

**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  
Manuel De Jesus Zarate Crespín, also known as Manuel Zarate, a  
member of the Ontario College of Teachers.

PANEL:            Bernard J. Adam, Chair  
                      Janet Cornwall  
                      Hilda Watkins

BETWEEN:	)	
	)	
	)	L. Thomas Forbes, Q.C.,
	)	McCarthy Tétrault,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -	)	
	)	
MANUEL DE JESUS ZARATE CRESPIÑ,	)	
ALSO KNOWN AS MANUEL ZARATE	)	Manuel De Jesus Zarate Crespín,
(CERTIFICATE # 439327)	)	also known as Manuel Zarate ,
	)	was not present, nor was he
	)	represented
	)	
	)	Nancy Spies,
	)	Stockwoods,
	)	Independent Legal Counsel
	)	
	)	Heard: June 9, 2004

**REASONS FOR DECISION, DECISION AND ORDER(S)**

This matter came on for hearing before a panel of the Discipline Committee (the  
“Committee”) on June 9, 2004 at the Ontario College of Teachers at Toronto.

Manuel De Jesus Zarate Crespin, also known as Manuel Zarate (the “Member”) was not in attendance at the hearing.

The College tendered an Affidavit of Service (Exhibit 1), which confirmed that the *Notice of Hearing* had been served on the Member. The *Notice of Hearing* required the Member to attend before the Discipline Committee on October 29, 2003 to set a date for hearing. As set out in the *Affidavit of Audley Trevor Evans*, Senior Law Clerk (“Affidavit of Evans”), (Exhibit 2), the Member did not appear on October 29, 2003 and the hearing date was set for June 9, 2004.

As stated in the Affidavit of Evans, Mr. Evans, on behalf of the College, subsequently wrote to the Member, care of his criminal counsel, advising him of the date of the hearing. Mr. Evans then spoke with the Member by telephone on two separate occasions where the Member acknowledged receipt of the documents sent by Mr. Evans. The Member also acknowledged that he was aware of the date for the hearing and that the date was satisfactory to him.

Accordingly, the Committee was satisfied that the Member knew that the hearing would proceed on this date. The hearing was scheduled to commence at 9:30 am. The hearing commenced at 1:50 p.m. The Member had still not appeared and accordingly, the Committee proceeded in the Member’s absence.

### The Allegations

The allegations against Manuel De Jesus Zarate Crespin, also known as Manuel Zarate in the *Notice of Hearing* are as follows:

**IT IS ALLEGED** that Manuel De Jesus Zarate Crespin, also known as Manuel Zarate is guilty of professional misconduct as defined in sections 30(2) and 40(1.1) of the *Ontario College of Teachers Act* (“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 or the *Education Act*, Revised Statutes of Ontario, 1990, Chapter E. 2 and specifically section 264 (1) (c) thereof, and the Regulations made under those Acts, contrary to Ontario Regulation 437/97, subsections 1 (14) and (15);
- (d) he contravened laws relevant to his suitability to hold a certificate of qualification and registration, contrary to Ontario Regulation 437/97, subsection 1 (16);
- (e) he performed an act or 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);

- (f) he engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19); and
- (g) 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. Manuel De Jesus Zarate Crespín, also known as Manuel Zarate, (the “Member”), is a member of the Ontario College of Teachers.
2. At all material times, the Member was employed by the Halton District School Board as a secondary school teacher at a District High School.
3. At all material times, A, whose date of birth is [XXX], was a [XXX] female student attending a senior public school in the Peel District School Board.
4. Commencing in or about January 2002, the Member, who posed on the Internet as an eighteen year old male, communicated with A, who was then [XXX] of age, via Internet chat rooms and via e-mail for the purpose of meeting A face to face.
5. On or around 17 January 2002, the Member, who then resided in Toronto, arranged to meet A in Mississauga.
6. On or around 18 January 2002, the Member met A as arranged and then drove her to a motel in Mississauga, where he engaged in unlawful sexual intercourse with her, thereby committing a sexual assault on A.
7. On or about 30 July 2003, the Member was found guilty of unlawfully sexually assaulting A, contrary to section 271 of the Criminal Code of Canada. The court has imposed a publication ban in respect of the identity of A.

8. The Member is to be sentenced on or about 30 September 2003.
9. The aforesaid criminal charge is public knowledge through media coverage of the aforesaid events involving the Member.
10. The aforesaid activity and the publicity resulting from the said media coverage and communication within the general public has resulted in a reputation, image and lifestyle which is inconsistent with that expected of a member, and which may prevent the Member from discharging the duty of the Member to the public, the students and his employer.

#### **Publication Ban**

On June 9, 2004 the Discipline Committee made an order that there be no publication of any information that may disclose the identity of the student involved in this matter.

#### **Member's Plea**

The Committee proceeded on the basis that the Member denied the allegations set out in the *Notice of Hearing*. The Chair, on behalf of the Member, entered a plea of not guilty to the allegations.

#### **The Evidence**

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

*Registered Member Information* (Exhibit 3)

Manuel De Jesus Zarate Crespin, also known as Manuel Zarate is a member of the Ontario College of Teachers as shown on the *Registered Member Information*.

Brief of Court Documents – Regina v. Manuel Zarate (Exhibit 4)

A *Brief of Court Documents* with respect to the criminal proceedings against Manuel Zarate was submitted as evidence (Exhibit 4). This brief consisted of:

- A. Certified copy of *Information* sworn May 9, 2002.
- B. Transcript of *Reasons for Judgment* before the Honourable Mr. Justice W. Sharpe on July 30, 2003 – Ontario Court of Justice.
- C. Transcript of *Proceedings at Sentence* of Honourable Mr. Justice W. Sharpe on October 8, 2003 – Ontario Court of Justice.

The Member was represented by Counsel at trial.

The *Brief of Court Documents* outline the following evidence:

Student A was [XXX] years of age (born [XXX]) and a virgin at the time of the offence.

She was a [XXX] student.

The Member was a high school teacher and 33 years of age at the time of the offence.

Student A and the Member met on line in an MSN Chat Room. The Student told the Member that she was [XXX] years of age and a virgin. The Member lied about his age stating that he was 18 years of age.

They subsequently met and had sexual intercourse at a hotel in Mississauga on or about January 18, 2002.

On or about July 30, 2003, the Member was found guilty of unlawfully sexually assaulting A, contrary to section 271 of the *Criminal Code* (Canada).

On or about October 8, 2003, the Member was sentenced to 12 months in jail and ordered to [XXX], as this was a primary designative offence. The Member will now [XXX].

Brief of Media Reports (Exhibit 5)

This document contains 3 newspaper articles from the Globe & Mail, National Post and Toronto Star and one radio report on the 680 News All News Radio website. These articles report on the criminal proceedings, including the conviction and sentencing with respect to the Member. This media coverage was on both the local and national level.

**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 considered the allegations in this case to be very serious.

**(ii) Decision**

Having considered the evidence and onus and standard of proof, and based on 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 Manuel De Jesus Zarate Crespín, also known as Manuel Zarate, 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(18) and 1(19) and 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 the Member was charged in May 2002 and convicted on or about July 30, 2003 of sexual assault on Student A, a [XXX]-year old girl, contrary to section 271 of the *Criminal Code* (Canada). This assault occurred on January 18, 2002. The Member was sentenced on October 8, 2003 to 12 months in jail.

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

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 no appeal of the conviction or discharge was taken and the time for an appeal has expired.

The Member has not appealed the conviction or sentence within the prescribed time limits. (Affidavit of Evans, Exhibit 2)

Having no evidence to the contrary, the Committee accepts the proof of prior conviction as described in the *Brief of Court Documents* (Exhibit 4) and finds that the Member did commit a sexual assault on Student A and that his actions constitute professional misconduct. As such, the Committee also finds that the Member engaged in sexual abuse of a student of a nature defined in sections 1 and 40 (1.1) of the Act.

Section 32.02 of the By-laws of the Ontario College of Teachers confirms that members of the College in their position of trust and influence must “maintain professional relationships with students”, “recognize and respect the privileged nature of the relationship that teachers maintain with students”, and “act with integrity, honesty, fairness and dignity”. The Committee finds that the Member breached these standards of the profession and accordingly breached section 264 (1) (c) of the *Education Act* and Ontario Regulation 437/7, subsection 1(5), 1(14) and 1(15) by sexually assaulting Student A and lying to her about his age.

The Committee also finds that the Member abused Student A sexually contrary to Ontario Regulation 437/97, subsection 1(7) and 1(18) and as such engaged in conduct that would reasonably be regarded by members as disgraceful, dishonourable and unprofessional.

The Committee finds that by sexual assaulting a [XXX]-year old, the Member contravened laws relevant to his suitability to hold a certificate of qualification and registration, contrary to Ontario Regulation 437/97, subsection 1(16) and engaged in

conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19).

### **Penalty**

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

1. revocation of the Member's certificate of qualification and registration;
2. imposition of a five year time limit within which the Member may not apply for reinstatement; and
3. publication of the findings of the Committee, with the name of the Member in *Professionally Speaking/Pour parler profession*.

### **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(7) of the *Ontario College of Teachers Act*, the Member may not apply for reinstatement for a period of at least ten years following the date of this order.
3. Pursuant to Section 30 (5) (iii) 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 the *Reasons for Judgment* (Exhibit 4 B), Mr. Justice Sharpe found that the Member admitted that he lied about his age to the Student, telling her that he was 18 years of age and that he was unmarried, while in fact he was 33 years old and married. The judge also found that the Member failed to take all reasonable steps to establish the Student's age. The judge found that Student A gave her evidence in a straightforward manner and the court believed her when she said she told the Member she was [XXX] years of age. The Member denied that Student A told him she was [XXX] years of age.

The judge who conducted the criminal trial found that the Member, in giving his evidence, was "evasive and convoluted". As such he rejected the Member's evidence.

The Member's behaviour is that of a sexual predator. He deliberately lured a young girl, under the age of consent, into a compromising situation whereby he sexually assaulted her. The Student was a virgin at the time of the assault. Subsequently a [XXX] was made. The sexual assault committed by the Member is a primary designated offence.

The Member pleaded not guilty to the charge of sexual assault, as was his right. However, in so doing, a young girl was required to testify in open court. At the criminal trial itself, the Member admitted to having had sexual intercourse with Student A.

The media coverage of this case was substantial, locally and nationally, resulting in a reputation, image and lifestyle which is inconsistent with that expected of a member and contrary to the ethical standards and standards of practice for the teaching profession.

The penalty must meet the objective of general deterrence to the members of the profession and the objective of specific deterrence to the Member. Accordingly, the Committee was satisfied that revocation of the Member's certificate of qualification and registration is the appropriate penalty.

Section 33 (4) of the *Ontario College of Teachers Act* specifies that an application for reinstatement following revocation shall not be made earlier than one year from the date of the order. This is of grave concern to the Committee due to the extent that there was a criminal conviction, a jail term and a [XXX]. The Member is [XXX]. For these reasons, the Committee concluded that Manuel De Jesus Zarate Crespin, also known as Manuel Zarate may not apply for reinstatement for a period of 10 years.

Date: July 30, 2004

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Bernard J. Adam  
Chair, Discipline Panel

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Janet Cornwall  
Member, Discipline Panel

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Hilda Watkins  
Member, Discipline Panel