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 Paul Schalm, a member of the Ontario College of Teachers.

PANEL: Danny Anckle, Chair
Rosemary Fontaine
Jacques Tremblay

BETWEEN:	)	
	)	David Leonard,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and –	)	
	)	Simon Blackstone,
	)	Green & Chercover LLP,
PAUL SCHALM	)	for Paul Schalm
(CERTIFICATE # 163368)	)	
	)	Christopher Wirth,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
	)	
	)	Heard: November 6, 2008

REASONS FOR DECISION, DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the "Committee") on November 6, 2008 at the Ontario College of Teachers ("the College") at Toronto.

A *Notice of Hearing*, dated March 14, 2008, was served on Paul Schalm, requesting his attendance before the Discipline Committee of the Ontario College of Teachers on April 29, 2008 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for November 6, 2008. Paul Schalm was not in attendance at the hearing.

THE ALLEGATIONS

The allegations against Paul Schalm in the *Notice of Hearing*, (*Exhibit 1*) dated March 14, 2008, are as follows:

IT IS ALLEGED that Paul Schalm 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 failed to comply with the Act and the *Education Act*, Revised Statutes of Ontario 1990, chapter E2 or the regulations made under those Acts, contrary to Ontario Regulation 437/97, subsections 1(14) and 1(15);

(c) he contravened a law or laws, the contravention of which is relevant to his suitability to hold a Certificate of Qualification and Registration, contrary to Ontario Regulation 437/97, subsection 1(16);

(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, Guilty Plea and Joint Submission on Penalty (ASF – Exhibit 3).*

The Agreed Statement of Facts, Guilty Plea and Joint Submission on Penalty provides as follows:

1. Paul Schalm (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 Waterloo Region District School Board ("the Board").

3. In early March 2006, including on or about March 13 and 15, 2006, the Member accessed an Internet chat room where he attempted to communicate, for a sexual purpose, with an individual whom he believed to be a thirteen year old female. The Member specifically indicated that he had no intention to seek a meeting or have any face to face contact with the individual**.**

4. On March 21, 2006, the Member was arrested and charged by the Ontario Provincial Police with two counts, one of child luring (Count No. 1) and one of invitation to sexual touching (Count No. 2).

5. At a trial of the criminal charges against him held on December 21, 2007, the Member entered a plea of guilt to Count No. 1, that he did, on or about the 13th day of March, 2006, at the City of Kitchener, in the said Region, by means of a computer system within the meaning of s. 342.1(2) of the *Criminal Code of Canada*, communicate with a person whom he believed was under the age of fourteen years for the purpose of facilitating the commission of an offence, contrary to section 172.1(c) of the *Criminal Code of Canada*.

6. Count No. 2 was withdrawn by the Crown.

7. Attached hereto and marked as **Exhibit "B"** is a copy of the transcript of the Plea and submissions before the Honourable Mr. Justice G. Taylor on December 21, 2007.

8. Pursuant to his guilty plea, the Member was convicted of the charge against him as set out in Count No. 1. A conditional sentence of imprisonment was imposed for a period of six months, pursuant to the terms and conditions set out in the Reasons for Judgment of Mr. Justice Taylor, dated December 21, 2007, a copy of which is attached and marked as **Exhibit "C"**. Also attached and marked as **Exhibit "D"** hereto is a certified copy of the Certificate of Conviction.

GUILTY PLEA

9. By this document, the Member admits the truth of the facts and exhibits referred to in paragraphs 1 to 8 above (the "Admitted Facts").

10. The Member hereby acknowledges that the Admitted Facts referred to in paragraphs 3 - 8 above constitute conduct which is unprofessional. The Member hereby pleads guilty to the allegations of professional misconduct against him, being more particularly breaches of Ontario Regulation 437/97 1(5), 1(14), 1(15), 1(16), 1(18) and 1(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 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.

12. 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

13. 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 the Registrar of the Ontario College of Teachers to immediately revoke the Certificate of Qualification and Registration of the Member,

which Certificate the Member is to immediately surrender to the Registrar of the Ontario College of Teachers for cancellation; and

(b) directs that the findings and order of the Committee, including the Member's name, be published in the official publication of the College *Professionally Speaking/Pour parler profession.*

14. 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

Having examined the Exhibits filed, and based on Member's guilty plea and the *Agreed Statement of Facts, Guilty Plea 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 Paul Schalm committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(14), 1(15), 1(16), 1(18) and 1(19) of the *Act* as set out in the *Notice of Hearing*.

REASONS FOR DECISION

The Member acknowledged that the Agreed Facts described in paragraphs 3 to 8 of the *Agreed Statement of Facts, Guilty Plea, and Joint Submission on Penalty* (ASF - Exhibit 3) constitute professional misconduct and pleaded guilty to these allegations of professional misconduct. The Committee accepted the Member's guilty plea and the *Agreed Statement of Facts, Guilty, and Joint Submission on Penalty*.

Rules 13.05 and 13.06 of the *Rules of Procedure of the Discipline Committee of the Ontario College of Teachers* allow the Committee to accept as proof that an offence was committed by a person, where there is a finding of guilt and conviction in a Canadian court, provided that there is no evidence to the contrary and that no appeal has been granted.

The Committee accepts the specific findings of fact contained in Exhibit 3 that at a trial of the criminal charges against him held on December 21, 2007, the Member entered a plea of guilt to Count No. 1, that he did, on or about the 13th day of March, 2006, at the City of Kitchener, in the said Region, by means of a computer system within the meaning of s. 342.1(2) of the *Criminal Code of Canada*, communicate with a person whom he believed was under the age of fourteen years for the purpose of facilitating the commission of an offence, contrary to section 172.1(c) of the *Criminal Code of Canada*.

Pursuant to his guilty plea, the Member was convicted of the charge against him as set out in Count No. 1. A conditional sentence of imprisonment was imposed for a period of six months and the Judge ordered the Member to complete one hundred hours of community service. The Member was also ordered not to be in the presence of any person under the age of 18 years except as required for employment or in the presence of his immediate family. Finally the Member was ordered to [XXX] for analysis.

There was no evidence presented of an Appeal by the Member of his conviction and/or sentence and the time for doing so has expired.

The Committee finds that the Member's conviction for internet luring of a person under the age of 14 years of age, as outlined herein constitutes acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(14) and 1(15).

The Member's criminal conviction contravened a law, the contravention of which is relevant to his suitability to hold a Certificate of pursuant to Ontario Regulation 437/97, subsection 1(16).

The Member's conduct was disgraceful, dishonourable, unprofessional and unbecoming a member contrary to Ontario Regulation 437/97, 1(18) and 1 (19).

PENALTY DECISION

The Committee makes the following order as to penalty:

1. The Registrar of the Ontario College of Teachers is directed to revoke the Certificate of Qualification and Registration of the Member, which Certificate the Member is to surrender immediately to the Registrar; and

2. 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 PENALTY DECISION

The Member pled guilty and was convicted of one count of internet luring of a person he believed to be under the age of 14 years of age. On March 13, 2006 the Member entered a

chat room and began communicating with a person he believed to be a 13-year old female. In fact he was communicating with a police officer who was posing as a young girl ("the complainant"). The officer was involved in the investigation of criminal Internet activity and in particular the distribution of child pornography and luring activity. In this conversation, the Member identified himself as a male and a teacher, and provided his vital statistics, including his age. He also indicated his city of residence. His conversations included questions regarding the complainant's sexual experience, flirting, and the sexuality and related experiences of the officer's persona. The Member "made inquiries with respect to the young girl's genitalia and invited her to touch herself to see if her private area was wet". (Exhibit 3, Tab B, pp. 4-5)

The Member had a similar conversation with the complainant on March 15, 2006, and a conversation on March 16, 2006 but it had little or no sexual content. The Member was subsequently arrested on March 21, 2006.

The Committee determined that no member of society should be engaged in this type of behaviour. It is particularly disgraceful that the Member was a teacher, someone who is entrusted with the protection of children, and identified himself as such to the complainant. The Committee found the Member's offences to be very disturbing. Children are vulnerable members of society and must be safeguarded against predators who use the internet to lure them into a situation where they can be sexually exploited and abused.

The Member indicated he had no intention of seeking a meeting with the complainant but rather that they could have, what he referred to as, CHAT sex, i.e. flirtatious talk involving discussions about kissing, sleeping apparel and private body parts. (Exhibit 3,

Tab B, p. 5) The Committee found that this explanation does not mitigate the severity of the Member's actions in any way and determined that in order to protect children and maintain the integrity of the profession, the Member's certificate must be revoked.

The Member's actions were criminal. Publication of the findings and order of the Committee, in summary, along with the name of the Member, provides a specific deterrent to the Member by identifying to his peers the nature of his misconduct and the consequences for such behaviour. Publication, in this case, acts as a general deterrent and informs the profession that such behaviour will be treated harshly.

Finally, publication serves the public interest by reassuring and informing the community that the profession acts decisively when matters of this nature are brought to its attention.

The Committee is confident that the penalty serves the interests of the public and the profession.

Date: November 6, 2008

Danny Anckle
Chair, Discipline Panel

Rosemary Fontaine
Member, Discipline Panel

Jacques Tremblay
Member, Discipline Panel