

**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 Terrence T. Lithgow, a member of the Ontario College of Teachers.

PANEL:            Annilee Jarvis, Chair  
                      Rosemary Fontaine  
                      John Tucker

BETWEEN:	)	
	)	
	)	Paul West,
	)	McCarthy Tétrault LLP,
ONTARIO COLLEGE OF TEACHERS	)	for Ontario College of Teachers,
	)	assisted by Jennifer Robinson,
- and -	)	Law Clerk
	)	
TERRENCE T. LITHGOW)	)	Terrence T. Lithgow was not
(CERTIFICATE #241739)	)	present, nor was he represented
	)	
	)	
	)	Luisa Ritacca,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
	)	
	)	Heard: May 21, 2008

**REASONS FOR DECISION, DECISION AND ORDERS**

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on May 21, 2008 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated January 17, 2008 (Exhibit 1) was served on Terrence T. Lithgow (the “Member”), providing him with notice that the Discipline Committee of the Ontario College of Teachers would meet on February 11, 2008 to set a date for a hearing, and specifying the charges. The Member did not attend on February 11, 2008. The Discipline Committee set May 21, 2008 as the date for the hearing on the merits.

The College tendered an *Affidavit of Audley Trevor Evans* sworn May 13, 2008 (Exhibit 3) setting out the efforts by the College to ensure that the Member had full disclosure and had proper notice of the hearing. The Committee was satisfied by the details outlined in Mr. Evans’ Affidavit that the Member had proper notice of the date, time and place of the hearing and that the Member had acknowledged receipt of all the material which had been sent to him. Further, he indicated by telephone on or about April 23, 2008 to Mr. Evans that he would not be defending or attending the hearing of this matter before the Discipline Committee. (Exhibit 3, Page 3, paragraph 8)

The Member did not appear at the hearing, nor was he represented by counsel. The Committee commenced the proceedings at 11:47 a.m. in the Member’s absence.

## **THE ALLEGATIONS**

The allegations against Terrence T. Lithgow in the *Notice of Hearing*, (Exhibit 1) dated January 17, 2008 are as follows:

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

**PARTICULARS OF THESE ALLEGATIONS ARE AS FOLLOWS:**

1. During the 2002-2003 academic year, the Member commenced an inappropriate and unprofessional personal relationship with a female grade [XXX] student (the “Student”) which relationship continued during the 2003-2004, 2004-2005 and 2005-2006 academic years and subsequently. The Member taught the Student while she was in grades [XXX] and [XXX], and was a [XXX] of the Student while she was in grade [XXX].
2. The improper conduct of the Member included his:
  - (a) engaging in inappropriate telephone and electronic communications with the Student;
  - (b) meeting the Student to pursue a personal relationship;
  - (c) purchasing gifts for the Student;
  - (d) engaging in inappropriate physical contact, sexual activity and sexual intercourse with the Student.
3. On or about 10 September 2007, the Member pleaded guilty to charges of sexual exploitation of the Student, contrary to Section 153 of the Criminal Code (Canada) and Internet luring of the Student, contrary to Section 172 of the Criminal Code (Canada).
4. On or about 10 September 2007, the Member was found guilty of charges of sexual exploitation of the Student, contrary to Section 153 of the *Criminal Code* (Canada) and Internet luring of the Student, contrary to Section 172 of the *Criminal Code* (Canada).
5. On or about 9 November 2007, the Member was sentenced, inter alia, to fifteen months imprisonment, a conditional sentence of twelve months and a period of probation.

## **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*

Terrence T. Lithgow is a member of the Ontario College of Teachers as shown on the *Registered Member Information*. (Exhibit 2)

### *Brief of Court Documents – Her Majesty the Queen v. Terrence. Lithgow* (Exhibit 4)

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

- 1 Certified copy of Information re Terrence Lithgow
- 2 Transcript of Proceedings before of the Honourable Justice R. Blouin on September 20, 2007 June 5, 2007
- 3 Transcript of Submissions on Sentence before the Honourable Justice R. Blouin on October 26, 2007
- 4 Transcript of Sentencing Hearing and Reasons on Sentencing before the Honourable Mr. Justice R. Blouin on November 9, 2007.

These Court Documents verify that on or about September 10, 2007 the Member pleaded guilty to and was found guilty of charges of sexual exploitation of a young person, contrary to Section 153 of the *Criminal Code* (Canada) and Internet child luring under 16 years, contrary to Section 172 of the *Criminal Code* (Canada).

On November 9, 2007, the Member was sentenced, *inter alia*, to 15 months imprisonment, a conditional sentence of twelve months and a period of probation of two years. (Exhibit 4, Tab 4, p. 59) He was ordered to [XXX] and to [XXX]. (Exhibit 4, Tab 4, p. 60) The Member was also ordered to attend for assessment and counselling and treatment for sexual offending as directed by a probation officer.

## **DECISION**

### **(i) Onus and Standard of Proof**

The College bears the onus of proving the allegations in accordance with the standard of proof 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 considered the allegations in this case to be very serious and assessed the evidence on that basis.

### **(ii) Decision**

Having considered the evidence, 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 Terrence T. Lithgow committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(7), 1(14), 1(15), 1(16), 1(17), 1(18) and 1(19).

Further, the Committee finds that the Member engaged in sexual abuse of a student of a nature defined in sections 1 and 40 (1.1) of the *Act*.

## **REASONS FOR DECISION**

Rules 13.05 and 13.06 of the *Rules of Procedure of the Discipline Committee of the Ontario College of Teachers* allow the Committee to accept as proof that an offence was committed by a person, where there is a finding of guilt and conviction in a Canadian court, provided that there is no evidence to the contrary and that no appeal has been granted.

In absence of evidence to the contrary, the Committee accepts the specific findings of fact contained in the *Brief of Court Documents* (Exhibit 4) that on or about September 10, 2007 the Member pleaded guilty to and was found guilty of charges of sexual exploitation of the Student, contrary to Section 153 of the *Criminal Code* (Canada) and Internet luring of the Student, contrary to Section 172 of the *Criminal Code* (Canada).

There was no evidence presented of an Appeal by the Member of his conviction and/or sentence and the time for doing so has expired.

The Committee finds that the Member's conviction for sexual exploitation and internet luring of a student as outlined herein constitutes acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(7), 1(14) and 1(15) and that he engaged in sexual abuse of a student of a nature defined in sections 1 and 40 (1.1) of the *Act*.

The Member's criminal convictions demonstrate that his actions contravened laws. These contraventions are relevant to his suitability to hold a Certificate of Qualification and Registration and have caused a student to be put at risk, pursuant to Ontario Regulation 437/97, subsections 1(16) and 1(17).

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

### **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 Certificate of Qualification and Registration of the Member, which Certificate the Member is to surrender immediately to the Registrar; of the Ontario College of Teachers; and
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 name of the Member in the official publication of the College, *Professionally Speaking/Pour parler profession*.

### **REASONS FOR PENALTY DECISION**

The Member began an inappropriate relationship with the Student while she was his student in [XXX]. During those two years they e-mailed and chatted using a computer in

a manner that became increasingly more sexual in nature. This culminated in visits where touching occurred. The relationship continued through grade [XXX] when he continued to be in a in a position of trust, as her [XXX]. This ongoing contact ultimately led to sexual activity and intercourse on multiple occasions. These activities occurred in the school, in a park, in a car, and in a motel. The Member exercised emotional control over the student by telling her that he loved her, giving her gifts and alcohol, and making her promise not to tell anyone about their activities.

As a result of the criminal proceedings, the Member was incarcerated, ordered to [XXX], to [XXX]. The Member was also ordered to attend for assessment and counselling and treatment for sexual offending as directed by a probation officer.

The Member's conduct over a lengthy period represents an abuse of his position of trust, both with the student and her family. The fact that he used his position of trust in order to create a long term pattern of abuse, control and sexual exploitation of his student requires that he receive the maximum penalty, revocation of his certificate of qualification and registration. The Member, by his abuse of a student, has brought the profession into disrepute and has lost the trust of the public.

Publication of the findings and order of the Committee, in summary, with the name of the Member, in *Professionally Speaking/Pour parler profession* provides both a specific deterrent to the Member and a general deterrent to the profession while advising and serving the public interest. It also reassures the public that the College will not tolerate such behaviour and will ensure that this type of misconduct is dealt with appropriately.

In conclusion, the Committee is confident that the penalty serves the interests of the public and the profession.

Dated: June 9, 2008

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Annilee Jarvis  
Chair, Discipline Panel

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Rosemary Fontaine  
Member, Discipline Panel

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John Tucker  
Member, Discipline Panel