

**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
Shanmuga Naidu, a member of the Ontario College of Teachers.

PANEL: Normand Fortin, Chair
 Janet Ouellette
 Anne Vinet-Roy

BETWEEN:)	
	)	Eric Block,
	)	McCarthy Tétrault,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Jennifer Robinson,
	)	Law Clerk
- and -)	
)	
SHANMUGA NAIDU	)	Shanmuga Naidu
(CERTIFICATE #373364)	)	was not present,
	)	nor was he represented by counsel
)	
)	
	)	Johanna Braden,
	)	Stockwoods,
	)	Independent Legal Counsel
)	
	)	Heard: June 7, 2005

REASONS FOR DECISION, DECISION AND ORDER (S)

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on June 7, 2005 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated July 21, 2004 was served on Shanmuga Naidu, requesting attendance before the Discipline Committee of the Ontario College of Teachers on December 8, 2004 for a hearing, and specifying the charges. The hearing was subsequently reset for June 7, 2005.

Shanmuga Naidu was not in attendance at the hearing.

The Allegations

The allegations against Shanmuga Naidu in the *Notice of Hearing*, (*Exhibit 1*) dated July 21, 2004, are as follows:

IT IS ALLEGED that Shanmuga Naidu is guilty of professional misconduct as defined in subsection 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 failed to comply with the Act, the regulations or the bylaws contrary to Ontario Regulation 437/97, subsection 1(14);
- (c) he failed to comply with the *Education Act*, R.S.O. 1990, c. E.2 and specifically paragraph 264 (1) (c) or the Regulation made under that Act, contrary to Ontario Regulation 437/97, subsection 1(15); and
- (d) he engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1 (19).

Publication Ban

On June 7, 2005 the Committee made an order that there be no publication of any information that may disclose the identities of the students involved in this matter.

Agreed Statement of Facts

Counsel for the College advised the Committee that an agreement had been reached on the facts and introduced as *Exhibit 3, an Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty*. (ASF – Exhibit 3)

The *Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty* provides as follows:

1. Shanmuga Naidu (the “Member”) is a member of the Ontario College of Teachers. Attached is a copy of the *Notice of Hearing* (ASF-Exhibit 3, Tab A).
2. At all times material hereto, the Member was employed by the District School Board of Ontario North East (“the Board”), as an occasional teacher at Kirkland Lake Collegiate and Vocational Institute (“the School”).
3. Between December 2002 and January 2003, the Member engaged in inappropriate conversations and contacts with two adult female students, [■] and [■], including:
 - (a) the Member made inappropriate references to their personal and physical attributes and their personal lives.
 - (b) on one occasion, the Member hugged [■]
 - (c) on another occasion, the Member suggested to [■] that she come to his home and assist him in marking math papers.
4. By his conduct, the Member failed to respect well-recognized boundaries of appropriate teacher-student relationships and in so doing, put his students at risk of misinterpreting his motives and of being distracted from more appropriate academic pursuits.
5. By this document, the Member pleads no contest to the facts referred to in paragraph 3 above, and states that:

- (a) he understands the nature of the allegations that have been made against him;
- (b) he voluntarily and unequivocally decided not to contest the allegations made against him;
- (c) he has been advised of his right to seek legal counsel in this matter, and has been encouraged by the College's legal counsel to do so.
- (d) he understands that a plea of no contest does not constitute an admission by him as to the facts or findings in any other civil, criminal or administrative proceeding;
- (e) he understands that by not contesting the allegations, he is waiving the right to require the College to prove the case against him and understands that the Discipline Committee can dispose of the issue of what finding ought to be made without a hearing;
- (f) he understands that the Discipline Committee can accept as correct the facts herein for the purposes of this proceeding only;
- (g) he understands that the Discipline Committee can accept that the facts stated herein constitute professional misconduct for the purposes of this proceeding only; and
- (h) he understands that any agreement entered into by him with the College respecting the penalty proposed does not bind the Discipline Committee panel.

6. 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 paragraph 3 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(14), 1(15), and 1(19).

7. The Member requests permission to resign his membership in the College forthwith.

8. The Ontario College of Teachers and the Member agree and jointly submit that the appropriate resolution of this matter would be as follows:

(a) that the Member be permitted to resign his membership in the College effective immediately upon a finding of professional misconduct, and that his certificate of qualification and registration shall immediately be surrendered by the Member to the Registrar, whereupon his certificate of qualification and registration shall be cancelled;

(b) the Member shall provide to the College a written undertaking that he will not seek reinstatement of his certificate of qualification and registration unless and until he has provided to the Registrar, in a form satisfactory to the Registrar, proof of his successful completion, at his own expense, of a course of instruction respecting student/teacher boundaries, which has been approved in advance by the Registrar;

(c) that in addition to the information prescribed by the *Ontario College of Teachers Act, 1996* (the "Act") and the bylaws thereunder, a notation shall be placed on the public register maintained by the Registrar in accordance with section 23 of the *Act*, recording the condition respecting any future reinstatement application referred to in paragraph 8(b) hereof; and

(d) that the Committee directs the Registrar to impose a term, condition or limitation on the Member's certificate that the member shall not engage in the practice of teaching in Ontario or hold any position for which a certificate of qualification and registration is required until:

(i) he has provided the Registrar with proof, in a form satisfactory to the Registrar, that he has successfully completed, at his own expense, a course of instruction respecting student/teacher boundaries approved in advance by the Registrar;

- (ii) the Registrar has received from the instructor of the course described in paragraph 8(d)(i), written confirmation that he or she has no concerns regarding the Member's return to teaching; and
- (iii) the Registrar has provided written confirmation to the Member that the requirements set out in paragraphs 8(d)(i) and (ii) have been satisfied.

9. The parties have not agreed upon the nature of publication to be ordered by the Discipline Committee pursuant to section 30(5)2 of the *Act*. Submissions will be made to the Discipline Committee on this issue.

Member's Plea

By this document, the Member Shanmuga Naidu, pleads no contest to the facts referred to in paragraph 3 and accepts that these facts constitute professional misconduct and pleads no contest to the allegations of professional misconduct against him being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), (14), (15), and (19).

Joint Submission as to Finding

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 paragraph 3 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(14), 1(15), and 1(19).

Decision as to Finding

Having examined the Exhibits filed, and based on the plea of no contest, the *Agreed Statement of Facts, Plea of No Contest 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 Shanmuga Naidu committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsection 1(5), 1(14), 1(15), 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) that the Member be permitted to resign his membership in the College effective immediately upon a finding of professional misconduct, and that his certificate of qualification and registration shall immediately be surrendered by the Member to the Registrar, whereupon his certificate of qualification and registration shall be cancelled;
- (b) the Member shall provide to the College a written undertaking that he will not seek reinstatement of his certificate of qualification and registration unless and until he has provided to the Registrar, in a form satisfactory to the Registrar, proof of his successful completion, at his own expense, of a course of instruction respecting student/teacher boundaries, which has been approved in advance by the Registrar;
- (c) that in addition to the information prescribed by the *Ontario College of Teachers Act, 1996* (the "*Act*") and the bylaws thereunder, a notation shall be placed on the public

register maintained by the Registrar in accordance with section 23 of the *Act*, recording the condition respecting any future reinstatement application referred to in paragraph 8(b) hereof; and

(d) that the Committee directs the Registrar to impose a term, condition or limitation on the Member's certificate that the member shall not engage in the practice of teaching in Ontario or hold any position for which a certificate of qualification and registration is required until:

- (i) he has provided the Registrar with proof, in a form satisfactory to the Registrar, that he has successfully completed, at his own expense, a course of instruction respecting student/teacher boundaries approved in advance by the Registrar;
- (ii) the Registrar has received from the instructor of the course described in paragraph 8(d)(i), written confirmation that he or she has no concerns regarding the Member's return to teaching; and
- (iii) the Registrar has provided written confirmation to the Member that the requirements set out in paragraphs 8(d)(i) and (ii) have been satisfied.

Publication

The parties were not in agreement upon the nature of publication to be ordered by the Committee.

Counsel for the College submitted that the findings and order of the Committee, along with the name of the Member be published. The Member submitted a letter to the Committee requesting that his name not be published and giving his reasons for that request.

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 Decision

The Committee accepted the Agreed Statement of Facts as proof of professional misconduct as defined in subsection 30 (2) of the Act.

The further plea of no contest and submission of penalty:

- that the Member resign his membership in the College
- that his certificate of qualification and registration be cancelled
- that the Member undertake not to seek reinstatement of his certificate until successful completion of a course of instruction respecting student/teacher boundaries
- notation of this undertaking on the Public Register

satisfied the requirements of upholding the standards of the profession and protecting the public interest.

Relative to the issue of the publication of the Member's full name, the Committee considered the letter submitted by the Member, information provided by College Counsel and the advice of Independent Legal Counsel. The Committee concluded that the public interest and the requirement for general and specific deterrence are best served by the publication of the Member's full name.

Date: June 7, 2005

Normand Fortin
Chair, Discipline Panel

Janet Ouellette
Member, Discipline Panel

Anne Vinet-Roy
Member, Discipline Panel