

ONTARIO COLLEGE OF TEACHERS

DISCIPLINE COMMITTEE

REASONS FOR DECISIONS AND ORDERS

IN THE MATTER OF ONTARIO COLLEGE OF TEACHERS ACT, 1996, and the Regulation (Ontario Regulation 437/97) thereunder:

AND IN THE MATTER OF discipline proceedings against JL.

The Discipline Committee held a hearing on April 2, 2001,

BETWEEN:

ONTARIO COLLEGE OF TEACHERS

- and -

JL
CERTIFICATE #263258

PRESENT:

Members of the Panel
Mark Lefebvre (Chair)
Bernard J. Adam
Solette N. Gelberg

The Honourable Patrick Galligan, Independent Counsel to the Panel

L. Thomas Forbes, Q.C., McCarthy Tétrault, Counsel for the Ontario College of Teachers,
assisted by Trevor Evans, Senior Law Clerk

The member was not present, nor was he represented.

A Notice of Hearing, dated November 20, 2000 was served on JL, requesting attendance before the Discipline Committee of the Ontario College of Teachers on December 14, 2000 to set a date for hearing, and specifying the charges. The hearing date was eventually set for April 2, 2001.

It is alleged that JL is guilty of professional misconduct 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 comply with the *Education Act*, Revised Statutes of Ontario, 1990, chapter E.2 and particularly section 264(1)(c) thereof or the Regulations made thereunder, contrary to Ontario Regulation 437/97, subsection 1(15);
- (d) he performed an act or acts that, having regard to all of 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 judgement 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.

The Notice of Hearing states that JL is a member of the Ontario College of Teachers and therefore comes under the jurisdiction of the Ontario College of Teachers (Exhibit #1).

On April 2, 2001, the Discipline Committee of the Ontario College of Teachers conducted a hearing into whether JL was guilty of professional misconduct.

JL was not in attendance at the hearing, nor was he represented by counsel. Proof of service of the Notice of Hearing was presented and accepted by the panel.

EVIDENCE:

Counsel for the Ontario College of Teachers referred to the charges set out in Exhibit #1, alleging that JL is guilty of professional misconduct in that his acts were contrary to the Professional Misconduct Regulation made under the *Ontario College of Teachers Act* and filed as Regulation 437/97 on December 4, 1997, in particular, subsections 1 (5), (7), (15), (18) and (19). JL was also alleged to have displayed a lack of knowledge, skill or judgement 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.

Particulars of the alleged misconduct are set out in Exhibit #1 and are to the effect that:

1. JL is a member of the Ontario College of Teachers.

2. At all material times, the member was employed by the Ottawa-Carleton Catholic District School Board as a teacher.
3. On or between September 1997, commencing in the first semester of the 1997-1998 school year, and March 1999, while he was a teacher at a high school in Ottawa, the member acted inappropriately in respect of a student, whose date of birth is [XXX], a student at the high school, who was in grade [XXX] during the 1997-1998 school year and grade [XXX] during the 1998-1999 school year.
4. The inappropriate actions of the member towards the student included:
 - (a) becoming over-familiar with the said student;
 - (b) meeting with her outside of school hours on at least ten occasions at various locations such as his apartment, outside the beer store near the student's home, in his car, and on the [XXX];
 - (c) being observed in an automobile on the [XXX] with the student while she attempted to conceal herself from view;
 - (d) taking her for drives in his car, including taking her on a trip to Carleton Place, Ontario for ice cream;
 - (e) giving the student his home or cellular telephone number so that she could call him;
 - (f) hugging the student and accepting hugs and kisses from the student and touching her face while she was hugging him; and
 - (g) giving the student a gift certificate for a day at a beauty spa and two Leonard Cohen tapes.

5. By letter dated March 26, 1999, the principal of the high school advised the member that until the alleged situation involving the student and himself had been resolved, he was being sent home with pay and he was to have no contact of any sort with the said student pending the outcome of the investigation.
6. Following a meeting of the Board on or about July 2, 1999, as a result of concerns about his relationship with the student, the member was advised that he would be suspended without pay for the first semester of the 1999-2000 school year, would be required to undertake a program of professional counselling prior to his return to teaching duties with the Board, and would be required to submit evidence, acceptable to the Board, of his fitness to continue his teaching career prior to his return to teaching duties. However, following grievance proceedings, the suspension was reduced to a half-semester suspension terminating on November 15, 1999, at which time the member was reinstated as a teacher, conditional on his undertaking a program of professional counselling.

Counsel presented evidence that JL is a member of the Ontario College of Teachers (Exhibit #1). At all material times, JL was employed by the Ontario-Carleton Catholic District School Board as a teacher.

The Committee heard evidence from three witnesses that JL engaged in an inappropriate relationship with a [XXX] year-old student in [XXX].

Dr. Miriam Kaufman, Medical Director of the Complex Adolescent Problem Program and Staff Physician at the Division of Adolescent Medicine at the Hospital for Sick Children, and former Medical Director for Adolescent Sexual Assault at the Hospital for Sick Children, was accepted as an expert witness by the Committee and gave opinion evidence in her area of expertise. Dr. Kaufman stated that it was totally age-appropriate behaviour for a student to have a crush on a teacher. Dr. Kaufman believed that the progression of the member's behaviour toward the student was consistent with 'grooming behaviour', which she considered the early stage of an abusive relationship. According to Dr. Kaufman's analysis of the situation, as illustrated by the mother approaching the member concerning her daughter's relationship with the member, and JL agreeing not to see the student again yet continuing to do so, the member's actions were consistent with 'grooming' the student. However, this particular situation did not end in a sexual relationship. Dr. Kaufman further stated that the student might very well become more vulnerable to abuse in the future because she had become comfortable with her experience of 'grooming behavior'.

James McCracken, Deputy Director of the Ottawa-Carleton Catholic School Board testified that witnesses told the principal of the school that they had seen the student getting into the teacher's car. The principal requested confirmation. Consequently, the member was suspended with pay and an investigation that included the Children's Aid Society, the police, and the Board was undertaken. James McCracken stated that considerable debate was carried out by the Board concerning what action to take in this matter. Legal counsel advised the Board that a decision to terminate the member's employment would not be upheld in arbitration. Therefore, the member was suspended with, then without, pay.

James McCracken testified that he felt that the arbitrator's decision (Exhibit #5), in which the Board's full semester suspension of the member for his conduct was reduced to a one-half semester suspension, showed that the arbitrator considered this to be like 'any other situation in the workplace.' James McCracken added that during the course of the member's relationship with the student, the member moved to an area within [XXX] of where the student lived. The member did not express any contrition concerning this matter to the Board, and the Board had offered, and the student had undergone some psychiatric counselling at the Board's expense.

Dr. Mary Louise Arnold, Associate Professor of the Department of Human Development and Applied Psychology at the University of Toronto, was accepted by the Committee as an expert witness and offered opinion evidence within her area of expertise. Dr. Arnold testified that her examination of the circumstances concerning the member and the student led her to believe, based on available information, that JL had clear knowledge of the student's infatuation for him as evidenced by his admission that he "must distance himself" and "not be available" to the student when the student's mother approached JL to inform him of her daughter's infatuation with him. Dr. Arnold also conjectured that a typical adolescent would interpret a drive to buy ice cream as a "date". According to Dr. Arnold, JL's purchase of tapes and a gift certificate to a health spa were "enticing and compelling" to the student and an effort to keep the student "on the hook for further intentions" from the member, which may have possibly escalated to a full fledged sexual relationship.

FINDINGS OF FACT:

An Agreed Statement of Facts was filed as Exhibit #2. That statement, dated March 16, 2001, was signed by the member and College counsel. The panel accepted the Agreed Statement of Facts, which states the following:

- (1) JL is a member of the Ontario College of Teachers.
- (2) At all material times, the member was employed by the Ottawa-Carleton Catholic District School Board as a teacher at the high school.
- (3) During the 1997-1998 school year, the student, whose date of birth is [XXX], was a female grade [XXX] student at the school.
- (4) During the first semester of the 1997-1998 school year, the member [XXX] [XXX] to the student, who was then [XXX] years old, during the [XXX] [XXX] of each day. At that time, the student had general problems at school and at home. She was not enjoying school and was not getting along with other students.
- (5) The member, who was approximately 27 years old at that time, and the student would stay after school one or two times per week to discuss the matters referred to in paragraph 4 above. These discussions continued in the second semester of the 1997-1998 school year, even though the member was no longer the [XXX]. The student would go to see him if there was something she wanted to talk about.
- (6) Around the end of the 1997-1998 school year, the student's mother, who was aware of the relationship between the student and the member, met with the member and told him that she felt that the student was infatuated with him.

- The member told the mother that he should, under those circumstances, distance himself from the student.
- (7) During the 1998-1999 school year, the [XXX]. The discussions concerning matters referred to in paragraph 4 above continued during the 1998-1999 school year.
 - (8) Towards the end of the first semester of the 1998-1999 school year, the student, who was then [XXX] years old, was being asked by other students why she and the member were meeting so often. As a result, the student arranged with the member to pick her up in his car in front of a store close to her home, or from the parking lot of [XXX]. They would go for short drives to the Ottawa River where they would sit in his car and talk. The member would then drop her off near her home. Six or seven such episodes took place.
 - (9) The nature of the discussions were always the same and were with respect to her family, other students and difficulties she was experiencing at school.
 - (10) On one of the occasions referred to in paragraph 7 above, the member took the student for a drive to Carleton Place, near Ottawa, where he bought her an ice cream. On other occasions, the member gave the student a gift certificate to a health spa, as well as two Leonard Cohen tapes that she had told the member she enjoyed.
 - (11) On two or three occasions, other than those referred to in paragraph 7 above, the member invited the student to his apartment where they stayed for approximately 45 minutes. The member and the student sat at his kitchen counter and talked about everyday things. The member also prepared grilled cheese sandwiches for the student and showed her his paintings.

- (12) On some of the occasions referred to in paragraphs 7 and 10 above, the student hugged and, at times, kissed the member on the cheek when leaving his car. The student had the feeling that the member did not feel comfortable with what she was doing and he never reciprocated other than to pat her on the cheek on one occasion. There was no other physical contact between them. However, when the student told the member that one of her classmates had enquired as to why she was going to another school campus, the member told her that she should not worry until she saw him "being led away in handcuffs." Consequently, the student formed the impression that her meetings with the member were somehow illegal.
- (13) On discussing the student's [XXX] birthday, the member said that he would put glow-in-the-dark stars on his living room ceiling for her as that was something she had always wanted. He also told her, without being specific, that he would do something that involved the five senses.
- (14) These matters became known in March 1999, when the student was observed ducking down in the front seat of the member's car on one occasion when he picked her up at the [XXX] of a nearby [XXX]. The student was confronted by the principal and after initially making a denial, recounted the whole matter. She was then questioned by the Sexual Assault and Child Abuse division of the Ottawa-Carleton Police and again described the events as set out above, with respect to the member.
- (15) The member was suspended from his employment with the Ottawa-Carleton Catholic District School Board for the 1999-2000 school year. The member brought grievance proceedings and an arbitration was conducted before M. Brian Keller, sole arbitrator, on September 1, 1999 and October 18, 1999. The student gave evidence at

the arbitration hearing. Her accounts to the police and at the arbitration were consistent. The arbitrator limited the suspension to 10 weeks. The reasons of M. Brian Keller were made available to the Committee (Exhibit #5).

- (16) The member, JL, accepts that the matters referred to in the preceding paragraphs constitute professional misconduct and pleads guilty to the allegations of professional misconduct set out in the Notice of Hearing, in particular breaches of Ontario Regulation 437/97, subsections 1(5), (7), (15), (18), and (19).
- (17) In light of the admitted facts and circumstances, the Ontario College of Teachers and the member submit and ask that the Discipline Committee find the member guilty of professional misconduct.

The Committee accepted the Agreed Statement of Facts agreed to by the member as witnessed in Exhibit #2.

Prior to the Committee rendering its final decision, Brian Rogers, legal counsel for the Ottawa Citizen, requested standing at the hearing and after consultation with independent counsel, was allowed to present his client's concerns regarding the publication ban ordered by the Committee.

DECISIONS AND ORDERS:

The Committee weighed the evidence provided by the witnesses, and based on all the evidence and the exhibits filed, the Committee finds JL guilty of professional misconduct under subsections 1 (5), (7), (15), (18); and (19) of the Professional Misconduct Regulation, as alleged, and directs the Registrar to revoke JL's Certificate of Qualification and Registration immediately.

The Committee deliberated on the information provided by College counsel and Brian Rogers regarding the jurisdiction of the College to order a publication ban.

After further weighing the additional information presented by counsel for the Ottawa Citizen, Counsel for the Ontario College of Teachers and by Independent Counsel, the Committee is of the opinion that anything other than a publication ban on the name of the teacher, the student and the school in this particular case, would identify the student who was the subject of the allegations. The Discipline Committee believes that it has the authority, under section 32 (7) of the *Ontario College of Teachers Act*, to order such a publication ban.

Therefore, the Committee orders that only two initials be used to identify the member, and that the name of student and the name of the school not be published in order to protect the identify of the student in this case.

Notice

It is important to the College's role in the governance of the profession to provide evidence to members that the College is active in self-regulation and is vigilant to breaches of its bylaws and rules of conduct. Such evidence is provided through notification of the decisions and orders of the College's disciplinary Committees, and is, in the opinion of the panel, a practice that has significant general deterrent value.

Pursuant to Section 30(5)(iii) of the Ontario College of Teachers Act, the Committee orders that the findings of this hearing be published in the official publication of the Ontario College of Teachers.

**DATED AT TORONTO, THIS 7th DAY OF MAY, 2001
BY ORDER OF THE DISCIPLINE COMMITTEE**

Mark Lefebvre, **Chair**

Bernard J. Adam

Solette N. Gelberg