

**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 Rafal Jacek Ralph Musial, a member of the Ontario College of Teachers.

PANEL:           Rosemary Fontaine, Chair  
                      Anne Marie Levesque  
                      Jacques Tremblay

BETWEEN:	)	
	)	Yasmin Nizami,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Jennifer Robinson,
	)	Law Clerk
- and -	)	
	)	Howard Goldblatt and
RAFAL JACEK RALPH MUSIAL	)	Mandy Wojcik,
(CERTIFICATE #214588)	)	Sack Goldblatt Mitchell LLP,
	)	for Rafal Jacek Ralph Musial,
	)	
	)	Johanna Braden,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
	)	
	)	Heard: April 6, 2009

**REASONS FOR DECISION, DECISION AND ORDERS**

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on April 6, 2009 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated November 12, 2008, was served on Rafal Jacek Ralph Musial, requesting his attendance before the Discipline Committee of the Ontario College of Teachers on November 25, 2008 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for April 6, 2009.

Rafal Jacek Ralph Musial was in attendance at the hearing.

## **THE ALLEGATIONS**

The allegations against Rafal Jacek Ralph Musial in the *Notice of Hearing*, (*Exhibit 1*) dated November 12, 2008, are as follows:

**IT IS ALLEGED** that Rafal Jacek Ralph Musial is guilty of professional misconduct as defined in section 30(2) 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(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 1(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);  
and

- (e) he engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19).

## **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 2)*, which provides as follows:

1. Rafal Jacek Ralph Musial (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 Toronto District School Board (the “Board”).
3. During the 2005-2006 academic year, while assigned to Hollycrest Middle School, the Member made inappropriate physical contact with students.
4. As a result of his actions described in paragraph 3, the Member was advised by the Board, or about March 30, 2006, that the following incidents had been substantiated:
  - (a) he used inappropriate language and epithets with reference to students;
  - (b) he had made several negative comments to students, including racialized remarks such as “just because you are black doesn’t mean you get privileges”; and
  - (c) he frequently made physical contact with students, including contact where he had pinched children on their shoulders.

5. The Member was advised by the principal on or about March 30, 2006 that the Member's behaviour was unacceptable and would not be tolerated. By way of disciplinary action, the Member was suspended for two days without pay, placed in an interim teaching position for the balance of the 2005-2006 academic year, and transferred to another school for the 2006-2007 academic year. The Member was also required to attend an equity course and an anger management course as part of harassment training, both of which courses were to have been completed by December 2006. The Member has advised that he completed these courses.

6. During the 2006-2007 academic year the Member was assigned to Lawrence Heights Middle School.

7. During the month of September 2006, the Member made inappropriate physical contact with students.

8. As a result of the inappropriate contact referred to in paragraph 7, the Member was advised by the Board, on or about October 2006, that the following behaviours had been substantiated: (a) on September 20, 2006, he grabbed a student by the upper arm and pinched the student's arm; (b) during September 2006, he grabbed other students; and (c) he frequently demonstrated anger in class through verbal comments. The Board then suspended the Member for seven days for inappropriate physical contact with students.

9. The Member remains employed by the Board, and on or about 3 February 2009, he received a satisfactory Teaching Performance Appraisal.

## PLEA OF NO CONTEST

10. 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 9 above (“the Admitted Facts”). The Member hereby acknowledges that the facts referred to in paragraphs 3 and 7 above, constitute professional misconduct and pleads no contest to the allegations of professional misconduct against him, being more particularly breaches of Ontario Regulation 437/97 1(5), (7 - physical), (14), (15), (18 - unprofessional) and (19).

11. By this document, the Member states that:

- (a) he understands fully the nature of the allegations against him;
- (b) he understands that by signing this document, he is consenting to the evidence and Exhibits as set out in paragraphs 1 to 9 above, being presented to the Discipline Committee at the hearing of this matter;
- (c) he understands that by pleading no contest to the allegations, he is waiving the right to require the College to prove the case against him and the right to have a full hearing on these issues; and
- (d) he understands and acknowledges that he is executing this Agreement voluntarily, unequivocally and with the advice of legal counsel.

12. 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, Ch. E23 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 proceedings.

13. 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**

14. 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) directs that the Member appear before the Committee immediately following the hearing of this matter to receive a reprimand, and the fact of the reprimand is to be recorded on the Register of the Ontario College of Teachers;
- (b) directs the Registrar to impose a term or condition on the Member's certificate that the Member is to enrol in and complete, at his own expense, within three (3) months from the date of an Order of the Discipline Committee, a course of instruction by a psychologist specializing in educational matters regarding appropriate boundaries and boundary violation issues, pre-approved by the Registrar, and that the Member shall deliver directly to the Registrar, within thirty (30) days of

completion of that course, a written certificate from the course provider stating:

- (i) that he or she has reviewed a copy of this document and the Decision and Reasons of the Discipline Committee; and
  - (ii) that the Member has successfully completed the course; and
- (c) 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 included in the publication and submissions will be made to the Committee on that issue.

15. 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.

#### **SUBMISSIONS REGARDING PUBLICATION**

After reviewing the Agreed Statement of Facts, College Counsel submitted that publication should include the name of the Member to act as a general and specific deterrent. Counsel submitted that publication of the Member's name advises the public, and sends a clear message to the profession and the public that this type of conduct is unacceptable. Counsel further submitted that since the hearings are open to the public there is an expectation of full publication, with the name of the member. Full publication

supports the transparency of the proceedings and promotes public confidence in the process.

Counsel for the Member stated that there should be no presumption of publication of a member's name and requested that the name of the Member not be published. He submitted that the incidents of misconduct were isolated occurrences that occurred two and a half years prior to the hearing. Counsel also stated that the Member had received a satisfactory performance appraisal in February of 2009. Further, he argued in this case there was no public interest in publishing the Member's name and that the need for transparency was satisfied by the fact that the finding will be recorded on the Public Register. Counsel further stated that the fact that the Member was subject to a discipline hearing was in itself deterrence.

## **DECISION**

Having examined the Exhibits filed, and based on 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 Rafal Jacek Ralph Musial committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(7 - physical), 1(14), 1(15), 1(18 - unprofessional) and 1(19) as set out in the *Notice of Hearing*.

## **REASONS FOR DECISION**

The Member admits the truth of the facts and exhibits referred to in paragraphs 1 to 9 above (“the Admitted Facts”) and acknowledged that the facts described in paragraphs 3, and 7 of the *Agreed Statement of Facts, Plea of No Contest, and Joint Submission on Penalty* (ASF - Exhibit 2) 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*.

In 2006, the Member used inappropriate language with reference to students, made several negative comments to students, and had frequent inappropriate physical contact with students, including grabbing a student by the upper arm and pinching students on the arm and shoulders. He also frequently demonstrated anger in class through verbal comments.

The Committee determined that the Member’s conduct in using inappropriate verbal comments with students and employing physical abuse as a discipline method did not comply with the standards of the profession or the Education Act contrary to Ontario Regulation 437/97 subsection 1(5), 1(7-physical), 1(14) and 1(15).

Further, the Committee found the Member’s inappropriate comments and discipline methods to be unprofessional and unbecoming a Member of the profession contrary to Ontario Regulation 437/97 subsections 1(18) and 1(19).

## **PENALTY DECISION**

The Committee makes the following order as to penalty:

1. The Member is required to appear before the Committee following the completion of the hearing of this matter to be reprimanded and the fact of the reprimand is to be recorded on the Register of the Ontario College of Teachers.
  
2. The Registrar is directed to impose a term or condition on the Member's certificate that the Member is to enrol in and complete, at his own expense, within three (3) months from the date of an Order of the Discipline Committee, a course of instruction by a psychologist specializing in educational matters regarding appropriate boundaries and boundary violation issues, pre-approved by the Registrar, and that the Member shall deliver directly to the Registrar, within thirty (30) days of completion of that course, a written certificate from the course provider stating:
  - (i) that he or she has reviewed a copy of this document and the Decision and Reasons of the Discipline Committee; and
  
  - (ii) that the Member has successfully completed the course; and
  
3. The findings and order of the Committee shall be published in summary, without the name of the Member, in the official publication of the College, *Professionally Speaking/Pour parler profession.*

## **REASONS FOR PENALTY DECISION**

The reprimand of the Member by his peers in respect of his inappropriate conduct serves to reinforce the necessity to maintain appropriate professional boundaries. It will further remind the member to uphold the standards of the profession and not to engage in conduct unbecoming a member. The fact that the reprimand will be recorded on the Register also serves as a specific deterrent to the Member.

The Committee determined that the course of instruction by a psychologist in appropriate boundaries and boundary violation issues will assist the Member in addressing the issues which have given rise to his misconduct and help him to understand the acceptable limits of student/teacher interaction.

The requirement that the Member take a course in appropriate boundaries and the reprimand of the Member will assure the public that the issues which gave rise to the misconduct are being addressed. The penalty informs the public that the College of Teachers does not take this type of misconduct lightly and deals appropriately with matters brought to its attention.

The Committee considered the submissions of College Counsel and Counsel for the Member with respect to publication without the Member's name. The Committee agrees with Counsel for the Member that publication of the findings and order of the Committee, in summary, without the name of the Member will suffice to act as a general deterrent.

Further, the Committee finds that the public interest will be served by notation on the public register of the finding of professional misconduct and the penalty imposed.

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

Date: April 30, 2009

---

Rosemary Fontaine  
Chair, Discipline Panel

---

Anne Marie Levesque  
Member, Discipline Panel



---

Jacques Tremblay  
Member, Discipline Panel