

**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
Barry Mark Anderson, a member of the Ontario College of
Teachers.

PANEL: Karen Mitchell, Chair
Ted Coulson
Janet Ouellette

BETWEEN:	)	Brian Wasyliw,
	)	McCarthy Tétrault,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -)	
)	
BARRY MARK ANDERSON	)	Barry Mark Anderson was not
(CERTIFICATE # 395310)	)	present, nor was he represented
)	
	)	Johanna Braden,
	)	Stockwoods,
	)	Independent Legal Counsel
)	
	)	Heard: April 6, 2005

REASONS FOR DECISION, DECISION AND ORDER (S)

This matter came on for hearing before a panel of the Discipline Committee (the
“Committee”) on April 6, 2005 at the Ontario College of Teachers (“the College”) at
Toronto.

The Allegations

The allegations against Barry Mark Anderson (“the Member”) in the *Notice of Hearing* (Exhibit 1) are as follows:

IT IS ALLEGED that Barry Mark Anderson is guilty of professional misconduct as defined in sections 30(2) and 40(1.1) of the *Ontario College of Teachers Act* (“Act”), 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 abused a student or students physically, sexually, verbally, psychologically, and/or emotionally, contrary to Ontario Regulation 437/97, subsection 1(7);
- (c) he failed to comply with the *Act* and the *Education Act*, Revised Statutes of Ontario, 1990, Chapter E. 2 and specifically section 264 (1) (c) thereof or the Regulations made under those Acts, contrary to Ontario Regulation 437/97, subsections 1 (14) and (15);
- (d) he contravened laws and that contravention of which is relevant to his suitability to hold a certificate of qualification and registration, contrary to Ontario Regulation 437/97, subsection 1 (16);
- (e) 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);
- (f) he engaged in conduct unbecoming a Member, contrary to Ontario Regulation 437/97, subsection 1(19);

- (g) he engaged in sexual abuse of a student or students of a nature defined in Sections 1 and 40 (1.1) of the Act; and
- (h) 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.

At the hearing, Counsel for the College withdrew the allegations of incompetence against the member as outlined in (h) above.

PARTICULARS OF THESE ALLEGATIONS ARE AS FOLLOWS:

1. Barry Mark Anderson, (the "Member") is a member of the Ontario College of Teachers.
2. At all material times the Member was employed by the Algonquin and Lakeshore Catholic District School Board ("the Board") as a teacher at [XXX] ("the School").
3. At all material times, [XXX] a female person, who was either a student or former student [XXX] at the School, was approximately [XXX] of age.
4. While [XXX] was a student at the school, the Member gave her rides to and from school and discussed matters of a personal nature with [XXX].
5. In or about October 2001, the Member, having invited [XXX] to dinner at his residence in [XXX], provided alcohol and marijuana to her at his residence.
6. In or around October 2001, the Member sexually assaulted [XXX], at his residence in [XXX].

7. At all material times, [XXX] was a [XXX] -old female person, who was a former student [XXX] at the School.
8. In or around April 2002, the Member gave his telephone number to [XXX]
9. On or about 15 June 2002, the Member invited [XXX] to have dinner with him. The Member took [XXX] to his residence in [XXX], where he consumed alcohol in her presence and provided alcohol to [XXX]
10. On or about 15 June 2002, the Member sexually assaulted [XXX] at his residence in [XXX].
11. On or about 15 June 2002, at the City of [XXX], the Member being in a position of trust or authority towards [XXX], a young person under the age of 18 years, unlawfully touched directly the body of [XXX] with a part of his body, to wit: his hand, for a sexual purpose.
12. The act of sexual touching in respect of [XXX] referred to in paragraph 11 above, was committed at the Member's residence in [XXX].
13. On or about 12 September 2002, the Member was suspended by the Board.

Publication Ban

On April 6, 2005 the Discipline Committee made an order that there be no publication of any information that may disclose the identity of the students involved in this matter.

Member's Plea

As the Member was not present, nor represented by Counsel, the Committee proceeded on the basis that the Member denied the allegations set out in the *Notice of Hearing*. The Chair, on behalf of the Member, entered a plea of not guilty to the allegations.

The College tendered an *Affidavit of Service of Audley Trevor Evans* (Exhibit 2), which confirmed that the Notice of Hearing had been served on the Member on September 15, 2003. The Notice of Hearing required the Member to attend before the Discipline Committee on October 20, 2003 to set a date for hearing. The hearing was subsequently set for 9:00 a.m. on April 6, 2005.

The hearing commenced at approximately 9:35 a.m. in the Member's absence. Evidence was produced to indicate that all efforts were made to contact the Member by telephone, correspondence, through his legal counsel and through his former employer. (Exhibit 2) This evidence satisfied the Committee that all reasonable efforts to notify the Member had been exhausted.

The Evidence

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

Brief of Court Documents – Her Majesty the Queen v. Barry Mark Anderson (Exhibit 3)

A *Brief of Court Documents (Brief)* with respect to the criminal proceedings against the Member was submitted as evidence. This brief consisted of the following documents:

Tab A – Certified copy of Indictment;

Tab B – Probation Order

Tab C – Transcript of Reasons for Decision of the Honourable Mr. Justice R.G. Byers delivered on December 8, 2003;

Tab D – Transcript of Sentencing Proceedings before the Honourable Mr. Justice R. Byers on February 13, 2004; and

Tab E – Transcript of Reasons for Sentence given by the Honourable Mr. Justice R. Byers on February 13, 2004.

The *Brief* outlines the following evidence:

The Member was indicted on 2 counts of sexual assault and 1 count of sexual touching, to which he pleaded not guilty and after a trial was convicted on 2 counts of sexual assault.

After the trial of this matter, the Member was found guilty on Counts 1 and 3 of the Indictment as follows:

Evidence Re: [XXX]

After a trial on December 9, 2003, the Member was found guilty on Count 1, that he did on or about the 15th day of June 2002, at the City of [XXX], in the East Region, commit a sexual assault on [XXX], contrary to section 271 of the *Criminal Code of Canada*.

Subsequently, the Member was sentenced on February 13, 2004 to 12 months in custody.

(*Brief* – Tab A)

After a trial on December 9, 2003, the Member was found guilty on Count 3, that he did on or between the 1st day of October 2001 and 31st day of October 2001, at the City of

[XXX], in the said Region, unlawfully commit a sexual assault on [XXX], contrary to section 271 of the *Criminal Code of Canada*.

Subsequently, the Member was sentenced on February 13, 2004 to three months in custody. (*Brief - Tab A*)

In addition to the sentence of 15 consecutive months in custody, the Member was put on probation for two years on terms and conditions as outlined in a pre-sentence report. There was also a 10-year weapons prohibition and a [XXX]. (*Brief - Tab A*)

The evidence presented by the College comes directly from the *Brief of Court Documents* (Exhibit 3). This evidence included the following salient points:

- At the time of the offences, the Member was a secondary school teacher.
- His initial contact with the victims was in this capacity.
- He was popular with students and they shared confidences with them.
- The two victims came from troubled backgrounds and had shared their emotional vulnerability with the Member prior to the offences.
- In both instances, the Member invited the victims to his residence for dinner.
- With respect to [XXX], at the dinner, both the Member and [XXX] used both alcohol and marijuana.

- The Member made sexual advances whereby he kissed her, hugged her and tried to undo her bra. [XXX] resisted these advances and left.
- With respect to [XXX], at the dinner both the Member and [XXX] consumed alcohol and [XXX] became intoxicated.
- The Member made sexual advances, including removing her clothing. [XXX] resisted the removal of her underwear and his suggestion of oral sex. At one point he digitally penetrated her.
- [XXX] subsequently informed her grandmother of the incident and went to the police.

Decision

(i) Onus and Standard of Proof

The College bears the onus of proving the allegations in accordance with the standard of proof with which the Committee is familiar as set out in *Re Bernstein and College of Physicians and Surgeons of Ontario* (1977) 15 O.R. (2d) 477. The standard of proof applied by the Committee, in accordance with the *Bernstein* decision, was a balance of probabilities with the qualification that the proof must be clear and convincing and based upon cogent evidence accepted by the Committee. The Committee also recognized that the more serious the allegations to be proved, the more cogent must be the evidence. The Committee considered the allegations in this case to be very serious.

(ii) Decision

Having considered the evidence and onus and standard of proof, and submissions made

by Counsel for the College, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that Barry Mark Anderson committed acts of professional misconduct as alleged, more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(7), 1(14), 1(15), 1 (16), 1(18) and 1(19) and that he engaged in sexual abuse of a student or students of a nature defined in Sections 1 and 40(1.1) of the Act.

Reasons for Decision

It is uncontested that the Member was convicted under section 271 of the *Criminal Code* (Canada) of two counts of sexual assault on two young females. The Member knew these young females in his capacity as a secondary school teacher. In both cases, the Member had gained their trust by befriending them and sharing their confidences. He knew that they were both emotionally vulnerable. He used that trust and their vulnerability to set up a situation in which he was able to supply them with alcohol and/or marijuana and sexually assault them.

The Member was sentenced to a term of incarceration of 15 months, put on probation for two years, prohibited from having weapons for 10 years and a [XXX] was imposed.

Rule 13.05 and 13.06 of the *Rules of Procedure of the Discipline Committee of the Ontario College of Teachers* states as follows:

13.05 **Proof of Prior Conviction or Discharge**

13.05(1) Proof that a person has, in proceedings before a court in Canada, been convicted or discharged of an offence following a finding of guilt is proof, in the absence of evidence to the contrary, that the offence was committed by the person, if:

- (a) no appeal of the conviction or discharge was taken and the time for an appeal has expired; or
- (b) an appeal of the conviction or discharge was taken but dismissed or abandoned and no further appeal is available.

13.05(2) Sub-rule (1) applies whether or not the convicted or discharged person is a party to the proceeding.

13.05(3) A certificate of conviction or discharge or certified copy of a Court Information meeting the requirements of sub-section 22.1(3) of the *Evidence Act* (Ontario) shall be accepted by the Discipline Committee as proof that the person was convicted or discharged of the offence for purposes of sub-rule (1).

13.06 **Findings of Fact in Prior Proceedings**

13.06(1) Where a certificate of conviction or discharge or certified copy of a Court Information has been admitted in evidence under sub-rule 13.05(3), the Discipline Committee shall also admit as ancillary to the certificate of conviction or discharge or certified copy of a Court Information the specific findings of fact contained in the court's reasons for judgment or reasons for sentence, which findings of fact are proof, in the absence of evidence to the contrary, of the facts so found.

The Member has not appealed the conviction or sentence within the prescribed 30-day time limit.

Having no evidence to the contrary, the Committee accepts as proof that the Member committed the offences of sexual assault and also accepts in evidence the specific findings of facts as described in the *Brief* (Exhibit 3) and as detailed above.

The Committee finds that the Member breached the standards of the profession and accordingly breached section 264 (1) (c) of the *Education Act* and Ontario Regulation 437/97, subsections 1(5), 1(14) and 1(15) by his conviction of sexual assault on two young females.

The Committee finds that the Member abused a student or students physically, sexually, verbally, psychologically or emotionally contrary to Ontario Regulation 437/97, subsection 1(7), and he engaged in sexual abuse of a student or students of a nature defined in Sections 1 and 40(1.1) of the Act;

The Committee finds that the Member is in breach of Ontario Regulation 437/97, subsection 1(16) by virtue of his criminal convictions for sexual assault.

The Committee also finds that the Member's conduct is contrary to Ontario Regulation 437/97, subsection and 1(18) and 1(19) in that the Member engaged in conduct that would reasonably be regarded by members as disgraceful, dishonourable and unprofessional and conduct unbecoming a member.

Penalty

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

1. revocation of the Member's certificate of qualification and registration;

2. publication of the findings of the Committee, with the name of the Member in *Professionally Speaking/Pour parler profession*.

Penalty Decision

The Committee makes the following order as to penalty:

1. The Registrar of the Ontario College of Teachers is directed to revoke the Member's certificate of qualification and registration, which the Member is to surrender immediately to the Registrar.
3. 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, including the Member's name, in the official publication of the College, *Professionally Speaking/Pour parler profession*.

Reasons for Penalty Decision

The offences committed by the Member are such that he has violated the trust that is inherent in his position as a teacher, taken advantage of the vulnerability of students and has not shown any remorse for his actions. He accused the victims of lying and caused them to go through an emotionally difficult trial. For these reasons, the Committee finds that the profession and the public are best served by the revocation of the Member's certificate of qualification and registration.

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

Date: April 6, 2005

Karen Mitchell
Chair, Discipline Panel

Ted Coulson
Member, Discipline Panel

Janet Ouellette
Member, Discipline Panel