

**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 James Michael Kowal, a member of the Ontario College of Teachers.

PANEL:           Brent Hamelin, Chair  
                      Danny Anckle  
                      Jacques Tremblay

BETWEEN:	)	
	)	
	)	Paul West and David Leonard,
	)	McCarthy Tétrault LLP,
ONTARIO COLLEGE OF TEACHERS	)	for Ontario College of Teachers,
	)	assisted by Trevor Evans,
- and -	)	Senior Law Clerk
	)	
	)	Bernard Hanson,
	)	Cavalluzzo Hayes Shilton
	)	McIntyre & Cornish,
JAMES MICHAEL KOWAL	)	for James Michael Kowal
(CERTIFICATE #153742	)	
	)	
	)	Paul Le Vay,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
	)	
	)	Heard: February 11, 2008 and
	)	September 28, 2009

**REASONS FOR DECISION, DECISION AND ORDERS**

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) February 11, 2008 and September 28, 2009 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated July 27, 2006, was served on James Michael Kowal, requesting his attendance before the Discipline Committee of the Ontario College of Teachers on September 13, 2006 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for and commenced on February 11, 2008. James Michael Kowal was not in attendance at the hearing.

## THE ALLEGATIONS

The allegations against James Michael Kowal in the *Notice of Hearing*, (*Exhibit 1*) dated July 27, 2006, are as follows:

**IT IS ALLEGED** that James Michael Kowal 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, 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); and

(e) he engaged in conduct unbecoming a Member, contrary to Ontario Regulation 437/97, subsection 1(19).

At the hearing on September 28, 2009, College counsel sought to withdraw the following allegations of professional misconduct contained in the *Notice of Hearing*: breaches of Ontario Regulation 437/97, subsections 1(7), 1(14), 1(15) and 1(18). The Committee agrees that these allegations shall be withdrawn.

#### 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, Guilty Plea and Joint Submission on Penalty (ASF – Exhibit 2)*.

The Agreed Statement of Facts, Guilty Plea and Joint Submission on Penalty provides as follows:

#### **The Member**

1. James Michael Kowal (the “Member”) is a member of the Ontario College of Teachers. Attached and marked as **Exhibit “A”** is a copy of the Ontario College of Teachers Registered Member Information in respect of the Member.
2. The Member is currently 55 years old. He is married and has two children, both of whom are full time post-secondary students.

#### **Background**

3. The Member was employed by the Peterborough Victoria Northumberland and Clarington Catholic District School Board (the “Board”) as an Occasional Teacher.

4. On October 4, 2005 (“the material date”), the Member was assigned to [XXX] School (“the School”) in [XXX] Ontario.
5. [XXX] was a male [XXX] student at the School.
6. At approximately noon hour on the material date, as the Member was leaving the School in his car, [XXX] called out to the Member to slow down, using the terms “crazy” and “queer” or “fag”.
7. The Member stopped his car, confronted [XXX], and took [XXX] into the Principal’s office.
8. The Principal’s secretary overheard the Member yelling in a raised voice at [XXX] and contacted the Principal. When the Principal entered her office, the Member, was visibly irate and demanded that [XXX] apologize to the Member.
9. [XXX] apologized several times to the Member who, dissatisfied with the sincerity of [XXX]’s apologies, demanded that he receive a written apology.
10. [XXX] was trembling and at one point was in tears.
11. On or about November 4, 2005, following an investigation by the Board, the Member’s name was removed from the Board’s Occasional Teacher list, and the Member’s employment was terminated.
12. The Member filed grievances against the Board, which resulted in a settlement between the parties. The Member was not returned to the Board’s Occasional Teacher list.

## **GUILTY PLEA**

13. By this document, the Member admits the truth of the facts and the Exhibit referred to in paragraphs 1 to 12 above (“the Admitted Facts”). The Member hereby acknowledges that his conduct, as described particularly in paragraphs 7, 8 and 9 of the Admitted Facts, constitutes conduct which is unprofessional and pleads guilty to the allegations of professional misconduct against him, being more particularly breaches of Ontario Regulation 437/97 1(5), and 1(19).

14. The Member states that:

- (a) he understands fully the nature of the allegations against him;
- (b) he understands that by pleading guilty 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 guilty; and
- (d) he understands and acknowledges that he is executing this Agreement voluntarily, unequivocally and with the benefit of legal counsel.

15. In light of the admitted 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) reprimand the Member in writing immediately following the completion of the hearing of this matter, and that the fact of the reprimand be recorded on the public register of the Ontario College of Teachers;
- (b) directs that the Member must enrol in and complete, at his own expense, within ninety (90) days of the date of this Order, a course of instruction, pre-approved by the Registrar, in appropriate student discipline techniques offered by the Ontario English Catholic Teachers' Association;
- (c) directs that the Member shall provide to the Registrar proof of successful completion of the course referred to in (b) above within thirty (30) days following such completion; and
- (d) directs that there be publication of the findings and Order of the Committee in summary form, including the Member's full name, in the official publication of the College, *Professionally Speaking/Pour parler profession*.

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 the plea of guilt, the *Agreed Statement of Facts, Guilty Plea and Joint Submission on Penalty*, and the submissions made by counsel, the Committee finds that the facts support a finding of professional misconduct.

In particular, the Committee finds that James Michael Kowal committed acts of

professional misconduct, being more particularly a breach of Ontario Regulation 437/97 subsection 1(5) as set out in the *Notice of Hearing*.

## REASONS FOR DECISION

The Member acknowledged that his conduct as described in paragraphs 7, 8 and 9 (the “Admitted Facts”) of the *Agreed Statement of Facts, Guilty Plea, and Joint Submission on Penalty* (ASF - Exhibit 2) constitutes conduct which is unprofessional and pleaded guilty to the allegations of professional misconduct against him.

The Committee’s concerns focused on the Member’s actions as outlined in paragraph 8 and the student’s reaction as outlined in paragraph 10 of the “Admitted Facts”. The Member, by yelling in a raised voice at a student, showed a lack of control over his professional demeanor. These actions occurred in the principal’s office without administration being present and able to assist in mediating a resolution. As a result, the Member was described as being “visibly irate” and the “student was trembling and at one point was in tears”.

Members of the profession must ensure that in situations similar to this, where normal student discipline techniques fail to produce results and there is a risk of the Member losing control, the Member must ensure that professional decorum is maintained and that the support of administration is sought. By failing to do so, the Member failed to comply with the standards of the profession under Ontario Regulation 437/97 subsection 1(5).

## PENALTY DECISION

The Committee makes the following order as to penalty:

- (a) the Registrar is directed to impose the following terms and conditions on the Certificate of Qualification and Registration of the member, namely:
- (i) the Member is directed to enrol in and complete, at his own expense, within ninety (90) days of September 28, 2009, a course of instruction, pre-approved by the Registrar, in appropriate student discipline techniques offered by the Ontario English Catholic Teachers' Association;
  - (ii) the Member shall provide to the Registrar proof of successful completion of the course referred to in (i) above within thirty (30) days following such completion; and
- (b) 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 Committee determined that confronting the student regarding his offensive comments to the Member, escorting the student to the office, and demanding a written apology were actions that did not rise to a level that warranted a reprimand or publication with name. The Committee felt that these actions were not inappropriate in the circumstances. It is the lack of control on the part of the Member and his failure to enlist administrative support that were key to the Committee arriving at a finding of professional misconduct.

The Committee is therefore satisfied that the successful completion of the course in appropriate student discipline techniques, pre-approved by the Registrar, is appropriate in the circumstances, and will serve to remediate the Member.

Publication of the findings and order of the Committee, in summary, without the name of the Member, in *Professionally Speaking/Pour parler profession*, acts as an educational tool for the members of the profession that in dealing with difficult behavioural situations, members must maintain control and seek administrative support when necessary. Publication of the findings also reassures the public that the College takes the issue of professional decorum seriously.

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

Date: September 28, 2009

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Brent Hamelin  
Chair, Discipline Panel

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Danny Anckle  
Member, Discipline Panel

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Jacques Tremblay  
Member, Discipline Panel