

**ONTARIO COLLEGE OF TEACHERS**

**DISCIPLINE COMMITTEE**

**REASONS FOR DECISIONS AND ORDERS**

*IN THE MATTER OF ONTARIO COLLEGE OF TEACHERS ACT, 1996, and the Regulation (Ontario Regulation 437/97) thereunder:*

**AND IN THE MATTER OF** discipline proceedings against T.

The Discipline Committee held a hearing on July 17 and 18, 2000,

**BETWEEN:**

**ONTARIO COLLEGE OF TEACHERS**

**- and -**

**T**

**PRESENT:**

Members of the Panel

Donna Marie Kennedy (Chair)

Larry Capstick

Solette N. Gelberg

Caroline Zayid, McCarthy Tétrault, Counsel for the Prosecution assisted by Trevor Evans, Senior Law Clerk. Also present is Caroline Jageman, law student.

Lloyd Houlden, Independent Counsel for the panel

T was present and was represented by Ian Fellows, Green and Chercover.

A Notice of Hearing, dated November 7, 1999 was served on the member, hereafter known as T, requesting attendance before the Discipline Committee of the Ontario College of Teachers on January 10, 2000, setting a date for hearing and specifying the charges. The hearing date was set for July 17, 2000.

It is alleged that is guilty of professional misconduct 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 maintain the standards of the profession by releasing or disclosing information about a student to a person other than that student, the consent of the student not having been first obtained, contrary to Ontario Regulation 437/97, subsection 1(6);
- c) he abused students physically, sexually, verbally, psychologically or emotionally, contrary to Ontario Regulation 437/97, subsection 1(7);
- d) he failed to comply with the *Education Act*, Revised Statutes of Ontario, 1990, chapter E.2, and particularly, section 264(1)(c) and the Regulations made under that Act, contrary to Ontario Regulation 437/97, subsection 1(15);
- e) he committed an act or acts that, having regard to all of the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 437/97, subsection 1(18); and
- f) he engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19).

The Notice of Hearing states that T is under the jurisdiction of the Ontario College of Teachers (Exhibit #1).

On July 17, 2000, the Discipline Committee of the Ontario College of Teachers conducted a hearing into whether T was guilty of professional misconduct.

Proof of service of the Notice of Hearing was presented and accepted by the panel.

**PUBLICATION ORDER:**

The Committee ordered that there be a publication ban prohibiting publication of names, places or any other identifying factors. Therefore, the member will be referred to as T, the students will be referred to by number, the school board will be referred to as 'the district school board' and the school as 'the secondary school' and the geographical location as 'Town, Ontario'.

**EVIDENCE:**

Counsel for the Ontario College of Teachers entered as Exhibit #1, the Notice of Hearing with six allegations of professional misconduct allegations against T in that his acts were contrary to the Professional Misconduct Regulation made under the Ontario College of Teachers Act and filed as Regulation 437/97 on December 4, 1997, in particular, sections 1(5) (6), (7), (15), (18), and (19).

Particulars of the alleged misconduct are set out in the Agreed Statement of Facts (Exhibit #2) and they are to the effect that:

1. T was a member of the Ontario College of Teachers, until his resignation and the cancellation of his Certificate of Qualification and Registration on June 3, 1998. Prior to becoming a member of the Ontario College of Teachers on May 20, 1997, T had held an Ontario Teachers Certificate since May 10, 1976.
2. From September 1976 until August 31, 1997, T was employed by the district school board, as an art teacher at the secondary school, Town, Ontario.
3. At all material times, the 17 students involved in the Agreed Statement of Facts attended the school board, Student #1, Student #2 and Student #6 who testified.
4. On or between September 1988 and April 1, 1997, T:
  - a) in or about June 1989, on the day of Student #6 (born [REDACTED]):
    - i) in or about June 1989, on the day of Student No. 6's high school graduation, drank alcohol to the point of obvious intoxication in her presence and the presence of other students, guests and teachers at an OAC graduation party held after the graduation ceremony at the home of another student;
    - ii) after leaving the graduation party, T encountered Student #6. At that time, T was intoxicated. Student #6 offered to assist T to get home safely. She did so because she was concerned for his welfare and her family experience with alcoholism suggested to her that she should not leave him alone in that condition;

- iii) when T and Student #6 arrived at his home, T invited her to come in to his home to see his paintings. Once inside, T offered Student #6 an alcoholic drink, which she declined;
  - iv) thereafter, T kissed Student #6 and touched her genital area to attempt to stimulate her sexually. This touching occurred without Student #6's consent;
  - v) T stopped the touching when his wife opened the door of the room and saw T and Student #6;
  - vi) showed Student #6 photographs that T had taken of female students and former students of the school, when she returned to the secondary school in 1991 as a speaker; and
  - vii) asked Student #6 to pose nude for him when she returned as a speaker to the said school in 1991
- b) In respect to Student #1 (born [REDACTED]), and while she was a grade [REDACTED] through grade [REDACTED] student of T's;
- i) made a body cast and sculpture of Student #1;
  - ii) made a plaster cast of Student #1 having first applied Vaseline to her body;
  - iii) put his hands underneath Student #1's bathing suit and touched her breasts and vaginal area without any previous indication or request to do so;
  - iv) photographed Student #1 in a pose which made it appear that her hands were tied behind her back;
  - v) photographed Student #1 when she was nude;

- vi) took photographs of Student #1 and Student #2 in poses in which they appeared to be chained to a log, and appeared to be tied to a tree wearing ripped clothing;
- vii) took photographs of Student #1 while she was wearing a blindfold, wrapped in cloth or plastic and so as to appear that her wrists and ankles were tied;
- viii) took photographs of Student #1 placed in cardboard boxes while she was nude and while she was clothed;
- ix) photographed Student #1 at Lake [REDACTED] in a nightgown that he provided;
- x) took photographs of Student #1, with her shirt unbuttoned and wearing no brassiere in his office at the said school, such that her breasts were visible in the photograph;
- xi) took photographs of Student #1 in the attic of his home, on his bed in his home basement, at his camp, in the bush and at other locations;
- xii) showed Student #1 nude photographs that he had taken of her;
- xiii) showed photographs of Student #1 alone and Student #1 with Student #2, to Student #2 and Student #3;
- xiv) took photographs of Student #1 and of others while they were nude then displayed on his office walls at the said school cropped portions of such photographs which showed their backs and head/faces;

- iv) allowed Student #1 to look at an art book, depicting women in bondage poses, titled "Fetish Girls"
- xvi) showed to Student #1 a portion of a book he was writing about "Jack" and "Julie" and in which there was also a character "Jane". T told Student #1 that some parts of the book relating to Jack were autobiographical. T told Student #1 that the character Jane referred to Student #1. Jack was portrayed as being in his early 20s. The writings included:
  - a) Jack and Jane are having sex in a barn;
  - b) Jack wanted Jane to have sex with his girlfriend; and
  - c) Jack and Jane had sex by a fireplace;
- xvii) gave Student #1 a photograph that he had taken of her lying on a log on which the name "Jane" had been carved;
- xviii) gave Student #1 a mug with the name "Jane" on it; and
- xix) gave Student #1 a cassette tape that he had made for her birthday.
- c) In respect to Student #2 (born [REDACTED]), while she was a grade [REDACTED] through grade [REDACTED] student;
  - i) photographed Student #2 in poses in which she appeared to be chained to a log, and appeared to be tied to a tree wearing ripped clothing;
  - ii) photographed Student #2 in ripped and/or shredded clothing resembling rags which was revealing of her anatomy;

- iii) showed Student #2 an art book which T kept in his school office and which depicted nudes, a shaved vagina, and more than one photograph of a clitoris;
  - iv) at a time when T was in possession of academic work of Student #2 for marking, told Student #2 that he would be interested in taking photographs similar to those depicted in the art book, including nude photographs of Student #2 and photographs of Student #2's clitoris or vagina and asked her to permit him to do so;
  - v) showed Student #2 a plaster cast made of Student #1 which depicted her in a bathing suit;
  - vi) photographed Student #2 in wet clothing beneath which he had asked her not to wear a brassiere;
  - vii) showed Student #2 photographs that he had taken of her and Student #1 wearing shredded clothing resembling rags which revealed parts of their anatomy;
  - viii) took a photograph of Student #2 in which part of her breast is showing;
  - ix) kept nude photographs of females and former students of the school in either his home or school office which nude photographs were viewed by Student #2;
- d) In respect to Student #3 (born [REDACTED]), in 1997:
- i) showed Student #3 pictures of nude students of the school;
  - ii) showed Student #3 photographs of a vagina or clitoris;

- iii) showed Student #3 a picture of a tiger skin tattooed on a vagina;
- iv) showed Student #3 books of nude photographs;
- v) showed Student #3 a photograph of a woman's breast superimposed with a shadow of the San Francisco bridge;
- vi) from time to time kept nude photographs of students of the school and other females in his office;
- vii) told Student #3 the names of other females or students of the school of whom he had taken photographs and/or nude photographs;
- viii) took photographs of Student #3 in which she posed in her bathing suit;
- ix) took photographs of Student #3 in which she posed without a shirt or bra;
- x) took a photograph of Student #3 with her knees pulled up so that it appeared that she wasn't wearing any clothing and using this photograph, made a painting that T hung at school and later in his home;
- xi) took a photograph of Student #3 in which the lighting unintentionally had the effect of making it appear that she was nude;
- xii) from time to time kept nude photographs of students of the school, former students and females known to Student #3, in his home basement studio;

- xiii) showed Student #3 a statue of Student #1, which depicted her nude, and which was kept in his classroom
  - xiv) suggested to Student #3 that she should not wear a brassiere under her clothes when he photographed her;
  - xv) had Student #3 change her clothing in a small open shower area in his office while he remained in the office but out of view; and
  - xvi) had Student #3 pose for a photograph in his locked office wearing a man's white dress shirt which was partially unbuttoned and which revealed a portion of her breasts.
- e) With respect to Student #12, (born [REDACTED]), or on between 1988 and 1991;
- i) attended a cast party with Student #12 and other students at which alcohol was consumed both by T and certain students who were under the age of 19;
- f) With respect to female students generally, on or between 1988 and 1997;
- i) told Student #12 that a former Student #4, (born [REDACTED]), had modeled nude for him and showed to her a nude painting of Student #4;
  - ii) in respect to Student #16, (born [REDACTED]), when she was [REDACTED] years old, requested and had the said student pose for him at the Lake and at his home;
  - iii) in respect to Student #10, (born [REDACTED]), requested and had the said student pose for him, both while she was a student at the school and after graduating, exposing her shoulders and showed to the said student nude pictures kept by T at school;

- iv) in respect of Student #17, (born [REDACTED]), when she was in grade [REDACTED], and [REDACTED] years old, took photographs of her while she was pregnant exposing part of her body including parts of her breasts and abdomen;
5. On or between 1988 and 1997, T failed to heed the suggestions of some colleagues that he should be careful about taking nude or semi-nude photographs or other artwork involving students.
  6. On or between 1988 and 1997, T failed to heed the advice of his colleagues not to place himself in possibly compromising situations with his students, for instance, being alone with them in his locked dark room.
  7. On or between 1988 and 1997, T permitted himself to be alone with female students in his office/dark room at the said school; in his home; at his camp; and, at various outside locations.
  8. In or about March 1997, the district school board received information in respect to allegations that T was involved in taking nude, semi-nude and/or provocative photographs and painting nude, semi-nude or provocative pictures of students and conducted an investigation.
  9. In accordance with an agreement between T's Federation, T and the district school board, dated July 22, 1997, T resigned his employment with the district school board, effective August 31, 1997.
  10. On or between 1976 and 1997, T maintained within his office at the said school, many photographs and negatives of students and former students of T's including nude shots, semi-nude shots and provocative shots of those students

and former students, including some of the students identified in the preceding paragraphs.

11. On or between 1988 and 1997, T maintained within his office at the said school, a book entitled "European Photography" containing photographs of naked female body parts and particularly close up photographs of vaginal and clitoral artwork.
12. On or between 1988 and 1997, T showed to a female student or students the said book titled "European Photography" and in particular the photographs of vaginal and/or clitoral artwork;
13. Between 1988 and 1997, T used his position of power, authority and trust over his students to persuade them to pose for nude, semi-nude and/or provocative photographic shots.

A Supplementary Statement of Agreed Facts (Exhibit #3) stated:

1. T is 49 years of age. He has been married since 1977. T has two daughters aged [ ] and [ ] respectively. T and his family live in Town, Ontario, a community of approximately [ ] persons. Up until June [ ] one or both of T's daughters attended the secondary school in question.
2. T has a B.F.A. in fine arts from Mount Allison University. He completed this degree in 1975. In 1975-76 he attended Althouse College and completed his B.Ed.
3. Upon completion of his B.Ed he received an Ontario Teaching Certificate and commenced employment with the Board of Education.
4. At all material times T has worked as an artist. One of T's interests has been the female form and this has been a major theme in his artwork.

5. While teaching at the school in question, T invited students including those referred to above to pose as models for him.
6. In many but not all cases T asked that the student in question check with their parents as to whether they had parental approval to pose. T did not discuss or obtain parental approval for nude photographs. T frequently gave his student models pictures that had been taken of them to take home and to show to their parents. T did not give students photographs involving nude or more risqué poses. T did provide students such photographs as those found at tabs A,B,D,E,H,K,L,M,O,P,Q,R,S,U, and V of the Agreed Statement of Fact.
7. At all material times certain teachers, department heads, vice principals and principals were aware that T used students and former students as models and that he had them pose for photographs. T was never disciplined or formally counseled by the Board prior to the spring of 1997.
8. During the time that T taught with the Board of Education and in particular throughout the 80's and early 90's a graduation party has been held at the end of each school year. In attendance at such graduation parties were the persons who had just graduated, some of whom were under 19 years of age, teachers, vice principals, and possibly principals (all from the school in question). At the said graduation parties alcohol was consumed by the former students and various members of staff. Similarly, teachers and students attended cast parties which were held from time to time and at which alcohol was consumed. Until the early 1990's no one suggested to T that it was inappropriate or unprofessional to attend such events or for alcohol to be consumed at such events. Once such suggestions were made T ceased attending such events.

9. In and about the spring 1997 certain allegations were made against T. These included allegations that he showed explicit material to students and that he took photographs of students in which they were partially dressed, wearing bathing suits, or nude.
10. In the summer of 1997 T resigned his employment with the Board of Education. At this time T also turned over to the Board of Education numerous photographs of female students that were in his possession at that time and about which complaints had been made. T states that he does not possess photographs or negatives depicting students about whom complaints had been made. The photographs turned over to the Board represent a small portion of the total photographs taken by T during his employment with the Board.
11. T has not engaged in teaching since his resignation from employment and has no plans to engage in teaching elementary or secondary students at any time in the future.
12. Both T and his wife are working artists. Prior to allegations of misconduct being made against T his family income was approximately \$80,000.00 per year. T states that his family income is now less than \$20,000.00 per year.
13. At the time in question (spring-fall of 1997) rumours and innuendo circulated in Town, Ontario concerning T and his resignation from employment.
14. In the period commencing with the allegations being made and ending some months after his resignation T and his family suffered various forms of abuse and threats of violence. This includes the following:

- 1) During a party held by one of his daughters while T and his wife were away a painting in his house was slashed, a photo enlarger was destroyed, and numerous objects were stolen.
  - 2) The T home has had eggs thrown at it on several occasions;
  - 3) Written death threats against T personally have been left on his property.
  - 4) On an occasion when T's wife was working at a school the family car had its windows smashed.
15. The allegations, together with the events set out in paragraph 37 above have caused T, his wife and his daughters considerable distress and fear.
16. Prior to T resigning he was advised by the Board of Education that they would make a report to the College. The College of Teachers was first apprised in writing of the allegations against T in and about September 4<sup>th</sup>, 1997 by the Board of Education. T was notified by the College of its investigation in this matter on July 10<sup>th</sup>, 1998. T requested particulars of the allegations against him on August 7<sup>th</sup>, 1998. T was not provided any further particulars of the allegations until June 8<sup>th</sup>, 1999. T responded to the College again on July 15<sup>th</sup>, 1999.

Counsel presented evidence that T was a member of the Ontario College of Teachers, (Exhibits #4, 5 and 6). At all material times, T was employed by the district school board as a secondary school art teacher.

An Agreed Statement of Facts and Supplementary Statement of Agreed Fact was filed as Exhibits #2 and #3. That statement had been signed by T and counsel for the Ontario College of Teachers.

**REASONS:**

The Committee accepts the Agreed Statement of Facts as set out in Exhibits #2 and #3.

The Committee specifically noted that:

T drank alcohol to the point of obvious intoxication in the presence of Student #6, guests, other students and teachers at a graduation party at a student's home. In an effort to assist T, Student #6 accompanied him to his home. In T's home, T kissed Student #6 and touched her genital area to attempt to stimulate her sexually. This touching occurred without Student #6's consent.

With regard to Student #1, who was a witness, T put his hands underneath Student #1's bathing suit and touched her breasts and vaginal area without any previous indication or request to do so.

T made a plaster cast of Student #1 having first applied Vaseline to her body

T photographed Student #1 when she was nude

T showed Student #2 inappropriate photographs of detailed female genitalia

T asked Student #2 to pose nude.

T photographed Student #2 in wet clothing under which he asked her not to wear a brassiere.

T took a photograph of Student #2 in which part of her breast is showing.

T kept nude photographs of students which were viewed by Student #2.

T put his hands underneath Student #1's bathing suit and touched her breasts and vaginal area without any previous indication or request to do so.

The Committee was not convinced, based upon the evidence, that T contravened section 1(6) by disclosing information about a student to someone else.

#### **DECISIONS AND ORDERS:**

The Committee finds T guilty of professional misconduct under sections 1(5), (15) (18), and (19). In addition, the Committee finds T not guilty of section 1(6), guilty of abusing students sexually, psychologically and emotionally contrary to section 1(7).

The Discipline Committee directs the Registrar to:

- 1) reprimand T; and
- 2) record the fact of the reprimand on the Register for an unlimited period.

The Committee ordered that there be a publication ban prohibiting publication of names, places or any other identifying factors. Therefore, the member will be referred to as T, the students will be referred to by number, the school board will be referred to as the district school board and the school as the secondary school and the geographical location as 'Town, Ontario'.

**NOTICE:**

The Committee believes that it is important to the Committee provide information for members on an ongoing basis. Teachers need to be aware that in these times it is important for them to be vigilant in order to avoid placing themselves in compromising situations vis a vis students. Boards of Education should have policies and procedures for employees and especially for teachers regarding their social interaction with students. These policies should also include guidelines related to their professional interactions and responsibilities.

The Committee notes the vandalism against T's home and car and the written death threat against T. These incidents followed the disclosure, in the community, of the issues raised in this case. Although the incidents were reported to the local police, the perpetrators have not been apprehended.

The Committee believes that there may be an issue of security and safety for T and his family if the details of this case were publicized again in Town.

DATED AT TORONTO, THIS 23<sup>rd</sup> DAY OF AUGUST, 2000  
BY ORDER OF THE DISCIPLINE COMMITTEE

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Donna Marie Kennedy, **Chair**

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Larry Capstick

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Solette N. Gelberg