

**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 Leslie Merlino, a member of the Ontario College of Teachers.

PANEL: Brent Hamelin, Chair
 Danny Anckle
 Hanno Weinberger

BETWEEN:)	
)	
	)	Caroline Zayid,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -)	
)	
LESLIE MERLINO	)	Ian Fellows,
(CERTIFICATE #444045)	)	Green & Chercover,
	)	for Leslie Merlino
)	
)	
	)	Luisa Ritacca,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
)	
	)	Heard: June 16, 2009

REASONS FOR DECISION, DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on June 16, 2009 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated May 15, 2008 (Exhibit 1) was served on Leslie Merlino (the “Member”), providing her with notice that the Discipline Committee of the Ontario College of Teachers would meet on June 10, 2008 to set a date for a hearing, and specifying the charges. The Discipline Committee set June 16, 2009 as the date for the hearing on the merits.

The Member was not in attendance at the hearing.

THE ALLEGATIONS

The *Notice of Hearing* sets out the following allegations:

IT IS ALLEGED that Leslie Merlino is guilty of professional misconduct as defined in sections 30(2) and 40(1.1) of the *Ontario College of Teachers Act* (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 or students physically, sexually, verbally, psychologically or emotionally, contrary to Ontario Regulation 437/97, subsection 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 contravened the law, the 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) she contravened the law, the contravention of which has caused students under the member’s professional supervision to be put at or remain at risk contrary to Ontario Regulation 437/97, subsection 1(17);
- (f) 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);
- (g) she engaged in conduct unbecoming a Member, contrary to Ontario Regulation 437/97, subsection 1(19); and

- (h) she engaged in sexual abuse of a student or students of a nature defined in sections 1 and 40 (1.1) 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, Plea of No Contest and Joint Submission on Penalty (ASF – Exhibit 3)*, which provides as follows:

1. Leslie Merlino (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. The Member voluntarily ceased paying her fees to the College after 13 October 2006.
2. The Member was employed as a high school teacher by the Peel District School Board from September 2001 until May 2007, at which time she submitted her resignation. The Member was assigned to [XXX] (the “School”) where she taught [XXX] and [XXX] until 13 October 2006 at which time she was sent home and placed on home assignment. She continued on home assignment until her resignation on 27 May 2007.
3. During the 2005-2006 academic year, student A was a female student of the Member in the first semester (September 2005 to January 2006) at the School.
4. The Member was a chaperone on a school trip to Spain and France during March 2006, in which student A was a participant.
5. Between July 2006 and October 2006, the Member entered into an inappropriate personal relationship with student A which included her:

- (a) communicating in a sexually explicit and inappropriate manner by electronic means with student A;
- (b) touched student A without consent.

6. Examples of the inappropriate electronic communications between the Member and student A are attached as follows:

- (a) **Exhibit “B”** - a transcript of a portion of an electronic chat between the Member and student A which took place on 9 August 2006;
- (b) **Exhibit “C”** - a transcript of a portion of an electronic chat between the Member and student A which took place on 10 August 2006;
- (c) **Exhibit “D”** - a transcript of a portion of an electronic chat between the Member and student A which took place on 26 August 2006;
- (d) **Exhibit “E”** - a transcript of a portion of an electronic chat between the Member and student A which took place on 1 September 2006;
- (e) **Exhibit “F”** - a transcript of a portion of an electronic chat between the Member and student A which took place on 8 September 2006; and
- (f) **Exhibit “G”** - a transcript of a portion of an electronic chat between the Member and student A which took place on 1 October 2006.

7. On or about 13 October 2006, criminal charges were laid against the Member in respect of her engaging in physical contact with student A in October 2006.

8. On or about 14 September 2007, the Member pleaded guilty to a charge that she assaulted student A, on or about 1 October 2006, at the City of Mississauga, contrary to Section 266 of the *Criminal Code* (Canada). The Member was found guilty of that charge.

9. On or about 14 September 2007, the Member was given a suspended sentence, placed on probation for of a period of 18 months and ordered to perform 40 hours of

community service. She was also ordered not to engage in the teaching profession or to associate, contact or hold any communication directly or indirectly with student A, during the period of probation. In addition, an Order [XXX].

10. Attached and marked as **Exhibit “H”** is a certified copy of the Information dated 15 November 2006 which shows the details of the charge against the Member and the details of the sentencing.

11. A certified copy of the Order with respect to [XXX] as **Exhibit “I”**.

12. A certified copy of the Probation Order dated 14 September 2007 is attached as **Exhibit “J”**.

13. A copy of the transcript of the Guilty Plea Proceedings before the Honourable Justice W.J. Blacklock on 14 September 2007 is attached as **Exhibit “K”**.

PLEA OF NO CONTEST

14. By this document, the Member admits for the purposes of this proceeding only, the truth of the facts and exhibits referred to in paragraphs 1 to 13 above (the “admitted facts”). The Member hereby acknowledges that the facts referred to in paragraphs 5 and 8 above constitute professional misconduct and pleads no contest to the allegations of professional misconduct against her being more particularly breaches of Ontario Regulation 437/97 1(5), (7), (14), (15), (16), (17), (18) and (19). The Member also pleads no contest to the allegation that she engaged in sexual abuse of a student or students of a nature defined in Sections 1 and 40(1.1) of the *Act*.

15. By this document, 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 paragraphs 1 to 13 above, including the referenced exhibits, being presented to the Discipline Committee at the hearing of this matter;

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

16. 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.

17. In light of the uncontested 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

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) 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) direct that there be publication of the findings and order of the Committee, including the full 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 her 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 Member's plea of no contest and the *Agreed Statement of 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 Leslie Merlino committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), (7), (14), (15), (16), (17), (18) and (19). Further, the Committee finds that the Member engaged in sexual abuse of a student of a nature defined in sections 1 and 40 (1.1) of the *Act*.

REASONS FOR DECISION

The Member acknowledged that the Agreed Facts described in paragraphs 5 and 6 of the *Agreed Statement of Facts, Plea of No Contest, and Joint Submission on Penalty* (ASF - Exhibit 3) constitute professional misconduct and pleaded no contest to these allegations of professional misconduct. The Committee accepted the Member's plea of no contest and the facts contained in the *Agreed Statement of Facts, Plea of No Contest, and Joint Submission on Penalty*.

Student A was a female student of the Member during the 2005-2006 academic year (semester 1). The Member accompanied Student A and other students, as a chaperone,

on a trip to Spain and France during March 2006. The Member sat with Student A an abnormal amount of time during this trip. The Member began spending more time with the student, going for walks during summer and meeting at coffee shops. [Exhibit 3, Tab K, p. 4-5] The personal relationship continued to develop and eventually included electronic communications over MSN between August 10, 2006 and October 1, 2006. The communications were numerous and evolved into significantly sexually explicit conversations on a number of occasions, describing having sex and other sexual acts with each other. [Exhibit 3, Tab K, p. 5] The Member, while in a position of trust and authority, entered into and continued this inappropriate personal relationship with Student A.

On or about October 13, 2006, criminal charges were laid against the Member in respect of her engaging in physical contact with Student A. The Member subsequently pleaded guilty to and was convicted of committing an assault on A, contrary to Section 266 of the Criminal Code (Canada). On or about 14 September 2007, the Member was given a suspended sentence, placed on probation for of a period of 18 months and ordered to perform 40 hours of community service. She was also ordered not to engage in the teaching profession or to associate, contact or hold any communication directly or indirectly with student A, during the period of probation. In addition, an Order was issued [XXX].

The Committee finds that the Member's actions that evolved into this inappropriate relationship and her criminal conviction for assault of a student, as outlined herein constitute acts of professional misconduct. The Member's criminal conviction is evidence that she contravened a law, the contravention of which is relevant to her suitability to

hold a Certificate and may cause students under her professional supervision to be put at risk.

The Member failed to maintain the standards of the profession and breached Ontario Regulation 437/97 1(14) and 1(15) and engaged in conduct that would reasonably be regarded by members as disgraceful and dishonourable, and engaged in conduct unbecoming a member.

The explicit sexual messaging between the Member and Student A constitutes sexual abuse by the Member towards the student as 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 has forfeited the privilege of being a member of the teaching profession and revocation is appropriate. The Member was criminally convicted of assault against

Student A, was ordered not to engage in the teaching profession during the probationary period of 18 months and was required to [XXX].

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 her without regard for the well being of the Student by engaging in an inappropriate personal relationship, including sexually explicit electronic communications with Student A. The Committee finds this constitutes sexual abuse by the Member towards the student.

The Committee is satisfied that revocation of the Member's certificate of qualification and registration is the appropriate penalty. 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 her and the nature of her misconduct. Publication also alerts the profession and informs the public that such behaviour will not be tolerated and will result in revocation.

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

Dated: June 16, 2009

Brent Hamelin
Chair, Discipline Panel

Danny Anckle
Member, Discipline Panel

Hanno Weinberger
Member, Discipline Panel