

**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 John Andrew Larmand, a member of the Ontario College of Teachers.

PANEL: Anne Vinet-Roy, Chair
Gabrielle Blais
Don Cattani

BETWEEN:)	
	)	Brian Wasyliw,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -)	
	)	John Andrew Larmand was not
	)	present, nor was he represented
John Andrew Larmand)	
(CERTIFICATE # 173583)	
	)	Scott Hutchison,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
)	
	)	Heard: December 12, 2005

REASONS FOR DECISION, DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (“the Committee”) on December 12, 2005 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing (Exhibit 1)*, dated September 7, 2005 was served on John Andrew Larmand, requesting attendance before the Discipline Committee of the Ontario College of Teachers on October 3, 2005 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for December 12, 2005.

The Member did not appear, nor was he represented. Counsel for the College submitted an Affidavit of Audley Trevor Evans (*Exhibit 2*), Senior Law Clerk at McCarthy Tétrault detailing communications he had with the Member, both by telephone and in writing with respect to the date of the hearing. The Committee was satisfied that the Member was served with the *Notice of Hearing (Exhibit 2, Tab B)* and all disclosure documents and was aware of the time and date of the hearing. The Committee therefore proceeded to hear the matter in the absence of the Member.

The Allegations

The allegations against John Andrew Larmand (“the Member”) in the *Notice of Hearing* are as follows:

IT IS ALLEGED that John Andrew Larmand is guilty of professional misconduct as defined in subsections 30(2) of the *Ontario College of Teachers Act* (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, 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).

PARTICULARS OF THESE ALLEGATIONS ARE AS FOLLOWS:

1. John Andrew Larmand (the "Member") is a member of the Ontario College of Teachers.
2. At all material times the Member was employed by the Simcoe County District School Board as a teacher at James Keating Public School, Penetanguishene.
3. On or about 24 March 2005, the Member pleaded guilty to a charge brought in the Ontario Court of Justice that he did, on 21 October 2003, at the Town of Penetanguishene, have in his possession child pornography, to wit: computerized graphic image files contrary to Section 163.1(4) of the *Criminal Code* (Canada).
4. On or about 15 June 2005, the Member was sentenced to three months imprisonment to be served conditionally followed by twelve [sic] months probation. The Member has not appealed the sentence.

5. The aforesaid activity of the Member and publicity resulting from media coverage of that activity and communication within the general public, has resulted in a reputation, image and lifestyle which is inconsistent with that expected of a member and which may prevent the Member from discharging the duty of the member to the public, his students and his employer.

Member's Plea

As the Member was not present, nor represented by counsel, the Committee proceeded on the basis that the Member denied the allegations set out in the *Notice of Hearing*. The Chair, on behalf of the Member, entered a plea of not guilty to the allegations.

The Evidence

Counsel for the College entered into evidence the following additional documents:

Registered Member Information (Exhibit 3)

John Andrew Larmand is a member of the Ontario College of Teachers as shown on the *Registered Member Information*.

Brief of Court Documents – Regina v. John Andrew Larmand (Exhibit 4)

A *Brief of Court Documents* with respect to the criminal proceedings against the Member was submitted into evidence. This *Brief* consisted of:

- A. Certified copy of *Information* sworn October 22, 2003
- B. Ontario Court of Justice – Transcript of Proceedings before the Honourable Mr. Justice R.P. Main on June 15, 2005, at Midland, Ontario

- C. Ontario Court of Justice – Transcript of Reasons for Judgment of the Honourable Mr. Justice R.P. Main on June 15, 2005, at Midland, Ontario
- D. Certified copy of *Conditional Sentence Order* dated June 15, 2005
- E. Certified copy of *Probation Order* dated June 15, 2005.

1. The evidence presented in the Court Documents confirms that on or about 24 March 2005, the Member pleaded guilty before Mr. Justice R. Main to a charge brought in the Ontario Court of Justice that he did, on 21 October 2003, at the Town of Penetanguishene, have in his possession child pornography, to wit: computerized graphic image files contrary to Section 163.1(4) of the *Criminal Code* (Canada). A certified copy of the Information laid against the Member is attached. (*Exhibit 4, Tab A*).

2. Mr. Justice Main accepted the Member's plea of guilt and found him guilty of the charge referred to in paragraph 3. Attached is a copy of the transcript of the proceedings on 24 March 2005 in the Ontario Court of Justice. (*Exhibit 4, Tab B*).

3. On or about 15 June 2005, the Member was sentenced by Mr. Justice Main to three months imprisonment to be served conditionally, followed by 21 months probation. The Member has not appealed the sentence. Attached are copies of the Conditional Sentence Order and Probation Order issued by the Ontario Court of Justice. (*Exhibit 4, Tabs D & E*).

Decision

(i) Onus and Standard of Proof

The College bears the onus of proving the allegations in accordance with the standard of proof with which the Committee is familiar as set out in *Re Bernstein and College of Physicians and Surgeons of Ontario* (1977) 15 O.R. (2d) 477. The standard of proof applied by the Committee, in accordance with the *Bernstein* decision, was a balance of probabilities with the qualification that the proof must be clear and convincing and based upon cogent evidence accepted by the Committee. The Committee also recognized that the more serious the allegation to be proved, the more cogent must be the evidence. The Committee viewed the allegations in this case to be very serious.

(ii) Decision

Having considered the evidence and onus and standard of proof, 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 John Andrew Larmand committed acts of professional misconduct as alleged, more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(14), 1(15), 1(16), 1(17), 1(18) and 1(19).

Reasons for Decision

It is uncontested that on or about March 24, 2005, the Member pleaded guilty to and was convicted of one count of possession of child pornography, to wit: computerized graphic image files contrary to Section 163.1(4) of the *Criminal Code* (Canada).

It is also uncontested that on or about June 15, 2005, the Member was sentenced by Mr. Justice Main to three months imprisonment to be served conditionally, followed by 21 months probation.

Rule 13.05 and 13.06 of the *Rules of Procedure of the Discipline Committee of the Ontario College of Teachers* states as follows:

13.05 Proof of Prior Conviction or Discharge

13.05(1) Proof that a person has, in proceedings before a court in Canada, been convicted or discharged of an offence following a finding of guilt is proof, in the absence of evidence to the contrary, that the offence was committed by the person, if:

- (a) no appeal of the conviction or discharge was taken and the time for an appeal has expired; or
- (b) an appeal of the conviction or discharge was taken but dismissed or abandoned and no further appeal is available.

13.05(2) Sub-rule (1) applies whether or not the convicted or discharged person is a party to the proceeding.

13.05(3) A certificate of conviction or discharge or certified copy of a Court Information meeting the requirements of sub-section 22.1(3) of the *Evidence Act* (Ontario) shall be accepted by the Discipline Committee as proof that the person was convicted or discharged of the offence for purposes of sub-rule (1).

13.06 Findings of Fact in Prior Proceedings

13.06(1) Where a certificate of conviction or discharge or certified copy of a Court Information has been admitted in evidence under sub-rule 13.05(3), the Discipline Committee shall also admit as ancillary to the certificate of conviction or discharge or certified copy of a Court Information the specific findings of fact contained in the court's reasons for judgment or reasons for sentence, which findings of fact are proof, in the absence of evidence to the contrary, of the facts so found.

The Member has not appealed the conviction or sentence within the prescribed 30-day time limit.

Having no evidence to the contrary, the Committee accepts as proof that the Member was convicted of being in possession of child pornography and was sentenced to three months imprisonment to be served conditionally, followed by 21 months probation. The Committee finds that this criminal conviction as detailed in the *Brief of Court Documents (Exhibit 4)* constitutes professional misconduct.

The Committee finds that by being in possession of child pornography and by being convicted for such possession, the Member committed acts of professional misconduct as alleged, more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(14), 1(15), 1(16), 1(17), 1(18) and 1(19).

Penalty

Counsel for the College submitted that the appropriate penalty be as follows:

1. revocation of the Member's certificate of qualification and registration; and
2. publication of the findings of the Discipline Committee, with the name of the Member in *Professionally Speaking/Pour parler profession*.

Penalty Decision

The Committee makes the following order as to penalty:

1. The Registrar of the Ontario College of Teachers is directed to revoke the Member's certificate of qualification and registration, which 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, including the Member's name, in the official publication of the College, *Professionally Speaking/Pour parler profession.*

Reasons for Penalty Decision

The Member was an elementary school teacher who was convicted of being in possession of child pornography. Evidence demonstrated that the Member downloaded, collected, and stored these materials, which included, among others, 23 graphic images of child pornography and 156 graphic images of child nudity.

The Committee was not presented with specific instances of sexual grooming or predatory behaviour on the part of the Member. Nonetheless, the number of images collected and the Member's use of these images for sexual gratification render him unsuitable to be in a classroom.

The Committee concurs with Justice Main's reasons for judgment that:

[the educational community must]... "be accountable to the parents of the children who are in their care by removing from the proximity of these children someone who admits

to be sexually aroused or gratified by pornographic images of children of that very age group."

The penalty must meet the objective of general deterrence to the members of the profession as well as the objective of specific deterrence to the Member. Accordingly, the Committee determined that revocation of the Member's certificate of qualification and registration and publication of the findings and order of the Committee, with the name of the Member, in *Professionally Speaking/Pour parler profession* was required.

The Committee is satisfied that this decision serves and protects the public interest.

Dated: December 12, 2005

Anne Vinet-Roy
Chair, Discipline Panel

Don Cattani
Member, Discipline Panel

Gabrielle Blais
Member, Discipline Panel