

**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 Shawn Clifton Daniel Mann, a member of the Ontario College of Teachers.

PANEL: Nancy Hutcheson, Chair
 Don Cattani
 Lynne Mastin

BETWEEN:	)	Carole Jenkins,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Heather Meredith
)	
- and -)	
)	
SHAWN CLIFTON DANIEL MANN	)	Shawn Clifton Daniel Mann
(CERTIFICATE # 191499)	)	appeared on his own behalf on
	)	March 21, 2005
)	
	)	Christopher Wirth,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
)	
	)	Heard: January, 10 & 11, 2006,
	)	March 20, 21 & 29, 2006

REASONS FOR DECISION AND DECISION

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on January 10 & 11, 2006, March 20, 21 & 29, 2006 at the Ontario College of Teachers (“the College”) at Toronto.

The hearing of this matter had originally been scheduled to begin on April 18, 2005, however, at the request of the College, it was adjourned to September 28, 2005. Subsequently, at the request of Shawn Clifton Daniel Mann, (“the Member”) the hearing was adjourned to November 16, 2005. At the Member’s request, the hearing was again adjourned on November 16, 2005 but the Member was advised that the hearing would proceed peremptorily at 9:00 a.m. on January 9, 2006 whether or not he was present.

This decision was sent by courier to the Member on November 17, 2005, returned unopened on December 1, 2005 and was sent by mail to the Member on December 2, 2005. The Member did not appear on January 9, 2006, however, he indirectly requested a further adjournment, and was informed by e-mail and by telephone that he would be given until 9:00 a.m., January 10, 2006 to appear.

The hearing began at 9:00 on January 10, 2006. The member was not present on January 10 or 11, 2006. He participated by teleconference for an hour on March 20, 2006 and attended in person on March 21, 2006, at which time he testified in his own defence and was briefly cross-examined before the hearing adjourned for the day.

Upon continuation of the hearing on March 29, 2006, the Member was not in attendance. Therefore, College Counsel could not complete the cross-examination of the Member. The hearing proceeded in his absence.

The Member was not represented by counsel. However Bernard LeBlanc of Steinecke Maciura LeBlanc appeared on March 20, 2006, indicating that he was not appearing as counsel of record but was there, briefly, to provide the Member with some legal advice.

Following the completion of the evidence on March 29, 2006, the Panel requested written closing argument from the parties. The Panel subsequently received written closing argument on behalf of the College but not from the Member. After receiving written advice from Independent Legal Counsel, the panel deliberated on the matter.

The Allegations

The allegations against Shawn Clifton Daniel Mann (“the Member”) in the *Notice of Hearing* (Exhibit 1) are as follows:

IT IS ALLEGED that Shawn Daniel Clifton Mann is guilty of professional misconduct as defined in sections 30(2) and 40(1.1) of the *Ontario College of Teachers Act* (“Act”), and/or is incompetent as defined in section 30(3) of 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, and/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 displayed a lack of knowledge, skill or judgment and/or a disregard for the welfare of students of a nature or extent that demonstrates that the Member is either unfit to carry out his professional responsibilities or that the Member's certificate should be made subject to terms, conditions or limitations.

At the outset of the hearing, Counsel for the College withdrew the allegations of incompetence against the member as outlined in (f) above.

PARTICULARS OF THESE ALLEGATIONS ARE AS FOLLOWS:

1. Shawn Clifton Daniel Mann (the "Member") is a member of the Ontario College of Teachers. At all times material hereto, the Member was employed by the St. Clair Catholic District School Board ("the Board"), and taught OAC students at St. Christopher Secondary School ("the School").
2. Between 1999 and 2002, the Member acted inappropriately in class and with his students, and made inappropriate comments and remarks to and/or about students, including but not limited to:
 - (a) showed funny or dirty e-mails and comic strips on the screen in class;

- (b) poked fun at students so that many were hurt by his remarks or thought that others would be;
- (c) made use of humour to criticize others, such as asking “What are you, an idiot?”
- (d) displayed mercurial behaviour, in that he would be “buddy-buddy” one minute and yelling the next;
- (e) acted like a teenager;
- (f) knew and talked about personal issues related to his students during class time;
- (g) listened in to personal conversations of his students and later repeated publicly something he had overheard;
- (h) referred to a student who was not in class at the time as “pimple face” and when others in class spoke up about it, he didn’t back down;
- (i) made comments in class about the administration;
- (j) talked in class about a female student’s bad reputation and what she did at rookie hockey parties;
- (k) referred to a student Bobby as “Booby”;
- (l) commented that it was “nice to teach an Italian who doesn’t have a fat ass”;
- (m) asked inappropriate questions, e.g. “Were you having sex on the hill? Were you having sex in the car?”
- (n) said about a female student who came to the classroom door – “You should pick up on her, she’s got a nice rack”;

- (o) on one occasion when a student asked to go to the bathroom remarked – “You need a magazine, are you going to play with yourself?”
- (p) asked a student whose father owns the Riverport – “Are your aunts the strippers?”
- (q) asked a student who was whistled at – “Hey you like that?”
- (r) used the following to describe a dark complexioned student – “Poncho”, “Mexican”, “Browntown”. Once while watching a movie in class, remarked – “No Mexican sub-titles, Poncho”;
- (s) said to a male student who wore his pants low – “You want easy access to your butt”;
- (t) called students “assholes”;
- (u) made fun of kids from the country;
- (v) called students names, such as “slob”, “slow”, “fat”, “ugly”;
- (w) told a student in front of the class that he probably broke his arm by “jacking off”;
- (x) wrote the word “gay” on a TV monitor during one student’s presentation;
- (y) during class, joined in a discussion with a group of boys about slang words for sex, including the remark – “Guy runs up to you and hits you with his dick and then runs away”;
- (z) stated “you smell, you are ugly”;
- (aa) made several references to a student at a hot tub party;
- (bb) referred to a female student as “bongo-boobs”;

- (cc) said to a student - “We all know you like to have your hands down your pants;
- (dd) commented in class about people who are dating;
- (ee) engaged in sexual humour and jokes;
- (ff) about a female student, [REDACTED], said words to the effect that: “The only way to shut her up is to put a cock in her mouth”, and/or “the only way to shut her up long enough is to go through the whole hockey team”;
- (gg) commented – “You have a small penis”.

At the outset of the hearing, Counsel for the College also withdrew the allegations found in paragraphs 3 and 4 below as outlined in the Notice of Hearing.

3. In or about September or October 1997, in the presence of members of the School’s soccer team, the Member said to [REDACTED], one of the soccer team members, that one of his female students, [REDACTED] was “just another one of those sluts who licks pussy”.
4. After being questioned by [REDACTED] about what it was that he had said about her to [REDACTED], the Member required a member of the soccer team [REDACTED] to run extra laps because the Member thought that [REDACTED] had been the one who told [REDACTED] what it is that the Member had said about her.

Publication Ban

On January 10, 2006 the Discipline Committee made an order that there be no publication of any information that may disclose the identity of the students involved in this matter.

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.

Overview

There are two areas of allegations against the Member

- (a) **Inappropriate Comments in Class:** It is alleged that the Member made inappropriate comments or remarks in class, including comments of a sexual and/or demeaning nature (paragraph 2. of the Notice of Hearing, Exhibit 1);
- (b) **Inappropriate Comment in School Hallway re: [REDACTED]:** It is alleged that the Member made inappropriate comments to students outside of class at St. Christopher Catholic School (the "School). In particular, it is alleged that the Member said to a group of boys "the only way to shut her up is to stick a cock in her mouth" and/or that "the only way to shut her up long enough is to go through the whole hockey team". This comment was in reference to a particular student [REDACTED] (paragraph 2. (ff) of the Notice of Hearing, Exhibit 1)

The Evidence

The College called six witnesses. They were Catharine Hockin, a social worker, Henry Kulik, Superintendent of the Board, John Girard, Vice-Principal, [REDACTED], [REDACTED] and [REDACTED]. The Member also testified on his behalf on March 20, 2006.

Evidence of Henry Kulik

Henry Kulik (“Kulik”) was Superintendent of Schools for the St. Clair Catholic District School Board (the “Board”). He had interviewed six students who reported an inappropriate comment made by the Member early the week beginning September 23, 2002. According to his notes dated September 30, 2002, (Exhibit 8), [■], [■] and [■] reported they had been present and heard the Member utter a comment about a female student, [■], to the effect that: “The only way to shut her up is to put a cock in her mouth”, and/or “the only way to shut her up long enough is to go through the whole hockey team”.

Evidence of Catharine Hockin

Catharine Hockin (“Hockin”) is a qualified social worker with academic credentials including a MSW and has had experience working both with the Children’s Aid Society and with the Office of Children’s Lawyer. She had no organizational connection with the Board.

Hockin interviewed 68 students. She indicated in the *Summary* of her *Initial Report* (Exhibit 5) that “only two [students] made no remarks that reflected inappropriate statements or actions made by Mr. Mann.”

There were two students who referred to comments made by the Member with regard to Particular 2. (ff) of the allegations against the Member, as contained in the *Notice of Hearing*:

2. (ff) about a female student, [REDACTED], said words to the effect that: "The only way to shut her up is to put a cock into her mouth," and/or "the only way to shut her up long enough is to go through the whole hockey team";

In Exhibit 4a, Tab 1, p 5, student [REDACTED] states the following: "My friends told me about a comment he made about me: 'The only way to shut [REDACTED] up is stick a cock in her mouth.'"

In Exhibit 4a, Tab 5, p 4, student [REDACTED] states as a witness to the utterance: "Yes. He was talking about [REDACTED]. The only way you can shut her up is with a cock in her mouth. The only way you can shut her up for long enough is to go through a whole hockey team."

The Committee later heard direct testimony from both [REDACTED] and [REDACTED] with regard to this incident.

Evidence of [REDACTED]

[REDACTED], a male student, was not one of the Member's students and stated that he liked the Member. (Exhibit 4a, Tab 5)

In an interview on September 30, 2002 with Kulik, [REDACTED] stated that he heard the Member say, "The only way to shut her up was to stick a cock in her mouth. For a sufficient amount of time she would have to go through the whole hockey team! I can't believe a teacher said that!!" He stated he had not told others and didn't want Mr. Mann to get into trouble. (Exhibit 8)

During [REDACTED]'s direct testimony, he confirmed that he had made the statements attributed to him with respect to Exhibit 4 a, Question #8 page 4 of his interview with Hockin. He stated, "Yes. He was talking about [REDACTED] The only way you can shut her up is with a cock in her mouth. The only way you can shut her up for long enough is to go through a whole hockey team."

When testifying, [REDACTED] stated that the Member was friendly, and that they both loved hockey, which they talked about. He only brought forward his evidence because he thought it was an inappropriate comment for a teacher to make, and [REDACTED] was a friend.

Evidence of [REDACTED]

[REDACTED], another male student, was not in the Member's class and had never been coached by the Member.

[REDACTED] had been interviewed by Kulik and Principal McKinley on September 30, 2002, but had not been interviewed by Hockin. In his interview with Kulik (Exhibit 8) regarding Particular 2.(ff), [REDACTED] stated he didn't recall exactly what had been said but it was along the lines of "the only way to shut her up was to stick _____ in her mouth." During [REDACTED]'s direct testimony, he confirmed that he had made the statements attributed to him with respect to this interview.

[REDACTED] testified that he had only had one significant conversation with the Member and that he was "shocked" and "didn't expect to hear anything like that from a teacher." He stated that he clearly remembered when the conversation took place. He was with [REDACTED]

when they encountered the Member in the hallway and concurred with [REDACTED] that the Member had stated “the only way to shut her up was to stick a cock in her mouth.”

Evidence of [REDACTED]

[REDACTED] was a female student in the Member’s [REDACTED] in 2002. In her testimony, [REDACTED] stated that a friend had told her about an inappropriate comment concerning her, made by the Member. The comment was to the effect that the only way to shut her up was to stick a cock in her mouth.

[REDACTED] had spoken to a teacher about the comment and was advised to tell her parents and the administration. She confirmed the evidence in Exhibit 8 that she had reported the comment to Mr. Girard on Thursday, September 26, 2002. She was subsequently interviewed by Kulik and by Hockin and confirmed in her direct testimony that she understood the Member to have made the comment as reported to her by her friend. She referred Hockin to other students who may have known about the Member’s comment regarding how to shut her up.

[REDACTED] reported to Hockin that she was very upset by everything, that she didn’t know if the Member would continue to be her teacher for the rest of the term, that she was worried about getting the Member fired, about his family and about his wife. She was subsequently removed from the Member’s class because she was so uncomfortable.

[REDACTED] also stated she had had a hard time telling her own family and finally wrote the Member’s comment for her mother because she was too upset to say it. She testified that

she continued to see the school counsellor, Sharon Berry-Ross, and that she continues to be affected by this incident. Even in third year university, she is uncomfortable going to professors or teaching assistants for help. In her home town, people continue to ask her about this incident.

Evidence of Shawn Mann

In his testimony, the Member stated that he had many concerns about issues at the school. These included his perception of a lack of moral tone in the school. In particular, he disagreed with the ‘rent-a-friend’ auction and was concerned with costuming the male Chaplain in a dress for an assembly. He testified that the students were laughing at the chaplain and chanting “fag, fag, fag” during the assembly.

The Member had concerns regarding student costumes and conduct as well as lack of adult supervision on Grade 9 Orientation Day. He felt that the costumes were disgusting, students were “parading around in underwear with stuff stuck in it,” they had squirt guns and shaving cream, and there was no sign of administration present.

The Member was also concerned that he had been assigned a tech class for which he was not qualified and which was oversubscribed, with 36 students. When he reported his concerns to the vice-principal, he was told to talk to the guidance counsellor who schedules students.

Regarding all of the particular allegations contained in the *Notice of Hearing*, the Member denied or clarified all particulars. He stated that students had attributed to him

comments or actions made by other students. To support his contention that he had not made any of the alleged comments, with the exception of 2. (ff), he stated that any teacher would have been reported if they had made such comments, that the students would have questioned such poor behaviour. Since the students had not reported any poor behaviour on the part of the Member prior to the interviews, this could be taken as evidence that he had not made such comments.

Incident Regarding Particular 2. (ff)

The Member stated that the only particular that had any truth was 2.(ff) which he maintained had arisen subsequent to an altercation between [■] and [■] in his class. He indicated that he had sent both students to the office and that the vice-principal did not deal with them despite the Member having repeatedly requested assistance.

Subsequently, the Member stated that he saw [■], [■] and another male student in the hall. These students had been involved in the Grade 9 Orientation Day. The Member indicated that these students made some comments to the effect that he was trying to get them in trouble.

The Member stated he had a history of conflict with [■] and had caused him to be suspended on five occasions. The Member admitted that, during this conversation, he made the comment referred to in Particular 2. (ff) of the *Notice of Hearing* but that he was simply repeating a statement made by a student the previous day. He indicated that he knew he had made a mistake the moment he said it because of his history with [■].

The member admitted that repeating such a comment was a mistake in judgment. The Member maintained that he did not come up with the comment, but admitted that he was wrong to repeat it.

The Member said that he did not use [REDACTED]'s name when making the comment and that he feels sorry for [REDACTED] and feels she was victimized. He also said that he and his family have been victimized as well.

The Member believes that many more students were interviewed by Hockin than the stated sixty-eight because of some numbers on certain consent forms. He also believes that some students were interviewed on more than one occasion.

The Member was concerned that students communicated with one another about this incident prior to being interviewed by Hockin.

The Member also believes he was not given the opportunity to defend himself at the school and that some pertinent documents have never come to light.

As noted earlier, the Member testified in his own defence on March 21, 2006. At the conclusion of his evidence, he was briefly cross-examined by College Counsel before the hearing adjourned for the day. Upon continuation of the hearing on March 29, 2006, the Member did not attend the hearing. Therefore, College Counsel was unable to complete her cross-examination of the Member and the hearing continued in his absence.

In reply, the College called the following witnesses:

Hockin – Reply Evidence

In her reply evidence, Hockin contradicted the Member’s contentions regarding the questionnaires and numbers of students interviewed. She stated that she had not written any numbers on the consent forms or the questionnaires and has no knowledge of who may have written those numbers. She stated that she interviewed sixty-eight students only and that she interviewed each student only once.

Evidence of John Girard

John Girard (“Girard”) was the vice-principal at St. Christopher School in Sarnia. Girard refuted several contentions made by the member with regard to discipline at the School. He testified that he took discipline seriously, that there were few fights at this school, that no fight had been reported between [■] and [■] on September 23, 2002, that no students had been sent home and that there was no record of any suspension from the Member’s class that day.

Regarding Grade 9 Orientation Day, Girard stated that there were “goofy costumes,” activities and water games. He stated that he was in charge of the school, the chaplain and the senior students were in charge of the activities and the grade 9 teachers were supervising. He further stated that there had been no complaints from students or parents regarding this event, the costumes or the activities.

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 allegations to be proved, the more cogent must be the evidence. The Committee considered the allegations in this case to be serious.

(ii) Decision

Having considered the evidence and onus and standard of proof, and 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 Shawn Clifton Daniel Mann committed acts of professional misconduct as alleged, more particularly breaches of Ontario Regulation 437/97, subsections 1(18) and 1(19). The Committee finds that the Member did not breach subsections 1(7), 1(14) and 1(15).

Reasons for Decision

Inappropriate Comments or Remarks in Class

With respect to the allegations that the Member made inappropriate comments or remarks in class, including comments of a sexual and/or demeaning nature (paragraph 2. of the

Notice of Hearing, Exhibit 1), the Committee finds that there was insufficient evidence to make a conclusion. Hockin presented her report of student interviews.

The Committee has several concerns with respect to Hockin's report. First, Hockin did not independently prepare the questions to be asked of the students, but was assisted by Kulik. Second, the preamble to the questions asked by Hockin, as seen in Exhibits 4a and 4b, may have been prejudicial to the students' perception of the Member:

"First of all, I want you to know that you are not in any trouble at all. Okay? The reason we have asked to meet with you is that we would like your help to learn the truth about a teacher who taught here, Shawn Mann. We wanted to meet with you because you are a former student of Mr. Mann. (emphasis added)

We are looking into Mr. Mann's practices as a teacher inside and outside of the classroom. You can assume that Mr. Mann will not be returning to St. Christopher's as a teacher. As a former student of his, we need to ask you some questions. It is important that you tell us the truth. Do you have any questions before we go on?" (emphasis added)

Further, the Committee was concerned about the apparent absence of certain controls in the questioning of students, in particular, the lack of a recorder during interviews and the lack of monitoring of student contact throughout the process. There was a three-week gap between Kulik's original interviews of six students and Hockin's interviews of sixty-eight students. On the day of Hockin's interviews, students were returned to class subsequent to their conversations with Hockin. Both of these situations made it possible for students to share information with others.

In all, 68 students were interviewed by Hockin. She indicated in the *Summary* of her *Initial Report* (Exhibit 5) that "only two [students] made no remarks that reflected

inappropriate statements or actions made by Mr. Mann.” The Committee does not concur with this statement. In reviewing the report and student interviews, we found at least twelve students who made no negative remarks regarding the Member’s behaviour.

In addition to these concerns, the majority of students who were interviewed by Hockin were not called as witnesses. As a result, the evidence with respect to these allegations could not be fully tested and the Committee gives it little weight. The College did not indicate why these potential witnesses were not called.

Inappropriate Comment in School Hallway

With respect to the inappropriate comment in the school hallway re: [■], (paragraph 2. (ff) of the Notice of Hearing, Exhibit 1), the Member admitted making the statement in the presence of [■] and [■]. as corroborated in their interviews and by their testimony. This statement about a female student, [■], said words to the effect that: “The only way to shut her up is to put a cock in her mouth”, and/or “the only way to shut her up long enough is to go through the whole hockey team”. This statement is disgraceful.

Although the Member claims he did not use [■]’s name in the statement, all other testimony indicates that he did. The Committee is persuaded by the context of the conversation and the agreement of all other witnesses that the Member used the name of the student in this statement. Whether the Member initiated the statement or repeated a comment made by someone else, the effect on the students would be the same.

The evidence presented persuades the Committee that [■] and [■] were shocked and offended by this type of comment made by a teacher. [■] was humiliated and embarrassed. To this day, she has difficulty trusting and communicating with any teacher. She still hears about this incident and testified that people in her community continue to talk about it.

The Committee concludes that the Member did make the statement referred to in Particular 2. (ff), that his behaviour in this regard was disgraceful, dishonourable and unprofessional, and constitutes conduct unbecoming a member.

Penalty

The Committee invites the parties to make any further written submissions with regard to penalty to the Committee within 10 days of the release of these reasons for decision.

Date: October 11, 2006

Nancy Hutcheson
Chair, Discipline Panel

Don Cattani
Member, Discipline Panel

Lynne Mastin
Member, Discipline Panel