

**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 Kelly James Madden, a member of the Ontario College of Teachers.

PANEL: Annilee Jarvis, Chair
 Danny Anckle
 Alexander Bass

BETWEEN:)	
)	
	)	Cedric Lamarche,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -)	
)	
	)	Simon Blackstone,
	)	Green & Chercover LLP,
KELLY JAMES MADDEN	)	for Kelly James Madden
(CERTIFICATE #457292))	
)	
	)	Richard Steinecke,
	)	Steinecke Maciura LeBlanc
	)	Independent Legal Counsel
)	
	)	Heard: September 21, 2009

REASONS FOR DECISION, DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on September 21, 2009 at the Ontario College of Teachers (“the College”) at Toronto.

Two *Notices of Hearing*, one dated February 12, 2009 and one dated February 13, 2009, were served on Kelly James Madden, (the “Member”) requesting his attendance before the Discipline Committee of the Ontario College of Teachers on February 24, 2009 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for September 21, 2009.

The Member was not in attendance at the hearing.

THE ALLEGATIONS

The allegations against Kelly James Madden in the *Notices of Hearing*, (Exhibits 1 and 2) dated February 12, 2009 and February 13, 2009 are as follows:

IT IS ALLEGED that Kelly James Madden 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*.

STATEMENT OF UNCONTESTED FACTS

Counsel for the College advised the Committee that an agreement had been reached on the facts and introduced a *Statement of Uncontested Facts, Plea of No Contest and Joint Submission on Penalty* (Exhibit 3) which provides as follows:

1. Kelly James Madden (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.

STATEMENT OF UNCONTESTED FACTS

Re Student No. 1

2. During the 2003-2004 academic year, the Member was employed by [XXX], a [XXX]school in [XXX], Ontario. At the same time, Student No. 1 was a [XXX] female student of [XXX].

3. On or about October 2, 2003, the Member was dismissed from his employment by [XXX] after he allegedly touched the buttocks of Student No. 1 during a [XXX].

Re Student No. 2

4. During the 2006-2007 academic year, the Member was employed by the District School Board of Niagara (the “Board”) as a high school teacher. He taught [XXX] and

was assigned to the [XXX], from approximately September 1, 2006 to December 14, 2006. During that period, Student No. 2 was an [XXX] female student of the Member at [XXX].

5. Between the approximate period of September 1, 2006 and December 14, 2006, the Member engaged in inappropriate behaviour towards Student No. 2 by:

- (a) paying special personal attention to her during and outside of school hours, including attending at her home on two occasions;
- (b) taking her to stay with him at his residence on one occasion when no one else was there;
- (c) giving her his home telephone number and exchanging cellular telephone numbers with her;
- (d) engaging frequently in telephone conversations with her;
- (e) giving her one of his t-shirts;
- (f) giving her a \$20 gift certificate to the movies; and
- (g) driving her home in his car following a sporting event at the school.

6. On or about December 14, 2006, the Member was suspended with pay by the Board. Attached hereto and marked as **Exhibits “B” and “C”** respectively, are copies of letters to the Member dated December 22, 2006 and January 15, 2007 with respect to that suspension.

7. Following the completion of an investigation, the Member was suspended by the Board on February 7, 2007 for a period of ten days without pay. The Board advised the Member that he would be reassigned to a new school upon his return to work. A copy of that letter is attached as **Exhibit “D”**.

Re Student No. 3

8. Following his return to work on February 21, 2007 after the completion of the suspension referred to above, the Member was reassigned to [XXX].

9. Between the approximate dates of February 22, 2007 and June 30, 2007, the Member, while teaching at [XXX], engaged in inappropriate behaviour towards Student No. 3, who was an [XXX] female student of that school, by:

- (a) making inappropriate comments to her with respect to her appearance and clothing. In addition, the Member spoke to Student No. 3 suggesting that she meet with him in private outside of the school;
- (b) taking her into an area inside his office that could not be seen from the hall, and kissing her on her neck. The Member later apologized to Student No. 3 for that behaviour;
- (c) on two occasions, while they were putting equipment away in an equipment room of the School's gymnasium, pulling Student No. 3 towards him and kissing her on the lips;
- (d) on one occasion asking her what her thoughts and feelings were about a teacher–student relationship;
- (e) asking her how she felt towards him, if she was attracted to him, and if she wanted him; and
- (f) on one occasion stated to her that he had had his house to himself and wished he had some way of contacting her.

Further Board Action

10. On or about October 12, 2007, the Member was suspended with pay by the Board. A copy of the letter of suspension dated October 12, 2007 is attached as **Exhibit “E”**.

11. Following a further investigation, the Member was suspended by the Board without pay, effective March 10, 2008. At the same time, the Member was advised that

the Board would consider a recommendation that his employment be terminated effective April 9, 2008 at its next meeting on April 8, 2008. A copy of the letter of the Board dated March 7, 2008 is attached as **Exhibit “F”**.

12. The Member’s employment was terminated by the Board on or about April 9, 2008 and a copy of the letter of termination bearing that date is attached as **Exhibit “G”**.

PLEA OF NO CONTEST

13. By this document, the Member enters a 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.

14. Pursuant to Rule 3.02(2), by this document, the Member does not contest, for the purposes of this proceeding only, the facts and exhibits referred to in paragraphs 2 to 12 above (the “uncontested facts”).

15. Pursuant to Rule 3.02(2), the member does not contest, for the purposes of this proceeding only, the allegations of professional misconduct made against him, being more particularly breaches of Ontario Regulation 437/97 1(5), (7), (14), (15), (18 - disgraceful) and (19), and that he engaged in sexual abuse of a student or students of a nature defined in Sections 1 and 40(1.1) of the *Act*.

16. By this document, the Member states that:

- (a) he understands fully the nature of the allegations against him;
- (b) he understands that by signing this document, he is consenting to the evidence as set out in paragraphs 1 to 12 above, including the referenced exhibits, being presented to the Discipline Committee at the hearing of this matter;

- (c) he understands that by pleading no contest to the allegations, he is waiving the right to require the College to prove the case against him and the right to have a full hearing into those allegations;
- (d) he voluntarily decided to plead no contest; and
- (e) he understands and acknowledges that he is executing this agreement voluntarily, unequivocally and with the advice of legal counsel.

17. In light of the Member's plea of no contest to the uncontested facts and allegations contained in the Notices of Hearing, the Ontario College of Teachers submits that the Discipline Committee ought to find the Member guilty of professional misconduct as alleged.

JOINT SUBMISSION ON PENALTY

18. 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) directs the Registrar of the Ontario College of Teachers to immediately revoke the Certificate of Qualification and Registration of the Member, which Certificate the Member is to immediately surrender to the Registrar of the Ontario College of Teachers; and
- (b) directs that there be publication of the findings and order of the Committee, with the name of the Member, in summary form, in the official publication of the College *Professionally Speaking/Pour parler profession*.

19. 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 *Statement of Uncontested 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 Kelly James Madden committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(7), 1(14), 1(15), 1(18 – disgraceful) and 1(19), and that he engaged in sexual abuse of a student or students of a nature defined in Sections 1 and 40(1.1) of the *Act*.

REASONS FOR DECISION

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

The Member does not contest the facts and exhibits referred to in paragraphs 2 to 12 of the *Statement of Uncontested Facts, Plea of No Contest, and Joint Submission on Penalty* and pleaded no contest to the allegations of professional misconduct as alleged in the *Notices of Hearing*.

The Member repeatedly put himself in situations involving inappropriate conduct with students. The Member was certified to teach in 2002. In October 2003 the Member was dismissed from his employment at [XXX] for allegedly touching the buttocks of a [XXX] female student.

From September 1, 2006 to December 14, 2006, the Member was employed as a [XXX] teacher in the District School Board of Niagara. During this time the Member engaged in

inappropriate behaviour towards an [XXX] female student by paying special personal attention to her during and outside of school hours. His actions included giving her gifts, sharing phone numbers, engaging frequently in telephone conversations, driving her home, attending at her home and taking her to his own home unsupervised. As a result of this conduct, the Member was suspended with pay on December 14, 2006 pending the completion of an investigation by the board. Following the completion of the board investigation, the Member was suspended without pay for 10 days on February 7, 2007 and then reassigned to a new school upon his return to work.

Following his reassignment to a new school in the same board on February 21, 2007, the Member again engaged in inappropriate behaviour towards an [XXX] female student at that school. In this case, the Member's actions included inappropriate comments to her regarding her appearance and clothing, suggestions of meeting with him in private outside of the school, kissing her on the neck and on two separate occasions, kissing her on the lips. The Member engaged in conversations with her about teacher-student relationships and specifically her feelings for him. On one occasion the Member stated to her that he had his house to himself and wished he had some way of contacting her.

The Member was suspended with pay on October 12, 2007 pending the completion of an investigation by the board. Following the investigation by the board the Member was suspended without pay on March 10, 2008 and his employment was terminated on April 9, 2008.

Despite two investigations, two suspensions without pay, and repeated disciplinary letters, the Member continued his inappropriate conduct towards female students in at

least two different communities. The Member's behaviour escalated from driving a student home in his car to kissing a student on the lips in a secluded area in the school.

The Committee determined that by his conduct, the Member committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(7), 1(14), 1(15), 1(18 – disgraceful) and 1(19), and that he engaged in sexual abuse of a student or students of a nature defined in Sections 1 and 40(1.1) of the *Act*.

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, 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 was in a position of trust and authority and repeatedly abused that trust. He did not heed repeated warnings regarding his behaviour. Suspensions had no impact on his behaviour. In a systematic way, the Member engaged in a pattern of misconduct as evidenced by his advances towards female students. The level of inappropriate behaviour continued to escalate until he was terminated from his employment. The Member

showed disregard for his position as a role model and brought the reputation of the profession into disrepute. Revocation is the only appropriate penalty in these circumstances.

Publication of the findings and order of the Committee, in summary, along with the name of the Member, provides a specific deterrent to the Member by identifying him and the nature of his misconduct. Publication alerts the profession and informs the public that such behaviour will not be tolerated and will result in the most serious penalty, revocation.

For the above reasons, the Committee is satisfied that this decision and penalty serves and protects the public interest.

Date: October 8, 2009

Annilee Jarvis, OCT
Chair, Discipline Panel

Danny Anckle
Member, Discipline Panel

Alexander Bass, OCT
Member, Discipline Panel