



## **REASONS FOR DECISION, DECISION AND ORDERS**

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on November 2, 2009 and June 8, 2010 at the Ontario College of Teachers (“the College”) at Toronto.

At the commencement of the hearing on November 2, 2009, the Discipline Committee panel consisted of three members: Mr. Favero, Ms. Lévesque and Mr. Tremblay. For reasons beyond her control, Ms. Lévesque was unable to continue serving as a panel member. Subsection 4.4 (1) of the *Statutory Powers Procedure Act* clearly states: “If a member of a tribunal who has participated in a hearing becomes unable, for any reason, to complete the hearing or to participate in the decision, the remaining member or members may complete the hearing and give a decision.”

In accordance with this section, the Committee therefore decided to continue this hearing with a panel consisting of two members, Mr. Favero and Mr. Tremblay, as of June 8, 2010.

A *Notice of Hearing*, dated April 21, 2009, was served on [XXX] requesting his attendance before the Discipline Committee of the Ontario College of Teachers on April 29, 2009 to set a date for a hearing. Because Mr. [XXX] was not present at the meeting to set a date for the hearing and was not represented by legal counsel, the Committee did not meet. The hearing was subsequently set for November 2, 2009.

At the hearing on November 2, 2009, the College produced a letter from the Member’s legal counsel, Thomas C. Barber, dated October 6, 2009 (Exhibit 2). The letter stated that Mr. [XXX] was aware that the hearing would take place in early November, that he was aware of his right to

attend at the hearing and that he had also chosen not to be present. The letter stated that Mr. Barber had discussed the penalty and the facts with Mr. [XXX], who did not contest a penalty of revocation.

In light of this evidence, the Committee commenced the hearing on November 2, 2009 at 2:40 p.m., in Mr. [XXX]'s absence.

## **ALLEGATIONS**

The allegations against [XXX] in the *Notice of Hearing* (Exhibit 1), dated April 21, 2009, are as follows:

**IT IS ALLEGED** that Mr. [XXX] is guilty of professional misconduct as defined in sections 30(2) and 40(1.1) 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 physically, sexually, verbally, psychologically or emotionally, contrary to Ontario Regulation 437/97, subsection 1(7);
- (c) he failed to supervise adequately a person who was under the professional supervision of the Member, contrary to Ontario Regulation 437/97, subsection 1(11);
- (d) he failed to comply with the *Act* and the *Education Act*, Revised Statutes of Ontario, 1990, chapter E.2, and specifically the Regulations made under those Acts, contrary to Ontario Regulation 437/97, subsections 1(14) and (15);

- (e) he contravened a law if the contravention was relevant to the Member's suitability to hold a certificate of qualification and registration, contrary to Ontario Regulation 437/97, subsection 1(16);
- (f) he contravened a law if the contravention caused or may cause a student who was under the Member's professional supervision to be put at or to remain at risk, contrary to Ontario Regulation 437/97, subsection 1(17);
- (g) 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);
- (h) he engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19);
- (i) he abused a student sexually, as described in sections 1 and 40 (1.1) of the *Act*.

**PARTICULARS OF THE ALLEGATIONS:**

1. Mr. [XXX] is a member of the College in good standing.
2. At all material times, the Member was employed by the Conseil des écoles publiques de l'Est de l'Ontario (the "Board") as a teacher and [XXX].
3. During the 2007-2008 school year, the Member taught at [XXX] (the "School") in Ottawa.
4. During the 2007-2008 school year, A. was a [XXX]-year-old student at the School.
5. During the 2007-2008 school year, the Member acted inappropriately and contravened the standards of the teaching profession, in that:
  - (a) he exchanged email of a sexual nature with A., a [XXX]-year-old student and member of the School's [XXX];

- (b) in February 2008, he purchased alcohol for the students who were members of the School's [XXX];
  - (c) between April and May 2008, for a sexual purpose, he touched A.'s body with his lips and hands;
  - (d) between April and May 2008, for a sexual purpose, he touched A.'s body with his penis;
  - (e) accordingly, he contravened a legislative provision relative to the Member's suitability to hold a certificate of qualification and registration, causing a student who was under the Member's professional supervision to be put at risk.
6. On June 12, 2008, the Member was charged with committing the following offences against A.:
- (a) sexual assault (s. 271 of the *Criminal Code*);
  - (b) sexual exploitation (s. 153(1.1) of the *Criminal Code*).
7. On January 8, 2009, the Member entered a plea of guilty with respect to the offence of sexual exploitation (s. 153(1.1) of the *Criminal Code*).

### **ORDER RESTRICTING PUBLICATION**

An order restricting publication was made on July 10, 2009, pursuant to section 486.4 of the *Criminal Code of Canada*, during the deliberations of the Ontario Court of Justice. The Committee is required to comply with and uphold the order restricting publication made by the Ontario Court of Justice in *Her Majesty the Queen v. [XXX]*, which prohibits the publication of any information that could identify the student involved.

In the case before us, the Court directed that the definition of the publication of any information included the name of the Member, the name of the School, the names of the witnesses and any other particular that could identify the victim by means of the community or her friends.

## **PLEA OF NOT GUILTY**

Given that the Member was not present at the hearing and was not represented by legal counsel, the Committee proceeded on the assumption that the Member denied the allegations set out in the *Notice of Hearing*. On the Member's behalf and in the Member's absence, the Chair entered a plea of not guilty to the allegations.

## **EVIDENCE**

Counsel for the College produced in evidence a *Brief of Court Documents – Her Majesty the Queen v. [XXX]* (Exhibit 3) concerning the criminal proceedings brought against the Member.

The Brief contained sections in English and French. It contained the following documents listed in English in the Table of Contents:

- A. *Information against [XXX] dated June 12, 2008*
- B. *Recognizance of Bail dated June 12, 2008*
- C. Privileged Information
- D. *Probation Order and checklist dated July 15, 2009*
- E. *Transcript of Plea of Guilt dated January 8, 2009*
- F. *Transcript of Proceedings at Sentencing Hearing dated July 10, 2009*
- G. *Transcript of Reasons for Sentence of the Honourable Justice R. Lavoie dated July 15, 2009*
- H. *Transcript of Publication Decision dated June 12, 2008*

Following the submission by Counsel for the College, who drew the Panel's attention to certain sections, and the reading of this document, the Panel members noted some pertinent items.

Exhibit 3, Tab A refers to the indictment, which confirms that on June 12, 2008 in Ottawa, during the 2007-2008 school year, the Member was charged with touching a student for a sexual purpose with a part of his body while he was in a position of trust or authority towards her, contrary to sections 153(1.1) (sexual exploitation) and 271 (sexual assault) of the *Criminal Code of Canada*. On January 8, 2009, the Member entered a plea of guilty to the offence of sexual exploitation, and was found guilty of committing this offence. After the sentence had been handed down, the judge withdrew the other allegation at the request of the parties (Exhibit 3, Tab G).

The Committee took note of the following items from Exhibit 3, Tab G concerning the Member's sentence on July 10, 2009:

- A. A sentence of 12 months of incarceration;
- B. Three years of probation upon completion of the order;
- C. An order to refrain from direct or indirect contact with the victim, or any member of her family and not to come within 300 metres of the victim's residence or place of work;
- D. Privileged information.

## **DECISION**

### **(i) Burden of Proof and Standard of Proof**

The College is responsible for providing the allegations pursuant to the standard of civil proof; i.e., the preponderance of probabilities by means of clear and convincing evidence.

### **(ii) Decision**

Having examined the Exhibits filed, and based on the evidence produced and the submissions made by Counsel for the College, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that [XXX] is guilty of professional misconduct, being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(7 – physical, sexual, psychological or emotional abuse), 1(11), 1(14), 1(15), 1(16), 1(17), 1(18 – disgraceful, dishonourable or unprofessional act or omission) and 1(19). The Committee further finds that the Member abused a student sexually, as described in sections 1 and 40 (1.1) of the *Act*.

## **REASONS FOR DECISION**

Pursuant to Rules 13.05 and 13.06 of the Discipline Committee's Rules of Procedure, the Committee admits in evidence that a person has, in proceedings before a court in Canada, been convicted of an offence following a finding of guilt, in the absence of evidence to the contrary and if no appeal of the conviction was granted.

The fact that the Member was convicted of the sexual exploitation of one of his students constitutes misconduct as set out in the decision.

The Member initiated this inappropriate interaction with the student by sending graphic emails that revealed his intentions towards, and plans for, the student. Intimate situations developed gradually at various times in various locations. The progression, or “grooming,” began with emails, [XXX] activities with the student, followed by asking for a kiss and culminating in a sexual relationship.

## **PENALTY**

### **Submission by Counsel for the College**

Counsel for the College recommended that the Member’s Certificate be revoked. In his submission, he emphasized the fact that in the letter from the Counsel for the Member (Exhibit 2), the Member does not contest the revocation. With respect to publication, Counsel for the College submitted that the summary in *Pour parler profession/Professionally Speaking* not include the Member’s name or any other information that could identify the Member so as to comply with an order restricting publication that was made on July 10, 2009, pursuant to section 486.4 of the *Criminal Code of Canada*, during the deliberations of the Ontario Court of Justice. Counsel for the College explained that pursuant to the *Act*, the Committee was required to comply with and uphold the order restricting publication made by the Ontario Court of Justice in *Her Majesty the Queen v. [XXX]*, which prohibits the publication of any information that could identify the student involved.

### **Independent Legal Counsel**

In his advice to the panel, the Independent Legal Counsel emphasized the need to comply with the order restricting publication that was made during the deliberations of the Ontario Court of Justice.

## **PENALTY DECISION**

The Discipline Committee makes the following order:

1. The Committee directs the College Registrar to revoke the Member's Certificate of Qualification and Registration;
2. In accordance with paragraph 3 of subsection 30(5) of the *Act*, the Committee directs that a summary of the finding and Order of the Committee be published, excluding the name of the Member, in *Pour parler profession/Professionally Speaking*, the official publication of the College.

## **REASONS FOR PENALTY DECISION**

The Committee considers the Member's actions to be a serious violation of trust. Neither the teaching profession nor the public accepts or tolerates, as a member of the teaching profession, a person who sexually abuses a student. The position of trust enjoyed by the Member towards the student is an aggravating circumstance in this case.

The Committee is satisfied that revocation is appropriate in this case in view of the seriousness of the Member's actions, his criminal conviction and the need to protect students. The Member has cast discredit on the teaching profession through his actions, particularly by abusing the public's trust in the profession.

With respect to publication, the Committee agrees that the summary should be published in *Pour parler profession/Professionally Speaking*, the official publication of the College. The Committee accepted the recommendations against the publication of the Member's name.

In such cases of abuse, the Committee generally directs that the Member's name be published but, in this case, it accepts the order made by the Ontario Court of Justice, because publishing the Member's name would make it very easy to identify the student involved. Publishing the summary will act as a deterrent for the teaching profession in general and will show clearly that grave misconduct on the part of a member will result in the severest of penalties: revocation.

Date: October 13, 2010

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Dean Favero, OCT  
Chair, Discipline Panel

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Jacques Tremblay, OCT  
Member, Discipline Panel