

**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
Joseph Pender, a member of the Ontario College of Teachers.

PANEL: Bernard J. Adam, Chair
 Ernie Checkeris
 Rosemary Fontaine

BETWEEN:)	
	)	L. Thomas Forbes, Q.C. and
	)	David Leonard,
	)	McCarthy Tétrault,
	)	for Ontario College of Teachers
ONTARIO COLLEGE OF TEACHERS	)	assisted by A. Trevor Evans,
	)	Senior Law Clerk
- and -)	
)	
JOSEPH PENDER	)	William Markle, Q.C.,
(CERTIFICATE #243977)	)	Markle May Phibbs,
	)	assisted by Donna Ptak,
	)	for Joseph Pender
)	
	)	Johanna Braden and Brian Gover,
	)	Stockwoods,
	)	Independent Legal Counsel
)	
	)	Heard: July 12, 13, 14 & 15, 2004 ,
	)	and May 24, 2005

REASONS FOR DECISION, DECISION AND ORDER(S)

This matter came before a panel of the Discipline Committee (“the Committee”) for a hearing on July 12, 13, 14, and 15, 2004 and May 24, 2005 at the Ontario College of Teachers at Toronto.

A *Notice of Hearing*, dated September 18, 2002 was served on Joseph Pender, requesting attendance before the Discipline Committee of the Ontario College of Teachers on October 7, 2002 to set a date for a hearing, and specifying the charges. The hearing was scheduled for May 31, 2004 but was adjourned at the request of the Member and subsequently scheduled for July 12 to 15, 2004 and May 24, 2005.

Joseph Pender was in attendance at the hearing. Proof of service of the *Notice of Hearing* was presented and accepted by the Panel. **(Exhibit 1)**.

The Allegations

The allegations against Joseph Pender in the *Notice of Hearing* are as follows:

IT IS ALLEGED that Joseph Pender is guilty of professional misconduct as defined in sections 30(2) and 40(1.1) of the Act 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 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 contravened laws, 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) 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);
- (f) he engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19);
- (g) 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
- (h) 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.

Publication Ban

On July 12, 2004, the Committee made an order that there be no publication of any information that may disclose the identity of the students involved in this matter.

Order Excluding Witnesses

On July 12, 2004 the Committee made an order excluding witnesses from the hearing, until called to give evidence.

Agreed Statement of Facts and Guilty Plea

After four days of hearings on July 12, 13, 14 and 15, 2004 Counsel for the College advised the Committee on May 24, 2005, that agreement had been reached on the facts and introduced an *Agreed Statement of Facts and Guilty Plea* (Exhibit 25) which provides as follows:

1. Joseph Pender (the "Member"), is a member of the Ontario College of Teachers. Attached hereto and marked is a copy of the Ontario College of Teachers Registered Member Information of the Member. (Exhibit 25, Tab A)
2. At all material times, the Member was employed by the Durham Catholic District School Board as a teacher at Monsignor Paul Dwyer Catholic High School ("the School"), in Oshawa. The member also took photographs at functions at the school, and other schools of the Board.
3. During the 1993-1994 school year, [REDACTED] and [REDACTED] were female students of the Member.
4. During the 1993-1994 school year, [REDACTED], who was then fifteen years of age, was a student in the Member's [REDACTED] class at the School. During that time, the Member made remarks to [REDACTED] concerning her appearance.

5. In or about March 1994, the Member put snow down the top of the turtleneck sweater of student [■]
6. During 1994, the Member, while in a Grade 9 English class, and with the permission of [■], briefly massaged [■]'s shoulders following a volleyball practice.
7. By this document, the Member, Joseph Pender, accepts that the matters referred to in paragraphs 4, 5, and 6 above constitute conduct unbecoming a member and pleads guilty to professional misconduct in breach of Ontario Regulation 437/97 subsection 1(19).
8. By this document, the Member states that:
 - (a) he understands fully the nature of the allegations that have been made against him;
 - (b) he understands that by pleading guilty to the allegations, he is waiving the right to require the College to prove the case against him and the right to have a hearing; and
 - (c) he voluntarily decided to plead guilty.
9. In light of the admitted facts and circumstances, the Ontario College of Teachers and the Member submit that the Discipline Committee should find the Member guilty of professional misconduct. The parties jointly submit that the

appropriate penalty to be imposed by the Discipline Committee in this case would be that the Discipline Committee:

- (a) require the Member to immediately appear before the Discipline Committee to be reprimanded, and the fact of the reprimand to be recorded on the Register of the College; and
- (b) direct that the findings and order of the Discipline Committee be published in summary, including the Member's name, in the official publication of the College, *Professionally Speaking/Pour parler profession*.

By this document, the Member acknowledges his understanding that any agreement between the College and defence counsel with respect to the penalty proposed does not bind the Discipline Committee.

Decision

Having examined the Exhibit filed, and based on the *Agreed Statement of Facts*, the guilty plea therein, and the submissions made by counsel, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that Joseph Pender committed acts of professional misconduct as alleged, being more particularly a breach of Ontario Regulation 437/97, subsections 1(19).

The Committee accepts the joint submission as to penalty as set out in the *Agreed Statement of Facts and Guilty Plea* and accordingly requires that the Member, Joseph Pender, appear before the Committee to be reprimanded and the fact of the reprimand will be recorded on the Register of the College.

The Committee further orders that pursuant to Section 30 (5) (3) of the *Ontario College of Teachers Act, 1996*, the findings and order of the Committee be published in summary, with the name of the Member, in the official publication of the Ontario College of Teachers, *Professionally Speaking /Pour parler profession*.

Reasons for Decision

The Committee concludes that the agreement, in these circumstances, is reasonable and serves and protects the public interest.

Date: May 24, 2005

Bernard J. Adam
Chair, Discipline Panel

Ernie Checkeris
Member, Discipline Panel

Rosemary Fontaine
Member, Discipline Panel