

**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 Deborah McConkey, a member of the Ontario College of Teachers.

PANEL: Jacques Tremblay, Chair
Danny Anckle
Tianna Travaglini-Babic

BETWEEN:)	
	)	Caroline Zayid,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -)	
)	
DEBORAH MCCONKEY	)	Howard Goldblatt,
(CERTIFICATE #201354)	)	Sack Goldblatt Mitchell,
	)	for Deborah McConkey,
	)	assisted by Mandy Wojcik
)	
	)	Martha Cook,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
)	
	)	Heard: January 30, 2007

REASONS FOR DECISION, DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on January 30, 2007 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated June 28, 2006 was served on Deborah McConkey, requesting attendance before the Discipline Committee of the Ontario College of Teachers on September 13, 2006 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for January 30, 2007.

Deborah McConkey was in attendance at the hearing.

THE ALLEGATIONS

The allegations against Deborah McConkey in the *Notice of Hearing*, (*Exhibit 1*) dated June 28, 2006 are as follows:

IT IS ALLEGED that Deborah McConkey 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 abused a student physically, sexually, verbally, psychologically or emotionally, contrary to Ontario Regulation 437/97, subsections 1(7);
- (c) she 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) 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
- (e) she engaged in conduct unbecoming a Member, contrary to Ontario Regulation 437/97, subsection 1(19).

On January 30, 2007, College counsel advised the Committee that the College sought to withdraw the allegations contained in (a) through (d) above. The Committee authorizes the College to withdraw these allegations and will not inquire into them further and will proceed only with the allegation that the Member engaged in conduct unbecoming a Member, contrary to Ontario Regulation 437/97, subsection 1(19).

AGREED STATEMENT OF FACTS

Counsel for the College advised the Committee that an agreement had been reached on the facts and introduced as *Exhibit 2, an Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty. (ASF – Exhibit 2)*

The *Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty* provides as follows:

1. Deborah McConkey (“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 Greater Essex County District School Board (“the Board”) and taught [REDACTED] at [REDACTED] School (“the School”) in Windsor, Ontario.

3. On or about October 9, [REDACTED], the Member failed to adhere to the School and Board’s “hands off” policy when interacting with a [REDACTED] year old male student in her class (the Student”), who was crying. The Member, in an attempt to stop the Student from crying, yelled at the Student, held him by the wrists and pulled him to her. This action further upset and frightened the Student, who vomited. For a short period, the Student was inconsolable.

4. The incident was witnessed by another teacher at the School and a parent volunteer.

5. By this document, the Member admits, for the purposes of this proceeding only, the truth of the facts and exhibit referred to in paragraphs 1, 2, 3 and 4 above (the “Admitted Facts”).

PLEA OF NO CONTEST

6. The Member hereby acknowledges that her conduct as described in paragraph 3 of the Admitted Facts, constitutes professional misconduct, and pleads no contest to the allegations of professional misconduct against her, being more particularly a breach of Ontario Regulation 437/97, section 1(19).

7. 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 Admitted Facts being presented to the Discipline Committee;
- (c) she understands that by pleading no contest to the allegations referred to in paragraph 3 above, she is waiving the right to require the College to prove the case against her and the right to have a hearing; and
- (d) she states that this plea of no contest was made voluntarily, unequivocally and with the benefit of independent legal counsel.

8. 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, 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.

JOINT SUBMISSION ON PENALTY

9. In light of the Admitted Facts and circumstances, 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) requires the Member to appear before the Committee to be reprimanded, with the fact of the reprimand to be recorded on the Register; and

(b) directs that the findings and order of the Committee be published in summary form in the official publication of the College *Professionally Speaking/Pour parler profession.*

10. The parties have not agreed on the issue of whether or not the publication referred to in paragraph 9(b) above will include the Member's name. Submissions will be made to the Discipline Committee on that issue.

DECISION

Having examined the Exhibits filed, and based on the plea of no contest, the *Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty*, and the submissions made by counsel, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that Deborah McConkey committed acts of professional misconduct, being more particularly a breach of Ontario Regulation 437/97, subsection 1(19).

REASONS FOR DECISION

The Committee accepted the evidence contained in the *Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty*. On one occasion, the Member failed to adhere to the School and Board's "hands off" policy when interacting with a [] year old male student in her class (the Student"), who was crying. The Member, in an attempt to stop the Student from crying, yelled at the Student, held him by the wrists and pulled

him to her. This action further upset and frightened the Student, who vomited. For a short period, the Student was inconsolable. The Member acknowledges that this behaviour constitutes professional misconduct. The Committee finds that the Member's actions constitute professional misconduct and is conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19).

PENALTY

College Counsel took no position with respect to whether or not to publish the Member's name in the findings and order of the Committee.

Counsel for the Member noted that it was within the Committee's discretion to publish or not to publish the Member's name. He emphasized that each case should be considered based on its own facts and there should be no prior presumption to publish or not to publish a member's name.

Counsel further stated that publication of the Member's name, in this case, would not advance the public interest or act as a specific deterrent to the Member. For purposes of a general deterrent the facts could be published without the Member's name.

PENALTY DECISION

The Committee accepts the Joint Submission on Penalty and makes the following order as to penalty:

1. The Member is to appear before the Committee immediately following the completion of the hearing of this matter, to be reprimanded and the fact of the reprimand will be recorded on the Register of the Ontario College of Teachers.

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, without the name of the Member, in the official publication of the College, *Professionally Speaking/Pour parler profession*.

REASONS FOR PENALTY DECISION

In making its decision, the Committee took into consideration that the Member had pleaded no contest to professional misconduct and had agreed to be reprimanded by the Committee. The Committee believes that the reprimand will serve as a specific deterrent to the Member to not engage in similar activities in the future. The Committee took into consideration that this was an isolated incident of a relatively minor nature and determined that a reprimand was an appropriate penalty.

The Committee considered the submissions of College Counsel and Counsel for the Member with respect to publication of the Member's name. The Committee agrees with Counsel for the Member that publication of the findings and order of the Committee, in summary, without the name of the Member will act as a general deterrent. The Committee noted that College Counsel took no position regarding publishing the

Member's name due to the nature of this matter and stated that non-publication, in these circumstances, would not bring the administration of justice into disrepute.

The Committee finds that the public interest will be served by notation on the public register of a finding of professional misconduct and reprimand of the Member.

Dated: January 30, 2007

Jacques Tremblay
Chair, Discipline Panel

Danny Anckle
Member, Discipline Panel

Tianna Travaglini-Babic
Member, Discipline Panel