

**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 Gilbert Ignatios McIntyre (otherwise known as Ian McIntyre), OCT, a member of the Ontario College of Teachers.

PANEL: Hanno Weinberger, OCT, Chair
Danny Anckle
Darlene Mead, OCT

BETWEEN:)	
	)	David Leonard,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -)	
	)	Gilbert Ignatios McIntyre was
	)	present on January 27, 2010,
GILBERT IGNATIOS MCINTYRE)	)	but not present or represented
(CERTIFICATE #245962)	)	on July 26, 2010
)	
	)	Julie Maciura,
	)	Steinecke Maciura LeBlanc,
	)	Independent Legal Counsel
)	
	)	Heard: January 27, 2010;
	)	July 26, 2010

DECISION, ORDER AND REASONS FOR DECISION AND ORDER

This matter was scheduled for hearing before a panel of the Discipline Committee (the “Committee”) on January 27, 2010 and July 26, 2010 at the Ontario College of Teachers (“the College”) at Toronto.

THE ALLEGATIONS

The allegations against Gilbert Ignatios McIntyre in the Notice of Hearing, (Exhibit 1) dated July 19, 2004 are as follows:

“IT IS ALLEGED that Gilbert Ignatios McIntyre (otherwise known as Ian McIntyre) is guilty of professional misconduct as defined in sub-section 30(2) 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 failed to comply with the Act and the *Education Act*, Revised Statutes of Ontario, 1990, Chapter E. 2 and particularly section 264(1)(c) thereof, and the Regulations made under those Acts, contrary to Ontario Regulation 437/97, subsections 1(14) and (15);
- (c) he performed an act or acts that, having regard to all the circumstances, would reasonably be regarded by members as being disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 437/97, subsection 1(18); and
- (d) he engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19).”

PARTICULARS OF THESE ALLEGATIONS ARE AS FOLLOWS:

- “1. Gilbert Ignatios McIntyre (otherwise known as Ian McIntyre), (the “Member”) is a member of the Ontario College of Teachers.
2. At all material times, the Member was employed by the Toronto District School Board (“the Board”) as a teacher at [XXX] (“the School”).
3. At all material times, [XXX], an adult female person, was a member of the Ontario College of Teachers and was employed by the Board as a first year probationary teacher at the School.
4. At all material times [XXX] and [XXX] were male students of the School and were under the age of nineteen years. During the 2001-2002 academic year, [XXX] was a student [XXX].

5. During the 2001-2002 academic year, the Member acted in an inappropriate manner towards [XXX], in that he:
 - (a) repeatedly sexually harassed [XXX];
 - (b) utilized his senior position within the School to pursue a relationship with [XXX]; and
 - (c) utilized his senior position within the School to discourage [XXX] from reporting his conduct to the School administration, the police, or to any other body of authority.
6. On or about 28 December 2001, the Member acted in an inappropriate manner in that he:
 - (a) offered alcohol to [XXX] and [XXX] while they were invited guests of the Member at a party at his residence;
 - (b) following the said party at his residence, accompanied [XXX] whom he had also invited to the said party, to her home, against her wishes; and
 - (c) after he had accompanied [XXX] to her home, forced her to submit to a kiss.
7. On or about 28 August 2002, the Member was directed by the principal of the School to have no contact with staff, students or parents of the School, and not to enter the property of the Board.
8. The Member, in contravention of the said direction from the principal:
 - (a) failed to refrain from entering the premises of the School; and
 - (b) failed to refrain from contacting staff members of the School.
9. On or about 2 May 2003, the Member was dismissed by the Board.”

MEMBER’S PLEA

As the Member was not present, or represented by Counsel on July 26, 2010, the Committee proceeded on the basis that the Member denied the allegations set out in the *Notice of Hearing*.

THE PROCEEDINGS

On January 27, 2010, the Member appeared before the Committee and brought a motion for a stay of the proceedings and/or an adjournment. The hearing was opened and the *Notice of Hearing* was entered as Exhibit 1. There was no plea taken with respect to the allegations in the *Notice of Hearing*. Further documents were entered as exhibits, including medical information supplied by the Member in support of his adjournment application (Exhibits 2, 5 & 6).

College counsel provided an Affidavit (Exhibit 4) from Audley Trevor Evans, Senior Law Clerk, McCarthy Tétrault, detailing the timelines of contacts made with the Member from July 19, 2004 to October 23, 2009, and confirming that the Member had received appropriate notice of the January 27, 2010 hearing date.

The Member stated that he was requesting a permanent stay or an adjournment of the proceedings pending the outcome of the lawsuit he had recently filed against the College, OSSTF and others.

College counsel informed the Committee that based on a previous law suit filed by the Member in the Ontario Superior Court of Justice (Exhibit 3), the Member had been declared a vexatious litigant by order of the Honourable Madam Justice Himel on March 12, 2008, and was prohibited from bringing any further proceedings in any court except by leave of a judge of the Superior Court of Justice. Counsel indicated that the law suit (referred to in the preceding paragraph) had been improperly filed, since the Member had not requested the appropriate leave to file.

After lengthy submissions by the Member and by Counsel for the College, the request for

an adjournment of this matter was granted by a two-thirds majority of the Committee members on the following basis:

1. Within a period of 4 weeks from January 27, 2010, the parties will agree to a mutually acceptable date in July 2010 for the resumption of the hearing.
2. Within two weeks from January 27, 2010, the Member will make a written request to his former lawyer, Susan Ursel, for the return of his file. A copy of this letter will be sent to Susan Pelky, Hearings Co-ordinator and David Leonard, McCarthy Tétrault. The Member should stipulate in his letter that any response from Susan Ursel should be copied to Susan Pelky and David Leonard.
3. The Member's Discipline hearing is peremptory and will proceed at 9:00 a.m. on the date agreed upon. The Member and/or his counsel will come prepared to proceed with the hearing on its merits on the appointed date subject to the circumstances specified in sub-paragraphs a. and b. below:
 - a. A request for a further extension will only be considered on specific medical grounds satisfactory to the Committee and must be supported by documentation from the Member's treating physician specifying the nature of the condition, the reason that the Member cannot participate and a reasonable estimate of when the Member will be able to participate in the hearing. Along with this written documentation, the Member has the option of providing a release in favour of this Committee allowing his treating physician to communicate directly with the Committee regarding the medical issues relevant to the request.
 - b. Any request for an extension, including the documentation referred to in paragraph a. above, must be received by the Hearings Office and College Counsel no later than two weeks (14 days) prior to the appointed date for the hearing.

Subsequent to the adjournment, the Committee received neither the information necessary to satisfy paragraph 1 nor the documentation required under paragraph 2 of the order of adjournment. As a mutually acceptable date in July 2010 for the resumption of

the hearing was not agreed to at the hearing on January 27, 2010, various dates were submitted to the parties for their consideration. The Member did not agree to any of the proposed dates. The Chair, therefore, set July 26, 2010 as the date for the resumption of the matter and the Member was advised in writing by letter dated May 17, 2010 that the hearing would resume at 9:00 a.m. on that date.

On July 26, 2010, the hearing resumed. The Committee waited until 9:32 a.m. before commencing. The Member did not attend, nor was he represented by counsel.

Prior to the hearing, on July 26, 2010, the Member delivered a letter dated July 5, 2010 to Susan Pelky, Hearings Co-ordinator, Ontario College of Teachers. The letter requested that the hearing be postponed, and in support of this request the Member had attached two letters from his physicians. The Member's letter, with attachments, was presented to the Committee by College counsel and entered as Exhibit 7.

Further to receipt of the above letter, Susan Pelky wrote to the Member on July 7, 2010 (Exhibit 8) noting that the medical letters received did not contain any documentation as to treatment and prognosis and no indication as to when the Member might be able to attend a hearing (as outlined in paragraph three of the Committee's adjournment order of January 27, 2010). The letter requested that if the Member wished to provide further information to the Committee on his behalf on July 26, 2010, that it should be delivered by July 16, 2010. The Member did not supply any further information with respect to treatment, prognosis or an indication as to when he might be able to attend at a hearing.

At the hearing on July 26, 2010, College Counsel informed the Committee that he would like to proceed with the hearing although he confirmed that the Committee did have the discretion to grant the further adjournment request of the Member. Counsel pointed out

that the Member had not satisfied the terms of the Committee's order of adjournment of January 27, 2010. He indicated that the medical letters provided by the Member did not give sufficient reason for the adjournment requested in that there was no explanation; no link as to why the Member could not attend; no diagnosis; and no indication of when the Member might be able to attend. Counsel also indicated this was one of the oldest matters before the College and that the allegations related to incidents dated back to 2001.

Independent Legal Counsel (ILC) stated that as per *section 21* of the *Statutory Powers Procedures Act* RSO 1990 and Rule 14.01 of the Discipline Committee's Rules of Procedure, the Committee did have the discretion to grant another adjournment. She advised that the Committee should take into consideration the sufficiency of the reasons advanced, particularly in light of its previous order of adjournment. ILC also advised the Committee to consider the timelines of the request; the resources of the Committee; any prejudice to the parties; whether any adjournments had been granted previously; the consent of the parties and any other relevant factor.

The Committee considered the request and decided not to grant a second adjournment. Based on the terms of the Committee's order dated January 27, 2010, and the subsequent evidence submitted, the Committee determined that there were insufficient reasons to grant a second adjournment. In granting the previous adjournment, the Committee considered the health issues of the Member, the Member's intention to seek legal representation, and the need for the Member to retrieve his evidence file from his previous counsel. The Committee attached specific conditions, including timelines, to the granting of this adjournment and the Member had indicated his agreement to these terms. These conditions were not met. The medical letters submitted by the Member (Exhibit 7)

did not provide a link between the Member's medical condition and his ability to attend the hearing or a reasonable estimate as to when the Member might be able to attend a hearing. Despite the letter sent to the Member by Ms. Pelky (Exhibit 8) requesting the additional information required, as per the conditions of the order, no further detail was provided. In addition, no evidence was presented to the Committee indicating that the Member had made any effort to obtain legal Counsel or to retrieve his evidence file from his previous Counsel.

The allegations against the Member date back to 2001 and the Notice of Hearing in this matter was issued on July 19, 2004. Numerous requests for postponement of the hearing were initiated by the Member and agreed to by the College as outlined in the Affidavit (Exhibit 4). In addition the Committee had previously granted the Member's request for an adjournment on January 27, 2010.

The Committee determined that there were not sufficient reasons, as detailed above, to grant a further adjournment.

THE EVIDENCE

The Committee heard from [XXX], who appeared via videoconference from Calgary, Alberta. During the 2001- 2002 school year, [XXX] was a full time probationary teacher employed by the Toronto District School Board at [XXX]. Although [XXX] worked in the [XXX] Department and the Member worked in the [XXX] Department.

[XXX] stated that the Member often came into the [XXX] office due to his rapport with the Assistant Head of that department. According to [XXX], over the course of the 2001-2002 school year, the Member's visits to the [XXX] office increased from once a week to

up to four to five times per day. [XXX] initially felt that her relationship with the Member was appropriate and that he was being helpful and friendly as he would help out new teachers.

On or about December 19, 2001, the Member placed a letter in the school mailbox of [XXX] inviting her to a post Christmas family dinner at his home on Friday, December 28, 2001 at 7:00 p.m. According to [XXX], she was under the impression that this party was for staff of [XXX]. The Member informed [XXX] that she was part of a hand chosen guest list that could include members of school administration and human resources. There was no indication that students would be attending.

[XXX] made plans to attend the party based upon the bus schedule. As the party was to begin at 7:00 p.m. with supper at 7:30 p.m., she planned to arrive between 7:00 p.m. – 7:30 p.m. and planned to leave between 10:00 p.m. – 11:00 p.m. Upon arrival at the party at 7:30 p.m., [XXX] was surprised and uncomfortable when she realized she was the only guest there, nothing appeared to be ready and the Member seemed to be in a bad mood. The Member was preoccupied with cooking and answering the phone as guests called to cancel. Within the hour following [XXX]'s arrival, at intervals of approximately fifteen minutes, four students from the Member's classes arrived at the party. The Member introduced these students as invited guests. [XXX] found the whole situation strange and odd as the Member had not informed her in advance that students would be attending. Between 9:30 p.m. and 10:00 p.m. [XXX] was very relieved that a colleague from [XXX], [XXX], and later a young man, his partner and her friend arrived. [XXX] felt more comfortable when the adults arrived because they were people of her age.

Around 11:00 p.m. the Member asked [XXX] if she would help with the clean up. [XXX] agreed believing that the clean up would occur while the other guests were still present. Because of the lateness of the evening, [XXX] decided that she would forego the bus and take a taxi. For safety reasons she had planned to leave when the first guest left the party. Just before midnight [XXX] decided he would leave and [XXX] decided she would leave at that time. But the Member stressed that she had promised to help clean up and that he was not feeling well. Everyone else left then but [XXX] stayed because of the Member's request for her to help clean up.

At approximately 12:30 a.m. the Member indicated he was not feeling well and produced a machine that looked like a blood-glucose monitor. After a second reading the Member made comments about [XXX]'s hands and comparing sizes. The Member insisted that they compare hands. [XXX] did not want to but placed her hand close to his without touching. When the Member folded his hand over hers and tried to hold her hand, [XXX] pulled it away, jumped up and said she was going to leave because the Member's behaviour was making her uncomfortable.

The Member accompanied [XXX] down to the lobby of his building to get a taxi. When the taxi arrived the Member indicated that he was getting into the taxi with [XXX] The Member refused to answer [XXX]'s question as to whether he was going to the hospital. Instead the Member grabbed [XXX]'s hand, told her he had had a really good time and that he just wanted to hold someone's hand. When they arrived at her residence, the Member paid the taxi fare and accompanied [XXX] to the entrance of her building.

For about fifteen to twenty minutes, they remained in the entrance way because [XXX] did not want to use her key to go into the building until the Member left. Eventually,

[XXX] put her key into the main security door and told the Member that there was no reason to wait as he had already seen her to the door safely. However the Member ignored her and walked in with her. At her apartment, [XXX] determined not to open the door until the Member left. But again he remained standing with her for fifteen to twenty minutes, complimenting [XXX] and telling her how lonely he was. At approximately 2:30 a.m. [XXX] finally opened her apartment door because she was concerned about disturbing her neighbours. The Member held the apartment door open and asked for a tour of the apartment. The Member continued the conversation for at least another half hour in the doorway. At that point in time the Member asked [XXX] for a kiss at least twice. On the condition that the Member would leave immediately after, [XXX] agreed to a bizou which, as she explained to the Member, was a peck on the cheek just like in France. When [XXX] turned her cheek to the Member, he grabbed her face, twisted her neck and forcefully pulled her up toward him. As their lips touched and the door started to close [XXX] slipped inside her apartment, closed the door and flipped the lock. [XXX] closed the door (between 3:00 a.m. and 3:30 a.m.) and there was no further contact.

At 11: 00 a.m. that same day, [XXX] was awakened by a telephone call from the Member. He was apologetic and said he was not feeling well. The Member told [XXX] that he had come into her life at the right time, to save her. He further stated she was being led astray by her common law partner and he was there to give her advice and wisdom. At this time he asked her out again. [XXX] was getting annoyed with the Member prying into her private life and told him she wouldn't have time to go out with him. There was no further contact until school resumed in January 2002.

On the third day back at school, [XXX] received a message from the Member inviting her for a coffee. When she did not respond, a few days later the Member asked her out personally. [XXX] stated she was too busy and the Member's response was that she was busy with her "baby at home" (a reference to her common law spouse) and that she was like an old lady.

The Member's behaviour was causing [XXX] to feel irritated and uncomfortable because he would come right into her classroom and ask her to go for coffee. This behaviour escalated to the Member coming to the classroom when [XXX] was working with a student and staring at her. [XXX] realized this was harassment. She decided that the next time he came to her classroom she would tell him to stop because the behaviour was making her uncomfortable. The Member's response was to laugh and say, "Do you really think I am interested in you? Anytime a black man asks a white woman to coffee she claims harassment". This confrontation took place in mid January and for at least the following two weeks the Member did not come around.

Gradually the Member began to come back up to the [XXX] offices under the pretext of seeing someone else. [XXX] would pretend to be busy, keep her head down and avoid eye contact with the Member.

Before March break, the Member informed [XXX] that he had some staffing information for her that she would be very interested in. He invited her to go for a coffee during the March break. Because the Member had not bothered her since the January confrontation, and because she was a probationary teacher and wanted to know if she would be hired back, [XXX] agreed to meet the Member in a coffee shop. [XXX] was expecting the Member to provide some staffing insight but instead, the Member produced a poem that

he had written for her and asked her if she wanted to go to Europe with him in the summer.

From March to June 2002 contact between [XXX] and the Member varied but could be as often as four to five times per day. [XXX] stated this was a very stressful time as she would meet the Member in the stairwell more often than ever before. He would come directly into her classroom while she was teaching, interrupt the class and try to strike up a conversation. When [XXX] advertised at the school for teachers to help supervise a group of grade [XXX] students on a field trip, the Member volunteered. According to [XXX], the Member would always put himself into situations in which she did not want his presence but could not really refuse it.

During final exams the Member came to sit beside [XXX] in the cafeteria. [XXX] stated that the Member was now getting nasty by making comments attacking her character and attacking her as a teacher. [XXX] now realized that the situation was evolving into something that was not going to go away; she felt the situation was getting scary. Therefore, [XXX] decided that she had to report the situation to school administration.

When asked by College counsel if she had gone to anyone or complained to anyone, [XXX] responded that she was on probation, was scared and didn't want to be noticed in any negative way by the administration.

When asked why she waited until June 27th to make a complaint, she indicated that she was on probationary status and didn't want to complain until she became permanent. [XXX] noted that there was a lot of pressure on her to keep her job as her partner at that time had lost his job. Therefore she waited until she received notification that she was now on permanent staff.

Prior to reporting the Member's behaviour to administration, [XXX] did not speak about her concerns to fellow staff members, as she understood from OSSTF representatives that such an action would breach Union protocol regarding making adverse reports about a fellow member. However, despite her reluctance to speak to colleagues in the school, the Member's frequent presence in the department office was noted by at least one colleague. [XXX] indicated that she did speak to other colleagues outside of her Board who acted as her sounding board and gave her advice as to what were acceptable interactions between colleagues.

DECISION

On July 26, 2010, the Committee delivered orally the following decision with respect to finding:

Having considered the evidence, the onus on the College and the standard of proof that must be met, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that Gilbert Ignatios McIntyre committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(14) 1(15), 1(18) and 1(19) as set out in the *Notice of Hearing* dated July 19, 2004.

REASONS FOR DECISION

The Committee finds that during the 2001-2002 academic year, the Member acted in an inappropriate manner towards [XXX], in that he repeatedly sexually harassed [XXX] and utilized his senior position within the School to pursue a relationship with [XXX] The Committee also finds that on or about 28 December 2001, the Member acted in an

inappropriate manner in that following the party at his residence, he accompanied [XXX], whom he had also invited to the said party, to her home, against her wishes; and after he had accompanied [XXX] to her home against her wishes, forced her to submit to a kiss.

The Committee makes no finding with respect to the particulars of the following allegations in the Notice of Hearing: 5 (c), 6 (a), 7, 8 (a) & (b) as insufficient evidence was presented that substantiated these allegations.

The Member failed to maintain the standards of the profession by frequently entering and disrupting [XXX]'s classroom, while the class was in session, being a breach of Ontario Regulation 437/97 subsection 1(5).

The Member also failed to comply with the Ontario College of Teachers and the *Education Act*, Revised Statutes of Ontario, 1990, Chapter E. 2 and particularly section 264(1)(c) thereof, and the Regulations made under those Acts, contrary to Ontario Regulation 437/97, subsections 1(14) and (15). As an experienced teacher, the Member has a duty to set an example for new teachers and act as a role model. The Member's pursuit of and unwanted advances toward [XXX] were contrary to this: he used his position as a senior member of staff to take full advantage of the power imbalance between himself and a vulnerable first-year teacher.

The Committee determined that the Member's behaviour was disgraceful, dishonourable and unprofessional and conduct unbecoming a member. The Member breached Ontario Regulation 437/97 subsections 1(18) and 1(19) by engaging in such actions as pursuing an unwanted kiss; forcing himself on [XXX] at her home; discrediting her spouse and encouraging her to leave him; using a false pretext (that he had important staffing

information relevant to her) to lure her out for coffee, then presenting her with a “love poem” and inviting her to accompany him to Europe that summer.

The Committee found [XXX] to be a credible witness. There was no evidence presented to the contrary. Further, her testimony had the ring of truth to it and she was not evasive or misleading. Throughout her testimony, the witness stated feeling threatened by the member, feeling the member was stalking her, and feeling she was being harassed. Despite her misgivings, the Committee found it plausible that [XXX] agreed to meet the Member for coffee during the March Break because in her naiveté she believed that the Member could provide her with relevant staffing information for the upcoming school year.

The Committee also found it plausible that [XXX] waited until the end of the school year when she became a permanent staff member to report the Member’s actions to her administration. Throughout the course of her interactions with the Member, [XXX] did not have a permanent contract and stated that she felt she did not have the protection of her Union. Her silence could reasonably be seen as her own attempt to protect herself and reasonable in light of the pressure she felt to keep her job due to her spouse being without work.

Submissions on Penalty

Counsel for the College suggested the appropriate sanction would be that the Member be reprimanded, that he be suspended for 3 months and the findings and order of the Committee be published with the name of the Member.

PENALTY DECISION

The Committee makes the following order as to penalty:

1. The Member is to be reprimanded by the Committee within 90 days of December 8, 2010, with the fact of the reprimand to be recorded on the Register of the College.
2. The Registrar is directed to suspend the Certificate of Qualification and Registration of the Member for a period of three (3) months commencing on December 8, 2010 and the fact of the suspension is to be recorded on the Register.
3. 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 Committee considers unprofessional interactions between colleagues as serious. In view of the power imbalance between the Member and [XXX], the Committee finds this ongoing sexual harassment by the Member even more egregious.

The reprimand and suspension are specific deterrents as they inform the Member that the College does not tolerate this type of behaviour. The suspension is also a general deterrent and sends a message to the profession and the general public of the type of sanction meted out for such behaviour. Further, these sanctions inform teachers, especially new teachers, that the College will take seriously complaints of any form of harassment between colleagues.

The Committee made no order regarding remediation or an educative component (i.e. boundary violation course) due to member's age and the likelihood that the he will never teach again.

Publication of a summary of the findings and order with the name of the member speaks to the transparency of the process.

Dated: December 8, 2010

Hanno Weinberger, OCT
Chair, Discipline Panel

Danny Anckle
Member, Discipline Panel

Darlene Mead, OCT
Member, Discipline Panel