

**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 Shawn Gavin Spencer, OCT, a member of the Ontario College of Teachers.

PANEL: Jacques Tremblay, OCT, Chair
Robert Ryan, OCT
Pauline Smart

BETWEEN:	)	Erica Richler,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -)	
)	
	)	Salama Rajab,
	)	Ontario Principals' Council,
SHAWN GAVIN SPENCER	)	for Shawn Gavin Spencer
(CERTIFICATE #195657))	
)	
	)	Richard Steinecke,
	)	Steinecke Maciura LeBlanc,
	)	Independent Legal Counsel
)	
	)	Heard: February 10, 2010

REASONS FOR DECISION, DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on February 10, 2010 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated August 13, 2009 was served on Shawn Gavin Spencer, requesting his presence September 21, 2009 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for February 10, 2010.

Shawn Gavin Spencer was in attendance.

THE ALLEGATIONS

The allegations against Shawn Gavin Spencer in the *Notice of Hearing*, (*Exhibit 1*) dated August 13, 2009, are as follows:

IT IS ALLEGED that Shawn Gavin Spencer 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 *Education Act*, Revised Statutes of Ontario, 1990, chapter E.2, and specifically sections 264(1)(c) and 265(1) thereof or the Regulations made thereunder, contrary to Ontario Regulation 437/97, subsection 1(15);
- (c) he contravened a law, the contravention of which is relevant to the Member’s ability 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).

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 2)*, which provides as follows:

AGREED STATEMENT OF FACTS

1. Shawn Gavin Spencer (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”) as a principal and was assigned to [XXX] (the “School”).
3. At all material times, A was a female teacher employed at the School.
4. For some time beginning in 2005 the Member and A were friends. During this time the Member would send A cards and gifts. At a certain point, A told the Member that they were friends and only friends. The Member could not accept this and pursued a personal relationship with A, which included continued unwanted telephone calls to A at home, the purchase of unwanted gifts for A and unwanted attempts to discuss the relationship at school. As a result of this conduct, A became very uncomfortable and would attempt to avoid the Member at work.
5. Just after 4:00 am on 13 March 2007, while she was at her home, A received two telephone calls from a pay phone within a three minute time frame but she did not answer the phone. A went to a window and looked out onto the street. After a short time, she observed the Member walking on the opposite side of her street. The Member then

crossed the street in front of her home and was lost from sight. A then called 911 and made a report.

6. Police officers attended at the area and searched without success as it turned out that the Member had parked his vehicle three blocks away from A's home.

7. On or about 14 March 2007, a police officer telephoned the Member and cautioned him. The officer advised the Member that if his behaviour continued, the police would lay charges. The Member advised the officer that he was remorseful and would not be bothering A again.

8. However, shortly after that, the Member attempted to engage A in conversation at the School and she refused to speak to him.

9. An Information was laid against the Member and on 14 January 2008, he pleaded guilty before Mr. Justice Hogg of the Ontario Court of Justice to a charge that he, between 13 March 2007 and 5 May 2007 in the City of Toronto, knowing that A is harassed, did beset or watch the dwelling house of A, thereby causing A to reasonably, in all the circumstances, fear for her safety, contrary to the *Criminal Code* (Canada), and the Member was found guilty of that charge.

10. On 14 January 2008, the Member was discharged by the court with the condition that he serve a period of 18 months probation and that he not associate, contact or hold any communication directly or indirectly with A.

11. Attached and marked as **Exhibits “B” and “C”** respectively are certified copies of the Information re *R v. Spencer* and the Probation Order issued by the court on 14 January 2008.

12. Attached and marked as **Exhibit “D”** is a transcript of the guilty plea proceedings in the Ontario Court of Justice before the Honourable Justice Hogg on 14 January 2008 at Toronto.

13. The Member has resigned his position as principal and has been reassigned as an elementary teacher. Attached and marked as **Exhibit “E”** is a letter dated 27 October 2009, from the Board concerning the Member’s return to the classroom and his performance.

GUILTY PLEA

14. By this document, the Member admits the truth of the facts and the exhibits referred to in paragraphs 1 to 13 above (the “Admitted Facts”).

15. The Member hereby acknowledges that the Admitted Facts referred to in paragraphs 4, 5 8 and 9 above constitute professional misconduct being more particularly breaches of Ontario Regulation 437/97 1(5), 1(15), 1(16), 1(18) and 1(19).

16. 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 as set out in the admitted facts being presented to the Discipline Committee;

- (c) 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;
- (d) he understands that depending on the penalty ordered by the Discipline Committee, the decision of the Committee and a summary of its reasons, including reference to his name, may be published in the official publication of the College;
- (e) he understands that any agreement between his counsel and counsel for the College with respect to the penalty proposed in this document does not bind the Discipline Committee;
- (f) he understands and acknowledges that he is executing this Agreement voluntarily, unequivocally, and with the advice of legal counsel.

17. 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

18. 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) direct that the Member appear before the Committee immediately following the hearing of this matter to be reprimanded and the fact of the reprimand be recorded on the Register of the Ontario College of Teachers;

- (b) directs the Registrar of the Ontario College of Teachers to suspend the Member's Certificate of Qualification and Registration for a period of three (3) months from the date of this Order;
- (c) directs that the imposition of the suspension by the Registrar referred to in paragraph (b) above be postponed and shall not be imposed if the Member fulfils the requirements of paragraph (d) below;
- (d) directs the Registrar of the Ontario College of Teachers to impose the following terms, conditions or limitations on the Member's Certificate of Qualification and Registration, the fact of such terms and conditions and limitations to be recorded on the Register of the College until such time as they are fulfilled:
 - (i) the Member shall enrol in and attend, at his own expense, within sixty (60) days of the date of the hearing of this matter, a course, pre-approved by the Registrar, that covers boundary violations, professional ethics and peer relationships; and
 - (ii) the Member shall deliver directly to the Registrar proof of the successful completion of the course referred to in (i) above within thirty (30) days of his completion of the course;
- (e) directs that there be publication of the findings and order of the Committee in summary form, including the full name of the Member, in the official publication of the College.

DECISION

Having examined the Exhibits filed, and based on the guilty plea, 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 Shawn Gavin Spencer committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(15), 1(16), 1(18) and 1(19) as set out in the *Notice of Hearing*.

REASONS FOR DECISION

The Member admitted the truth of the facts and exhibits referred to in paragraphs 1 to 13 (the “admitted facts”) of the *Agreed Statement of Facts, Guilty Plea, and Joint Submission on Penalty* (ASF - Exhibit 2). He acknowledged that the admitted facts referred to in paragraphs 4, 5, 8 and 9 above constitute professional misconduct and pleaded guilty to the allegations of professional misconduct. The Committee accepted the Member’s guilty plea and the facts in the *Agreed Statement of Facts, Guilty Plea and Joint Submission on Penalty*.

The Member, a principal, failed to maintain the standards of the profession by pursuing a female teacher “A” at his school. The Member sent cards and gifts to the teacher. At some point “A” indicated they were friends and only friends. The Member could not accept this and continued with unwanted phone calls to “A” at home, continued to purchase unwanted gifts and attempted to discuss the relationship at school.

In another instance, “A” received two phone calls from a pay phone at 4:00 a.m. which she did not answer. She looked out the window and observed the Member walking on the opposite side of her street in front of her house. She called 911. The Member advised a police officer that he was remorseful and would not be bothering “A” again.

As a result of the Member continuing to pursue an unwanted personal relationship within the school environment, “A” became very uncomfortable and would attempt to avoid the Member at work. Due to this continued behaviour, the Member failed to comply with the Education Act, specifically sections 264(1)(c) and 265(1) thereof or the Regulations, contrary to Ontario Regulation 437/97, subsection 1(15) in that he did not develop co-operation and co-ordination of effort among the members of his staff.

An Information was laid against the Member and he pleaded guilty to criminal harassment of “A” and was found guilty. (Exhibit 2, Tab C) The Member was discharged by the court with the condition that he serve a period of 18 months probation and that he not associate, contact or communicate directly or indirectly with “A”. This contravention of the law is relevant to the Member’s ability to hold a Certificate of Qualification and Registration, contrary to Ontario Regulation 437/97, subsection 1(16).

The Member’s pursuit of “A”, both in and out of school and his conditional discharge for criminal harassment is conduct unbecoming a member. He committed acts that would reasonably be regarded by members of the profession as dishonourable and unprofessional.

PENALTY DECISION

The Committee accepts the joint submission on penalty and makes the following order as to penalty:

- a. the Member is required to appear before the Committee immediately following 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;
- b. the Registrar of the Ontario College of Teachers is directed to suspend the Member's Certificate of Qualification and Registration for a period of three (3) months from the date of this Order;
- c. the Registrar is directed that the imposition of the suspension referred to in paragraph b. above be postponed and shall not be imposed if the Member fulfils the requirements of paragraph (d) below;
- d. 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 and conditions and limitations to be recorded on the Register of the College until such time as they are fulfilled:
 - i. the Member shall enrol in and attend, at his own expense, within sixty (60) days of the date of the hearing of this matter, a course, pre-approved by the Registrar, that covers boundary violations, professional ethics and peer relationships; and

- ii. the Member shall deliver directly to the Registrar proof of the successful completion of the course referred to in (i) above within thirty (30) days of his completion of the course;
- e. 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 in the official publication of the College, *Professionally Speaking/Pour parler profession.*

REASONS FOR PENALTY DECISION

The Committee appreciated its obligation to give serious consideration to a joint submission on penalty. The Committee accepted the joint submission on penalty as being within the appropriate range. However, the Committee has concerns that the penalty was at the minimal level of the range regarding protection of the public and remediation.

As a principal, the Member held a position of trust, authority and had a responsibility to be a leader. The Member failed in his responsibility to be an example of professional behaviour. The Committee agrees that a reprimand is appropriate. The reprimand of the Member by his peers will serve as a specific deterrent and will also educate the Member to respect boundaries of principal/teacher relationship at all times. The fact of the reprimand will appear on the Public Register for a period of three years and serves as a specific deterrent.

The course in boundary violations, professional ethics and peer relationships will serve to remediate the Member from repeating similar conduct. Should the Member fail to enrol in this course within sixty days and complete this course successfully, his Certificate will

be suspended for a period of three months. If the Member is suspended, he will still be required to complete the course.

The Member pled guilty to a charge of criminal harassment and received a conditional discharge after serving probation for 18 months. It is therefore appropriate that the Member's name be published in these circumstances. Publication of the findings and order of the Committee with the name of the Member will serve to advise the profession and the public that such behaviour exhibited by the Member will not be tolerated.

Date: March 8, 2010

Jacques Tremblay, OCT
Chair, Discipline Panel

Robert Ryan, OCT
Member, Discipline Panel

Pauline Smart
Member, Discipline Panel