

**DISCIPLINE COMMITTEE
OF THE ONTARIO COLLEGE OF TEACHERS**

IN THE MATTER OF *the Ontario College of Teachers Act, 1996*, S.O. 1996,
c. 12 and the Regulation (Ontario Regulation 437/97) thereunder;

AND IN THE MATTER OF discipline proceedings against
Daniel Richard Thibault, a member of the Ontario College of Teachers.

PANEL: Alexander (Sandy) Bass, OCT, Chair
 William (Bill) Kirkwood
 Hanno Weinberger, OCT

BETWEEN:	)	
	)	
	)	Shane D’Souza,
ONTARIO COLLEGE OF TEACHERS	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
	)	assisted by Annie Lacroix,
- and -	)	Litigation Paraprofessional
	)	
	)	
DANIEL RICHARD THIBAUT	)	Katie Rowen,
(CERTIFICATE #519821)	)	Ursel Phillips Fellows Hopkinson LLP,
	)	for Daniel Richard Thibault
	)	
	)	
	)	Rebecca Durcan,
	)	Steinecke Maciura LeBlanc,
	)	Independent Legal Counsel
	)	
	)	Heard: March 19, 2013

DECISION, REASONS FOR DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on March 19, 2013 at the Ontario College of Teachers (the “College”) at Toronto.

A *Notice of Hearing*, dated August 26, 2011 was served on Daniel Richard Thibault, (the “Member”) requesting his presence on September 20, 2011 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for March 19, 2013.

Daniel Richard Thibault was not in attendance.

THE ALLEGATIONS

The allegations against Daniel Richard Thibault in the *Notice of Hearing*, (Exhibit 1) dated August 26, 2011, are as follows:

IT IS ALLEGED that Daniel Richard Thibault is guilty of professional misconduct as defined in subsection 30(2) of the *Ontario College of Teachers Act, 1996* (the “*Act*” in that:

- (a) he failed to maintain the standards of the profession, contrary to *Ontario Regulation 437/97*, subsection 1(5);
- (b) he failed to comply with the *Act* and the *Education Act*, Revised Statutes of Ontario, 1990, chapter E.2, and specifically subsection 264(1)(c) thereof or the Regulations made under those Acts, contrary to *Ontario Regulation 437/97*, subsection 1(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); and
- (d) he engaged in conduct unbecoming a Member, contrary to *Ontario Regulation 437/97*, subsection 1(19).

College Counsel advised the Committee that an agreement had been reached on the facts and introduced a *Statement of Uncontested Facts and Plea of No Contest* (Exhibit 3), which provides as follows:

STATEMENT OF UNCONTESTED FACTS

1. Daniel Richard Thibault (the “Member”) is a member of the Ontario College of Teachers. Attached to Exhibit 3 and [located at Tab “A”] is a copy of the Ontario College of Teachers Registered Member Information respecting the Member.

2. At all material times, the Member was employed by the District School Board of Niagara (the “Board”) and taught at the secondary level at [XXX] School.

3. The Member lived with his family in a property next door to the family residence of a former student of [XXX] School (the “School”), Student A. Student A, who graduated from the School in June 2008, lived with her parents. The Member had not been a regular teacher of Student A while she was at the School, but may have taught Student A on one occasion while supply teaching in one of her classes.

4. If she were to testify in this matter, Student A would say that on May 22, 2009 while she was at home in her bedroom watching television with her boyfriend, she heard the rustling of leaves outside of her partially opened bedroom window. Student A turned off the bedroom lights. After a few minutes, Student A and her boyfriend saw a naked male running away from the house.

5. Student A called the police. The police attended. While Student A was providing a statement to the investigating officer on the front porch of her home, the Member suddenly appeared, naked, around the corner of his house. The police officer shone his flashlight at the naked male who then ran off with the officer in pursuit. The Member was apprehended by the police officer.

6. If called to testify, the Member will state that he was in his hot tub in his backyard next door, and upon hearing a commotion in the neighbouring property, he went to investigate. He failed to grab his clothes or a towel. On turning the corner of his house, a police officer yelled at him. Startled, the Member ran back to his hot tub, where he was arrested.

7. The Member was charged by Niagara Regional Police with 'loiter/prowl at night on other person's property, contrary to Section 177 of the *Criminal Code of Canada*. Student A's mother advised police that she had, two days earlier, on May 20, 2009, seen a naked male smoking in their driveway. Student A's mother had not reported the incident.

8. On August 20, 2009, the charge against the Member was withdrawn. The Member entered into a twelve (12) month Peace Bond and was ordered not to have any contact or communication, directly or indirectly, with Student A.

9. The Member's employment with the Board was terminated effective September 23, 2009.

PLEA OF NO CONTEST

10. By this document, the Member admits, for the purposes of this proceeding only, the truth of the facts referred to in paragraphs 1 to 9 above (the "Uncontested Facts").

11. The Member hereby acknowledges that the Uncontested Facts referred to in paragraphs 5 and 6 above constitute conduct which is unprofessional. The Member hereby pleads no contest to the allegations of professional misconduct against him, being more particularly breaches of Ontario Regulation 437/97 1(5), 1(15), 1(18 - unprofessional) and 1(19).

12. By this document the Member states that:

- (a) he understands fully the nature of the allegations against him;

- (b) he understands that by pleading no contest to the allegations he is waiving his right to require the College to prove the case against him and the right to have a hearing;
- (c) he voluntarily decided to plead no contest;
- (d) he understands that depending on the penalty ordered by the Discipline Committee, the decision of the Committee and a summary of its reasons, including reference to his name, may be published in the official publication of the College;
- (e) he understands that any agreement between him and counsel for the College with respect to the penalty proposed in this document does not bind the Discipline Committee; and
- (f) he understands and acknowledges that he is executing this Agreement voluntarily, unequivocally, and with the advice of legal counsel.

13. In light of the Uncontested Facts and circumstances, the Ontario College of Teachers and the Member submit that the Discipline Committee find the Member guilty of professional misconduct.

JOINT SUBMISSION ON PENALTY

14. The Ontario College of Teachers and the Member jointly submit that the appropriate penalty to be imposed by the Discipline Committee in this matter would be that the Committee:

- (a) requires the Member to appear before the Committee to be reprimanded, with the fact of the reprimand to be recorded on the Register;

- (b) directs the Registrar of the Ontario College of Teachers to suspend the Member's Certificate of Qualification and Registration for a period of three (3) months, commencing on the date of the decision in this matter;
- (c) directs the Registrar of the Ontario College of Teachers to impose the following terms, conditions or limitations on the Member's Certificate of Qualification and Registration, the fact of such terms, conditions and limitations to be recorded on the Register of the College until such time as they are fulfilled:
 - (i) prior to the Member returning to any employment, for which a certificate of qualification and registration is required, following the suspension referred to at (b) above, and within thirty (30) days prior to the date of such return, he shall provide to the Registrar a written certificate from a psychiatrist, pre-approved by the Registrar, stating:
 - A. that he or she has examined the Member, at the Member's expense, no earlier than sixty (60) days before the intended date of return to work, and found that the Member is able to return to full-time classroom duties without any undue risk of harm or injury to students or the school community; and
 - B. confirming that he or she has received and reviewed a copy of the Statement of Uncontested Facts and Plea of No Contest and the Joint Submission on Penalty documents made exhibits at the hearing of this matter, the Decision and Reasons of the Discipline Committee and such other documents as the Registrar requires;
 - (ii) prior to the Member returning to any employment for which a certificate of qualification and registration is required:

- A. the Member shall complete, at his own expense, a course in ethical responsibilities of teachers approved in advance by the Registrar; and
 - B. the Member shall provide proof of successful completion to the Registrar in a form satisfactory to the Registrar.
- (d) directs that there be publication of the findings and Order of the Committee in summary form in the official publication of the College, *Professionally Speaking/Pour parler profession*. The parties have not agreed on whether or not the Member's name should be included and submissions will be made on that issue.

SUBMISSIONS RE: PUBLICATION

College Counsel submitted that publication with name was warranted. Publication with name acts as a general deterrent to the profession. The public and the profession have expectations of members of the profession whether or not they are teaching or off-duty. Publication with name also advises the profession and the public of the importance of conducting oneself in an appropriate and ethical manner at all times.

Counsel for the Member provided the Committee with four cases that had been decided by previous panels of the Discipline Committee in support of her position that the Member's name not be published. Counsel submitted that there was no presumption in favour of publication of name and that each case had to be considered on its own merits. Counsel for the Member argued that in this case the events took place almost four years ago, that it was an isolated incident of poor judgment involving off-duty conduct. Specific deterrence had already been met as the

Member went through the ordeal of a criminal investigation, had his employment terminated by his Board and has not worked as a teacher since. Counsel for the Member argued that general deterrence can be achieved without publication of the name, as outlined in the discipline cases presented to the Committee. Counsel for the Member agreed that off-duty conduct needs to be taken seriously, however this can be done without publication of the Member's name. Further, Counsel for the Member indicated that publication of the Member's name might identify the Student.

In response to Counsel for the Member, College Counsel argued that the passage of time should not thwart the message sent to the public. The Member's employment had been terminated by his Board and if the employer treated the matter that seriously, so should the Committee. While College Counsel agreed that identifying the student is relevant, he argued that in this case there was no evidence before the Committee to suggest this was a concern.

DECISION

Having considered the evidence and onus and standard of proof, and the submissions made by Counsel for the College and Counsel for the Member, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that Daniel Richard Thibault committed acts of professional misconduct as alleged, more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(15), 1(18-unprofessional) and 1(19).

REASONS FOR DECISION

The Member acknowledged that the Uncontested Facts referred to in paragraphs 5 and 6 of Exhibit 3 constitute conduct which is unprofessional and pled no contest to the allegations of

professional misconduct against him, being more particularly breaches of Ontario Regulation 437/97 1(5), 1(15), 1(18 - unprofessional) and 1(19).

The Committee accepts the plea of no contest and agrees that the conduct of the Member constitutes professional misconduct. While Student A was providing a statement to the investigating officer on the front porch of her home, the Member appeared naked around the corner of his house. By being naked in public view, the Committee finds the Member's conduct to be unprofessional and conduct unbecoming a member of the profession.

PENALTY DECISION

The Committee makes the following order as to penalty:

1. The Registrar of the Ontario College of Teachers is directed to suspend the Member's Certificate of Qualification and Registration for a period of three (3) months, commencing on March 19, 2013;
2. The Member is required to appear before the Committee to be reprimanded, with the fact of the reprimand to be recorded on the Register;
3. The Registrar is directed to impose the following terms, conditions or limitations on the Member's Certificate of Qualification and Registration, the fact of such terms, conditions and limitations to be recorded on the Register of the College until such time as they are fulfilled:
 - i. prior to the Member returning to any employment, for which a certificate of qualification and registration is required, following the suspension referred to at 1. above, and within thirty (30) days prior to the date of such return, he shall provide to the Registrar a written certificate from a psychiatrist, pre-approved by the Registrar, stating:

- A. that he or she has examined the Member, at the Member's expense, no earlier than sixty (60) days before the intended date of return to work, and found that the Member is able to return to full-time classroom duties without any undue risk of harm or injury to students or the school community; and
 - B. confirming that he or she has received and reviewed a copy of the Statement of Uncontested Facts and Plea of No Contest and the Joint Submission on Penalty documents made exhibits at the hearing of this matter, the Decision and Reasons of the Discipline Committee and such other documents as the Registrar requires;
 - ii. prior to the Member returning to any employment for which a certificate of qualification and registration is required:
 - A. the Member shall complete, at his own expense, a course in ethical responsibilities of teachers approved in advance by the Registrar; and
 - B. the Member shall provide proof of successful completion to the Registrar in a form satisfactory to the Registrar.
4. Pursuant to subsection 30 (5) paragraph 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 agreed that the jointly submitted penalty was appropriate and addressed specific deterrence, general deterrence, remediation, rehabilitation and transparency.

The Committee directed that there be publication in summary form, with the name of the Member in the official publication of the College, *Professionally Speaking/Pour parler*

profession. The Committee reviewed the cases presented by the Member's Counsel but determined that the facts of this case warranted publication of the Member's name. The conduct of the Member was serious, resulted in the termination of the Member's employment and exacted a serious penalty by this Committee. As a result, the Committee determined it appropriate that his name be published. Publication with name provides the transparency and openness expected by the public and acts as a general deterrence to the profession. It advises the profession of the importance of conducting oneself in an appropriate and ethical manner at all times and the consequences for failing to do so. General deterrence and transparency are achieved through publication of the facts, the Member's name and through access to the College's website where full decisions are posted.

The Committee is satisfied that the penalty is fitting in the circumstances and serves and protects the public interest.

Date: March 19, 2013

Alexander (Sandy) Bass, OCT
Chair, Discipline Panel

William (Bill) Kirkwood
Member, Discipline Panel

Hanno Weinberger, OCT
Member, Discipline Panel