

**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 Tommy Kouzmanis, a member of the Ontario College of Teachers.

PANEL: Mel Greif, Chair
Rosemary Fontaine
Brent Hamelin

BETWEEN:)	
	)	Yasmin Nizami,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -)	
	)	Paul Stern,
	)	Stern Landesman Clark LLP,
TOMMY KOUZMANIS	)	for Tommy Kouzmanis
(CERTIFICATE #483153)	
)	
	)	Christopher Wirth,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
)	
	)	Heard: September 18, 2008

REASONS FOR DECISION, DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on September 18, 2008 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing* dated April 4, 2008 was served on Tommy Kouzmanis, requesting attendance before the Discipline Committee of the Ontario College of Teachers on May 13, 2008 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for September 18, 2008.

Tommy Kouzmanis was in attendance at the hearing.

THE ALLEGATIONS

The allegations against Tommy Kouzmanis in the *Notice of Hearing, (Exhibit 1)* dated April 4, 2008, are as follows:

IT IS ALLEGED that Tommy Kouzmanis is guilty of professional misconduct as defined in sections 30(2) and 40(1.1) 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 (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);
- (e) he engaged in conduct unbecoming a Member, contrary to Ontario Regulation 437/97, subsection 1(19); and
- (f) he engaged in sexual abuse of a student or students of a nature defined in sections 1 and 40 (1.1) of the *Act*.

On September 18, 2008, College Counsel sought to withdraw the allegation contained in (b) above, that the Member abused a student or students physically, sexually, verbally, psychologically or emotionally, contrary to Ontario Regulation 437/97, subsection 1(7). College Counsel also sought to withdraw the allegation that the Member is guilty of professional misconduct as defined in Section 40 (1.1) of the Act. The Committee authorizes the College to withdraw these allegations.

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) which provides as follows:

1. Tommy Kouzmanis (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 Toronto District School Board as a teacher at [XXX] (the “School”).
3. During the 2005-2006 academic year [XXX] (the “Student”) was a female student of the School, and was [XXX].
4. In or about June 2006, the Member acted inappropriately and unprofessionally towards the Student in that:
 - a. he requested her to go into the bathroom adjacent to his office to try on various items of sports clothing, including a bathing suit, which he said

should be worn “as is” as she would normally wear it which the Student understood to mean that she should wear it with nothing underneath;

- b. at a later date, while conducting a check on his digital camera in his office in the presence of only the Student, he inadvertently took a photograph of her when she was filling out a form, while he was behind her and failed to advise her that he had done so.
5. In or about June 2006, the Member acted inappropriately and unprofessionally at the School in that:
 - a. he acted contrary to a directive issued to him by the principal of the School that he should not be alone in his office with any female students; and
 - b. he requested other female students, who were either alone or with others, to go into the bathroom adjacent to his office to try on various items of sports clothing while the member was either alone or with other students in his office.
6. During June 2006, the Member acted inappropriately and unprofessionally by providing a false and misleading explanation to the School’s principal with respect to his use of his digital camera at the School, although within a few days of the incident, he tried to provide an accurate and correct explanation to the principal.
7. During the 2005-2006 academic year, the Member acted unprofessionally in that he utilized the computer assigned to him at the School for viewing nude photographs of female persons on the Internet, which photographs were retained in the “cache” of the computer.

8. The Member resigned his position with the Board in or around August 2006 and has not taught since that time.

PLEA OF NO CONTEST

9. By this document, the Member does not contest the truth of the facts and exhibits referred to in paragraphs 1 to 8 above (the “admitted facts”). The Member hereby acknowledges that the admitted facts referred to in paragraphs 4, 5, 6 and 7 above constitute conduct which is unprofessional and pleads no contest to the allegations of professional misconduct against him being more particularly 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) or the Regulations made under those Acts, contrary to Ontario Regulation 437/97, subsections 1(14) and (15);
- c. he committed acts that having regard to all of the circumstances would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 437/97, subsection 1(18);
and
- d. he engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19).

10. By this document, 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 particulars set out herein, he is waiving his right to require the College to prove the case against him and the right to have a hearing into those allegations;
- c. he voluntarily decided to plead no contest; and
- d. he states that this plea of no contest was made voluntarily, unequivocally and with the advice of legal counsel.

11. 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, c. 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.

12. In light of his plea of no contest to the allegations of professional misconduct against him, the Ontario College of Teachers and the Member submit that the Discipline Committee find the Member guilty of professional misconduct.

JOINT SUBMISSION ON PENALTY

13. 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 Discipline Committee:

- a. direct that the Member appear before the Committee immediately following the hearing of this matter to receive a reprimand, which reprimand is to be recorded on the Register of the Ontario College of Teachers;

- b. direct the Registrar of the Ontario College of Teachers to suspend the Member's Certificate of Qualification and Registration for a period of three (3) months commencing on the date of the Decision of the Discipline Committee in this matter;
- c. direct the Member to notify the Registrar of the Ontario College of Teachers at least thirty (30) days before commencing work as a teacher at any public or private school of the date on which he intends to return to work as a teacher and the name of his employer and, at the same time, provide the Registrar with proof of his having enrolled in, subsequent to the date of the hearing of this matter, and completed, a course pre-approved by the Registrar regarding appropriate boundaries with students and boundary violation issues; and
- d. direct 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.

14. 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 the plea of no contest, 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 Tommy Kouzmanis committed acts of professional

misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(14), 1(15), 1(18) and 1(19).

REASONS FOR DECISION

The Member admitted the truth of the facts and exhibits referred to in paragraphs 1 to 8 of the *Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty*. He further acknowledged that the admitted facts in paragraphs 4, 5, 6 and 7 above constitutes conduct which is unprofessional and pleaded no contest to the allegations of professional misconduct against him.

The Committee accepted the Member's plea of no contest and the evidence contained in the *Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty*.

The Member acted inappropriately and unprofessionally towards students and administration at the school. He inadvertently took a digital photograph of a student without her knowledge. He asked students, while alone with them, to try on various items of sports clothing, including a bathing suit. After being directed by the principal to not be alone in his office with any female students, he disregarded this directive and asked a female student to fill in a form in his office when he was alone. The Member provided false and misleading explanations to the school principal regarding use of his digital camera at the school. The Member utilized a school computer to view nude photographs of female persons on the Internet.

The Committee finds that by these actions the Member failed to maintain the standards of the profession contrary to Ontario Regulation 437/97, subsection 1(5) and failed conduct himself in accordance with 264 (1) (c) of the *Education Act* and Ontario

Regulation 437/97, subsections 1(14) and 1(15). The Member's conduct was disgraceful, dishonourable and unprofessional and unbecoming a member contrary to Ontario Regulation 437/97, subsections 1(18) and 1(19).

PENALTY DECISION

The Committee makes the following order as to penalty:

- a. The Member is directed 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 suspend the Member's Certificate of Qualification and Registration for a period of three (3) months commencing on the date of the Decision of the Discipline Committee in this matter;
- c. The Member is directed to notify the Registrar of the Ontario College of Teachers at least thirty (30) days before commencing work as a teacher at any public or private school of the date on which he intends to return to work as a teacher and the name of his employer and, at the same time, provide the Registrar with proof of his having enrolled in, subsequent to the date of the hearing of this matter, and completed, a course pre-approved by the Registrar regarding appropriate boundaries with students and boundary violation issues; and
- d. The findings and order of the Committee, including the Member's full name, shall be published in summary in the official publication of the College, *Professionally Speaking/ Pour parler profession*.

REASONS FOR PENALTY DECISION

The reprimand by his peers in respect of these actions serves as a specific deterrent to the Member and the fact that the reprimand will be recorded on the Register sends a clear message to the membership that this conduct is inappropriate.

The Member's misconduct is serious. A suspension of the Member's certificate for a period of three months is appropriate. During this time the Member will have an opportunity to reflect upon the nature of his misconduct and on its consequences. Successful completion of a course of instruction, pre-approved by the Registrar, regarding appropriate boundaries with students and boundary violation issues will serve to rehabilitate the Member by ensuring that in the future, should he return to teaching, he will make appropriate professional judgments and maintain proper boundaries.

Publication of the findings and order of the Committee, in summary, with the name of the Member, in *Professionally Speaking/Pour parler profession*, serves as a specific deterrent to the Member and as a general deterrent to the profession. Publication serves the public interest by reassuring and informing the community that the profession acts decisively when matters of this nature are brought to its attention.

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

Date: September 18, 2008

Mel Greif
Chair, Discipline Panel

Rosemary Fontaine
Member, Discipline Panel

Brent Hamelin
Member, Discipline Panel