

**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 Kristen Ann Ross, OCT, a member of the Ontario College of Teachers.

PANEL: Hanno Weinberger, OCT, Chair  
Danny Anckle  
Darlene Mead, OCT

|                             |   |                                  |
|-----------------------------|---|----------------------------------|
| BETWEEN:                    | ) |                                  |
|                             | ) | David Leonard,                   |
|                             | ) | McCarthy Tétrault LLP,           |
|                             | ) | for Ontario College of Teachers, |
| ONTARIO COLLEGE OF TEACHERS | ) | assisted by Trevor Evans,        |
|                             | ) | Senior Law Clerk                 |
| - and -                     | ) |                                  |
|                             | ) | Howard Goldblatt,                |
| KRISTEN ANN ROSS            | ) | Sack Goldbatt Mitchell LLP,      |
| (CERTIFICATE # 418691)      | ) | for Kristen Ann Ross             |
|                             | ) |                                  |
|                             | ) | Bonni Ellis,                     |
|                             | ) | Steinecke Maciura LeBlanc,       |
|                             | ) | Independent Legal Counsel        |
|                             | ) |                                  |
|                             | ) | Heard: November 9, 2009          |

**REASONS FOR DECISION, DECISION AND ORDERS**

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on November 9, 2009 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated January 5, 2009, was served on Kristen Ann Ross, requesting her attendance before the Discipline Committee of the Ontario College of Teachers on January 28, 2009 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for November 9, 2009. Kristen Ann Ross was in attendance.

### **PUBLICATION BAN**

The Committee was made aware by counsel that there was a court ordered publication ban from a previous criminal proceeding that prohibited publication of any information that might tend to identify the student involved in this matter. Both counsel were asked to provide information to the Committee regarding the details of this publication ban. The Committee determined that it was bound by this publication ban and therefore ordered that there be no publication of any information that might tend to identify the student involved in this matter.

### **THE ALLEGATIONS**

The allegations against Kristen Ann Ross in the *Notice of Hearing*, (Exhibit 1) dated January 5, 2009 are as follows:

**IT IS ALLEGED** that Kristen Ann Ross is guilty of professional misconduct as defined in section 30(2) of the *Ontario College of Teachers Act, 1996* (the “Act”), in that:

- (a) she failed to maintain the standards of the profession, contrary to Ontario Regulation 437/97, subsection 1(5);
- (b) she 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);

- (c) she contravened a law, 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);
- (d) she 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) she engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19); and
- (f) she failed to comply with the member's duties under the *Child and Family Services Act*, contrary to Ontario Regulation 437/97, subsection 1(27).

At the conclusion of the hearing on November 5, 2009, College Counsel sought to withdraw the allegations of professional misconduct contained in part of paragraph (b), and paragraphs (c) and (f) above, being alleged breaches of Ontario Regulation 437/97, subsections 1(14), 1(16) and 1(27). The Committee agrees that these allegations shall be withdrawn.

Counsel for the College advised the Committee that an agreement had been reached on the facts and introduced a *Statement of Uncontested Facts, Plea of No Contest and Joint Submission on Penalty* (SUF– Exhibit 2) which provides as follows:

#### **STATEMENT OF UNCONTESTED FACTS**

1. Kristen Ann Ross (the "Member") is a member of the Ontario College of Teachers. Attached hereto and marked as **Exhibit "A"** is a copy of her Registered Member Information.
2. At all material times, the Member was employed by the Durham District School Board (the "Board") as a teacher at a school (the "School"). The Member was also a coach at the School.

3. During the 2003-2004 academic year, the Student was a female student of the School and was [REDACTED] A female colleague of the Member was also [REDACTED]
4. During the 2004-2005 academic year, the Student was a [REDACTED] located close to the [REDACTED] School. During that academic year, the Student [REDACTED] [REDACTED] to do forty hours of community involvement, as part of her diploma requirements and, in so doing, assisted the Member and her colleague in [REDACTED]
5. On or about 21 August 2005, the Member, along with her colleague, took the Student and another female student on a [REDACTED] trip and overnight [REDACTED] (“the trip”) to another city. The Student was then under 16 years of age.
6. The Member and her colleague were granted permission by the Student’s parents to take the Student on the trip. The parents were not aware that the colleague’s husband would be staying overnight with the colleague, the Member and the students.
7. On the afternoon of 21 August 2005, the Member and her colleague checked into a suite at a hotel (“the hotel”).
8. On the evening of 21 August 2005, the Member, her colleague and the two students were joined by the colleague’s husband, who accompanied them to dinner at a restaurant. Following dinner, the group returned to the hotel and, shortly thereafter, the Member returned home, leaving the two students with her colleague.
9. The colleague and her husband, accompanied by the two students, returned to the colleague’s residence (“the home”) on 22 August 2005.

10. On the afternoon of 22 August 2005, the Member visited the home and the Student told the Member that she had been sexually touched by the colleague's husband while they were staying at the hotel on the night of 21-22 August 2005 (the "sexual touching allegation").

11. On or about 31 August 2005, while assisting the Member with preparations for the forthcoming school year, the Student again had a conversation with the Member about the sexual touching allegation.

12. The Member did not, at any time, inform:

- (a) the Student's parents;
- (b) any person in a position of responsibility at the School or at the Board or;
- (c) the police and/or the Children's Aid Society,

of the Student's report of the sexual touching allegation.

13. The Member did not follow the written policy of the Board to report a suspected case of child abuse to the Durham Children's Aid Society, according to the Durham District School Board Guidelines for Reporting Children in Need of Protection. Attached hereto and marked as **Exhibit "B"** is a copy of the Durham District School Board Regulation 5146. The Guidelines define a child as someone who is under the age of 16 years. A summary of The Durham District School Board Guidelines for reporting children in need of protection is attached hereto and marked as **Exhibit "C"**.

14. The charges which were brought against the Member for failing to report contrary to Section 72(3) in the *Child and Family Services Act* were dismissed by the Provincial Offences Court and that decision was upheld on appeal by the Ontario Court of Justice.

## PLEA OF NO CONTEST

15. By this document, the Member admits, for the purposes of this proceeding only, the truth of the facts and the exhibit referred to in paragraphs 1 to 14 above (the “Uncontested Facts”).

16. The Member hereby pleads no contest to the allegation that the Uncontested Facts referred to in paragraphs 12 to 13 above constitute professional misconduct being more particularly breaches of Ontario Regulation 437/97 1(5), 1(15), 1(18 – unprofessional) and 1(19).

17. By this document the Member states that:

- (a) she understands fully the nature of the allegations against her;
- (b) she understands that by signing this document she is consenting to the evidence as set out in the Uncontested Facts being presented to the Discipline Committee;
- (c) she understands that by pleading no contest to the allegations, she is waiving the right to require the College to prove the case against her and the right to have a hearing;
- (d) she understands and acknowledges that she is executing this Agreement voluntarily, unequivocally, and with the advice of legal counsel.

18. 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, chapter E. 23, 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 proceeding.

19. 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**

20. 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 directs:

- (a) 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) that the Registrar be directed to impose the following terms, conditions or limitations on the Member's Certificate of Qualification and Registration, the fact of such terms, conditions or limitations to be recorded on the Register of the College until such time as they are fulfilled:
  - (i) that within sixty (60) days of the date of the Order of the Discipline Committee, the Member shall enrol in, attend at and successfully complete, at her own expense, a course in professional ethics, pre-approved by the Registrar, and
  - (ii) within (30) days of her completion of the course outlined in (i) above, she shall provide a written Certificate from the Course

Provider stating:

- A. that he or she has reviewed a copy of the Statement of Uncontested Facts, Plea of No Contest and Joint Submission on Penalty document made an exhibit at the hearing of this matter, and the Decision and Reasons of the Discipline Committee; and
  - B. that the Member has successfully completed the course.
- (c) 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 on whether or not the Member's name should be included and submissions will be made on that issue

21. By this document, the Member acknowledges her 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 WITH RESPECT TO PUBLICATION**

College Counsel asked the Committee to consider the purpose of publication and argued that publication of the Member's name ensures transparency to the public, serves as a general deterrent to the profession and as a specific deterrent to the Member. Counsel further stated that the severity of the misconduct warranted publication and that the publication ban related to the student, not the Member. Counsel indicated that the issue of publication of the Member's name is unrelated to any potential criminal proceedings against the colleague's husband.

Counsel for the Member submitted that publication of the Member's name would be inappropriate and an excessive response. He argued that the Member was found not guilty of failing to report contrary to Section 72(3) of the *Child and Family Services Act*. He also submitted that the matter is a live issue due to the potential of ongoing proceedings regarding the colleague's husband. Counsel for the Member warned the Committee that the issue of the court ordered publication ban must be taken into consideration with respect to any connection being made to the student as this would be a breach of that order.

## **DECISION**

Having examined the Exhibits filed, and based on the plea of no contest, the *Statement of Uncontested 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 Kristen Ann Ross committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(15), 1(18 - unprofessional) and 1(19).

## **REASONS FOR DECISION**

The Committee accepted the Member's plea of no contest and the facts as outlined in the *Statement of Uncontested Facts*.

The Member admitted the truth of the facts and exhibits referred to in paragraphs 1 to 14 above and acknowledged that her conduct described in paragraphs 12 and 13 of the Uncontested Facts constitutes professional misconduct and pleaded no contest to the

allegations of professional misconduct, being more particularly, breaches of Ontario Regulation 437/97, subsections 1(5), 1(15), 1(18 - unprofessional) and 1 (19).

The Member had a duty to report allegations of child abuse and this did not occur. On two separate occasions, over a period of approximately ten days, the student disclosed to the Member that she had been sexually touched by the colleague's husband. By failing to report the disclosure, the Member did not follow the written policy of the Durham District School Board to report a case of suspected child abuse.

The Member did not, at any time, report the allegation of sexual touching to:

- (a) the Student's parents;
- (b) any person in a position of responsibility at the School or at the Board; or
- (c) the police and/or the Children's Aid Society.

The Member, in failing to report, contravened the Board Regulation 5146 according to the Durham District School Board Guidelines for Reporting Children in Need of Protection. (Exhibit 2, Tabs B & C).

Teachers are expected to protect students in their care at all times. By not reporting allegations of sexual abuse, the Member failed to maintain the standards of the profession and failed to comply with the *Education Act*. Her conduct was unprofessional and unbecoming a member.

### **PENALTY DECISION**

The Committee makes the following order as to penalty:

1. The Member is required to appear before the Committee to be reprimanded, with the fact of the reprimand to be recorded on the Register of the College.

2. 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 to be recorded on the Register of the College until such time as they are fulfilled:

i. that within sixty (60) days of the date of the Order of the Discipline Committee, the Member shall enrol in, attend at and successfully complete, at her own expense, a course in professional ethics, pre-approved by the Registrar, and

ii. within (30) days of her completion of the course outlined in (i) above, she shall provide a written Certificate from the Course Provider stating:

A. that he or she has reviewed a copy of the Statement of Uncontested Facts, Plea of No Contest and Joint Submission on Penalty document made an exhibit at the hearing of this matter, and the Decision and Reasons of the Discipline Committee; and

B. that the Member has successfully completed the course.

3. 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 name of the Member but without any information that would identify the student, in the official publication of the College, *Professionally Speaking/Pour parler profession*.

### **REASONS FOR PENALTY DECISION**

The reprimand of the Member acts as a specific deterrent to the Member. The fact that the reprimand of the Member took place and will be recorded on the Register is both a specific and general deterrent and addresses the issue of transparency of the proceedings.

The Committee determined that the course of instruction in professional ethics is an appropriate component of the decision as it addresses the rehabilitation of the Member, provides an opportunity for further education and serves to protect the public interest.

Failure to report allegations of sexual abuse is an egregious violation of a teacher's duty to protect students. The Committee determined that publication of the name of the Member was appropriate in this case because of the severity of the misconduct. Publication of the findings and order of the Committee, in summary, with the name of the Member, in *Professionally Speaking/Pour parler profession* provides a specific deterrent to the Member, a general deterrent to the profession, instructs the profession, and advises the public that this type of misconduct is taken very seriously.

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

Date: December 3, 2009

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Hanno Weinberger, OCT  
Chair, Discipline Panel

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Danny Anckle  
Member, Discipline Panel

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Darlene Mead, OCT  
Member, Discipline Panel