

MINORITY DECISION (MARILYN A. LAFRAMBOISE)

The Minority has grave concerns about the suitability of this matter being brought to the Discipline Committee by way of the Dispute Resolution program. The Minority does not accept Independent Legal Counsel's advice that the Committee had no choice but to hear the matter as it had been properly brought under Section 30 (1) (a) of the Ontario College of Teachers Act.

Section 30 (1) of the Act states:

The Discipline Committee shall

- (a) hear and determine matters directed or referred to it under section 26, 29 or 33; and
- (b) perform such other duties as are assigned to it by the Council.

The Minority accepts that at the hearing, the members of the Panel sit as Members of the Panel of the Discipline Committee. The Minority believes that as a Committee of Council that the Panel has a responsibility, first and foremost, to follow a direction or position taken by Council. In the absence of a policy document, the Discipline Committee must perform its duties in a manner that reflects a direction or position taken by Council and understood by members of Council as a result of consideration of an issue at Council. Additionally, examination of the documents requested by the Committee and provided at the hearing, which included the slides of a PowerPoint presentation to Council on February 28th, 2003 and a copy of the External Review of Use of the Dispute Resolution Program at the Ontario College of Teachers to Resolve Complaints of Sexual Abuse by Lisa Feld, May 2004, lead the Minority to conclude that while Council endorses the use of the Dispute Resolution program for most matters, it specifically excludes matters of sexual abuse where the complainant is a member of the public from the program.

Although Council may expand the mandate of the Dispute Resolution program in the future to include matters of sexual abuse where the complainant is a member of the

public, at this point in time, such a matter is not appropriate for Dispute Resolution. The Minority believes that matters of this nature, where the Member and the College are able to reach an agreement on findings of fact and penalty, would be better resolved by way of an Agreed Statement of Facts and a Joint Submission on Penalty and not by way of a Memorandum of Agreement reached through the Dispute Resolution program.

The Minority of the Committee (the "Minority") has read the decision of the Majority of the Committee (the "Majority"). Despite her concerns as expressed above, the Minority concurs with the Decision outlined in the Majority decision.

Penalty

However, the Minority disagrees with the Penalty Decision made by the Majority. On October 25, 2004, the parties to the Memorandum of Agreement (the "MOA") were asked by the Committee to vary the following term of the agreement:

12. The Member agrees and undertakes that upon ratification of this MOA by the Discipline Committee, he shall not apply to the College for reinstatement and for a new certificate of qualification and registration for a period of two years from the date of the ratification of this MOA.

to read:

12. The Member agrees and undertakes that upon ratification of this MOA by the Discipline Committee, he shall not apply to the College for reinstatement and for a new certificate of qualification and registration for a period of ten years from the date of the ratification of this MOA.

The Committee was advised that the Member did not agree to vary the terms of the MOA. On January 15, 2005 the Committee was provided with a letter from the Member dated October 29, 2004 (Exhibit 4).

Decisions and Reasons

The Minority disagrees with the Majority's view that the Member's statement: " ... I have made a written statement to the College that I will not return to Canada to teach or live..." is sufficient to serve and protect the public interest. The Minority does not accept that this statement in the October 29, 2004 letter constitutes an undertaking, and therefore does not carry the weight of an undertaking. Furthermore, the written statement to which the Member refers in his letter was not provided to the Committee.

By signing the MOA, the Member has pleaded guilty to professional misconduct as set out in the Notice of Hearing. The Member admitted to engaging in an inappropriate relationship with a student during the 1973/1974 academic school year and the summer preceding that year, which included engaging in sexual relations with her, including kissing and oral sex, discussing the possibility of marriage with her, and telling her that he was attracted to her. The Member also admitted to telling another male teacher of the board about his sexual relationship with the student.

The Minority believes that the conduct to which the Member has admitted is egregious sexual abuse: a Member having sexual relations with a student in his class. The Minority considered the mitigating factors of the Member's age, his place of residence, and the length of time between the conduct and the matter being brought to the College.

The Minority considered the statements provided in the Member's letter of October 29, 2004.

The Minority does not accept the Member's statement that it was a "single, isolated incident of mutual consent". The Member admitted to the period of time during which the inappropriate conduct occurred.

The Minority was not provided with employers' letters attesting to the Member's "spotless record".

The Minority considered the Member's claim that the College has issued more lenient judgments. The Minority was not provided with the letter of January 2, 2004 in which the Member claims to reference such matters. The Minority referred to decisions by Committees of the Ontario College of Teachers in which a 10-year ban on reapplication was issued, more specifically Bélanger in 2004; Dickson in 2004; and Gehring in 2002.

The Minority agrees that the Member has cooperated with the College's investigation.

The Minority believes that the mitigating factors do not carry sufficient weight to reduce the period of time during which the Member may not apply for reinstatement. The Minority believes that it is inconsistent with decisions on other matters of egregious sexual abuse, that it is disproportionate to the offence and contrary to the public interest and that it brings the administration of justice into disrepute.

The statements made by the Member in his letter are insufficient to compel the Minority to accept only a two-year period during which the Member may not apply for reinstatement.

The Minority is of the view that section 12 of the *MOA* must be amended to read:

12. The Member agrees and undertakes that upon ratification of this *MOA* by the Discipline Committee, he shall not apply to the College for reinstatement and for a new certificate of qualification and registration for a period of ten years from the date of the ratification of this *MOA*.

The Minority believes that is not in the public interest to not include in this matter of such reprehensible conduct a penalty that includes a lengthier period during which the member is prohibited from applying for reinstatement. Such a penalty would serve to meet the objectives of specific deterrence to the Member as well as the objectives of general deterrence, i.e., a clear message to deter members of the profession from engaging in similar conduct.

Date: February 25, 2005

Marilyn A. Laframboise
Chair, Discipline Panel

