in paragraph 13 above, the School's administration obtained a log file from the firewall system between 17:22 hours and 22:30 hours on 3 January 2003. A copy of the log file is attached as Exhibit "F. The log file showed that a further attempt was made to access the "gentle-angels" website at 18:56 hours. Further, the firewall system blocked an attempt by the Member on the Desktop computer to access the website www.sex-in-www.com, and to conduct the search <http://search.yahoo.com/bin/search?p=tight+preteen+lolitas> at 18:58 hours.
16. The references to the websites referred to in paragraphs 14 and 15 are to be found on page 4 of Exhibit F. The firewall showed that the "gentle-angels" website contained sexual acts and gross depictions (graphics or text - as defined on page 2 of Exhibit "D") and that the "sex.in.www" website contained sexual acts (graphics or text - as defined on page 2 of Exhibit "D").
17. As a result of the events described in paragraphs 14 to 16 above, on or about 8 January 2003, the Member's Laptop and Desktop computers were retrieved by the School's administration and an inspection was made of their hard drives. It was found that the Desktop computer contained material relating to Internet searches of, and access to adult pornography, teenage pornography and pre-teen

child pornography websites. It was found that the Laptop computer contained material relating to Internet searches of, and access to adult pornography websites only.

18. The records on the Member's Desktop computer showed it had been used by the Member to access and/or view various websites relating to pornography, and to conduct Internet searches relating to pornography on or around 6, 20 and 23 October 2002, 14, 17, 18 and 24 November 2002, 4, 8, 9, 22, 27 and 30 December 2002, and 3, 5, 7 and 8 January 2003. Attached hereto and marked as Exhibits "G" and "H" respectively are a print-out showing the Internet activity on the Desktop computer between 6 October 2002 and 8 January 2003, and a list of Internet cookies generated from the use of the Internet by the Member on the Desktop computer between 6 October 2002 and 2 January 2003.
19. The records on the Member's Laptop computer showed it had been used by the Member to access and/or view various websites relating to pornography on 19 September 2001, and on 19 April 2002. Attached hereto and marked as Exhibit "I" is a printout showing the temporary Internet files and cookies accessed by the Laptop computer on 19 September 2001 between 8:11 p.m. and 8:23 p.m. and on 19 April 2002 between 8:41 p.m. and 8:42 p.m.
20. Cookies are pieces of text that a web server can store on a user's hard disk. Cookies allow a website to store information on a user's machine and later retrieve it. For example, a website might generate a unique identification number for each visitor and store the identification number on each user's machine using a cookie file.
21. The definitions of terminology of other web files referred to in Exhibit "I" are as follows:
 - "jpg" and "gif" are types of files used for the storage or transmission of photographs;
 - "htm" and "html" are types of computer language used in web pages on the Internet;

- “bbs” refers to a bulletin board on the Internet; and
- “swf” is a macromedia flash format file used for viewing videos on the Internet.

Internet Searches Conducted by the Member

22. In addition to information about websites visited on a particular computer, it is possible to determine Internet searches conducted on various computers. The administration at the School retrieved the Internet History from the Member’s Desktop computer. A printout of the Internet History of the Member’s Desktop computer between 27 December 2002 and 5 January 2003 is attached hereto and marked as Exhibit “J”. It shows that:
- on or about 27 December 2002 at 10:20 a.m., the Member conducted a Yahoo search for “child porn”;
 - on or about 27 December 2002 at 10:24 a.m. the Member conducted a Yahoo search for “nude pretty preteen lolitas”;
 - on or about 27 December 2002 at 10:34 a.m., the Member conducted a Yahoo search for “nude lolita tots”;
 - on or about 30 December 2002 between 5:37 p.m. and 5:39 p.m., the Member conducted a Yahoo search for “preteen lolita pussies”
 - on or about 3 January 2003 at 8:22 a.m., the Member conducted a Yahoo search for “tight preteen lolitas”;
 - on or about 3 January 2003 at 7:03 p.m. the Member again conducted a Yahoo search for “tight preteen lolitas”; and
 - on or about 5 January 2003 at 2:20 p.m.. the Member conducted a Yahoo search for “tiny tight preteen lolitas”.

23. On or about 27 December 2002 at 10:20 a.m., the Member accessed the BBC News website and viewed a news article entitled "Teacher on child porn charge." Attached hereto and marked as Exhibit "K" is a copy of that article which was posted on the BBC News World Edition website on 2 October 2002.
24. The School's I.T. Manager did not find any evidence that any of the pornographic material searched for and viewed by the Member was saved to the hard drives of the computers or to a disk. Information about the searches conducted, the websites visited and the images viewed by the Member were stored in the Windows cookies folders that are specific to the individual user, the Windows "Temp" Folders, and Temporary Internet Files of the computers. Printouts of these files are at Exhibits "G", "H", "I", and "J".
25. By letter dated 9 January 2003, a copy of which is attached hereto and marked as Exhibit "L", the Member resigned his employment with the School, with immediate effect.
26. On or about 22 March 2003, the Member responded to the allegations made by the Registrar of the Ontario College of Teachers. Copies of the Member's response and his curriculum vitae are attached hereto and marked as Exhibit "M" and Exhibit "N" respectively.
27. During the times that the Member was accessing the web sites described above on the School's computers, no one reported seeing him viewing of any of the sites referred to in the previous paragraphs on any of the computers assigned to him. There is no evidence that the Member harmed any students while teaching at the School. The School did not receive any complaints from students or parents during his time at the School, or afterwards.
28. Mr. King performed his duties and responsibilities as a teacher at the School very competently and professionally. The School records show that in the eighteen months that Mr. King was under contract at the School, he was not absent once from his duties and responsibilities.

29. By this document, the Member states that:

- (a) he understands the nature of the allegations that have been made against him; and
- (b) he understands that by signing this document he is consenting to the evidence as set out herein and in Exhibits A to N herein being presented to the Discipline Committee.

Decision

Based on the *Agreed Statement of Facts*, and having examined the Exhibits filed, and the submissions made by counsel and the Member, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that Philip Louis King, also known as Philip Louis Roy did commit acts of professional misconduct as alleged, more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(14), 1(15), 1(18) and 1(19).

Reasons for Decision

Despite the fact that the Member had signed an *Agreed Statement of Facts*, he emphasized that the College withdrew the allegations that he had contravened any laws and that contravention is relevant to his suitability to hold a certificate of qualification and registration contrary to Ontario Regulation 437/97, subsection 1(16). Therefore it was his argument that his conduct, although reprehensible and appalling, was not relevant to maintaining his teaching certificate.

In his argument he also relied on the fact that the College had withdrawn the allegation that he displayed a lack of knowledge, skill or judgment and/or a disregard for the welfare of students of a nature or extent that demonstrates that the Member is either unfit to carry out his professional responsibilities or that the Member's certificate should be made subject to terms, conditions or limitations.

He referred to Exhibit 2, paragraph 28 which states that he performed his duties and responsibilities as a teacher very competently and professionally. He further stated that he maintained and exceeded many of the standards of the profession. He further argued that in his duties as a teacher, he committed no acts that would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 437/97, subsection 1(18).

He further stated that in his role as a teacher, he did nothing unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19).

He emphasized that all of his conduct occurred outside of school hours and "no child, no one, witnessed any of this". During school hours, he indicated that he inculcated the very strong and important values pursuant to *the Education Act*.

The Member argued that this matter had been settled at the School level, and should not be before a discipline Panel of the Ontario College of Teachers. He stated that the School should have provided a safe haven that would have protected him from accessing the pornographic websites.

The Committee accepts the fact that no student was harmed. The Committee did not accept the Member's argument that, because the activities engaged in occurred outside of school hours and outside of the province, those actions are not relevant to his suitability to hold an Ontario teaching certificate. The Member holds an Ontario certificate of qualification and registration and therefore comes within the jurisdiction of the College.

The Committee was persuaded by the clear, cogent, compelling evidence contained within the *Agreed Statement of Facts*. The Committee found the Member's arguments to be without substance.

The Member's conduct was reprehensible and appalling. It is immaterial whether this conduct occurred outside of school hours or outside of the Province of Ontario. Viewing and accessing child pornography sites on the Internet is unacceptable for a Member of the Ontario College of Teachers and constitutes professional misconduct which brings the profession into disrepute.

Penalty

Counsel for the College requested that the Panel revoke the certificate of qualification and registration of the Member and publish its decision, in summary, with the name of the Member, in *Professionally Speaking/Pour parler profession*. College Counsel argued that the facts underlying this case speak to revocation, due to the need to protect students, the public interest and preserve confidence and trust in the education system.

Counsel emphasized that the Member was accessing child pornography, including images of children engaged in sexual conduct and sexually graphic material, including children of the same age as he was teaching. Many times he viewed this material just prior to the children coming into the classroom and just after they had left. This behaviour is completely inconsistent with the tenets of being a teacher and is a betrayal of the trust that parents place in teachers. Counsel argued that the Panel should revoke the Member's certificate because the Member does not understand why it is inappropriate to access this type of material. The Member continues to make excuses for his behaviour, including stating that he is completely within his rights to access this material in Hong Kong where there is a different culture and different societal values. The Member continues blaming the school administration for not preventing his access to the material, and reiterating that the conduct occurred outside of his teaching time. Counsel emphasized that the Member continues to miss the point that he should have been part of protecting the students by creating a safe haven for them, rather than expecting the School to create a safe haven for the Member by ensuring he was unable to access these pornographic sites.

As to the matter of publication, College Counsel argued it was necessary to publish the findings in summary, including the Member's name, in *Professionally Speaking/Pour parler profession*, to act as a general deterrent to the profession. He further argued that the summary of this case will bring home to Members the appropriate conduct expected when using technology, particularly as it becomes more readily available.

The Member, acting on his own behalf, stated, "I do get this" and referred to his March 22, 2003 written statement (Exhibit 2, Tab M), in which he admitted that he viewed these activities on the desktop and that he recognizes the inappropriateness of his actions. He did not "challenge the School's Administrative Team's decision to terminate my employment by having me resign" and he recognizes the seriousness and inappropriateness of his actions.

The Member argued that, given the loss of his employment, his earnings, and the respect of his colleagues, he believes that appropriate disciplinary action has been taken. He asked that the Discipline Panel admonish him, and then take no further action. He stated that he is now employed as a teacher in Ontario and cannot accept revocation or suspension, nor that any terms, conditions or limitations be placed on his certificate. He emphasized that he did not contravene any laws in Hong Kong. He also stated that he would accept to take sensitivity training at his own cost and is willing to allow the College access to any and all of his activity records on the Internet for a period of two years, should he ever own a computer.

The Member argued that publication would only serve to humiliate him further among his colleagues and family.

Independent Counsel stated that the Panel's penalty decision should protect the public interest, maintain the high standards of the profession and preserve the public's confidence in the profession. He further advised the Panel that the penalty was a matter for their discretion but that the Panel should consider the rehabilitation and remediation

of the Member. It should also take into account any aggravating or mitigating factors, such as the history of his conduct, his character, the effect of the decision on the Member, any remorse or acknowledgement of wrongdoing. The Panel should consider whether the Member co-operated with the investigation of the matter, whether the Member's conduct was for profit, whether any harm was done to students and whether the Member attempted to mislead the Panel.

Penalty Decision

Based on the evidence and on the submissions as to penalty, the Committee directs the Registrar to suspend the certificate of qualification and registration of Philip Louis King, also known as Philip Louis Roy, for a period of two years from the date hereof, December 8, 2003, which certificate the Member is to surrender immediately.

Prior to his return to the classroom, the Member must attend upon and co-operate with a professional person acceptable to the Registrar, and at the expense of the Member, for sensitivity training with regard to pornography, in particular child pornography, with a report to the Registrar.

Additionally, prior to his return to the classroom, the Member must attend upon and co-operate with a professional with expertise in psychological assessment satisfactory to the Registrar. This assessment will be at the expense of the Member, and upon completion, a report and an opinion is to be forwarded to the Registrar stating that the Member may

return to full time classroom teaching duties and poses no risk to students and/or the school community.

The Committee assigned the longest suspension possible to demonstrate the seriousness of the matter and to protect the public interest. The Panel ordered a psychological assessment to protect students and the school community. The Committee ordered the Member to undergo sensitivity training so that the potential for remediation might be provided to the Member. The Committee also looked at mitigating circumstances such as the devastation this matter has already had on the Member, his acknowledgment of wrongdoing, as well as his co-operation with the College's investigation.

Pursuant to Section 30 (5) (iii) of the Ontario College of Teacher's Act, the Committee orders that the findings of this hearing, as well as the name of the Member, be published in the official publication of the Ontario College of Teachers, *Professionally Speaking/Pour parler profession*.

Date: December 9, 2003

Nancy Hutcheson
Chair, Discipline Panel

Diane Leblovic
Member, Discipline Panel

Dick Malowney
Member, Discipline Panel