

**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 Gerald Jacob Trutwin, a member of the Ontario College of Teachers.

PANEL: Danny Anckle, Chair
 Rosemary Fontaine
 John Wells

BETWEEN:)	
	)	David Leonard,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -)	
	)	David Bloom,
	)	Cavalluzzo Hayes Shilton McIntyre
	)	& Cornish
GERALD JACOB TRUTWIN	)	for Gerald Jacob Trutwin
(CERTIFICATE #160167))	
)	
	)	Chris Wirth,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
)	
	)	Heard: December 6, 2007

REASONS FOR DECISION, DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on December 6, 2007 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated May 17, 2005, was served on Gerald Jacob Trutwin, requesting his attendance before the Discipline Committee of the Ontario College of Teachers on June 7, 2005 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for December 6, 2007. Gerald Jacob Trutwin was in attendance at the hearing.

THE ALLEGATIONS

The allegations against Gerald Jacob Trutwin in the *Notice of Hearing*, (*Exhibit 1*) dated May 17, 2005, are as follows:

IT IS ALLEGED that Gerald Jacob Trutwin is guilty of professional misconduct as defined in sections 30(2) and/or incompetent as defined in section 30(3) 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, and/or emotionally, contrary to Ontario Regulation 437/97, subsection 1(7);
- (c) he failed to comply with the *Act* and the *Education Act*, Revised Statutes of Ontario, 1990, chapter E.2, and specifically section 264(1)(c) thereof or the Regulations made under those Acts, contrary to Ontario Regulation 437/97, subsections 1(14) and (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 displayed a lack of knowledge, skill or judgment and/or a disregard for the welfare of students of a nature or extent that demonstrates that the Member is either unfit to carry out his professional responsibilities or that the Member's certificate should be made subject to terms, conditions or limitations.

At the hearing on December 6, 2007, College counsel sought to withdraw the following allegations of professional misconduct contained in the *Notice of Hearing* with respect to breaches of Ontario Regulation 437/97, subsections 1(7), 1(14), 1(15), 1(18) and subsection 30(3) of the *Act*. The Committee agrees that these allegations shall be withdrawn.

AGREED STATEMENT OF FACTS

Counsel for the College advised the Committee that an agreement had been reached on the facts and introduced an *Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty (ASF – Exhibit 2)*.

The Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty provides as follows:

1. Gerald Jacob Trutwin, (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 Hamilton-Wentworth District School Board (“the Board”) as a Grade [■] teacher at [■] (“the School”), in Stoney Creek, Ontario.
3. In early February of the 2003/2004 academic year, the Member used inappropriate, unnecessary and unacceptable force in dealing with three [■] students in his Grade [■] classroom.
4. On February 18, 2004, the Member was charged with 4 counts of assault, contrary to the provisions of Section 266 of the *Criminal Code of Canada*, by Hamilton Police.
5. On January 31, 2005, before the Honourable Mr. Justice N. Bennett, the Member, on consent with the Crown, entered into a peace bond, requiring the Member to have no contact, direct or indirect, with certain students and to not attend at the School, except with prior notice being given by him to the School’s front office. Mr. Justice Bennett ordered that the Member keep the peace and be of good behaviour for a period of 12 months upon the terms set out by the Crown, including the no contact provisions hereinbefore referred to. Following the entering into of the peace bond described above, the charges against the Member were withdrawn.
6. The Member is currently teaching adult education classes at the Board.

PLEA OF NO CONTEST

7. 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 6 above (the “Admitted Facts”). The Member hereby acknowledges that his conduct as

described in paragraph 3 of the Admitted Facts, constitutes 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 (19).

8. 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 Admitted Facts and the exhibits above referred to being presented to the Discipline Committee;
 - (c) he understands that by pleading no contest to the allegations referred to in paragraph 3 above, he is waiving the right to require the College to prove the case against him and the right to have a hearing; and
 - (d) he states that this plea of no contest was made voluntarily, unequivocally and with the benefit of independent legal counsel.
9. 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, c. 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.

JOINT SUBMISSION ON PENALTY

10. In light of the Admitted Facts and circumstances, 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) requires the Member to appear before the Committee to be reprimanded, with the fact of the reprimand to be recorded on the Register;

(b) directs the Registrar of the Ontario College of Teachers to impose the following terms, conditions or limitations on the Member's certificate of qualification and registration, the fact of such terms, conditions and limitations to be recorded on the Register until such time as they are fulfilled:

i. prior to commencing employment in a teaching position involving children under the age of 18 years:

a) the Member will notify the Registrar in writing that he has accepted such a position and the start date;

b) if possible, prior to commencing employment in the position described in (i) above, but in any event no later than 60 days after commencing such employment, the Member must enrol in and complete, at his own expense, a course of instruction, approved in advance by the Registrar, in classroom management;

c) if possible, prior to commencing employment in the position described in (i) above, but in any event no later than 60 days after commencing such employment, the Member must enrol in and complete, at his own expense, a course of instruction, approved in advance by the Registrar, in anger management;

d) thereafter the Member will provide to the Registrar the first two performance reviews completed in respect of the employment in the teaching position described in (i) above;

ii) the Member shall deliver directly to the Registrar proof of the successful completion of the courses referred to at (b)(i)(b) and (b)(i)(c) above, within thirty (30) days of the completion of each respective course; and

(c) directs 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.

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 *Agreed Statement of Facts, Plea of No Contest 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 Gerald Jacob Trutwin committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5) and 1(19), as set out in the *Notice of Hearing*.

REASONS FOR DECISION

The Member pleaded no contest and acknowledged that his conduct as described in paragraph 3 (the “Admitted Facts”) of the *Agreed Statement of Facts, Plea of No Contest, and Joint Submission on Penalty* (ASF - Exhibit 2) constitute professional misconduct.

The Committee finds that the Member used inappropriate, unnecessary and unacceptable force. By this conduct, the Member failed to comply with the standards of the profession, Ontario Regulation 437/97 subsection 1(5), and engaged in acts that are conduct unbecoming a member, subsection 1(19).

PENALTY DECISION

The Committee accepts the joint submission on penalty and makes the following orders as to penalty:

1. The Member is required to appear before the Committee to be reprimanded, with the fact of the reprimand to be recorded on the Register;
2. The Registrar of the Ontario College of Teachers is directed to impose the following terms, conditions or limitations on the Member’s certificate of qualification and registration, the fact of such terms, conditions and limitations to be recorded on the Register until such time as they are fulfilled:
 - (i) prior to commencing employment in a teaching position involving children under the age of 18 years:

- a. the Member will notify the Registrar in writing that he has accepted such a position and the start date;
 - b. if possible, prior to commencing employment in the position described in (i) above, but in any event no later than 60 days after commencing such employment, the Member must enroll in and complete, at his own expense, a course of instruction, approved in advance by the Registrar, in classroom management;
 - c. if possible, prior to commencing employment in the position described in (i) above, but in any event no later than 60 days after commencing such employment, the Member must enroll in and complete, at his own expense, a course of instruction, approved in advance by the Registrar, in anger management;
 - d. thereafter the Member will provide to the Registrar the first two performance reviews completed in respect of the employment in the teaching position described in (i) above;
- (ii) the Member shall deliver directly to the Registrar proof of the successful completion of the courses referred to at 2(i)(b) and 2(i)(c) above, within thirty (30) days of the completion of each respective course; and

- (c) directs 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.

REASONS FOR PENALTY DECISION

The Committee is assured that the Member is not presently nor will he be teaching students under the age of 18 years in the immediate future.

The Committee is satisfied that the successful completion of the classroom management and anger management courses, pre-approved by the Registrar, will serve to remediate the Member and is an important step that will assist him, should he consider returning to teaching students under the age of 18 years. These conditions that must be fulfilled, along with the requirement to provide the Registrar with the first two performance reviews completed in respect of employment in the teaching position described, serves to protect these students.

The reprimand by his peers in respect of these actions serves as a specific deterrent to the Member. Publication of the findings and order of the Committee, in summary, with the name of the Member, in *Professionally Speaking/Pour parler profession*, serves as a specific deterrent to the Member and as a general deterrent to the profession, sending a message that such physical contact with students is professional misconduct.

Furthermore, the publication of the Member's name and the conditions placed on his Certificate demonstrates transparency and serves to promote public confidence in the profession. Publication in *Professionally Speaking/Pour parler profession* and on the Register informs the public of these conditions.

The Committee is satisfied that the penalty is appropriate in the circumstances and it serves and protects the public interest.

Date: December 6, 2007

Danny Anckle
Chair, Discipline Panel

Rosemary Fontaine
Member, Discipline Panel

John Wells
Member, Discipline Panel