

**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
Carmela Lutz, OCT, a member of the Ontario College of Teachers.

PANEL: Hanno Weinberger, OCT, Chair
 Irene Dembek, OCT
 John Tucker

BETWEEN:	)	Eli Mogil,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Daniela De Bartolo,
	)	Litigation Paraprofessional
- and -)	
)	
CARMELA LUTZ	)	Alejandro Munoz,
(CERTIFICATE #171114)	)	Markle & Phibbs,
	)	for Carmela Lutz
)	
	)	Julie Maciura,
	)	Steinecke Maciura LeBlanc,
	)	Independent Legal Counsel
)	
	)	Heard: July 18, 2011

DECISION, REASONS FOR DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on July 18, 2011 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated February 10, 2011 was served on Carmela Lutz, requesting her presence on February 22, 2011 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for July 18, 2011.

Carmela Lutz was in attendance.

THE ALLEGATIONS

The allegations against Carmela Lutz in the *Notice of Hearing*, (Exhibit 1) dated February 10, 2011 are as follows:

IT IS ALLEGED that Carmela Lutz is guilty of professional misconduct as defined in section 30(2) of the *Ontario College of Teachers Act, 1996* (the “Act”), in that:

- (a) she failed to maintain the standards of the profession, contrary to Ontario Regulation 437/97, subsection 1(5);
- (b) she released or disclosed information about a student to a person other than the student or, if the student is a minor, the student’s parent or guardian, contrary to Ontario Regulation 437/97, subsection 1(6);
- (c) she abused a student verbally, contrary to Ontario Regulation 437/97, subsection 1(7);
- (d) she abused a student psychologically or emotionally, contrary to Ontario Regulation 437/97, subsection 1(7.2);
- (e) she failed to adequately supervise a person who is under her professional supervision, contrary to Ontario Regulation 437/97, subsection 1(11);
- (f) she failed to comply with the *Education Act*, Revised Statutes of Ontario, 1990, chapter E.2, and specifically section 264(1)(c) thereof or the Regulations made under that Act, contrary to Ontario Regulation 437/97, subsection 1(15);
- (g) she 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

- (h) she engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19).

At the hearing on July 18 2011, College counsel sought to withdraw the allegations of professional misconduct in paragraphs (b), (e) and (f), namely that the Member breached Ontario Regulation 437/97, subsections 1 (6), 1(11) and 1(15). The Committee agrees that these allegations shall be withdrawn.

Counsel for the College advised the Committee that an agreement had been reached on the facts and introduced a *Statement of Uncontested Facts and Plea of No Contest* (Exhibit 2), which provides as follows:

STATEMENT OF UNCONTESTED FACTS

1. Carmela Lutz (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 Algonquin and Lakeshore Catholic District School Board (the “Board”) and taught [XXX] at [XXX] in Belleville, Ontario (the “School”).
3. Student #1 was a male [XXX] student at the school during the 2009/2010 academic year. Student #1 has an executive functioning learning disability and [XXX] syndrome. The Member taught Student #1.
4. Throughout the 2009/2010 year, the Member failed to display the appropriate sensitivity to the special needs of Student #1, including:

- (a) telling him that he would fail [XXX] if he failed to do his French work and sometimes failing to provide him with help when he requested same;
- (b) taking away his Occupational Therapy Manipulative Devices;
- (c) being inattentive to his Individual Education Plan (“IEP”);
- (d) knowing that Student #1 had a severe peanut/nut allergy, distributed treats to other students that were not peanut or nut safe;
- (e) on one occasion, failed to return to Student #1 a Christmas card that he had been working on; and
- (f) on or about January 5, 2010, repeatedly said to Student #1 in a raised voice – “Stop shaking your head at me”. This comment was heard by a fellow teacher at the School.

5. The Member, if called to testify, will acknowledge the incident described at paragraph 4(f) above but will state that the student was rude to her initially and the reason she made this demand of Student #1 was because she believed he would hurt himself as he had not exhibited to her this type of reaction before. Further, the Member will testify that she was remorseful about this incident and expressed such remorse to the parents of Student #1.

6. As a result of the January 5, 2010 incident described above, the Member whose conduct had not previously been the subject of a recorded complaint, was suspended for three (3) days by the Board. The Member filed a grievance which was the subject of agreement between the parties.

7. The Member has not yet returned to active teaching duties.

PLEA OF NO CONTEST

8. By this document, the Member admits, for the purposes of this proceeding only, the truth of the facts and exhibits referred to in paragraphs 1 to 7 above (the “uncontested facts”).

9. The Member hereby acknowledges that the uncontested facts referred to in paragraph 4 above, constitute conduct that is unprofessional and pleads no contest to the allegations of professional misconduct against her, being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(7), 1(7.2), 1(18 - unprofessional) and 1(19).

10. By this document the Member states that:

- (a) she understands fully the nature of the allegations against her;
- (b) she understands that by signing this document she is consenting to the evidence as set out in the uncontested facts being presented to the Discipline Committee;
- (c) she understands that by pleading no contest to the allegations, she is waiving the right to require the College to prove the case against her and the right to have a hearing;
- (d) she understands that depending on the penalty ordered by the Discipline Committee, the decision of the Committee and a summary of its reasons, including reference to her name, may be published in the official publication of the College;
- (e) she understands that any agreement between her counsel and counsel for the College with respect to the penalty proposed in this document does not bind the Discipline Committee;
- (f) she understands and acknowledges that she is executing this Agreement 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, chapter E. 23, for the purpose of this proceeding under the *Ontario 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 the uncontested 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

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 Committee:

- (a) directs that the Member appear before the Committee immediately following the hearing of this matter to be counselled, and the fact of the counselling is to be recorded on the Register of the Ontario College of Teachers;
- (b) directs the Registrar of the Ontario College of Teachers to impose the following terms, conditions or limitations on the Member's Certificate of Qualification and Registration, the fact of such terms and conditions and limitations to be recorded on the Register of the College until such time as they are fulfilled:
 - (i) the Member is to enrol in and complete, at her own expense, within ninety (90) days of the date of this Order, a course of instruction, pre-approved by the Registrar, in professional boundaries and student sensitivities with particular emphasis on the recognition and protection of same;

- (ii) within thirty (30) days of her completion of the course outlined at (i) above, the Member shall provide to the Registrar a written Certificate from the Course Provider stating:
 - A. that, prior to conducting the course, he or she has reviewed a copy of the draft Statement of Uncontested Facts and Plea of No Contest and the draft Joint Submission on Penalty documents to be made exhibits at the hearing; and
 - B. that the Member has successfully completed the course;
- (c) directs that there be publication of the findings and Order of the Committee in summary form in the official publication of the College, *Professionally Speaking/Pour parler profession*.

DECISION

Having considered the evidence, onus and standard of proof, 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 Carmela Lutz committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(7), 1(7.2), 1(18 - unprofessional) and 1(19).

REASONS FOR DECISION

The Member admitted the truth of the facts and exhibits referred to in paragraphs 1 to 7 (the “uncontested facts”) of the *Statement of Uncontested Facts and Plea of No Contest* (Exhibit 2). She acknowledged that the uncontested facts referred to in paragraph 4 above constitute

conduct which is unprofessional and pleaded no contest to the allegations of professional misconduct against her. The Committee accepted the Member's plea of no contest and the facts in the *Statement of Uncontested Facts and Plea of No Contest*.

The Member engaged in conduct that failed to display the appropriate sensitivity to the special needs of a Student with an executive functioning learning disability and [XXX] syndrome including:

- (a) telling him that he would fail [XXX] if he failed to do his French work and sometimes failing to provide him with help when he requested same;
- (b) taking away his Occupational Therapy Manipulative Devices;
- (c) being inattentive to his Individual Education Plan ("IEP");
- (d) knowing that Student #1 had a severe peanut/nut allergy, distributed treats to other students that were not peanut or nut safe;
- (e) on one occasion, failed to return to Student #1 a Christmas card that he had been working on; and
- (f) on or about January 5, 2010, repeatedly said to Student #1 in a raised voice – "Stop shaking your head at me". This comment was heard by a fellow teacher at the School.

By engaging in this conduct, the Member committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(7), 1(7.2), 1(18 - unprofessional) and 1(19).

SUBMISSIONS ON PUBLICATION

The Committee received submissions from Counsel for the Member with respect to publication of the Member's name in *Professionally Speaking/Pour parler profession*. Counsel for the Member submitted that the Member had been with the current school board for over 20 years with no previous disciplinary history. Counsel indicated that the conduct

was at the low level, that the Member had already taken a course in professional boundaries and student sensitivities (recognition/protection). Counsel submitted that publication of the Member's name might lead to identification of the Student in the small community.

Counsel for the College took no position with regard to publication of the Member's name.

PENALTY

The Committee makes the following order as to penalty:

1. the Member is to appear before the Committee immediately following the hearing of this matter to be counselled and the fact of the counselling is to be recorded on the Register of the Ontario College of Teachers;
2. the Registrar is directed to impose the following terms, conditions or limitations on the Member's Certificate of Qualification and Registration, the fact of such terms, conditions or limitations to be recorded on the Register of the College until such time as they are fulfilled;
 - (i) the Member is to enrol in and complete, at her own expense, within ninety (90) days of the date of this Order, a course of instruction, pre-approved by the Registrar, in professional boundaries and student sensitivities with particular emphasis on the recognition and protection of same;
 - (ii) within thirty (30) days of her completion of the course outlined at (i) above, the Member shall provide to the Registrar a written Certificate from the Course Provider stating:
 - A. that, prior to conducting the course, he or she has reviewed a copy of the draft Statement of Uncontested Facts and Plea of No Contest and the draft Joint Submission on Penalty documents, made exhibits at the hearing; and
 - B. that the Member has successfully completed the course;

3. the Committee directs that there be publication of the findings and Order of the Committee in summary form, without the name of the Member, in the official publication of the College, *Professionally Speaking/Pour parler profession.*

REASONS FOR PENALTY DECISION

The counselling of the Member by her peers in respect of her inappropriate conduct serves to reinforce the necessity to maintain appropriate student/teacher boundaries. The counselling will further remind the Member to uphold the standards of the profession and not to engage in unprofessional conduct.

The Committee determined that the course of instruction in professional boundaries and student sensitivities is necessary to address the rehabilitation of the Member and to provide an opportunity for further education as to the inappropriateness of her conduct.

The finding of professional misconduct and the fact that the Member has been counselled and is required to take a course will be recorded on the Public Register and serves as both a specific and general deterrent.

Publication of the findings and order, in summary, without the name of the Member, will serve as a general deterrent to the profession and demonstrates the transparency of the discipline process. The Committee took into consideration the nature of the misconduct, and the agreement of counsel that the conduct was on the low end of the spectrum. The Committee also took into consideration that there was no prior record of similar behaviour and that there was little risk of repetition, given that the Member is required to take a course on professional boundaries and student sensitivities.

The Committee determined that publication without name was appropriate in this situation.

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

Date: August 4, 2011

Hanno Weinberger, OCT
Chair, Discipline Panel

Irene Dembek, OCT
Member, Discipline Panel

John Tucker
Member, Discipline Panel