

**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 Erin Jay Montemurro, a member of the Ontario College of Teachers.

PANEL: Don Cattani, Chair
Normand Fortin
Anne Vinet-Roy

BETWEEN:)	
	)	Heather Meredith,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -)	
	)	Dijana Simonovic,
	)	Green & Chercover LLP,
ERIN JAY MONTEMURRO	)	for Erin Jay Montemurro
(CERTIFICATE #267837))	
)	
	)	Brian Gover,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
)	
	)	Heard: April 26, 2006

REASONS FOR DECISION, DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on April 26, 2006 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated June 14, 2005 was served on Erin Jay Montemurro, requesting attendance before the Discipline Committee of the Ontario College of Teachers on July 11, 2005 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for April 26, 2006.

Erin Jay Montemurro was in attendance at the hearing.

The Allegations

The allegations against Erin Jay Montemurro in the *Notice of Hearing*, (*Exhibit 1*) dated June 14, 2005, are as follows:

IT IS ALLEGED that Erin Jay Montemurro is guilty of professional misconduct as defined in section 30(2) and/or is incompetent as defined in section 30(3) 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, and/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 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 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); and
- (f) 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.

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 and 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. Erin Jay Montemurro, (the “Member”) is a member of the Ontario College of Teachers. Attached hereto is a copy of the Ontario College of Teachers Registered Member Information respecting the Member. (*ASF – Exhibit 2, Tab A*)
2. At all material times the Member was employed by the Hamilton-Wentworth District School Board (the “Board”) as a teacher of [REDACTED] at the [REDACTED] site (the “School”).

3. During the 2002/2003 academic year, and, more specifically, in or about May 2003, during a class demonstration of CPR, the Member kissed [REDACTED], an adult male student, in front of the class. This action shocked and embarrassed [REDACTED] who, for a time following this incident, bore the brunt of his classmates' ridicule.

4. Also during the course of the 2002/2003 school year, the Member engaged in conduct that caused certain of his students to experience embarrassment, unhappiness, humiliation and discomfort. This conduct included but was not limited to his:
 - (a) on one occasion making [REDACTED], an adult male student who was late for class, stand in a corner of the classroom with books on his head;
 - (b) describing as 'garbage' the contents of a workbook from another [REDACTED] course which was brought into the Member's class by [REDACTED], an adult male student, and ripping 3 or 4 pages from this notebook;
 - (c) making jokes or comments of such a nature as to cause discomfort to some students in the Member's class; and
 - (d) gesturing with his arms and pelvis to indicate sexual intercourse.

5. Some of the Member's students were offended by the Member's conduct, resulting in a disruption to the work and learning environments at the School.

6. As a result of the conduct described above, the Member's employment with the Board was suspended for a period of one year.

GUILTY PLEA

7. By this document, the Member admits the truth of the facts referred to in paragraphs 3, 4 and 5 above, and acknowledges that these admitted facts constitute conduct which is disgraceful, dishonourable and unprofessional.

8. By this document, the Member pleads guilty to the allegations of professional misconduct against him, being more particularly breaches of Ontario Regulation 437/97 1(5), (18 – unprofessional conduct) and (19).

9. 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 his 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 with the benefit of legal counsel.

10. 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

11. In light of the admitted facts and circumstances, and taking into consideration the one year suspension imposed on the Member by the Board, 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 respect to his inappropriate treatment of his students and to be counselled about the importance of maintaining appropriate boundaries with students, with the fact of the reprimand to be recorded on the register;
- (b) directs the Registrar of the Ontario College of Teachers to suspend the Member's certificate of qualification and registration for a period of one (1) month from the date of this Order, the fact of that suspension to be recorded on the register; however, if the Member fulfills the requirements of (c)(i) and (c)(ii) below, this suspension will itself be suspended and will only take effect if the Member does not fulfil the requirements of (c)(i) and (c)(ii) below;
- (c) directs the Registrar to impose the following terms, conditions or limitations on the Member's certificate of qualification and registration, the fact of such terms, conditions and limitations to be recorded on the Register until such time as they are fulfilled, and the Member makes application to have them removed under Section 33(2) of the *Ontario College of Teachers Act, 1996*:

- (i) the Member must enrol in and complete, at his own expense, within three (3) months from the date of this Order, a course of instruction, pre-approved by the Registrar, regarding classroom management skills, with a focus on adult students;
- (ii) the Member shall deliver directly to the Registrar proof of the successful completion of the course referred to at (i) above, within thirty (30) days of its completion;
- (iii) within thirty (30) days of the first performance appraisal conducted by the Member's employer following his return to his teaching duties, the Member shall advise the Registrar, in writing, that the performance appraisal has taken place and shall, as soon as it is available to the Member, provide the Registrar with a copy of the performance appraisal; and
- (iv) if the performance appraisal referred to in (iii) above does not occur within twelve (12) months of the Member's return to his teaching duties, the Member shall notify the Registrar within thirty (30) days of the end of the twelve (12) month period that the performance appraisal has not taken place and the Member shall undertake all reasonable efforts to have his employer conduct a performance appraisal as soon as possible and the Member shall advise the Registrar of his employer's response; and

- (d) directs that there be publication of the findings and order of the Committee, in summary form, including the full name of the Member, in the official publication of the College.

12. 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.

Decision as to Finding

Having examined the Exhibits filed, and based on the guilty plea, the *Agreed Statement of Facts, Guilty Plea 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 Erin Jay Montemurro committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsection 1(5), 1(18) and 1(19), as set out in the *Notice of Hearing*.

Penalty Decision

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

- (a) The Member is required to appear before the Committee to be reprimanded with respect to his inappropriate treatment of his students and to be counselled about the importance of maintaining appropriate boundaries with students, with the fact of the reprimand to be recorded on the register;

- (b) The Registrar of the Ontario College of Teachers is directed to suspend the Member's certificate of qualification and registration for a period of one (1) month from the date of this Order, the fact of that suspension to be recorded on the register; however, if the Member fulfills the requirements of (c)(i) and (c)(ii) below, this suspension will itself be suspended and will only take effect if the Member does not fulfil the requirements of (c)(i) and (c)(ii) below;
- (c) The Registrar is directed to impose the following terms, conditions or limitations on the Member's certificate of qualification and registration, the fact of such terms, conditions and limitations to be recorded on the Register until such time as they are fulfilled, and the Member makes application to have them removed under Section 33(2) of the *Ontario College of Teachers Act, 1996*:
- (i) the Member must enrol in and complete, at his own expense, within four (4) months from the date of this Order, a course of instruction, pre-approved by the Registrar, regarding classroom management skills, with a focus on adult students;
 - (ii) the Member shall deliver directly to the Registrar proof of the successful completion of the course referred to at (i) above, within thirty (30) days of its completion;
 - (iii) within thirty (30) days of the first performance appraisal conducted by the Member's employer following his return to his teaching duties, the Member shall advise the Registrar, in writing, that the

performance appraisal has taken place and shall, as soon as it is available to the Member, provide the Registrar with a copy of the performance appraisal; and

- (iv) if the performance appraisal referred to in (iii) above does not occur within twelve (12) months of the Member's return to his teaching duties, the Member shall notify the Registrar within thirty (30) days of the end of the twelve (12) month period that the performance appraisal has not taken place and the Member shall undertake all reasonable efforts to have his employer conduct a performance appraisal as soon as possible and the Member shall advise the Registrar of his employer's response; and
- (d) The findings and order of the Committee shall be published in summary form, including the full name of the Member, in the official publication of the College, *Professionally Speaking/Pour parler profession.*

Reasons for Decision

The Committee accepted the Member's guilty plea, the *Agreed Statement of Facts and Guilty Plea* and *Joint Submission on Penalty*. The facts as admitted to by the Member in paragraphs 3, 4, and 5 of the *Agreed Statement of Facts and Guilty Plea* and *Joint Submission on Penalty* constitute professional misconduct.

In accepting the joint submission on penalty, the Committee acknowledged that the Member had served a lengthy suspension from his employer as a result of his actions, that

the Member is required to complete a course of instruction with regard to classroom management skills, focusing on adult students and the Member is required to provide the Registrar of the Ontario College of Teachers with proof of satisfactory performance appraisal within 12 months of his return to teaching. These requirements, along with the reprimand, serve to remediate the Member and to provide him with a specific deterrent to not engage in similar activities in the future. Publication of the findings and order of the Committee, in summary, will provide a general deterrent to the profession and serve the public interest.

Date: April 26, 2006

Don Cattani
Chair, Discipline Panel

Normand Fortin
Member, Discipline Panel

Anne Vinet-Roy
Member, Discipline Panel