

**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 James Maurice Melnick, a member of the Ontario College of Teachers.

PANEL: Annilee Jarvis, Chair
 Jacques Tremblay
 John Tucker

BETWEEN:)	
	)	David E. Leonard,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -)	
	)	James Maurice Melnick was not
	)	present or represented by counsel
JAMES MAURICE MELNICK)	
(CERTIFICATE #443168))	
)	
	)	Martha Cook,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
)	
	)	Heard: June 19, 2007

REASONS FOR DECISION, DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on June 19, 2007 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated March 29, 2007, was served on James Maurice Melnick, requesting his attendance before the Discipline Committee of the Ontario College of Teachers on April 10, 2007 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for June 19, 2007. James Maurice Melnick was not in attendance at the hearing.

THE ALLEGATIONS

The allegations against James Maurice Melnick in the *Notice of Hearing*, (Exhibit 1) dated March 29, 2007 are as follows:

IT IS ALLEGED that James Maurice Melnick 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(17);
- (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 contravened a law, a contravention of which is relevant to the Member’s suitability to hold a Certificate of Qualification and Registration contrary to Ontario Regulation 437/97, subsection 1(16);

- (e) he contravened a law, a contravention of which has caused or may cause a student under the Member’s professional supervision to be put at or to remain at risk, contrary to Ontario Regulation 437/97, subsection 1(17);
- (f) 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);
- (g) he engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1 (19); and
- (h) he engaged in sexual abuse of a student or students of a nature defined in sections 1 and 40 (1.2) of the *Act*.

AGREED STATEMENT OF FACTS

Counsel for the College advised the Committee that an agreement had been reached on the facts and introduced an *Agreed Statement of Facts, Guilty Plea and Joint Submission on Penalty (ASF – Exhibit 2)*.

The Agreed Statement of Facts, Guilty Plea and Joint Submission on Penalty provides as follows:

1. James Maurice Melnick, also known as Jayme Melnick, (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 [XXX] School Board (the “Board”) as a teacher at a public school (“the School”).

3. At all material times, the Student attended a [XXX] school in the same town in which the Member taught.
4. The Student had been a student of the Member at the School while she was in grades [XXX] and [XXX] during the [XXX] academic year and the [XXX] academic year, respectively.
5. The Student became [XXX] years of age prior to the end of the [XXX] academic year.
6. While the Student was in grade [XXX], the Member gave his students his home telephone number and e-mail address.
7. While the Student was in grade [XXX], she sent e-mails to the Member approximately once per week, but when she was in grade [XXX], there was more communication between them including telephone conversations, more frequent e-mail and by computer instant messenger programs. In those communications, the Student would tell the Member about her problems. They became friends. During this time period, the Member assured the Student's mother that he had no sexual interest in the Student.
8. During the summer of 2004, the Member and the Student continued the communication referred to above. However, the Member started seeing the student alone.

9. Commencing in approximately the middle of August 2004 and continuing until approximately October 27, 2004, the Member engaged in an inappropriate, unprofessional, sexual relationship with the Student. This included his:

- (a) engaging in frequent electronic and telephone communication with her at various hours of the day and night;
- (b) engaging in electronic communication with her while using his school computer;
- (c) taking her for walks, going with her to the woods and taking her on various trips alone to locations several kilometres away from her residence; and
- (d) engaging in sexual contact with her, including kissing, acts of oral sex, sexual touching and digital penetration, on numerous occasions.

10. There were approximately 530 e-mails exchanged between the Member and the Student between August 2004 and October 27, 2004.

11. Prior to October 26, 2004 the Member made arrangements to pick up the Student from her residence after school on that day, and encouraged her to convey false information to her caregivers as to her whereabouts that evening. The Member also advised the School's Principal that he would be away from the School on October 27, 2004 so as to attend to a matter involving a relative.

12. On the evening of October 26, 2004, the Member drove the Student to a lakeside town which was approximately 50 kilometres away from her residence and later spent the

night with her in a motel in that town before returning with her to his home on the following morning.

13. On or about 8 February 2005, the Member was dismissed by the Board.

14. The Member was charged criminally. On or about May 9, 2006, the Member pleaded guilty in the Ontario Court of Justice to a charge contained in Information No. 04-15947 that he being a person of trust or authority towards the Student, a young person, for a sexual purpose did invite, counsel and incite the Student, a young person to touch directly with a part of his body, his hands, lips and mouth, contrary to Section 153(b) of the *Criminal Code* (Canada) and was found guilty of that charge. A certified copy of Information No. 04-15947 showing the charges against the Member contained in this paragraph and in paragraph 16, and the disposition of those charges is attached as **Exhibit “B”**.

15. A copy of the transcript in respect of the proceedings in the Ontario Court of Justice before Madam Justice Deborah Livingstone on May 9, 2006 is attached and marked as **Exhibit “C”**.

16. On or about August 3, 2006, the Member pleaded guilty to the second charge contained in Information No. 04-15947, that he on or between September 4, 2004 and October 21, 2004, did, by means of a computer system, communicate with the Student, a person aged [XXX] whom the Member believed to be aged [XXX], for the purpose of facilitating in the commission of an offence, contrary to Section 172.1 of the *Criminal Code* (Canada).

17. On or about August 3, 2006, the Member was sentenced in the Ontario Court of Justice to six months in jail to be followed by a conditional sentence of fifteen months.

The Court also ordered that the Member:

- (a) [XXX];
- (b) be prohibited from possessing any firearms, ammunition or explosive substances for a period of five years;
- (c) attend and actively participate in such assessment treatment and counselling programs as required by his supervisor;
- (d) not have any personal contact or communication directly or indirectly with the Student or members of her immediate family;
- (e) not use computer chat lines, MSN or e-mail to contact persons under the age of 14 years;
- (f) not attend within the town where the Student resides unless written approval in advance was obtained from his supervisor.

18. The Court also ordered that [XXX].

19. Attached and marked as **Exhibit “D”** is a copy of the transcript of the proceedings before Madam Justice Livingstone on August 3, 2006 in respect of the Plea of Guilt as set out in paragraph 16 above.

20. Attached and marked as **Exhibit “E”** is a copy of the transcript of the Reasons for Sentencing given by Madam Justice Livingstone on August 3, 2006 referred to in paragraphs 17 and 18.

21. The Member has not appealed either the conviction or the sentence which was imposed on him.

22. On or about May 10, 2007, the Honourable Madam Justice Deborah Livingstone issued an Order with respect to certain documents and transcripts relating to the matter of Her Majesty the Queen v. James Melnick as set out in Information No. 04-15947, which documents and transcripts she ordered to be released to the Ontario College of Teachers. Madam Justice Livingstone directed that the Order issued by the Ontario Court of Justice pursuant to Section 486(4) of the Criminal Code of Canada is to be maintained by the Ontario College of Teachers. A copy of the Order of Madam Justice Livingstone is attached as Exhibit “F”.

GUILTY PLEA

23. By this document, the Member admits the truth of the facts and exhibits referred to in paragraphs 1 to 22 above (the “admitted facts”).

24. The Member hereby acknowledges that the admitted facts and exhibits referred to in paragraphs 6 to 18 above, constitute conduct which is unprofessional and pleads guilty to the allegations of professional misconduct against him being more particularly breaches of Ontario Regulation 437/97 1(5), 1(7), 1(14), 1(15), 1(16), 1(17), 1(18) and

1(19). Further, the Member pleads guilty to the allegation that he engaged in sexual abuse of a student of a nature defined in Sections 1 and 40(1.1) of the *Act*.

25. By this document the Member states that:

- (a) he understands fully the nature of the allegations against him;
- (b) he understands that by pleading guilty to the allegations, he is waiving the right to require the College to prove the case against him, and the right to have a hearing;
- (c) he voluntarily decided to plead guilty; and
- (d) he understands and acknowledges that he is executing this agreement voluntarily, unequivocally and without the benefit of legal counsel.

26. In light of the admitted 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

27. 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) direct 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 in summary form in the official publication of the College, *Professionally Speaking/Pour parler profession*. The parties have not agreed upon whether the Member's full name will be published in *Professionally Speaking/Pour parler profession* and submissions will be made to the Committee on that issue.

28. 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.

PUBLICATION BAN

The Committee makes an order banning publication and broadcast of any information identifying or tending to identify the student to whom the allegations in the *Notice of Hearing* relate. The Committee makes this order to abide by the binding order of the Ontario Court of Justice in the criminal proceedings where there was a non-publication and non-broadcast order with respect to any information that could identify a witness under the age of eighteen years.

DECISION

Having examined the Exhibits filed, and based on the plea of guilt, the *Agreed Statement of Facts, Guilty Plea and Joint Submission on Penalty*, and the 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 James Maurice Melnick committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(7), 1(14), 1(15), 1(16), 1(17) 1(18) and 1(19), as set out in the *Notice of Hearing*. Further, the Committee finds that the Member engaged in sexual abuse of a student of a nature defined in Sections 1 and 49 (1.1) of the *Act*.

REASONS FOR DECISION

The Committee accepted the Member's guilty plea and the *Agreed Statement of Facts, Guilty Plea, and Joint Submission on Penalty*. Although the Member was not present or represented by counsel, the Committee was satisfied that the Member pleaded guilty voluntarily and unequivocally in that the Member provided *Questions to be Answered by James Maurice Melnick in respect of his Guilty Plea* (Exhibit 3).

The Member admitted the truth of the facts referred to in paragraphs 6 to 18 of the *Agreed Statement of Facts, Guilty Plea, and Joint Submission on Penalty* (ASF - Exhibit 2) and that these facts constitute professional misconduct.

The Member pleaded guilty to and was convicted of two charges under the *Criminal Code* (Canada). These were:

- (a) that he being a person of trust or authority towards the Student, a young person, for a sexual purpose did invite, counsel and incite the Student, a young person to touch directly with a part of his body, his hands, lips and mouth, contrary to Section 153(b) of the *Criminal Code* (Canada); and

- (b) that he on or between September 4, 2004 and October 21, 2004, did, by means of a computer system, communicate with the Student, a person aged [XXX] years whom the Member believed to be aged [XXX] years, for the purpose of facilitating in the commission of an offence, contrary to Section 172.1 of the Criminal Code (Canada).

The Member was sentenced six months in jail to be followed by a conditional sentence of fifteen months. He was ordered to [XXX] and [XXX]. He has not appealed the conviction or sentence.

Given the guilty plea by the Member in the criminal proceedings and the conviction and sentence imposed, the Committee determines this conduct to be professional misconduct under Ontario Regulation 437/97 subsections 1(5), 1(7), 1(14), 1(15), 1(16), 1(17), 1(18) and 1(19) and that the Member engaged in sexual abuse of a student of a nature defined in Sections 1 and 40 (1.1) of the *Act*.

SUBMISSIONS ON PUBLICATION

The Committee received a letter from the Member dated June 12, 2007 requesting that his name not be published in *Professionally Speaking/Pour parler profession*. (Exhibit 4)

The Member submitted that publication of his name would bring renewed embarrassment to his wife and brother, both of whom share his last name and are teachers in the community. He also submitted that the student continued to be a student in the same town and publication of his name, which would be linked to her, would bring unwanted attention to her and her family. He further suggested that publication of his name is

unnecessary since the public interest has already been served the efforts of the Ontario Provincial Police, [XXX] School Board, news media and the Canadian court system.

Counsel for the College urged the Committee to publish the name of the Member because the hearing was open to the public and there is a duty to report to the public the findings to ensure transparency and openness. Counsel stated that the name of the Member was already in the public domain due to the criminal proceedings against him and [XXX]. Counsel reiterated the seriousness of the Member's misconduct and the need to inform and thereby protect the public.

PENALTY DECISION

The Committee accepts the joint submission on penalty and orders the Registrar of the Ontario College of Teachers to revoke immediately the Certificate of Qualification and Registration of the Member, which Certificate the Member is to surrender immediately to the Registrar.

Further, the Committee orders that 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 Member's full name, in the official publication of the College, *Professionally Speaking/Pour parler profession*.

REASONS FOR PENALTY DECISION

The Committee finds that the Member initiated an inappropriate and unprofessional relationship with the student while she was under his care and supervision in grades

[XXX] and [XXX]. The Member gave his students his home phone number and e-mail address. Over this two year period the Member and the student exchanged increasingly frequent phone calls, e-mails and instant messages. During this time period, the Member assured the student's mother that he had no sexual interest in the student.

The Member used his position as a teacher to develop an inappropriate, unprofessional relationship involving sexual touching. Once the student entered [XXX] school the Member continued his frequent communications with the student. Subsequently the Member engaged in a sexual relationship with the student.

The Member encouraged the student to convey false information to the caregivers as to the student's whereabouts in order to drive the student 50 kilometers away from her residence and spend the night with her in a motel. The Member was subsequently criminally charged.

The Committee finds the Member's conduct is reprehensible and unbecoming a member of the profession. The Member abused the authority and trust vested in him in his role as a teacher for his own gratification, without regard to the well being of the student. The conduct of the Member was unacceptable and in conflict with the duty of a teacher to protect, not abuse students. Therefore, the Member has forfeited the privilege of holding a teaching certificate and being a member of the teaching profession. Revocation is the appropriate penalty for misconduct of this severity.

The Committee orders publication of the finding and order with the name of the Member for the following reasons:

1. The Member has pleaded guilty and was convicted in criminal proceedings involving a sexual relationship with a [XXX] old student. This is a serious crime in our society and the public must be informed that a member of the teaching profession who engages in this type of behaviour will suffer the most serious of consequences.
2. The Member has been ordered to [XXX] and [XXX]. It is therefore essential that the public be made aware of his identity.
3. In these circumstances, publication acts as a specific deterrent to the Member and as a general deterrent to members of the profession.

The Committee considered the Member's request to withhold publication of his name. The fact of potential embarrassment to the Member's spouse and brother and other reasons addressed by the Member do not outweigh the responsibility of the College to protect the best interests of the public. As the Member's actions comprise the most serious breach of trust, publication in these circumstances is mandatory.

The Committee is satisfied that the penalty is appropriate and serves and protects the public interest.

Date: June 19, 2007

Annilee Jarvis
Chair, Discipline Panel

Jacques Tremblay
Member, Discipline Panel

John Tucker
Member, Discipline Panel