

ONTARIO COLLEGE OF TEACHERS

DISCIPLINE COMMITTEE

IN THE MATTER OF *ONTARIO COLLEGE OF TEACHERS ACT, 1996*, and the Regulation (Ontario Regulation 437/97) thereunder:

AND IN THE MATTER OF discipline proceedings against Herbert James Mollenhauer.

The Discipline Committee held a hearing on May 5, 2003,

BETWEEN:

ONTARIO COLLEGE OF TEACHERS

- and -

HERBERT JAMES MOLLENHAUER
Certificate #231943

REASONS FOR DECISION, DECISION AND ORDERS

PRESENT:

Members of the Panel

Bernard J. Adam (Chair)

Ernie Checkeris

Pierrette Nadeau

Christopher Wirth of Stockwoods, Independent Counsel to the Committee

Carole Jenkins, McCarthy Tétrault, Counsel for the Ontario College of Teachers, assisted by Jennifer Robinson, Law Clerk

Ian J. Fellows, Green & Chercover, Counsel for the member

Herbert James Mollenhauer was present.

This decision is subject to a publication ban with respect to the name of the student who shall be referred to as a female student.

A Notice of Hearing, dated November 5, 2002 was served on Herbert James Mollenhauer, requesting attendance before the Discipline Committee of the Ontario College of Teachers on December 4, 2002 to set a date for a hearing, and specifying the charges.

It is alleged that Herbert James Mollenhauer is guilty of professional misconduct as defined in sections 30(2) and 40 (1.1), 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 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 particularly section 264 (1) (c) thereof, and 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);

- (f) he engaged in sexual abuse of a student or students of a nature defined in sections 1 and 40(1.1) of the Act; and
- (g) 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.

On May 5, 2003 the Discipline Committee of the Ontario College of Teachers conducted a hearing into whether Herbert James Mollenhauer was guilty of professional misconduct.

Herbert James Mollenhauer was in attendance at the hearing. Proof of service of the Notice of Hearing was presented and accepted by the panel.

EVIDENCE

Counsel for the Ontario College of Teachers referred to the charges set out in the Notice of Hearing, alleging that Herbert James Mollenhauer is guilty of professional misconduct in that his acts were contrary to the Professional Misconduct Regulation made under the Ontario College of Teachers Act and filed as Regulation 437/97 on December 4, 1997, in particular, subsections 1 (5), 1(7), 1(14), 1(15), 1(18), and 1 (19). Particulars of the alleged misconduct are set out in the Notice of Hearing. An Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty was filed as Exhibit 2. The Agreed Statement of Facts had been signed by Carole Jenkins of

McCarthy Tétrault and by Ian J. Fellows on behalf of the Member, Herbert James Mollenhauer.

Counsel presented evidence that James Herbert Mollenhauer is a member of the Ontario College of Teachers, (Exhibit 1).

FINDINGS OF FACT:

Based on the Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty, the panel finds the following facts:

1. Herbert James Mollenhauer, (the “Member”), is a member of the Ontario College of Teachers. He is 54 years of age, is married to his wife of 13 years and has two children aged 9 and 11.
2. At all material times, the Member was employed by a School Board (“the Board”) as a teacher at a Secondary School (“the School”).
3. At all material times, a female student (“the Student”) who was 17 years old attended the School.
4. During the 2001/2002 school year, the Member was requested by the Student to offer a co-op program for her. The Member agreed to do so on condition that another teacher share the responsibility with him.
5. Commencing in or about November 2001, the Member and the Student had numerous conversations. On a number of occasions, the Student raised matters relating to her boyfriend and her sexual relationship. The Member discussed these matters with the Student. These conversations included references to the Student’s personal appearance.
6. On or about January 15, 2002, the Member had a further discussion with the Student.

7. A part of the conversation was recorded by the Student without the knowledge of the Member.
8. An official transcript of the tape recording was made and was presented to the Panel as Appendix A of Exhibit 2, Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty.
9. On or about January 18, 2002, the Student brought the tape recording to the attention of the administrators at the School.
10. The Member never inappropriately touched the Student nor did he engage in any sexual activity with the Student.
11. The Member never met with the Student outside of school property.
12. On or about January 21, 2002, the Member was assigned to home with pay by the Board's Superintendent.
13. The Member provided the Board with his full co-operation during the Board's ongoing investigation and has accepted that his comments were ill-advised and highly inappropriate. The Member has also expressed in writing his regret for his actions and for any discomfort or harm caused to the Student.
14. Prior to this incident, the Member had never been disciplined by the Board nor had there been any allegations of inappropriate behaviour made against him.
15. On June 11, 2002, the Member made submissions to the Board, a true copy of which was attached as Appendix B to Exhibit 2.
16. On June 12, 2002, the Member's employment with the Board was terminated.
17. Commencing in February 2002, the Member sought the assistance of a psychiatrist and is also participating in counselling in order to help him clearly understand what has happened and to assist him in being able to appropriately address the issues raised. He has also attended the EAP Program for teachers on how to deal with stress. The Member is further prepared to take any other

reasonable steps to assist him in understanding his behaviour and to assist him in finding better ways to maintain appropriate boundaries and deal with students.

18. The Member pleads no contest to the facts referred to in paragraphs 5 and 6 above.
19. In light of the above plea of no contest, the Ontario College of Teachers and the Member submit that the Discipline Committee may accordingly treat the matters referred to in paragraphs 5 and 6 as constituting professional misconduct and may find the Member guilty of professional misconduct, being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(7), 1(14), 1(15), 1(18), and 1(19).
20. The Ontario College of Teachers and the Member jointly submit that the appropriate penalty to be imposed by the Discipline Committee in this case would be that the Committee:
 - (a) require the Member to appear before the Committee to be reprimanded, and that the fact of the reprimand be recorded on the Register;
 - (b) direct the Registrar to suspend the Certificate of Qualification and Registration held by the Member for a period of nine (9) months, retroactive to September 1, 2002;
 - (c) require the Member to be instructed by Dr. Mary Louise Arnold of the Ontario Institute for Studies in Education, University of Toronto, regarding maintaining appropriate student/teacher relationships and the impact of breaches of the student/teacher boundaries on the adolescent learner. The assignment of a

course of instruction is to be completed by the Member at the Member's own expense. Proof of the Member's successful completion of such program is to be received by the Registrar of the College from the Member prior to the Member's return to any teaching duties; and

- (d) require the Member to provide to the College proof that the Member is fit to return to teach and that students are safe in his care. Such proof is to be in the form of a psychiatric report prepared by a registered psychiatrist approved by the College and to be received by the Registrar of the College prior to the Member's return to any teaching duties. The Committee directs the Registrar to approve the Member's current psychiatrist, Dr. Kenneth Kruger of 247 Main Street North, Brampton, ON L6Y 2R7 for the purposes of an assessment.

REASONS

Counsel for the Member requested that the name of the Member not be published.

However the Committee determined that the reasons given were not compelling enough not to publish and did not outweigh the public interest and the interest of the College.

DECISION AND ORDERS:

Having examined the exhibits filed and based on the submissions by both parties, the Committee accepts the Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty and finds Herbert James Mollenhauer, Certificate of Registration

#231943, guilty of professional misconduct under sections 1 (5), 1 (7), 1 (14), 1 (15), 1(18) and 1 (19) of the Professional Misconduct Regulation 437/97.

The Discipline Committee directs the Registrar to impose the following:

- (a) require the Member to appear before the Committee to be reprimanded, and that the fact of the reprimand be recorded on the Register;

- (b) direct the Registrar to suspend the Certificate of Qualification and Registration held by the Member for a period of nine (9) months, retroactive to September 1, 2002;

- (c) require the Member to be instructed by Dr. Mary Louise Arnold of the Ontario Institute for Studies in Education, University of Toronto, regarding maintaining appropriate student/teacher relationships and the impact of breaches of the student/teacher boundaries on the adolescent learner. The assignment of a course of instruction is to be completed by the Member at the Member's own expense. Proof of the Member's successful completion of such program is to be received by the Registrar of the College from the Member prior to the Member's return to any teaching duties; and

- (d) require the Member to provide to the College proof that the Member is fit to return to teach and that students are safe in his care. Such proof is to be in the form of a psychiatric report prepared by a registered psychiatrist approved by the College and to be received by the Registrar of the College prior to the

Member's return to any teaching duties. The Committee directs the Registrar to approve the Member's current psychiatrist, Dr. Kenneth Kruger of 247 Main Street North, Brampton, ON L6Y 2R7 for the purposes of an assessment.

Pursuant to Section 30(5)(iii) of the Ontario College of Teachers Act, the Committee orders that the findings of this hearing, as well as the name of the member, be published in the official publication of the Ontario College of Teachers, *Professionally Speaking /Pour parler profession.*

The Committee also orders that, in any publication, the name of the school, the school board and the name of the student not be published and that the student should be referred to as a female student.

**DATED AT TORONTO, THIS 6th DAY OF MAY, 2003
BY ORDER OF THE DISCIPLINE COMMITTEE**

Bernard J. Adam, **Chair**

Ernie Checkeris

Pierrette Nadeau