

**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 Spencer James Thomason, OCT, a member of the Ontario College of Teachers.

PANEL: Mel Greif, Chair  
Dean Favero, OCT  
Jacques Tremblay, OCT

BETWEEN:	)	Erica Richler,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Jennifer Robinson,
	)	Law Clerk
- and -	)	
	)	
SPENCER JAMES THOMASON	)	Simon Blackstone,
(CERTIFICATE #429708)	)	Green & Chercover,
	)	for Spencer James Thomason
	)	
	)	
	)	Richard Steinecke,
	)	Steinecke Maciura LeBlanc,
	)	Independent Legal Counsel
	)	
	)	Heard: July 15, 2010

**REASONS FOR DECISION, DECISION AND ORDERS**

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on July 15, 2010 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated August 25, 2009 was served on Spencer James Thomason, requesting his presence on September 21, 2009 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for July 15, 2010.

Spencer James Thomason was in attendance.

## **THE ALLEGATIONS**

The allegations against Spencer James Thomason in the *Notice of Hearing*, (*Exhibit 1*) dated August 25, 2009, are as follows:

**IT IS ALLEGED** that Spencer James Thomason 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 (d) thereof or the Regulations made thereunder, contrary to Ontario Regulation 437/97, subsection 1(15);
- (c) 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
- (d) he engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19).

At the hearing on July 15, 2010, College counsel sought to withdraw the allegations of professional misconduct in paragraph (b), namely that the Member breached Ontario

Regulation 437/97, subsection 1(15). The Committee agrees that this allegation 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. Spencer James Thomason (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 [XXX] Board (the “Board”) and from 2003 served as Curriculum Leader in the Deaf/Hard of Hearing Department at [XXX] (the “School”), in [XXX], Ontario. The Member’s primary form of communication is the American Sign Language or ASL.

3. During the 2005/2006 academic year, the Member made inappropriate comments of a sexual nature to a female Sign Language Facilitator at the School, including:

(a) on or about October 14, 2005, following her advice to the Member during conversation in the School lunchroom of her upcoming attendance at a motorcycle course, the Member made the signs for a “hot man” which was understood by the Facilitator to mean “You’re going to be all hot and bothered by the men there”;

(b) on or about October 21, 2005, while she was telling one of her female colleagues about a planned boat trip to [XXX], signed to her - “Did you know there is a nude beach there?”;

(c) on or about November 2, 2005, during a lunchroom group conversation about masturbation, in reference to her previous remarks on the subject, said to her “I know you masturbate every day”. He signed this from his sitting position at the table using the ASL sign which mimics the act of female masturbation;

(d) in the presence of one of her female colleagues with whom she had been speaking about a hole in her sweater, referred to her by signing the word “slut”. When she asked him to what he had signed, he finger spelled “s-l-u-t”.

4. On or about February 10, 2006, by letter of reprimand to the Member from the Superintendent of Education of the Board, attached as **Exhibit “B”**, the Member was advised of his receipt of a 5-day suspension for sexual harassment of a female support staff member with respect to the conduct referred to in paragraph 3 above.

#### **PLEA OF NO CONTEST**

5. By this document, the Member admits, for the purposes of this proceeding only, the truth of the facts and exhibits referred to in paragraphs 1 to 4 above (the “uncontested facts”).

6. The Member hereby acknowledges that the uncontested facts referred to in paragraph 3 above constitute 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), 1(18 - unprofessional), and 1(19).

7. 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 and acknowledges that he is executing this Agreement voluntarily, unequivocally, and with the advice of legal counsel.

8. 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.

9. 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**

10. The Ontario College of Teachers and the Member jointly submit that the appropriate penalty to be imposed by the Discipline Committee in these matters would be that the Committee:

- (a) directs 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) directs the Registrar to impose a term or condition on the Member's certificate that the Member is to enrol in and complete, at his own expense, within three (3) months from the date of an Order of the Discipline Committee, a course of instruction in work place boundaries / professional boundaries, pre-approved by the Registrar, and that the Member shall deliver directly to the Registrar, within thirty (30) days of completion of that course, a written certificate from the course provider stating:
  - (i) that he or she has received and reviewed a copy of the Statement of Uncontested Facts, Plea of No Contest and Joint Submission on Penalty documents, made an exhibit at the hearing of this matter, as well as the Decision and Reasons of the Discipline Committee; and
  - (ii) that the Member has successfully completed the course; and
- (c) directs 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.

11. 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 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 Spencer James Thomason committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(18 – unprofessional) and 1(19).

## **REASONS FOR DECISION**

The Member admitted the truth of the facts and exhibits referred to in paragraphs 1 to 4 (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 3 thereof constitute professional misconduct and pleaded no contest to the allegations of professional misconduct. 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 was employed in the Deaf/Hard of Hearing Department in his school. In this capacity he worked with co-workers fluent in American Sign Language (ASL). The Member made inappropriate comments of a sexual nature by signing to a colleague on

several occasions, and at times in the presence of other co-workers. The explicit comments by the Member demonstrate unprofessional behaviour and that his conduct was unbecoming a member. By this conduct, the Member failed to maintain the standards of the profession and thereby committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(18 – unprofessional) and 1(19).

### **SUBMISSIONS ON PUBLICATION**

The Committee received submissions from both counsel with respect to publication of the Member's name in *Professionally Speaking/Pour parler profession*, which was not expressly dealt with in the joint submission.

Counsel for the College stated that the name of the Member should be published to ensure transparency of the process and to demonstrate that the public interest was addressed and that this promotes confidence in the administration of justice. Counsel also indicated that publication of the name served as a general deterrent and a message to both the profession and the public that unprofessional conduct is taken seriously at the Ontario College of Teachers. Counsel also made specific reference to the fact that the Member had a position of authority at the time as a Curriculum Leader. Counsel provided a previous decision of a Discipline Committee (*Watson*) that was rendered in 2002 but the decision did not provide much rationale for publication reasons.

Counsel for the Member submitted that the name of the Member not be published and offered two recent, previous cases of Discipline panels in support (*Ogoke & Geekie*).

Both these cases involved inappropriate comments directed at students as opposed to the instant case where the comments were directed at a co-worker.

Counsel stated that there was no history of similar behaviour by the Member and little risk of repetition. He also made reference to the 5-day suspension, without pay, by the employer, that the behaviour was not severe, not related to students, and not repeated in the past four years. Counsel indicated that the deaf community is a tight knit, small community, with a high degree of technological communication. Counsel referenced the broader deaf community and that parents and students and the general community would be satisfied with publication of the findings, without the name of the Member.

## **PENALTY**

The Committee makes the following order as to penalty:

(a) The Member is required to appear before the Committee to be reprimanded, with the fact of the reprimand to be recorded on the Register;

(c) The Registrar is directed to impose the following term or condition on the Member's Certificate of Qualification and Registration, the fact of such term or condition to be recorded on the Register of the College until such time as it is fulfilled:

- (i) that the Member is to enrol in and complete, at his own expense, within three (3) months from July 15, 2010, a course of instruction in work place boundaries / professional boundaries, pre-approved by the Registrar, and the Member shall deliver directly to the Registrar, within thirty (30) days of completion of that course, a written certificate from the course provider stating:

- (ii) that he or she has received and reviewed a copy of the Statement of Uncontested Facts, Plea of No Contest and Joint Submission on Penalty documents, made an exhibit at the hearing of this matter, as well as the Decision and Reasons of the Discipline Committee; and
  - (iii) that the Member has successfully completed the course; and
- (d) 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, without the name of the Member in the official publication of the College, *Professionally Speaking/Pour parler profession.*

#### **REASONS FOR PENALTY DECISION**

The reprimand is appropriate in this instance because it serves as a specific deterrent to the Member and underlines the gravity of his misconduct. It should also serve as part of his rehabilitative process.

The course of instruction in work place boundaries / professional boundaries should have a rehabilitative effect on the Member and address the issues which gave rise to his misconduct. This boundaries course will provide an opportunity for the Member to fully understand the appropriate language and references to be used in an educational setting and the associated forms of address to be used with co-workers.

Publication of the findings and order of the Committee, without the name of the Member, will serve as a general deterrent to the profession and demonstrate the transparency of the discipline process. The Committee took into consideration that there ought to be little risk of repetition, given that there have been no incidents in the last four years and that a

boundaries course will have been completed. Publication without name will inform the profession and the public and serve to maintain transparency of process. Publication with name will serve no further benefit in this case. Specific deterrence has been achieved through the other elements of the penalty decision.

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

Date: July 15, 2010

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Mel Greif,  
Chair, Discipline Panel

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Dean Favero, OCT  
Member, Discipline Panel

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Jacques Tremblay, OCT  
Member, Discipline Panel