

**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
Frederick Paul Fromm, a member of the Ontario College of
Teachers.

PANEL: Ted Coulson, Chair
Normand Fortin
Dick Malowney

BETWEEN:)	
)	
	)	Caroline Zayid & Eric Block
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Jennifer Robinson
- and –)	
)	
FREDERICK PAUL FROMM	)	Frederick Paul Fromm,
(CERTIFICATE #236026)	)	on his own behalf
)	
	)	Christopher Wirth
	)	Stockwoods LLP,
	)	Independent Legal Counsel
)	
	)	Heard: January 25, 26 & 27, 2005,
	)	April 17, 18 & 19, 2007 and May 1,
	)	2, 3, 8 and June 12 & 13, 2007

REASONS FOR DECISION, DECISION AND ORDERS

This matter came before a panel of the Discipline Committee (“the Committee”) for a hearing on January 25, 26 and 27, 2005, April 17, 18 and 19, 2007 and May 1, 2, 3, 8, and June 12 and 13, 2007 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated August 23, 2003 was served on Frederick Paul Fromm (the “Member”), requesting attendance before the Discipline Committee of the College on September 17, 2003 to set a date for a hearing, and specifying the charges. The hearing was subsequently scheduled to begin on January 25, 2005. The *Notice of Hearing* was subsequently amended on August 11, 2006 and served on the Member.

Frederick Paul Fromm was in attendance at the hearing.

THE ALLEGATIONS

The additions to the Notice of Hearing as amended are underlined. The allegations against the Member in the *Amended Notice of Hearing* dated August 11, 2006 (Exhibit 45) are as follows:

IT IS ALLEGED that Frederick Paul Fromm is guilty of professional misconduct as defined in section 30 (2) and/or is incompetent as defined in section 30 (3) of the *Ontario College of Teachers Act, 1996* (the “Act”), in that he failed to:

- (a) strive at all times to achieve and maintain the highest degree of professional competence and to uphold the honour, dignity and ethical standards of the teaching profession contrary to section 13 of the *Regulation Made Under the Teaching Profession Act*, made pursuant to section 12 of the *Teaching Profession Act*, R.S.O. 1970, c. T. 2, R.S.O. 1980, chapter 495, and R.S.O. 1990, c. T. 2, as amended (the “TPA Regulation”);
- (b) regard as his first duty the effective education of his pupils and the maintenance of a high degree of professional competence in his teaching contrary to section 14(a) of the *TPA Regulation*;

- (c) show consistent justice and consideration in all his relations with pupils contrary to section 14(d) of the *TPA Regulation*;
- (d) concern himself with the welfare of his pupils while they were under his care contrary to section 14(f) of the *TPA Regulation*; and
- (e) comply with section 264(1)(c) of the *Education Act*.

AND IT IS FURTHER ALLEGED that Frederick Paul Fromm is guilty of professional misconduct as defined in section 30 (2) and/or is incompetent as defined in section 30 (3) of 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 failed to comply with the Act and the Education Act, Revised Statutes of Ontario, 1990, Chapter E. 2 and particularly section 264 (1) (c) thereof, and the regulations made under those Acts, contrary to Ontario Regulation 437/97, subsections 1 (14) and (15);
- (c) 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);
- (d) he engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1 (19);
- (e) he practised the profession while in a conflict of interest, contrary to Ontario Regulation 437/97, subsection 1 (26); 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.

PARTICULARS OF THESE ALLEGATIONS ARE AS FOLLOWS:

1. Frederick Paul Fromm, (the "Member"), is a member of the Ontario College of Teachers and at all material times held an Ontario Teacher's Certificate and as such, is subject to the jurisdiction of the Ontario College of Teachers.
2. The Member was employed by the Peel District School Board ("the Board"), from 1974 and taught English at Applewood Heights Secondary School until 1993, when he was assigned to the Britannia Adult Education Centre.
3. The Member's employment was terminated by the Board, pursuant to a resolution dated February 26, 1997.
4. During the term of his employment by the Board, the Member engaged in the following activities:
 - a. in 1979, the Member co-founded and was research director for Citizens for Foreign Aid Reform Inc. (C-FAR), an organization which espouses beliefs and values contrary to the principles of multiculturalism and tolerance. C-FAR publishes the "Canadian Population and Immigration Quarterly Report", which publication contains a section entitled "Crime Watch". This publication suggests that crime and social problems are a consequence of admitting into Canada visible minorities as immigrants or refugees;

- b. in 1981, the Member co-founded the Canadian Association for Free Expression (CAFE), an organization which espouses beliefs and values contrary to the principles of multiculturalism and tolerance;
- c. on March 11, 1989, the Member addressed a crowd of about 60 persons at a speaking engagement sponsored by C-FAR. The Member's speech discussed the "threat to our rights and freedoms from multiculturalism";
- d. in March 1989, the Member attended a public meeting of the Toronto Mayor's Committee on Community and Race Relations. While at the meeting, the Member associated with 'skinhead' supporters, one of whom yelled out to the chair of the meeting, Mr. Rose, when he was not allowed to speak - "You're a dead man Gerry Rose";
- e. on December 8, 1990, the Member participated in a Martyr's Day Rally sponsored by the Heritage Front in conjunction with C-FAR. The room in which this event took place was decorated with various racist and supremacist flags. The keynote speaker, who was applauded by the Member, ended his speech with the Nazi salute and the words "White Power";
- f. at the Martyr's Day Rally referred to in paragraph (e) above, the Member spoke in support of John Ross Taylor, describing Mr. Taylor as a "hero" and stating that Mr. Taylor had been persecuted and that " 'we' are up against an army of occupation where the majority have no rights." Earlier, in 1979, the Federal Human Rights Commission had found John Ross Taylor in breach of federal human rights legislation on the ground that his answering machine communicated anti-Semitic messages likely to promote hatred of a group. Ignoring the ruling and recording additional messages, Mr. Taylor was then charged with contempt, was convicted and incarcerated;

- g. on April 9, 1991, the Member attended a meeting held by The Heritage Front to celebrate Hitler's birthday;
- h. on September 5, 1991, the Member spoke at a meeting organized by the Heritage Front and billed as an "Open Forum on Canada's Immigration Policy" at which he gave a speech referring to persons claiming refugee status under The Immigration Act as "hordes of criminals, scam artists and welfare collectors". The Member also claimed that government employment equity goals constitute "anti-white discrimination", and referred to government advertisements as "outright racist discrimination";
- i. on September 24, 1991, the Member attended the Toronto Mayor's Committee on Community and Race Relations. When an anti-racist activist, Mr. Rodney Bobiwash, spoke of the need to curb racist organizations, the Member said "Scalp him";
- j. on November 7, 1992, in a speech at the Imperial Inn in Victoria, the Member attacked Canada's refugee program and multiculturalism policy;
- k. on November 19, 1994, the Member participated in the 1994 Revilo P. Oliver Memorial Symposium in Urbana, Illinois, organized by the National Alliance, a white supremacist organization run by William Pierce, a former member of the American Nazi party, at which symposium Mr. Oliver, a recognized racist, was honoured. At this event, the Member:
 - i. shared the stage with David Duke, a former head of the Ku Klux Klan in the United States of America;
 - ii. publicly described Mr. Oliver as a "giant in his field" and as a "man greatly admired";

- iii. stated publicly that if “...certain things are not done, then the inevitable fate will be as predicted in many of his writings; that we will see the extinction of European man on this continent, and we will gradually slide into complete degeneracy, and after that we will be subsumed by whichever of the envious other groups that happens to be strongest at the time”;
 - iv. stated publicly that “...we find ourselves today confronted by a ruling class that having abandoned the best of our civilization is now prepared to fall for the most incredible nonsense – for the most preposterous ideas; for instance, the idea of a multicultural, multiracial society as being one that will work”, and further, that the multicultural, multiracial experiment has resulted in a “great loss of personal liberty” and that the “entire experiment has been a complete failure”;
 - v. publicly commended “the wise men among our forefathers ... like the ones who headed the Asiatic Exclusion League”; and
 - vi. cited, with approval, a passage from Mr. Oliver’s work referring to an “oleaginous Jew” and a “sleazy Jew”;
- l. the Member organized the March 1996 British Columbia Second Canadian Free Speech Symposium in Surrey, British Columbia, and at that symposium, consorted publicly with known racists, speaking publicly about their right to make racist statements; and
- m. during the time period referred to above, associated with individuals who are racist and who promote web sites, newsletters and promote and sell books that are racist.

5. The Member knew or ought to have known that in espousing racist ideology and publicly stating, by word and action, beliefs and values contrary to the principles of multiculturalism and tolerance inherent in and fundamental to his employment with the Board and his responsibilities as a member of the Ontario College of Teachers, he placed himself in a position of conflict of interest.
6. From as early as 1991, the Member received warnings and reprimands that his conduct indicated a clear disrespect for the principles of multiculturalism and ethno cultural equity. Despite such notice that his behaviour was unacceptable to and in contravention of the fundamental values of the education system and the Board and should cease, the Member persisted in his participation in and attendance at conferences and meetings sponsored by individuals and organizations openly supportive of white supremacist and anti-Semitic views and policies.
7. By his public actions and statements, the Member failed to inculcate, by precept and example, respect for religion and the principles of Judaeo-Christian morality and the highest regard for truth, justice, loyalty, love of country, humanity, benevolence, sobriety, industry, frugality, purity, temperance and all other virtues.
8. The activities by the Member referred to in paragraph 4 above are public knowledge through media coverage thereof. The publicity resulting from the said media coverage and communication within both the general public and the school community has resulted in a reputation and image inconsistent with that expected of a Member.

ORDER EXCLUDING WITNESSES

On January 25, 2005 the Committee made an order excluding witnesses from the hearing, until called to give evidence.

MEMBER'S PLEA

The Member denied the allegations set out in the Amended Notice of Hearing.

OVERVIEW

In the opening statement, the College stated that this was not the typical case that comes before a Discipline Committee. The Committee was being asked to make a statement about the fundamental values of the teaching profession in Ontario, specifically about off-duty conduct on the part of the teacher and allegations about conduct that took place outside the classroom and outside the school. The College did not allege that the Member did not teach his classes properly and indeed the Committee heard that his teaching evaluations were satisfactory. As such, the question that the Committee was faced with was, can a person, who is engaged in the specific off-duty conduct that the Member was involved in, be a teacher in the first place?

The College submitted that in fact the Committee was not being asked to chart new ground in this case and in the *Malcolm Ross* case, the Supreme Court of Canada had already addressed this very issue. The Supreme Court of Canada said:

“It is on the basis of the position of trust and influence that we hold the teacher to high standards, both on and off duty, and it is an erosion of these standards that may lead to a loss in the community of confidence in the public school system.”

Ross v. New Brunswick School District No. 15, [1996] 1 S.C.R. 825 at para. 45

The Court went on to say:

“I do not wish to be understood as advocating an approach that subjects the entire lives of teachers to inordinate scrutiny on the basis of more onerous moral standards of behaviour. This could lead to a substantial invasion of the privacy rights and fundamental freedoms of teachers. However, where a “poisoned” environment within the school system is traceable to the off-duty conduct of a teacher, that is likely to produce a corresponding loss of confidence in the teacher and the system as a whole, then the off-duty conduct of the teacher is relevant.”

Ross, supra, at para 45

The College takes the position that the off-duty conduct of the Member is relevant because of the impact it had and was likely to have on the confidence of the public in the Member as a teacher and in the system as a whole if he was permitted to continue as a teacher in that system.

The College stressed the unique importance of the teaching profession and in light of that importance, a teacher who engaged in that kind of activity should not be allowed to continue in that profession. Further, the conduct was not a single incident, but the conduct consisted of a number of activities over an extended period of time.

The College referenced activities of the Member personally and through his organizations that he founded such as Citizens for Foreign Aid Reform (C-FAR) and the Canadian Association for Free Expression (CAFE), wherein the Member alleged that multiculturalism is doing damage to our society. He made appearances at events organized by the Heritage Front, a Martyrs’ Day Rally, a celebration of Adolph Hitler’s birthday; made public

comments concerning a native Canadian speaker at the 1989 Mayor's Committee meeting; attended, organized and spoke at certain other events involving white supremacists or similar organizations.

The College affirmed that citizens do have freedom of speech guaranteed in the Charter and that the Member can say what he likes provided it is within the law. But that doesn't mean, necessarily, that he can also be a teacher when he says those things. There are limits on freedom of speech that a teacher can engage in (as noted in *Ross, supra*, at para 45) and still play the very important role that our society requires with respect to teachers.

The College suggested that comments and criticisms about Canada's refugee and immigration system can be appropriate. When these comments are presented at an event with racist and white supremacists and you make clear that you are a common cause with those people, then you are sending a message that is very different. This is an important part of how the public will understand that off-duty conduct.

The College presented evidence about the large amount of media coverage there was about the Member's activities and about the negative effect of his activities and the surrounding publicity on the school and on the Board where the Member worked. Evidence presented showed that these events had a very significant effect on teachers and students at the school. It also had expected and predictable effects on student participation in the school system.

The Committee was asked to determine whether or not a teacher, who engages in the activities such as those of the Member, can do the job that the public expects of a teacher in

Ontario. As a consequence of such activities, can that person continue to be a teacher and continue to be a member of the Ontario College of Teachers?

The Member submitted that this case will determine whether or not teachers can be involved in expressing their political or religious views on their own time outside the classroom. The Member indicated there is a wide range of political activity that could offend somebody somewhere and the Committee will be called upon to make a decision whether a political activity by a teacher on his own time, outside the classroom, not using the classroom as a pulpit for his own views, if that is an activity that should be censored. In other words, will a teacher be able to be politically active?

The Member contended that his case was superficially similar to *Malcolm Ross*, in that Malcolm Ross also wrote booklets, books, wrote letters to the editor and made statements outside the classroom and was never accused of making statements inside the classroom. In *Ross'* case, the Supreme Court of Canada found that his activities outside the classroom had created a poisoned environment inside the school. According to the Member, this had not been found in his own situation.

The Member stated that he never sought out publicity. He submitted that from time to time it arose for a brief period and it was embarrassing to him and to his colleagues in the education system. He indicated that this hearing is entirely political and a trial of his views, which were alleged to have brought the teaching profession into disrepute. He pointed out that his views were entirely legal, that he had never been charged under any law in Canada. His views were presented non-violently on his own time and off school property.

EVIDENCE

The Member is a member of the Ontario College of Teachers (Exhibit 7 – Registered Information). At all material times, he was employed by the Peel District School Board.

The College called six witnesses: Sandra Birthelmer (“Birthelmer”), Jeff G. Cowan (“Cowan”), Doreen Johnson (“Johnson”), Susan Both (“Both”), Nora Dewar Allingham (“Allingham”), and Bridget Harrison (“Harrison”).

The College introduced into evidence the following five videotapes that showed some of the public events in which the Member attended and participated.

- CBC Newsmagazine, April 27, 1992 (Exhibit 18)
- Heritage Front Martyr’s Day Rally, December 8, 1990 (Exhibit 19)
- Memorial Symposium for Revilo P. Oliver, Urbana Illinois, November 19, 1994 (Exhibit 34)
- 2nd Canadian Free Speech Conference, Vancouver, BC, March 23, 1996 (Exhibit 35)
- Meet the Heritage Front, Toronto, ON, September 5, 1991 (Exhibit 36)

Evidence of Sandra Birthelmer

Birthelmer, who is a member of the College, held several Supervisory Officer positions with the Peel Board of Education. She first served as field Superintendent, then was appointed as Executive Superintendent of Operations in 1991, responsible for all day-to-day operations and subsequently was appointed in 1995 as Superintendent of the Human Resources portfolio.

She gave evidence that the Peel Board of Education received very high numbers of immigrant students during her time with the Board. The kinds of services that were built revolved around the special needs of students who had English as a second language; who were culturally, racially and ethnically diverse. She indicated in the late 1980's, there were policies developed on multiculturalism, race relations and ethnic cultural equity. She testified that the Board's anti-racism and ethnocultural equity policy (Exhibit 8) was approved by the Board in 1988 and was revised in 1991 and 1993. She also indicated that the Member had been hired by the Board as an English teacher in 1974 and remained with the Board until January 29, 1997 when the Board approved a recommendation to terminate his contract effective the end of August of that year. She also indicated that from her knowledge of the Member's personnel file, that his teaching evaluations over that time were satisfactory.

Birthermer first became aware of the Member in the fall of 1991 as the Member became involved in the Mayor's Committee for Race Relations where he had made some statements that were problematic and had the potential to affect the school system as a whole. She identified a number of newspaper articles that the Board's communications staff collected in relation to the Member's activities (Exhibit 9). She was aware that a meeting was held with the Member and representatives from OSSTF to review the incidents and the appropriateness of the comments made by the Member and to outline what kind of behaviour with respect to those kinds of activities would be acceptable to the Board in the future (Exhibit 10).

Ms Birthermer indicated that subsequently a letter of reprimand was issued. The Member was clearly advised that:

“While we recognize that the occurrence was not physically within the confines of a school and/or classroom, you should have known that your statement would cause outrage, fear, and concern in the perception of our public ...we are informing you that any further occurrences of a like nature may lead to further disciplinary action, which could include dismissal.”
(Exhibit 11)

Birthermer identified a Sunday, April 12, 1992 Toronto Sun article (“Lesson in Hate”), that made references to a Martyrs’ Day Rally held in 1990 at which the Member had spoken (Exhibit 14). The article prompted conversations that Sunday evening between the Director of Education, the Principal of the school, the Superintendent of Schools and herself. They believed that the next morning, school staff as well as the students would understandably have questions of concern related to the article. The Principal did not know what she would be facing in terms of media coverage at the school and possible attempts to exploit students and/or staff in a quest for further information. The decision was made that the Principal would hold an emergency staff meeting in an attempt to inform and prepare the staff and would make herself available to respond to students and staff.

The Superintendent of Human Resources called a meeting involving the Member, OSSTF, the school Principal and Board administration at which time the Member indicated that what had appeared in the newspaper articles was not accurate and indicated that he was not aware of the large swastika banner at the rally. Various other symbols that would be considered racist were also on display. The Member was asked whether there were activities or events of a similar nature that they ought to be aware of and the Member responded “no” and if he thought of any he would let them know.

Birthermer indicated that the Board viewed a nine-minute clip run on the CBC News Magazine show (Exhibit 18) and a videotape of the entire Martyrs' Day Rally (Exhibit 19) that occurred on December 8, 1990. She testified that she found the videotape itself to be reprehensible: *"The speech clips from the rally were very racist. The body language, in terms of the Nazi salutes and the musical background, just really came, for me, to form a picture of something that was very strongly white supremacist and very strongly racist, totally in contravention of any of the values that the Board, at the time, was trying to promote."* Subsequently, the Board decided to take action in the form of severe reprimand that would go into Mr. Fromm's file. At the same time the Board intended to notify the Minister of Education that the Board was requesting a review of the Member's teaching certificate. The Board also intended to ask the Minister to join with the Board in requesting OTF to establish guidelines for the professional conduct of teachers. (Exhibit 20)

Birthermer described the impact on students at the school where the Member was employed. She indicated there were increasing numbers of visits from students in vehicles from jurisdictions not associated with the Peel Board or the school. There were students who were involved in activities at the school who felt that the Member was simply being protected by his colleagues and didn't understand why there were expectations for students around multiculturalism that seemed to them to be different from what was expected from one of their teachers. Further, she felt that there was among teachers some resentment, embarrassment, particularly among the English department and there was a necessity to have an increasing

number of teachers on point duty in the halls around the school. All of that really brought an extreme pressure on both the staff and the students in the school.

Birthermer identified a letter written by the English Department to the editor of the Toronto Sun dated April 22, 1990 where they wanted to “*make clear that Mr. Fromm’s activities and associations outside the school do not reflect the philosophies and actions of the other members of the English department*” (Exhibit 21). Birthermer also identified a memo dated April 24, 1992 also from some members of the English department to the Principal Bridget Harrison (Exhibit 22) that described how Applewood Heights over time had become an increasingly multicultural school and they were extremely proud of the work they were doing and there were a number of initiatives in the school that were endeavouring to really promote the goals, philosophies and values of the policy on multiculturalism and race relations. The members of the department felt somewhat compromised by the activities of the Member with respect to the good work that they felt they were trying to promote and accomplish with their students. She indicated that you always have to be concerned when you have an extremely divisive situation in the department. It means that the energies of the people that are trying to move forward with good work for students are certainly compromised.

The Board sent a letter to the Minister of Education dated May 4, 1992

...“to draw your attention to the activities of Mr. Paul Fromm, a teacher with the Peel Board of Education. Mr. Fromm is also the Research Director for an organization called ‘C-FAR’... “It is the position of the Peel Board of Education that Mr. Fromm’s participation in the ‘Martyrs Day Rally’ was reprehensible and totally unacceptable, particularly in light of the Board’s strong commitment to its policy on multiculturalism and race relations. It is the belief of our Board that Mr. Fromm has jeopardized his trusted position as a teacher and role-model for students. ... We have advised Mr. Fromm that we

would be drawing this situation to your attention in order to allow you to review Mr. Fromm's teaching certificate and take appropriate action under Clause 8-1-M of the Education Act." (Exhibit 23).

As a result of this letter to the Minister, Jeff Cowan ("Cowan") was appointed and was asked to deliver a report within six weeks based on the four terms of reference defined by the Minister.

Birther testified that the Board reviewed Cowan's findings (Exhibit 24). The report identified three additional incidents in 1989, 1990 and 1991, all of which the Board had not been aware. There was disappointment and certainly concern over the number of activities of a similar nature in terms of the Member's involvement that had not been brought to the Board's attention by the Member. The Board came to a determination that it would be better if the Member was not in a position that dealt with younger students and so he was transferred to the Britannia Adult Education Centre (Exhibit 25). The letter stated:

"Moreover, your continued presence at Applewood Heights Secondary School has had an extremely adverse effect on morale among the teachers at that school, particularly the English department. ... "Please be advised that any further incidents of the type described in this letter will probably result in a recommendation that your Teacher's Contract be terminated."

Birther identified the sworn affidavit of Alan Dutton, Executive Director of the Canadian Anti-Racism Education and Research Society (Exhibit 27). The affidavit identified two events in which Mr. Fromm spoke, the Revilo P. Oliver Symposium held November 19, 1994 and the Canadian Free Speech Conference held on March 23, 1996. The Board had been unaware of these events until the receipt of the affidavit.

Birtheimer identified video tapes, speeches and events at Urbana, Illinois, November 19, 1994 (Exhibit 34), Vancouver Conference on March 23, 1996 (Exhibit 35), and Meet The Heritage Front (Exhibit 36) and along with various newspaper clippings that were used in making her recommendation to the Board. The video tapes consistently contained material that was racist in nature, that was very much in favour of white power, that often had derogatory comments with respect to the diversity that exists in our society and the role that people of diversity would play or could play in this society.

Birtheimer submitted that the effect was a very significant one on the Board and the staff. The Board developed policies that it believed were responsive to the multicultural nature of the community and allowed students and the community members to feel that their diversity was valued by the Board. The Board considered the role of the teacher in developing the self-esteem of students, the role of the teacher in developing the value of diversity, the role of the teacher in helping students to understand and to appreciate their own culture, the role of the teacher in terms of developing trust with parents and students and the communities that it served. *“And the conclusion of the Board that given the various involvements of Mr. Fromm that the role of the teacher to which I just referred could not really be carried out in a way that was consistent with what we considered to be professional standards and employee standards with respect to what were the goals and philosophies and aims of the Board.”*

Birtheimer identified the Board report dated January 28, 1997 that recommended the Member be dismissed for cause and be terminated August 31, 1997. (Exhibit 29) The Board approved the recommendation and in a letter dated February 26, 1997, the Member was

advised of his termination for cause (Exhibit 30). OSSTF District 10 filed a grievance on March 5, 1997 on behalf of the Member (Exhibit 31). The grievance proceeded to arbitration and the decision to uphold the termination was rendered on March 8, 2002. The arbitration ruling indicated the following:

“... we have found that notwithstanding the fact that Mr. Fromm was put on notice, he continued to publicly consort with known racists, to publicly make racist comment and to publicly speak in favour of known racists to make racist comment. ... we have found that even though the response of the Peel Board served to limit Mr. Fromm’s freedoms of expression and association under the Charter, this limitation was demonstrably justified in a free and democratic society under section 1 of the Charter” (Exhibit 32, page 86).

The College was informed on March 26, 2002 that the Member had been terminated (Exhibit 33).

Evidence of Jeff Cowan

Jeff Cowan (“Cowan”), a lawyer with the firm Weir Foulds practising primarily in the public law field, gave evidence that he was asked by the Minister of Education in November 1992 to conduct a review concerning a teacher named Paul Fromm with the following terms of reference:

1. To advise and report to the Minister upon whether Paul Fromm has fulfilled his duties as a teacher under ss. 264(1)(a), (b) and (c) of the Education Act, and ss. 20(a), (b), (c) and (e) of Regulation 298.
2. To advise and report to the Minister upon whether Paul Fromm’s conduct is such that a reasonable person would apprehend that he could not afford to the pupils in his classes their right to fair and equal treatment, free from racial and religious discrimination.

3. To advise and report to the Minister upon whether Paul Fromm's presence as a teacher has had an adverse effect on the school community within the jurisdiction of the Peel Board of Education.
4. To advise and report to the Minister upon whether any changes in the laws or practices and procedures respecting the duties of teachers are indicated, and to recommend such changes with a view to improving such laws or practices and procedures.

Cowan reported back to the Minister with recommendations and conclusions based on interviews of a variety of people, representatives or organizations. Cowan emphasized that he did not have subpoena powers, that he sought out people and interviewed them and also spoke to the Member on two occasions. He also reviewed a wide variety of documents, newspapers, articles, submissions, and videos. He also had occasion to meet with some of the students and teachers of the school. He also spoke with administration: principals, vice-principals, Peel Board of Education staff, and others associated with the Peel Board of Education. The conclusions reached by Cowan with respect to the four terms of reference are as follows:

First Term of Reference

Cowan concludes:

Under the Education Act, Mr. Fromm fulfilled his duties as a teacher under ss. 264(1)(a) and (b). However, he did not fulfill his duties under s. 264(1)(c) based on his view "that Mr. Fromm's public activities were inconsistent with the fundamental or "core values" which it is a teacher's duty to "inculcate by precept and example" under this section." (Exhibit 24, p.5).

Second Term of Reference

Cowan concludes:

“There is no direct substantive evidence that Mr. Fromm consciously or actively discriminates against students in his classroom. I believe that a reasonable person, in this case a minority student or parent, would apprehend Mr. Fromm is not committed to the policies respecting ethnocultural equity, multiculturalism and anti-racism that are fundamental to the education system in this province. I agree with the Peel Board’s conclusion that the publicity surrounding Mr. Fromm’s activities undermined parent and student confidence related to their expectations for fair and impartial treatment of students in the classroom.” (Exhibit 24, Page 6).

Third Term of Reference

Cowan concludes:

“In my view, there has been an immediate and ongoing adverse effect from Mr. Fromm’s presence. The media attention has been disruptive. Racial tension increased in the aftermath of the publicity. Mr. Fromm is the subject of inappropriate behaviour and ridicule. Students have been frustrated by the inability of the school authorities to talk directly to them about Mr. Fromm. ... There are divisions among staff members, primarily between those outside the English department and those within the English department. There is an increased burden placed primarily on the English department, whose members bear the obligation of managing a potentially a disruptive force” (Exhibit 24, Page 6 and 7).

Upon receipt of the report, the Peel Board of Education requested the Minister to reopen the investigation and provide a supplementary report containing as much detail as possible concerning two more events. Cowan was asked if his conclusions had changed as a result of these incidents and “my response back to the Minister was that these events occurring when they did, didn’t cause me to change my conclusions.”

Evidence of Doreen Johnson

Johnson, who was the Head of English at the time, described the Applewood School as having 70% of its students from other countries and 40% who did not speak English as a first language. The students were interested in doing well in the world and they had a global conscience. Their parents were supportive. There was a connectedness amongst the staff and students that people would remark upon when they entered the school.

In describing the Member’s impact on the school, she indicated that it increasingly became difficult to act as teachers and to be with students and to know that they were asking questions and looking to you for answers. There was more distress amongst the teachers. The teachers were concerned about their students and they felt that they were in many ways connected to what was happening in the media, that it was always referring to the English department at Applewood Heights. They also were concerned about their colleagues – the general note was of fear and frustration. They felt they were afraid because of the company the Member was in, that those groups had incidents of violence and this was reason to believe that there was just cause to be afraid.

Johnson testified that the letter to the Toronto Sun by the English Department was a collective attempt to express their point of view in terms of who they were and what we were attempting to accomplish with their students. It was not a comment about anyone else (Exhibit 21). The memo to Bridget Harrison was a response to the Peel Board to indicate how they were feeling at this particular time. The members felt that their integrity was challenged by others and they were caught between their professionalism and our humanitarian values (Exhibit 22). As a result of this memorandum, the writers were grieved by the Member under s. 18(1)(b) of the Teaching Profession Act. A resolution was reached between the parties, but the English department members felt vulnerable that they might be grieved again over anything they might say or do connected with the Member. “There were constant reminders that things were not as they should be. The professional activities were not occurring as they would be. Poison is a good word to describe the environment because it was very, very different than what it had been, and it wasn’t a positive environment. You couldn’t predict that good things would happen.” On the basis of the Member’s out of classroom activities, Johnson did not feel Mr. Fromm was able to fulfill his role of a teacher in Ontario.

Evidence of Bridget Harrison

Harrison was Principal of Applewood Heights Secondary School from January 1988 until June 1992 and went on to serve as Operations Officer and Superintendent of Schools for the Peel Board until 1998.

Harrison testified that she knew the Member was a member of the staff and may have even met him before becoming principal at English teacher functions. As Principal, she had the opportunity to review the Member's performance as a classroom teacher and described him as a competent classroom teacher, that he had very good classroom management skills and he certainly knew English literature.

Harrison indicated that in the four and a half years as Principal, she became aware of a number of incidents that seemed to be of increasing seriousness in terms of the attention that Mr. Fromm drew to the school and the degree of turmoil that resulted as a consequence of his activities.

Harrison received a letter from the yearbook editors in October 1990 expressing concern over an article that did not appear in the summer supplement of the school yearbook. The article dealt with a club, the Committee of Active Students and Teachers (CAST) that dealt with things that had to do with racism and multiculturalism in the school. The committee members took a number of initiatives like holding meetings in the school and writing letters to the editor and it was intended to give them a sense of voice in this situation. It was the student editors' suspicion that the Member had edited this out because it dealt with things that had to do with racism and multiculturalism in the school. The Member indicated that he removed the article from the yearbook because in his view the material that they submitted was not well written and up to the same standard as the other material in the yearbook. Because it was the summer supplement, there was not time for him to get back to them to work on it (Exhibit 53).

Harrison received a phone message (Exhibit 54) from a parent, who was in Kitchener, and had indicated that Mr. Fromm had delivered a speech in Guelph after which he was labelled a racist and a Nazi by the audience. The parent wanted to bring to the school's attention that it reflected very badly on the school and he wondered how they could employ such a teacher.

Harrison received, from a parent and/or student, an Op-Ed article, that appeared on August 14, 1990 in the Ottawa Citizen written by Mr. Fromm. In the article, the Member writes that he supports a policy which would limit immigration to the country. Teaching in a school in this time which was largely populated by immigrant students, it caused some concern (Exhibit 54). Clearly, it was a topic of conversation amongst the community. She thanked them for their interest and reassured them that this was a good school for their children.

In September 1991, the Member was alleged to have said "scalp him" at a Toronto Race Relations Committee and it was captured by a CityTV videographer. Harrison became aware of the incident because it brought a great deal of television coverage and played relentlessly on the news. The students became very much aware of the incident as the media appeared at the school to try and get the students to talk to them (Exhibit 9).

Harrison gave evidence that she was in attendance at a Human Resources Review meeting where the Member was asked to provide some history and his interpretation of events. Mr. Weldon, Superintendent of Operations, wanted to make clear to the Member that the board had very clear policies relating to multiculturalism and race relations and to reiterate to the Member the necessity of keeping politics out of the classroom (Exhibit 10). Ms Harrison also

identified the letter of reprimand that was sent to the Member as a result of that meeting (Exhibit 11).

Harrison identified a memo from Ms. Coutts, a guidance counsellor, regarding a student whose parents were requesting a change from the Member's English class because of the articles in the newspaper. The request could not be completed because all other English classes were at their maximum size. It was her policy to speak to the student and reassure them that at any point if they felt uncomfortable they come and see me right away.

Another parent, whose daughter was in the Member's English class, came to see her because he felt that his daughter would not get a fair evaluation in his class. She tried to reassure him that she had no reason to believe that the evaluation would not be fair. Harrison encouraged the family to allow their daughter to remain in the classroom, to hold her ground and to judge for herself. In speaking further with his daughter, her father called the next day to say that she would remain in the class. As it turns out, the student remained in the class and was very successful, receiving a very high mark. Harrison never insisted that a student go back in the class if she felt the student did not have the fortitude and was able to accomplish this. She indicated that she received this kind of request five or six times during her term as principal.

Harrison identified a letter to the editor dated January 24, 1992 that was written by students on behalf of CAST (Exhibit 57). In the letter the students wrote that the school was perceived as a racist organization because of its connection to the Member and his activities at public meetings. The letter was a response by the students who firmly felt the school was none of these things and worked very hard to be the kind of world that we wanted to create.

Harrison conducted an early morning emergency staff meeting as a result of the Sunday Sun article entitled “Teacher Taped at White Power Rally” of April 12, 1992. The meeting provided information about the potential issues that might arise as a result of the media attention and gave direction to the staff on how to deal with student concerns and questions. She advised staff that their first priority was to protect our kids and not to have them exploited and not to have them become the story. The classroom was not to become a forum for discussion and all student questions were to be directed to the principal. At one point, they had about 300 students on the lawn and the media would not be above exploiting kids at all. No staff member was to speak to the media neither on nor off the record and if media were to appear on the property they were to be directed to her. Because there was to be an investigation of these allegations, it was critical that there was to be only one voice for the Board (Exhibit 58). She indicated that the staff exhibited a range of emotions, anger, frustration, but they came together and did a really fine job of handling the situation and provided an excellent model to the students.

Harrison submitted that the students in the school expressed their feelings to the situation in several ways. In an English class, the teacher turned the students to a positive activity of expressing their opinions in a letter to the editor. As expected, a range of opinion about points of view was given (Exhibit 59). On a number of occasions, the students placed posters around the school in a reaction to the media coverage of the Member’s activities (Exhibit 60). Ms Harrison indicated that the staff removed these posters immediately when they were found.

Harrison was asked whether she felt Mr. Fromm's outside activities were consistent with fulfilling all the duties that a school has to its students and her response was, "well, absolutely not. The public persona and the relationships of Mr. Fromm with organizations like the Heritage Front...in the media...like that videotape of him speaking at the Heritage Front is quite sobering...when you see the bands that are singing and the words that they are using and that kind of thing." She went on to say, "it is the responsibility of teachers to be role models for students...the Peel Board and the Ministry of Education had taken on stronger and stronger statements about supporting ethnic education....The Board was developing racial harassment policies along with sexual harassment policies and stuff like that. So there were very clear strategies. So his public persona was more and more clearly in opposition to what the Board and the school stood for from their public policy stand and so it became increasingly alienating to everybody that was involved there."

Under cross-examination by the Member, Mr. Fromm asked Harrison to identify a teacher evaluation report on the Member dated June 23, 1992 (Exhibit 61). She indicated that the evaluation occurred during a time when there was much media attention about the Member and the school. "There are no problems with classroom management and discipline in Paul's classes...Paul makes use of humour in the classroom...Paul also makes contributions to students and staff beyond the classroom. He has been staff advisor to the yearbook for the past 12 years....Paul Fromm is a competent classroom teacher of English. The classes observed were well planned, well organized and well managed."

Harrison indicated that there were no other complaints about the Member in his role as yearbook staff advisor beyond the letter (Exhibit 53). She agreed that the message to the staff advisor, praising the students for the work they've done, was most appropriate. She also stated that the Member continued to act as yearbook staff advisor in the next school year.

Harrison said there was no evidence that students in the Member's English classes were objects of discrimination. Any requests for transfer from the class were specifically based on the publicity surrounding the Member.

Evidence of Susan Both

Both was the Principal of Applewood Heights Secondary School from September 1992 until June 1996. She confirmed that the students were from many countries and the school was very multicultural.

Both noted that she received a letter from a young man who had been a student the previous year asking her to intercede on his behalf with the Ontario Federation of Schools Athletic Associations (OFSAA). He wished to play basketball for the new school but was prevented from doing so because of the transfer rules. His letter indicated he was no longer a pupil at Applewood Heights because he had transferred to another school as a result of his parents concern about what they were hearing about the school and Mr. Fromm.

Both anonymously received a media report entitled "Getting into Canada easy for Gangsters, Toronto teacher says", from the Times-Colonist, dated Sunday, November 8, 1992 in her mail box which described Fromm speaking in western Canada through that weekend. (Exhibit 70)

After the Minister appointed Mr. Cowan to review the incidents involving Mr. Fromm, Both facilitated Cowan's access to staff, students and the community. The contents of the Cowan Report became known amongst the staff and it led some staff to assume that the Member would no longer be a teacher at Applewood. Both testified "that the (Cowan) investigation had shown and had uncovered something that was not appropriate in his (Fromm's) behaviour as a teacher."

The Cowan report was released during March break and a staff meeting was held at 8:00 a.m., Monday morning. Staff was advised of the release of the report and advised to send students to her (Both) if the students had any questions. Both indicated that this was a stressful start to the last term of the school year.

Both gave evidence of flyers, found in the vicinity of the school, protesting against Fromm's activities and presence in the school in the spring of 1993. These flyers were from groups Both didn't recognize but students would bring them into the school. (Exhibit 75) There was a lot of media coverage and she was informed that there was to be a walk-out at the school to protest Mr. Fromm. While the walk-out never materialized, she testified that it brought another level of tension to the school.

The Committee heard evidence in regards to the potential resignation of an outstanding staff member who found it most difficult to work alongside the Member as he continued to espouse positions on immigration in these venues. Ultimately the staff member did not resign but this issue caused angst and emotional turmoil amongst other staff members.

When asked about the effect of Mr. Fromm's public activities and public reputation on the school as a whole, Both indicated that it was a tremendously tense time and she couldn't imagine the emotional cost to some of the people that occurred that school year.

In cross-examination of Both, Mr. Fromm stated that it was only the publicity surrounding his activities and not his actual behaviours that the Board was objecting to. Both responded that she believed "it was the behaviours that caused the publicity that caused the concern that undermines parent confidence ... there is no publicity if there is no event."

Evidence of Nora Dewar Allingham

After hearing submissions by both parties, the Committee determined that Allingham had sufficient skills and expertise to qualify as an expert witness in the area of multiculturalism.

Her personal observations were based on experience over more than 35 years of work as a teacher of adolescents and adults; as a developer of curriculum resources; as an in-service trainer and program developer for teachers and administrators; as the Director of Antidiscrimination and Equal Opportunity Branch of the Ministry of Education in 1993, as Course Director and Co-ordinator of the Access Initiative at the Faculty of Education at York University, and as an international presenter and consultant with respect to Equity issues in education and in the wider community.

As Branch Director with the Ministry, she was responsible to ensure the development and monitoring of policies on anti-racism and ethnocultural equity in all Boards in the province of Ontario. The Branch was responsible for ensuring that there was support for boards,

teachers, and programs that were developed by each board. When the policies were developed they were returned to her Branch for approval and assistance in implementation.

Subsequent to this position, Allingham was appointed Equity Advisor to the Toronto Board of Education. Her role entailing primarily curriculum development and helping teachers understand how to implement inclusive curriculum within the Board.

At the request of the College, Allingham prepared a report having been asked to assume the following: that the Member's name had been publicly associated with certain organizations and individuals; that he had made certain public statements in his own publications and websites; and that he had never made any such statements at school or mentioned any political associations at school. With those assumptions in mind she was asked to consider what effects on a school community or school environment could reasonably be expected in such circumstances and to comment as to whether a teacher in these circumstances could reasonably be expected to fulfill the duties of a teacher in Ontario.

Allingham concluded in her written report:

“In my opinion, where a teacher is known to espouse or associate himself with the views in question, this will have a chilling effect on the school community. The learning environment will be effectively poisoned as students and others are likely to perceive that such views are acceptable or even approved of. Students will reasonably assume that derogatory views apply to them, their families, or peers. Given the power imbalance between students and teachers, students may be unable to challenge those views. It can be expected that a trust relationship between that teacher and his students will be impossible. In fact, the ongoing acceptance of that teacher in the school is also likely to harm the trust that students have in other teachers and staff.”

“If a teacher is known to publicly espouse views in opposition both to public policy and to the standards of the teaching profession, and is supported by those responsible for professional certification, then it is safe to assume that

the confidence of the community in the profession will be seriously eroded. The community would be justified in doubting whether other policies such as the Safe Schools Policy or the Sexual Harassment Policy might not be respected. It should be up to the public, to parents or to individual students to bring formal complaints in order to hold teachers accountable, although unfortunately that seems to be the case.”

(Exhibit 74, Page 17, 18)

In her direct evidence, Allingham indicated that:

“...the kind of attitudes and views that, according to this document, Mr. Fromm has held or – the views of people with whom he associates have held, if they’re not addressed by the larger system, they implicitly condone this kind of behaviour. And I’m not suggesting that these teachers are racist by conviction; they’re racist by occasional behaviour.

But if the views that are expressed by – I gather from the report here and the views that Mr. Fromm’s associates express are not confronted by the system which the students need to support them, to whom they can go on a secure understanding that they will be protected and helped, then those kinds of views allow this kind of behaviour to occur, because the teachers think they can do it and get away with it, because if people who express those views are not – have no consequences for the expression of those views, which are fundamentally against Canadian values and the core values of the education system and the duties of teachers to protect and defend students, if that is not addressed, then it’s okay to do this, isn’t it?

That teacher is there to provide a safe place for students to learn, and if – if there is a suggestion, even a suggestion, in a student’s mind that the student’s race or culture or language is working against him or her, they’re not going to feel safe in approaching a teacher, because a teacher represents, in their eyes, a system that is not protecting them.

So I think the fundamental value for teachers, and certainly for the expectations of the community, are that they’re not going to turn their children over to someone that isn’t going to protect them.”

MOTION OF MEMBER FOR AN ORDER DISMISSING THE PROCEEDINGS

On May 1, 2007 the Member brought a motion for the dismissal of the complaint on the grounds of *res judicata*.

Res judicata is a legal doctrine that says a dispute, once judged with finality, is not subject to relitigation. Issue Estoppel is one branch of *res judicata* that requires that three preconditions be met. These are:

1. the issue must be the same as the one decided in the prior decision;
2. the prior judicial decision must have been final; and
3. the parties to both proceedings must be the same, or their privies.

The grounds set out in the Notice of Motion were that the conduct complained of was almost in its entirety investigated and referred to the Minister of Education and was dealt with, in that he declined to use his discretion to suspend or revoke the Member's teaching certificate. The Education Act, Revised Statutes of Ontario, 1990, Chapter E.2 was relied on.

Having examined the materials provided and having considered the submissions of the Member and Counsel for the College, the Committee dismissed the Member's motion and provided written reasons for dismissing the motion in its order of May 2, 2007.

The Cowan inquiry was, by its very nature, not judicial but rather an inquiry. Mr. Cowan's authority was limited and he did not have the power to subpoena witnesses, provide cross-examination, appropriate disclosure and other processes designed to ensure procedural fairness for all parties.

The Committee concurred with the submissions of the College in that the Minister did not make a determination, one way or the other, as to whether Mr. Fromm's certificate should be cancelled in 1992 or 1993. Contrary to Mr. Fromm's submission that the Cowan inquiry and the Minister's action addressed the issue, it was the Committee's conclusion that the appropriate procedure in place at that time for making such decisions, which involved a hearing by the OTF was never followed. The Cowan Report and the Cowan Addendum may have represented an investigation into certain issues concerning the Member, but the results of that investigation were referred back to Mr. Fromm's employer to help them determine how to proceed in this matter.

The three preconditions for Issue Estoppel were not relevant as the matter had not been previously litigated. Neither Mr. Cowan's work nor the Minister's response to it can thus be considered a "final" or "judicial" decision about whether Mr. Fromm's certificate should be suspended or cancelled. (Motion for Dismissal heard May 1, 2007 – Committee's Decision May 2, 2007)

EVIDENCE OF THE MEMBER

The Member presented a 27-minute videotape of a gathering of adult students that had been in the Member's class. The Member hired the videographer and asked a number of students to participate in the making of the video for presentation at a Board meeting where the Board was considering the termination of the Member. The video consisted of adult students talking about Mr. Fromm. Comments included positive references to Mr. Fromm, such as: open atmosphere, students free to speak their mind; fair treatment of all students; no outside

politics brought into the classroom; and not aware of his external activities, but should be free to have views. The Member did not substantiate the testimony by calling the videographer or any of the student participants as witnesses. (Ehibixt 84)

It was unclear as to whether a script was provided to the students for the production of the videotape. Some students spoke spontaneously and others were prompted by brief questions. There was no indication whether the Member was present or not and it wasn't clear what information the students had about the context of the interview or the possible use of the videotape. It appeared they were not aware of the specifics of Mr. Fromm's activities, but only that his job was in jeopardy.

The Member did not testify and chose to submit no further evidence.

The College had no reply evidence.

FURTHER SUBMISSIONS

On June 13, 2007, the Member brought a motion to dismiss the proceedings. The Member believed that since his activities had occurred prior to 1997, and the coming into force of the *Ontario College of Teachers Act*, the College did not have jurisdiction. He believed they should more properly be held before the Relations and Discipline Committee of the Ontario Teachers' Federation, as a result of the *Kalin* decision which those activities had to be judged on the basis of the regulations in effect at the time.

Ontario Regulation 276/97 – Transitional Matters – Discipline, describes the legislative framework for dealing with transitional matters at the time of the formation of the Ontario

College of Teachers. It created three categories of cases:

1. Cases referred by the Minister to OTF before January 1, 1997 were to be dealt with by the OTF;
2. Cases referred by the Minister to the OTF between January 1, 1997 and May 20, 1997 were moved to the Discipline Committee of the Ontario College of Teachers; and
3. Cases which had not been referred by the Minister at all to the OTF were to fall under the jurisdiction of the Ontario College of Teachers.

The Committee denied the Member's motion on the basis that this matter was never referred by the Minister to the OTF and therefore fell under the jurisdiction of the College, pursuant to category 3 above.

At the conclusion of the hearing on June 13, 2007, the Member requested an adjournment of six months in order to provide him with time to access any records that the Ontario Teachers' Federation might have that would impact on the outcome of his hearing. The Member had only made initial contact with OTF on June 11, 2007. It was the Member's view that matters previously dealing with professional misconduct and discipline by OTF prior to coming into force of the Ontario College of Teachers Act would have a significant influence on the deliberations of the Committee. The Committee denied this request on the basis that it was incumbent on both parties to bring forward all appropriate materials prior to the completion of the hearing. It was the College's position, that should the Member receive something from OTF that he thought to be relevant to the Committee's deliberations and provided that the Committee had not yet made a decision, then it would be possible for him to make submissions in writing to the Committee.

Following the Member's request, and subsequent communications with OTF counsel, a binder was located at the College entitled "Relations and Discipline Precedents – Ontario Teachers' Federation". This binder had been sent to the College in the very early days of the College's existence to assist its members in how the OTF Discipline and Relations Committee received, considered and disposed of complaints of professional and unethical misconduct. By letter dated July 6, 2007, College counsel notified the Committee and the Member that the binder had been located. Consequently, the Committee granted an adjournment in order for the Member to review the contents of this binder and provide written submissions by September 14, 2007, based on information contained in the binder. The College was given until September 28, 2007 to respond. The Committee received submissions from both parties.

The Member could find no similar case of a teacher being charged with unprofessional conduct for expressing political views on their own time off school property. The Member submitted that a breach of section 13 ("Section 13") of the *Regulation Made Under the Teaching Profession Act* under the rules prior to 1997 required that the offending teacher had to have been convicted of a serious offence under the Criminal Code.

The Member offered no judicial authority for that proposition and nothing in the plain language of Section 13 (or any other section of the *Regulation*) suggests that a criminal conviction is a necessary or sufficient condition that gives rise to a breach of the *Regulation*.

The Member sought dismissal of all charges against him in this matter on the basis that there was no precedent for punishing a teacher for expressing his political views.

The Member submitted that the College was negligent in not knowing that it possessed the binder and made no effort to find 1997 precedents or to argue these in their submissions. The Member requested financial compensation in the amount of \$25,000. However, by his own admission, the Member only turned his mind to the OTF precedents while preparing his final submissions for his hearing. He only asked the OTF itself for the decisions on June 11, 2007. The *Notice of Hearing* was issued on August 28, 2003 and amended on August 11, 2006. As such, the Member had ample time to seek these decisions. The Committee has no authority to award damages.

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 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 very serious.

(ii) Decision

Having considered the evidence and onus and standard of proof, the Committee finds the Member guilty of professional misconduct as defined in section 30(2) of the Act, in that he failed to:

- (a) strive at all times to achieve and maintain the highest degree of professional competence and to uphold the honour, dignity and ethical standards of the teaching profession contrary to section 13 of the *Regulation Made Under the Teaching Profession Act*, made pursuant to section 12 of the *Teaching Profession Act*, R.S.O. 1970, c. T. 2, R.S.O. 1980, chapter 495, and R.S.O. 1990, c. T. 2, as amended (the “*TPA Regulation*”);
- (b) show consistent justice and consideration in all his relations with pupils contrary to section 14(d) of the *TPA Regulation*;
- (c) concern himself with the welfare of his pupils while they were under his care contrary to section 14(f) of the *TPA Regulation*; and
- (d) he failed to comply with the section 264(1)(c) of the *Education Act*.

REASONS FOR DECISION

The Committee finds the Member guilty of professional misconduct under the Ontario College of Teachers Act and *Regulation Made Under the Teaching Profession Act* in effect before the establishment of the Ontario College of Teachers (1996) because the Member’s activities commenced prior to the College’s existence.

The College did not allege that the Member failed to adequately perform his professional duties in the classroom. This case is not about the Member’s right to hold political views that are unpopular, or to participate in legal political activities. It is about whether a teacher who publicly expresses views which are contrary to the values of the profession and the education system, and which have a negative impact on the education system, is entitled to be a member of this College. The Member’s conduct outside the classroom has detrimentally

impacted the school community and has caused a loss of confidence in both Mr. Fromm as a teacher and in the Ontario school system.

The Committee finds as fact that during the term of his employment by the Board, the Member engaged in the following activities:

- (a) in 1979, the Member co-founded and was research director for Citizens for Foreign Aid Reform Inc. (C-FAR), an organization which espouses beliefs and values contrary to the principles of multiculturalism and tolerance. C-FAR publishes the “Canadian Population and Immigration Quarterly Report”, which publication contains a section entitled “Crime Watch”. This publication suggests that crime and social problems are a consequence of admitting into Canada visible minorities as immigrants or refugees; (Exhibit 16 and 24)
- (b) in 1981, the Member co-founded the Canadian Association for Free Expression (CAFE), an organization which espouses beliefs and values contrary to the principles of multiculturalism and tolerance; (Exhibit 16)
- (c) on March 11, 1989, the Member addressed a crowd of about 60 persons at a speaking engagement sponsored by C-FAR. The Member’s speech discussed the “threat to our rights and freedoms from multiculturalism”; (Exhibit 24, page 20)
- (d) in March 1989, the Member attended a public meeting of the Toronto Mayor’s Committee on Community and Race Relations. While at the meeting, the Member associated with ‘skinhead’ supporters, one of whom yelled out to the chair of the meeting, Mr. Rose, when he was not allowed to speak - “You’re a dead man Gerry Rose”; (Exhibit 24, p. 20)

- (e) on December 8, 1990, the Member participated in a Martyr's Day Rally sponsored by the Heritage Front in conjunction with C-FAR. The room in which this event took place was decorated with various racist and supremacist flags. The keynote speaker, who was applauded by the Member, ended his speech with the Nazi salute and the words "White Power"; (Exhibits 18 and 19)
- (f) at the Martyr's Day Rally referred to in paragraph (e) above, the Member spoke in support of John Ross Taylor, describing Mr. Taylor as a "hero" and stating that Mr. Taylor had been persecuted and that " 'we' are up against an army of occupation where the majority have no rights." Earlier, in 1979, the Federal Human Rights Commission had found John Ross Taylor in breach of federal human rights legislation on the ground that his answering machine communicated anti-Semitic messages likely to promote hatred of a group. Ignoring the ruling and recording additional messages, Mr. Taylor was then charged with contempt, was convicted and incarcerated; (Exhibit 19)
- (g) on April 9, 1991, the Member attended a meeting held by The Heritage Front to celebrate Hitler's birthday; (Exhibit 24, p. 5 of Addendum Report)
- (h) on September 5, 1991, the Member spoke at a meeting organized by the Heritage Front and billed as an "Open Forum on Canada's Immigration Policy" at which he gave a speech referring to persons claiming refugee status under *The Immigration Act* as "hordes of criminals, scam artists and welfare collectors". The Member also claimed that government employment equity goals constitute "anti-white discrimination", and referred to government advertisements as "outright racist discrimination"; (Exhibit 16, p. 2 and Appendix 2; Exhibit 24, p. 24; Exhibit 36)

- (i) on September 24, 1991, the Member attended the Toronto Mayor's Committee on Community and Race Relations. When an anti-racist activist, Mr. Rodney Bobiwash, spoke of the need to curb racist organizations, the Member said "Scalp him"; (Exhibit 16, p. 2; Exhibit 24, pp. 25-26)
- (j) on November 7, 1992, in a speech at the Imperial Inn in Victoria, the Member attacked Canada's refugee program and multiculturalism policy; (Exhibit 70)
- (k) on November 19, 1994, the Member participated in the 1994 Revilo P. Oliver Memorial Symposium in Urbana, Illinois, organized by the National Alliance, a white supremacist organization run by William Pierce, a former member of the American Nazi party, at which symposium Mr. Oliver, a recognized racist, was honoured. (Exhibit 34). At this event, the Member:
 - (i) shared the stage with David Duke, a former head of the Ku Klux Klan in the United States of America;
 - (ii) publicly described Mr. Oliver as a "giant in his field" and as a "man greatly admired";
 - (iii) stated publicly that if "...certain things are not done, then the inevitable fate will be as predicted in many of his writings; that we will see the extinction of European man on this continent, and we will gradually slide into complete degeneracy, and after that we will be subsumed by whichever of the envious other groups that happens to be strongest at the time";
 - (iv) stated publicly that "...we find ourselves today confronted by a ruling class that having abandoned the best of our civilization is now prepared to fall for the most incredible nonsense – for the most preposterous ideas; for instance, the idea of a multicultural, multiracial

society as being one that will work”, and further, that the multicultural, multiracial experiment has resulted in a “great loss of personal liberty” and that the “entire experiment has been a complete failure”;

- (v) publicly commended “the wise men among our forefathers ... like the ones who headed the Asiatic Exclusion League”; and
- (vi) cited, with approval, a passage from Mr. Oliver’s work referring to an “oleaginous Jew” and a “sleazy Jew”;
- (l) the Member organized the March 1996 British Columbia Second Canadian Free Speech Symposium in Surrey, British Columbia, and at that symposium, consorted publicly with known racists, speaking publicly about their right to make racist statements; and (Exhibit 35)
- (m) during the time period referred to above, associated with individuals who are racist and who promote web sites, newsletters and promote and sell books that are racist.

The Member spoke against multiculturalism and non-white immigration, used racist language in relation to Jews, Asians and Aboriginal people while participating in public events involving individuals and organizations with racist views. He expressed his support for individuals who were known to hold racist views. This conduct continued despite reprimands from his employer and a Ministry commissioned investigation into his activities. His continued actions significantly affected students and staff and resulted in creating a poisoned school environment and these actions were inconsistent with the values of the profession.

The Committee relied upon the Supreme Court of Canada ruling about the importance of teacher conduct that takes place outside the formal boundaries of the classroom. In *Ross*, the Court held:

By their conduct, teachers as “medium” must be perceived to uphold the values, beliefs and knowledge sought to be transmitted by the school system. The conduct of a teacher is evaluated on the basis of his or her position, rather than whether the conduct occurs within the classroom or beyond. Teachers are seen by the community to be the medium for the educational message and because of the community position they occupy, they are not able to “choose which hat they will wear on what occasion”...teachers do not necessarily check their teaching hats at the school yard gate and may be perceived to be wearing their teaching hats even off duty.

Ross v. New Brunswick School District No. 15, [1996] 1 S.C.R. 825 at para. 44

Teachers must reflect the “values, beliefs and knowledge sought to be transmitted by the school system” and they must be seen as “the medium for the educational message” as embodied in the regulations to which the Member was subject at the time of the conduct at issue. The regulations that govern members impose a heavy burden on all educators and is not only limited to classroom performance. This does not mean that teachers cannot have a “private life” and that the entirety of their conduct is subject to special scrutiny. The Supreme Court of Canada in *Ross* directly considered this risk and answered it this way:

It is on the basis of the position of trust and influence that we hold the teacher to high standards both on and off duty, and it is an erosion of these standards that may lead to a loss in the community of confidence in the public school system. I do not wish to be understood as advocating an approach that subjects the entire lives of teachers to inordinate scrutiny on the basis of more onerous moral standards of behaviour. This could lead to a substantial invasion of the privacy rights and fundamental freedoms of teachers. However, where a “poisoned” environment within the school system is traceable to the off-duty conduct of a teacher that is likely to produce a

corresponding loss of confidence in the teacher and the system as a whole, then the off-duty conduct of the teacher is relevant.

Ross at para. 45 [Emphasis added]

The Applewood Heights school community was very multicultural and was strongly impacted by Mr. Fromm's activities. The Committee heard evidence of this fact from a supervisory officer, principals, a department head and an expert witness. Allingham testified that this was a time of increasing racial and ethnocultural diversity, not only at Applewood, but across the Peel Board and indeed all across Ontario. Birlhelmer testified that policies developed by the Board and its schools recognized that "students and teachers need to understand and respect all cultures, appreciate diversity and reject discriminatory attitudes and behaviours".

The Ministry of Education policy document Ontario Schools: Intermediate and Senior Divisions, Program and Diploma Requirements, 1984 (Exhibit 80) describes at length an approach to multiculturalism and education that includes the following: "exercising a positive role in coping with problems that involve interracial or intercultural tensions or conflict," encouraging students to "develop and maintain confidence and a sense of self-worth," "develop and retain a personal identity by becoming acquainted with the historical roots of the community and culture of their origin," appreciating "points of view of ethnic and cultural groups other than their own," and learning the "social skills and attitudes on which effective and responsible co-operation and participation depend." The Ministry of Education - English Curriculum Guidelines, Intermediate and Senior Division, 1987 (Exhibit 81) notes the importance of developing "esteem for customs, cultures and beliefs of a wide variety of

societal groups”, regard for “multiculturalism”, and encouraging “intercultural understanding and an appreciation of the strength in cultural and racial diversity.” As an English teacher in a multicultural environment, Mr. Fromm would have been well aware of these professional requirements.

The climate in the school was greatly affected due to the Member’s activities and the resulting media attention that focused on Applewood Heights. Evidence was heard that staff exhibited emotions of anger and frustration. They responded in a professional manner and provided excellent role models for the students. The students experienced frustration as they were not free to discuss the events and the resulting media attention with their teachers, but were directed to the principal in an attempt to have their concerns addressed.

While Harrison’s classroom evaluation indicated that the Member was a competent classroom teacher of English, she said that the Member’s public persona was more and more clearly in opposition to the public policy of the Board and the School and so it became increasingly alienating to everybody who was involved.

The Member submitted that his participation in public events was not a desire to draw publicity to himself or the school. However when an individual participates in public events, particularly when one does so as an active participant, it must be presumed that these activities will become publicly known. This is particularly true of the kinds of activities in which the Member was engaged. The College’s expert witness, Nora Allingham, noted that these particular events were clearly of the kind to draw attention:

I think regardless of whether or not we identify ourselves according to our profession, to speak in a public forum; to – to make statements of – of the kind that you referred me to; to be publicly associated with people who evidently support Hitler and the Nazi ideology; and to be associated with people who are, or have been connected with the Ku Klux Klan in the States, if you're publicly associating with these groups or individuals, it seems to be that you're assuming that this is going to become public knowledge.

When the Member chose to engage in political activities of an intensely public nature – writing articles, delivering speeches, attending provocative rallies – he opened the door to creating an effect on the school community that jeopardizes it as a viable learning environment, by its affect on the students, teachers and staff, and the public more broadly. The Supreme Court of Canada in *Ross* was precisely concerned with off-duty teacher conduct. That corresponding loss of confidence, experienced by all stakeholders, is evident in this case.

There is no doubt that the Member's conduct is itself in conflict with the values of the education system. His expressed views that deny the basic equality and dignity of every person go to the very heart of the public education system. The impact of that conduct was also clear – disruption, tension, fear, mistrust – both in terms of those within his school community and the public at large.

PENALTY

In closing arguments, College Counsel and the Member made submissions on penalty, should there be a finding of professional misconduct.

Counsel for the College submitted that the appropriate penalty would be revocation of the Member's certificate of qualification and registration and publication of the decision and reasons of the Committee in summary, with the Member's name, in *Professionally Speaking/Pour parler profession*.

The Member stated that his submissions would have been more effective had the case law before the Ontario Teachers' Federation been available. The Member was given an opportunity to review this case law but did not further address the issue of penalty in his final written submission. The Member sought dismissal of all charges against him.

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 Certificate of Qualification and Registration of the Member, which Certificate the Member is to surrender immediately to the Registrar; and
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, with the name of the Member, in the official publication of the College, *Professionally Speaking/Pour parler profession*.

REASONS FOR PENALTY DECISION

The Committee heard evidence of how teachers, staff and parents and the public were all affected by the Member's conduct. The evidence demonstrated how such conduct undermines the values of the education system and the duties and functions assigned to teachers within the system. The severity of the misconduct, its ongoing duration and the degree of harm caused to the school community was high.

The Member's participation in meetings and rallies, where racist and anti-multicultural views were expressed, brought significant media coverage to him and to the school with a resulting negative impact on the school community. This behaviour continued despite numerous written reprimands from his employer that his activities were inconsistent with board policies and his duties as a teacher. Throughout the hearing, the Member never indicated that he recognized the negative impact of his conduct on members of the school community and the Committee saw no evidence of any remorse by the Member.

The Member expressed his views, antithetical to the policies and values of the society, of the community, of the Board and of the profession, in public forums that included known racists and racist organizations. The Member's pattern of conduct, which persisted over many years, undermined confidence in the school community and makes the member unsuitable for membership in the profession. Public confidence in the profession's ability to govern its members would be undermined if the Member was subject to a less severe form of penalty, for example suspension of his certificate.

The College must govern its members in a manner that does not undermine public confidence in the profession. There is no evidence that over the years the Member took any steps to cease public activities that are inconsistent with the duties of professional membership and the values on which the education system in Ontario is based. A penalty other than revocation would send a message to other educators and to the public at large that the College is unwilling or unable to ensure that its members will work to implement legislated policies based on shared public values. It sends a message that there is room in the Ontario education system for someone who is prepared to put his own political activities ahead of the interests of students, colleagues, and the education system itself. As a result, an order to revoke the Member's certificate is necessary and appropriate.

The Committee has determined in this case, that due to the nature of the Member's misconduct and the revocation of the Member's certificate, publication of the Member's name is warranted. Publication of the nature of the misconduct in which the Member engaged will deter members of the profession from similar off duty conduct. Publication of this Member's name gives additional impact to the message that if any member of the teaching profession behaves in a manner such as this Member, he or she will be identified to their peers and the public. This assures the public of the transparency of the proceedings.

Publication of the Member's name and a summary of the facts serve as a further censure of the Members' actions. Publication of the Committee's order also acts as a general deterrent to guide members of the profession and to inform that similar behaviour will result in a finding of professional misconduct and revocation of their Certificate.

The Committee is satisfied that the penalty serves to preserve the reputation of the profession and to protect the interest of the public.

Date: October 31, 2007

Ted Coulson
Chair, Discipline Panel

Normand Fortin
Member, Discipline Panel

Dick Malowney
Member, Discipline Panel