

**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 Stephen James Tonks, a member of the Ontario College of Teachers.

PANEL: Don Cattani, Chair
Amin Saab
Jacques Tremblay

BETWEEN:)	
)	
	)	Brian Wasyliw,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -)	
)	
	)	Joshua Phillips,
	)	Green & Cherver LLP,
STEPHEN JAMES TONKS	)	for Stephen James Tonks
(CERTIFICATE #151593))	
)	
	)	Johanna Braden,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
)	
	)	Heard: February 13, 2006

REASONS FOR DECISION, DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on February 13, 2006 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated July 8, 2004 was served on Stephen James Tonks, requesting attendance before the Discipline Committee of the Ontario College of Teachers on September 15, 2004 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for February 13, 2006.

Stephen James Tonks was not in attendance at the hearing.

The Allegations

The allegations against Stephen James Tonks in the *Notice of Hearing, (Exhibit 1)* dated July 8, 2004, are as follows:

IT IS ALLEGED that Stephen James Tonks 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 E. 2 and particularly section 264 (1) (c) thereof, and the Regulations made under those Acts, contrary to Ontario Regulation 437/97, subsections 1 (14) and (15);
- (c) he contravened laws, the contravention of which is relevant to the member’s suitability to hold a certificate of qualification and registration, contrary to Ontario Regulation 437/97, subsection 1 (16);
- (d) he contravened laws, the contravention of which has caused or may cause a student or students who were under the Member’s professional

supervision to be put at risk, contrary to Ontario Regulation 437/97, subsection 1(17);

- (e) 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
- (f) 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 as *Exhibit 2*, an *Agreed Statement of Facts and Guilty Plea*. (ASF – *Exhibit 2*)

The *Agreed Statement of Facts and Guilty* provides as follows:

1. Stephen James Tonks is a member of the Ontario College of Teachers (the “Member”). Attached hereto is a copy of the Ontario College of Teachers Registered Member Information in respect of the Member. (ASF-*Exhibit 2, Tab A*)
2. At all material times, the Member was employed by the Upper Grand District School Board (the “Board”) as a teacher at [XXX] (the “School”). The Member taught at the School from 1 September 1979 until approximately 3 December 2003.

3. At all material times, [XXX] was a former female student [XXX] at the School.
4. The Member, while he was employed at the School, and specifically on 27 November 2003, was in possession of a considerable amount of graphic electronic images and paper copies of graphic images depicting sexual encounters or sexual activity between children or which involved children.
5. On or about 13 September 2005, the Member pleaded guilty before The Honourable Mr. Justice Herold in the Ontario Superior Court of Justice, to a charge that he, on or about the 27th day of November 2003, in the City of Guelph, did possess child pornography, to wit: computerized graphic image files and hard copy computerized graphic images, contrary to section 163.1(4) of the *Criminal Code* (Canada).
6. Attached is a certified copy of the Indictment issued by the Ontario Superior Court of Justice on 26 April 2005, showing the details of the charges against the Member, his plea of guilt and the details of his sentencing. (*ASF-Exhibit 2, TabB*)
7. On or about 13 September 2005, Mr. Justice Herold took note of an Agreed Statement of Facts that had been filed by the Crown in which it was agreed by the Member, *inter alia*, that:
 - (a) he was in possession of a total of four hundred and forty-eight images of child pornography, including hard copies of photographs and computer images, which were found in various places at his residence, including a computer, a filing cabinet, and on CD-ROMS. In addition, the Member

was in possession of approximately three hundred and three images of child nudity.

- (b) the hard copy images of child pornography consisted of photographs of pre-pubescent children, as young as two - three years of age, involved in sexually explicit activities or having the dominant characteristic of which was the depiction, for a sexual purpose, of a sexual organ or anal region of a person under the age of eighteen years; and
 - (c) there were numerous images of child pornography which had been made by “cutting and pasting” images of children’s heads onto photographs showing adult genitalia.
 - (d) four of those images referred to in (c) above included photographs of the head and torso of [XXX], while she was fully clothed, which had been originally taken in the classroom. [XXX] was unaware that the Member was using her images to make child pornography and was shocked by the inappropriate use of her photographs.
8. A non-publication and non-broadcast order was imposed by the court pursuant to Section 486(3) of the *Criminal Code* (Canada), directing that the identities of persons under the age of 18 years who were involved in the matter in any way, and any information that could disclose the identities of those persons, were not to be published in any document or broadcast in any way.

9. A transcript of the proceedings before The Honourable Mr. Justice Herold in the matter of *Her Majesty the Queen v. Stephen James Tonks* on 13 September 2005, is attached. (*ASF-Exhibit 2, Tab C*)

10. On or about 15 November 2005, the Member was sentenced by Mr. Justice Herold as follows:
 - (a) that he serve a term of 12 months, to be served conditionally in the community, and on completion of the conditional sentence, he is to be placed on probation for a period of two years. The terms of the probation include that he:
 - (i) not use a computer except for employment objectives or pursuit of a business endeavour;
 - (ii) permit any member of the Ontario Provincial Police, at any time, to enter his home or office to inspect any computer to which he has access; and
 - (iii) not associate directly or indirectly other than through counsel with [XXX];
 - (b) that he [XXX];
 - (c) that he [XXX]; and
 - (d) that he be prohibited from using a computer system for the purpose of communicating with a person under the age of 14 years.

11. A transcript of the proceedings in respect of the sentencing of the Member on 15 November 2005 is attached. (*ASF-Exhibit 2, Tab D*)

12. The Member has not appealed the sentence which has been imposed on him.

Member's Plea

13. By this document, the Member admits the truth of the facts and exhibits referred to in paragraphs 1 to 12 above (the "Admitted Facts"). The Member hereby acknowledges that his conduct as described in paragraphs 4, 5, and 7 of the Admitted Facts, constitutes conduct that is disgraceful, dishonourable and unprofessional and pleads guilty to the allegations of professional misconduct against him being more particularly breaches of Ontario Regulation 437/97 s.1 (5)(14)(15)(16)(17)(18) and (19).
14. The Member also acknowledges that his conduct in respect of [XXX] as described in paragraph 7 (d) constituted psychological and emotional abuse of [XXX]
15. 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 the 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 advice of legal counsel.
16. In light of his conduct as described in the Agreed Facts, the Ontario College of Teachers and the Member submit that the Discipline Committee find the Member guilty of professional misconduct.

JOINT SUBMISSION ON PENALTY

17. 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 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; and
 - (b) direct 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.
18. 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 as to Finding

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, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that Stephen James Tonks committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsection 1(5), 1(14), 1(15), 1(16), 1 (17), 1(18) and 1(19), as set out in the *Notice of Hearing*.

Penalty Decision

The Committee accepts the Joint Submission on Penalty and makes the following order

as to penalty:

1. The Registrar of the Ontario College of Teachers is directed to revoke immediately the Member's certificate of qualification and registration, which certificate the Member is to surrender immediately to the Registrar of the Ontario College of Teachers; 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 Decision

The Committee accepted the Member's guilty plea, the *Agreed Statement of Facts and Guilty Plea* and Joint Submission on Penalty. The Member admitted that, while employed by the Upper Grand District School Board he was in possession of a considerable amount of graphic electronic images and paper copies of graphic images depicting sexual encounters or sexual activities between children or which involved children.

The Member was charged under the Criminal Code of Canada and pleaded guilty to a charge of possession of child pornography. Possession of child pornography is a crime against children and perpetuates a market which thrives on the abuse of children.

The Committee finds that the Member's use of one [XXX] student's images "morphed" onto another's body to create a pornographic image was an extraordinary breach of trust and showed a complete disregard for the student's emotional wellbeing.

By possessing and manipulating child pornography, the Member has effectively surrendered his right to teach in the province of Ontario.

On or about 15 November 2005, the Member was sentenced by Mr. Justice Herold as follows:

- (a) that he serve a term of 12 months, to be served conditionally in the community, and on completion of the conditional sentence, he is to be placed on probation for a period of two years. The terms of the probation include that he:
 - (i) not use a computer except for employment objectives or pursuit of a business endeavour;
 - (ii) permit any member of the Ontario Provincial Police, at any time, to enter his home or office to inspect any computer to which he has access; and
 - (iii) not associate directly or indirectly other than through counsel with [XXX];
- (b) that he [XXX];
- (c) that he [XXX]; and

- (d) that he be prohibited from using a computer system for the purpose of communicating with a person under the age of 14 years.

The Member has not appealed the sentence which has been imposed on him.

While the Committee notes the submissions of the Member's counsel as to the co-operation of the Member, the Committee nevertheless concludes that the Member's actions are disgraceful and dishonourable and that he is unsuitable to hold a certificate of qualification and registration.

Publication of the findings and order of the Committee, with the Member's name, meets the objectives of specific deterrence to the Member and general deterrence to the members of the profession.

The Committee concludes that the penalty serves and protects the public interest.

Date: February 13, 2006

Don Cattani
Chair, Discipline Panel

Amin Saab
Member, Discipline Panel

Jacques Tremblay
Member, Discipline Panel