

**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 Duke Ernest C. Young, a member of the Ontario College of Teachers.

PANEL: Anne Vinet-Roy, Chair
Amin Saab
Jacques Tremblay

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| BETWEEN: |) | |
| |) | Brian Wasyliw, |
| |) | McCarthy Tétrault LLP, |
| |) | for Ontario College of Teachers, |
| ONTARIO COLLEGE OF TEACHERS |) | assisted by Trevor Evans, |
| |) | Senior Law Clerk |
| - and - |) | |
| |) | Michael Figol, |
| Duke Ernest C. Young |) | for Duke Ernest C. Young |
| (CERTIFICATE # 131504 |) | |
| |) | Christopher Wirth |
| |) | Stockwoods LLP, |
| |) | Independent Legal Counsel |
| |) | |
| |) | Heard: February 8, 2006 |

REASONS FOR DECISION, DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (“the Committee”) on February 8, 2006 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing (Exhibit 1)*, dated April 18, 2005 was served on Duke Ernest C. Young, requesting attendance before the Discipline Committee of the Ontario College of Teachers on May 2, 2005 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for February 8, 2006.

The Member was in attendance at the hearing.

The Allegations

The allegations against Duke Ernest C. Young (“the Member”) in the *Notice of Hearing* are as follows:

IT IS ALLEGED that Duke Ernest C. Young is guilty of professional misconduct as defined in subsections 30(2) and 40 (1.1) of the *Ontario College of Teachers Act* (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 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 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);

- (e) he contravened a law, the contravention of which has caused students under the Member's professional supervision to be put at or to remain at risk contrary to Ontario Regulation 437/97, subsection 1(17);
- (f) 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);
- (g) he engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19); and
- (h) he engaged in sexual abuse of a student or students of a nature defined in sections 1 and 40 (1.1) of the *Act*.

PARTICULARS OF THESE ALLEGATIONS ARE AS FOLLOWS:

1. Duke Ernest C. Young (the "Member") was at all material times a member of the Ontario College of Teachers.
2. Between the approximate dates of January 1974 and 30 June 2000, the Member was employed by the Toronto District School Board ("the Board") as an elementary teacher.
3. For several years prior to his retirement from the Board at the end of the 1999-2000 academic year, the Member was a teacher at [XXX] School ("[XXX] School").
4. On or about 15 May 2000, the Member advised the Board of his retirement from the Board with effect from 30 June 2000.
5. On or about 25 August 2000, [XXX], whose date of birth is [XXX], was a female student of [XXX], Toronto, the premises of which are adjacent to those of [XXX] School, which she had attended for grades [XXX] and [XXX].
6. The Member had been [XXX] [XXX] while she attended [XXX] School and was the [XXX] which was independent of the Board. [XXX] was a member of the [XXX].

7. During the approximate period between February 2000 and 25 August 2000, the Member acted inappropriately towards [XXX] in that he:

- (a) picked her up from her home to [XXX];
- (b) communicated with her on a frequent basis by telephone, e-mail and instant messaging on the Internet;
- (c) took her on [XXX];
- (d) accompanied her on [XXX]; and
- (e) fostered a relationship with her which was outside the boundaries of that of a teacher or coach and student.

8. On or about 25 August 2000, the Member attended at the home of [XXX] at approximately 7:00 a.m. and went for a [XXX] with her. They returned to her home at approximately 8:30 a.m. that morning.

9. Shortly thereafter, [XXX]'s mother left the home to go to work, and while she was away, the Member entered the bedroom of [XXX]

10. When [XXX]'s mother returned home unexpectedly at around noon that day, the Member and [XXX] were on the floor of [XXX]'s bedroom. The Member's body was over that of [XXX] At that time, the Member was engaged in tickling, touching and kissing [XXX]

11. On or about 28 May 2002, the Member was found guilty of a charge that he, on or about 25 August 2000, in the City of Toronto, being in a position of trust or authority towards [XXX], a young person, did for a sexual purpose touch directly the body of [XXX], a young person, with parts of his body to wit his mouth and hands, contrary to the *Criminal Code* (Canada).

12. The Member has not appealed the finding of guilt.

13. On or about 12 June 2002, the Member was given a suspended sentence and was placed on probation for a period of twelve months. He was also ordered to [XXX].

14. The Member appealed the sentence referred to in paragraph 13 above, but abandoned the appeal on or about 17 March 2005.

Publication Ban

On February 8, 2006, the Committee made an order that there be no publication of any information that may disclose the identity of the victim involved in this matter.

Member's Plea

The Member pleaded guilty to the allegations set out in the *Notice of Hearing*.

The Evidence

Counsel for the College entered into evidence the following additional documents:

Registered Member Information (Exhibit 2)

Duke Ernest C. Young is a member of the Ontario College of Teachers as shown on the *Registered Member Information*.

Brief of Court Documents – Her Majesty the Queen v. Duke Young (Exhibit 3)

A *Brief of Court Documents* (“*Brief*”) with respect to the criminal proceedings against the Member was submitted into evidence. This *Brief* consisted of:

- A. Certified copy of *Information* sworn 26 August 2000
- B. Certified copy of Probation Order dated 12 June 2002

- C. Superior Court of Justice – Notice of Appeal re sentence only, dated 10 July 2002, and endorsement re abandonment of appeal dated 17 March 2005
- D. Transcript of Evidence of [XXX] at trial – 18 March 2002
- E. Transcript of Evidence of [XXX] at trial (voir dire) – 18 March 2002
- F. Transcript of Evidence of [XXX] at trial – 19 March 2002
- G. Transcript of Evidence of Duke Young at trial – Examination in chief – 19 March 2002
- H. Transcript of Evidence of Duke Young at trial – Cross Examination – 28 May 2002
- I. Transcript of Reasons for Judgment of the Honourable Madam Justice R. Shamai dated 28 May 2002
- J. Transcript of the Proceedings at Sentencing before the Honourable Madam Justice R. Shamai dated 12 June 2002.

The evidence presented in the Court Documents confirms that on or about 28 May 2002, the Member was found guilty of a charge that he, on or about 25 August 2000, in the City of Toronto, being in a position of trust or authority towards [XXX], a young person, did for a sexual purpose touch directly the body of [XXX], a young person, with parts of his body to wit his mouth and hands, contrary to the *Criminal Code* (Canada). (*Exhibit 4, Tab A*).

On or about 12 June 2002, the Member was given a suspended sentence and was placed on probation for a period of twelve months. He was also ordered to [XXX].

The Member appealed the sentence but abandoned the appeal on or about March 17, 2005. (*Brief, Tab C, p.10*)

Decision

(i) Onus and Standard of Proof

The College bears the onus of proving the allegations in accordance with the standard of proof with which the Committee is familiar as set out in *Re Bernstein and College of Physicians and Surgeons of Ontario* (1977) 15 O.R. (2d) 477. The standard of proof applied by the Committee, in accordance with the *Bernstein* decision, was a balance of probabilities with the qualification that the proof must be clear and convincing and based upon cogent evidence accepted by the Committee. The Committee also recognized that the more serious the allegation to be proved, the more cogent must be the evidence. The Committee viewed the allegations in this case to be quite serious.

(ii) Decision

Having considered the evidence and onus and standard of proof, and based on the guilty plea, 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 Duke Ernest C. Young committed acts of professional misconduct as alleged, more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(7), 1(14), 1(15), 1(16), 1(17), 1(18), 1(19) and that he engaged in sexual abuse of a student of a nature defined in sections 1 and 40 (1.1) of the *Act*.

Reasons for Decision

It is uncontested that on or about 28 May 2002, the Member was found guilty of a charge that he, on or about 25 August 2000, while in a position of trust or authority towards [XXX], a young person, directly touched the body of [XXX] for a sexual purpose, with parts of his body, i.e. his mouth and hands, contrary to the *Criminal Code* (Canada).
(*Exhibit 3, Tab A*)

It is also uncontested that on or about 12 June 2002, the Member was given a suspended sentence and was placed on probation for a period of twelve months. He was also ordered to [XXX]. (*Exhibit 3, Tabs A & B*)

Rule 13.05 and 13.06 of the *Rules of Procedure of the Discipline Committee of the Ontario College of Teachers* states as follows:

13.05 Proof of Prior Conviction or Discharge

13.05(1) Proof that a person has, in proceedings before a court in Canada, been convicted or discharged of an offence following a finding of guilt is proof, in the absence of evidence to the contrary, that the offence was committed by the person, if:

- (a) no appeal of the conviction or discharge was taken and the time for an appeal has expired; or
- (b) an appeal of the conviction or discharge was taken but dismissed or abandoned and no further appeal is available.

13.05(2) Sub-rule (1) applies whether or not the convicted or discharged person is a party to the proceeding.

13.05(3) A certificate of conviction or discharge or certified copy of a Court Information meeting the requirements of sub-section 22.1(3) of the *Evidence Act* (Ontario) shall be accepted by the Discipline Committee as proof that the person was convicted or discharged of the offence for purposes of sub-rule (1).

13.06 Findings of Fact in Prior Proceedings

13.06(1) Where a certificate of conviction or discharge or certified copy of a Court Information has been admitted in evidence under sub-rule 13.05(3), the Discipline Committee shall also admit as ancillary to the certificate of conviction or discharge or certified copy of a Court Information the specific findings of fact contained in the court's reasons for judgment or reasons for sentence, which findings of fact are proof, in the absence of evidence to the contrary, of the facts so found.

The Member appealed the sentence but abandoned the appeal on or about March 17, 2005. (*Brief, Tab C, p. 10*)

Having no evidence to the contrary, the Committee accepts as proof that, the Member was found guilty of a charge that he, on or about 25 August 2000, while in a position of trust or authority towards [XXX], a young person, directly touched the body of [XXX] for a sexual purpose, with parts of his body, i.e. his mouth and hands, contrary to the *Criminal Code* (Canada). (*Exhibit 3, Tab A*)

The Committee finds the Member's conviction of sexual exploitation constitutes acts of professional misconduct as alleged, more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(7), 1(14), 1(15), 1(16), 1(17), 1(18), 1(19) and he engaged in sexual abuse of a student or students of a nature defined in sections 1 and 40 (1.1) of the *Act*.

Although the evidence presented showed that the Member had no prior criminal record, the Committee found the Member's actions to be unbecoming of a member of the profession. Having been a teacher for many years, the Member was well aware of Board policies and boundaries that should be maintained between students and teachers and

knew that this type of behaviour could harm [XXX] and her family. The Member also recognized that he had betrayed the trust he had built up with [XXX] and her family over a [XXX].

The Committee also considered the many times the Member was alone with [XXX] and the frequent and various ways that the Member communicated with [XXX] to be inappropriate, i.e frequent e-mails and instant messaging. He fostered a relationship with [XXX] outside the boundaries of teacher [XXX] and student, by going on [XXX] and accompanying her on [XXX].

Penalty

Counsel for the College submitted that the appropriate penalty be as follows:

1. revocation of the Member's certificate of qualification and registration; and
2. publication of the findings of the Discipline Committee, with the name of the Member in *Professionally Speaking/Pour parler profession*.

Counsel for the Member did not make any submissions with respect to what would be an appropriate penalty. He did however ask the Committee to consider the fact that the judge at the criminal proceedings had difficulty deciding whether or not there was sexual intent on the part of the Member.

Penalty Decision

The Committee makes the following order as to penalty:

1. The Registrar of the Ontario College of Teachers is directed to revoke the Member's certificate of qualification and registration, which the Member is to surrender immediately to the Registrar.
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, including the Member's name, in the official publication of the College, *Professionally Speaking/Pour parler profession*.

Reasons for Penalty Decision

In light of the fact that the Member admitted the allegations of professional misconduct set out in the *Notice of Hearing*, and was convicted of sexual exploitation, the Committee determined that the appropriate penalty was revocation of the Member's certificate of qualification and registration as well as publication of the findings and order of the Committee, with the name of the Member, in *Professionally Speaking/Pour parler profession*.

Revocation is appropriate to demonstrate that the Member's conduct is unacceptable in the eyes of the profession and of the public. This penalty also serves to protect the reputation of the profession in the minds of the public. Publication of the Committee's order is necessary as a general deterrent to guide members of the profession as to what is acceptable conduct between teachers and students.

The Committee is satisfied that this decision serves and protects the public interest.

Dated: February 8, 2006

Anne Vinet-Roy
Chair, Discipline Panel

Amin Saab
Member, Discipline Panel

Jacques Tremblay
Member, Discipline Panel