

**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
Massimiliano Silvio Tallarico, OCT, a member of the Ontario
College of Teachers.

PANEL: Hanno Weinberger, OCT, Chair
Danny Anckle
Alexander (Sandy) Bass, OCT

BETWEEN:	)	Eli Mogil,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Daniela De Bartolo,
	)	Litigation Paraprofessional
- and -)	
)	
MASSIMILIANO SILVIO TALLARICO	)	Mandy Wojcik, and
(CERTIFICATE #419044)	)	Max Way, Articled Student,
	)	Sack Goldblatt Mitchell LLP,
	)	for Massimiliano Silvio Tallarico
)	
	)	Rebecca Durcan,
	)	Steinecke Maciura LeBlanc,
	)	Independent Legal Counsel
)	
	)	Heard: February 17, 2011

DECISION, REASONS FOR DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on February 17, 2011 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated April 13, 2010 was served on Massimiliano Silvio Tallarico, requesting his presence on April 22, 2010 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for February 17, 2011.

Massimiliano Silvio Tallarico was in attendance.

THE ALLEGATIONS

The allegations against Massimiliano Silvio Tallarico in the *Notice of Hearing*, (Exhibit 1) dated April 13, 2010, are as follows:

IT IS ALLEGED that Massimiliano Silvio Tallarico is guilty of professional misconduct as defined in sections 30(2) and 40(1.1) 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 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 *Education Act*, Revised Statutes of Ontario, 1990, chapter E.2, and specifically section 264(1)(c) thereof or the Regulations made thereunder, contrary to Ontario Regulation 437/97, subsection 1(15);
- (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);
- (e) he engaged in conduct unbecoming a Member, contrary to Ontario Regulation 437/97, subsection 1(19); and
- (f) he engaged in sexual abuse of a student or students of a nature defined in sections 1 and 40 (1.1) of the *Act*.

At the hearing on February 17, 2011, College counsel sought to withdraw the allegations of professional misconduct in paragraphs (b), (c), (e) and (f), namely that the Member breached Ontario Regulation 437/97, subsections 1(7), 1(15), 1(19) and that he engaged in sexual abuse of a student or students of a nature defined in sections 1 and 40(1.1) of the Act. 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* (Exhibit 2), which provides as follows:

STATEMENT OF UNCONTESTED FACTS

1. Massimiliano Silvio Tallarico (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 Peel District School Board (the “Board”) as an elementary teacher at [XXX] (the “School”).
3. During the 2001-2002 academic year, the Student was a Grade [XXX] female student [XXX] at the School.
4. Towards the end of the academic year, the Member sent the Student a card by way of reassurance in respect of her disclosure to him of a personal problem.
5. During the summer of 2002, the Member gave the Student a book about [XXX], because he knew that she loved [XXX] and used the nickname [XXX] at school.
6. During the 2002-2003 academic year, the Member was the [XXX] School.

7. Between the approximate dates of 1 September 2002 and 30 June 2003, the Member engaged in an inappropriate relationship with the Student, in that he:

(a) communicated inappropriately with the student using instant messaging and e-mails. The Member's e-mails to the student were written in casual language and used short forms. Topics included parties, school events, tests and the pregnancy of his wife. His e-mail communications to the Student included the following statements:

- (i) "I wish I could talk to you all the time";
 - (ii) "miss you lots";
 - (iii) "Thanks for the healing kisses";
 - (iv) "Lots of love";
 - (v) "You made my day by showing up, I was kinda hoping you were going to come today and my wish came true";
 - (vi) "I always love it when you come and talk to me";
 - (vii) "Can't stop thinking about you, I didn't want you to leave today";
- and

(b) referred to A as [XXX].

8. On or about 13 November 2009, the Member was found not guilty in the Superior Court of Justice of charges of sexual assault and sexual exploitation in respect of the Student. A copy of the Reasons for Judgment of Madam Justice Wein is attached as **Exhibit "B"**.

9. Madam Justice Wein in her Reasons makes reference to the statements in paragraph 7 a) (i) to (vii) above and states, "Surely, Mr. Tallarico can see the flirty and even sexually

charged context and realize how misleading these would be to an impressionable young girl.”

10. In addition, Madam Justice Wein in her Reasons includes the following:

- (a) a few of the emails which were sent by the Member to the Student during her [XXX] year and which were retrieved from the Student’s home computer, showed that there was good confirmation that a relationship did exist that was much closer than one would expect for a teacher and a student and reflected the status of their relationship;
- (b) in the early months of [XXX], the language that was used in the email exchanges between the Member and the Student was of concern and bore close examination;
- (c) she noted that the level of chat would be seen by many as entirely inappropriate and at a minimum, it did the Student a grave disservice in her quest to become an adult; and
- (d) when the Member was confronted by the Police he decided to lie about the emails.

PLEA OF NO CONTEST

11. By this document, the Member admits, for the purposes of this proceeding only, the truth of the facts and the exhibits referred to in paragraphs 1 to 10 above (the “Uncontested Facts”).

12. The Member hereby acknowledges that the Uncontested Facts referred to in paragraph 7 above constitute conduct which is professional misconduct, and pleads no

contest to the allegations of professional misconduct against him, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5) and 1(18 - unprofessional).

13. 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 Uncontested Facts being presented to the Discipline Committee;
 - (c) he understands that by pleading no contest 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.

14. 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 *Ontario 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.

15. 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

16. 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 (the “Register”);
- (b) the Registrar to impose the following terms, conditions and 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 the Member shall enrol in and successfully complete, at his own expense, a course of instruction pre-approved by the Registrar regarding appropriate boundaries and boundary violation issues; and
 - (ii) within thirty (30) days of his completion of the course outlined in (i) above, shall provide to the Registrar 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.

DECISION

Having considered the evidence, onus and standard of proof, 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 Massimiliano Silvio Tallarico committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5) and 1(18 - unprofessional).

REASONS FOR DECISION

The Member admitted the truth of the facts and exhibits referred to in paragraphs 1 to 8 (the “uncontested facts”) of the *Statement of Uncontested Facts, Plea of No Contest, and Joint Submission on Penalty* (Exhibit 2). He acknowledged that the uncontested facts referred to in paragraph 7 above constitute conduct which is professional misconduct and pleaded no contest to the allegations of professional misconduct against him. The Committee accepted the Member’s plea of no contest and the facts in the *Statement of Uncontested Facts, Plea of No Contest, and Joint Submission on Penalty*.

The Member engaged in an inappropriate relationship with the Student between the approximate dates of 1 September 2002 and 30 June 2003 in that he:

- (a) communicated inappropriately with the Student using instant messaging and e-mails. The Member’s e-mails to the Student were written in casual language and used short forms. Topics included parties, school events, tests and the pregnancy of his wife. His e-mail communications to the Student included the following statements:
 - (i) “I wish I could talk to you all the time”;

- (ii) “miss you lots”;
 - (iii) “Thanks for the healing kisses”;
 - (iv) “Lots of love”;
 - (v) “You made my day by showing up, I was kinda hoping you were going to come today and my wish came true”;
 - (vi) “I always love it when you come and talk to me”;
 - (vii) “Can’t stop thinking about you, I didn’t want you to leave today”;
- and

(b) referred to the Student as [XXX].

By engaging in this inappropriate relationship and by communicating with the Student in this manner, the Member committed acts of professional misconduct as alleged, more particularly breaches of Ontario Regulation 437/97, subsections 1(5) and 1(18-unprofessional).

Although the Member was found not guilty in the Superior Court of Justice of charges of sexual assault and sexual exploitation in respect of the Student, Madam Justice Wein in her Reasons for Judgment stated “Surely Mr. Tallarico can see the flirty and even sexually charged context and realize how misleading these would be to an impressionable young girl.” She further went on to state “But this level of chat would be seen by many as entirely inappropriate...”.

Teachers are expected to maintain appropriate professional relationships with their students and respect the boundaries of the student/teacher relationship. By his conduct, the Member failed to maintain the standards of the profession in that he neglected his duty to maintain professional boundaries.

SUBMISSIONS ON PUBLICATION

The Committee received submissions and previous cases of the Discipline Committee from Counsel for the College and Counsel for the Member with respect to publication of the Member's name in *Professionally Speaking/Pour parler profession*.

Counsel for the College submitted that publication of the finding and name of the Member acts as a general and specific deterrent. Counsel stated that publication with name acts as a general deterrent and advises both the public and the profession that if you engage in such behaviour, your name will be published. He further stated that without publication of name there is not much of a deterrent to the membership at large.

Counsel for the Member argued that the matter is appropriate to warrant publication without the Member's name in the official publication of the College. Counsel indicated that there is no presumption for publication, that it is discretionary for the panel to look at the facts of each case. Counsel noted that the Member has successfully returned to the profession and submitted as Exhibit 3 his successful Teacher Performance Appraisal. There were no previous incidents, there was no physical contact, the Member went through a criminal proceeding and was found not guilty.

Counsel for the Member stated that the principle of general deterrence is not the only principle to be applied, that specific deterrence and rehabilitation are also important factors to consider. Counsel also argued that the Registry is public and that the finding and penalty will be on the Registry and will serve both as a general and specific deterrent.

Counsel for the Member stated that general deterrence will be met with the publication of the facts and the penalty without name and will send a strong message that boundary violations are important and can have a devastating impact on a Member's career. With respect to specific deterrence, Counsel stated that the experience the Member has gone through over the last 4 years has impressed upon him the seriousness of maintaining

professional boundaries. The Member has already taken a course and has agreed to take an additional course in professional boundaries which addresses the conduct. Rehabilitation is an important principle of penalty and in fact the Member has successfully returned to the classroom. Counsel stated that publication of his name, so long after the alleged conduct would not serve to rehabilitate and might do harm to the Member's reintegration into his profession.

PENALTY

The Committee makes the following order as to penalty:

1. the Member is to 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 (the "Register");
2. the Registrar is directed to impose the following terms, conditions and 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 the Member shall enrol in and successfully complete, at his own expense, a course of instruction pre-approved by the Registrar regarding appropriate boundaries and boundary violation issues; and
 - (ii) within thirty (30) days of his completion of the course outlined in (i) above, shall provide to the Registrar 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. the Committee directs that there be publication of the findings and Order of the Committee in summary form, without the name of the Member, in the official publication of the College, *Professionally Speaking/Pour parler profession*

REASONS FOR PENALTY DECISION

The reprimand of the Member by his peers in respect of his inappropriate conduct serves to reinforce the necessity to maintain appropriate student/teacher boundaries. The reprimand will further remind the Member to uphold the standards of the profession and not to engage in unprofessional conduct.

The Committee determined that the course of instruction in appropriate boundaries and boundary violation issues is necessary to address the rehabilitation of the Member and to provide an opportunity for further education as to the inappropriateness of his conduct.

The finding of professional misconduct and the fact that the Member has been reprimanded and is required to take a course will be recorded on the Public Register and serves as both a specific and general deterrent. This provides the transparency and openness required by the

public. Therefore, publication of the findings and order of the Committee without the name of the Member is sufficient to serve as a general deterrent to the profession. The Committee determined it was not necessary to publish the name of the Member to act as a specific deterrent as there was no indication of prior misconduct or repetition. The Member has successfully reintegrated into the profession with his same Board, and has received a successful Teacher Performance Appraisal. Further, the Member, on his own, has already taken a course on professional boundaries and has agreed to take an additional course.

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

Date: March 14, 2011

Hanno Weinberger, OCT
Chair, Discipline Panel

Alexander (Sandy) Bass, OCT
Member, Discipline Panel

MINORITY OPINION (DANNY ANCKLE)

I have had the benefit of reading the majority decision in this matter. I concur with the finding of the majority that the Member be found guilty of professional misconduct. I also concur with the penalty order of reprimand with the provision that the Member enrol in and successfully complete a course of instruction regarding appropriate boundaries and boundary violation issues. Further, I concur that the findings and order of the Committee be published in *Professionally Speaking/Pour parler profession*. However I do not agree that publication be without the name of the Member.

To ensure the transparency of the process, in an open hearing, the College has a duty to report to the public. In order to protect and serve the public interest, the Member's name should be published unless there are compelling reasons to not include the Member's name. I do not agree with the Member's counsel that publishing the Member's name will add to the ordeal he has gone through, is unnecessary and inappropriate. I do not agree that publication of the Member's name will have an adverse affect on his family, nor that this is relevant or material to this matter. The need to publish the Member's name and thereby inform the public outweighs the potential impact to the Member or his family.

Publication of the findings and order without the Member's name amounts to suppression of information and raises questions in the minds of the public regarding the transparency of the process. Publication of the Member's name sends a strong message to the profession and alerts the public that misconduct of any nature will not be tolerated by the College.

Dated: March 14, 2011

Danny Anckle
Member, Discipline Panel