

ONTARIO COLLEGE OF TEACHERS

DISCIPLINE COMMITTEE

REASONS FOR DECISIONS AND ORDERS

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

AND IN THE MATTER OF discipline proceedings against Daniel Francis Burnie.

The Discipline Committee held a hearing September 17-21 and November 21, 2001, 2001,

BETWEEN:

ONTARIO COLLEGE OF TEACHERS

- and -

**DANIEL FRANCIS BURNIE
CERTIFICATE #147205**

PRESENT:

Members of the Panel
Mark Lefebvre (Chair)
Sterling Campbell
Karen Mitchell

The Honourable Lloyd Houlden, retired judge, Independent Counsel to the Panel

Sally Bryant, McCarthy Tétrault, Counsel for the Ontario College of Teachers, assisted by Jennifer Robinson, Law Clerk

William Markle, Markle May Phibbs, Counsel for the member

Daniel Francis Burnie

Pursuant to section 32 (7) of the Ontario College of Teachers Act, the Committee orders that only two initials be used to identify the name of alleged victim and her family in order to protect the identity of those parties.

A Notice of Hearing, dated September 5, 2001, was served on Daniel Francis Burnie requesting attendance before the Discipline Committee of the Ontario College of Teachers on October 16, 2001 to set a date for hearing, and specifying the charges. The hearing date was set for September 17, 2001.

It is alleged that Daniel Burnie is guilty of professional misconduct in that:

- (a) he failed to maintain the standards of the profession, contrary to Ontario Regulation 437/97, subsection 1(5);
- (b) he abused students physically, sexually, verbally, psychologically, or emotionally, contrary to Ontario Regulation 437/97, subsection 1(7);
- (c) he failed to comply with the Act and with the *Education Act*, Revised Statutes of Ontario, 1990, chapter E.2 and particularly s. 264(1)(c) thereof, or the Regulations made under those Acts, contrary to Ontario Regulation 437/97, subsections 1(14) and (15);
- (d) he committed an act or acts that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 437/97, subsection 1(18);
- (e) he engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19); and

(f) he displayed a lack of knowledge, skill or judgement and/or a disregard for the welfare of his student or 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 Certificates should be made subject to terms, conditions or limitations.

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

On September 17, 2001, the Discipline Committee of the Ontario College of Teachers commenced a hearing into whether Daniel Burnie was guilty of professional misconduct.

EVIDENCE:

Counsel for the Ontario College of Teachers referred to the charges set out in Exhibit #1, alleging that Daniel Burnie is guilty of professional misconduct in that his acts were contrary to the Professional Misconduct Regulation made under the Ontario College of Teachers Act and filed as Regulation 437/97 on December 4, 1997, in particular, subsections 1(5), (7), (14), (15), (18) and (19).

At all material times, Daniel Burnie was employed as a teacher by the former Peterborough Victoria Northumberland and Newcastle Roman Catholic Separate School

Board, now the Peterborough Victoria Northumberland and Clarington Catholic District School Board.

The Committee heard evidence from three witnesses for the College that Daniel Burnie engaged in an inappropriate relationship with [XXX], who was a [XXX] at [XXX] in [XXX].

[XXX], now known as [XXX], testified that she became acquainted with Daniel Burnie in 1973 while she was a Grade [XXX] student at [XXX] in Peterborough. Daniel Burnie was the Grade 6 teacher at that school. [XXX] testified that Daniel Burnie was never her teacher. She was a [XXX] and Daniel Burnie was responsible for the [XXX]. According to [XXX], the relationship between Daniel Burnie and herself in her Grade [XXX] year was friendly, kind, and professional.

According to [XXX], in the fall of 1974, when she was a Grade [XXX] student at [XXX], her teacher, [XXX], asked if there were any students interested in helping [XXX] decorate his bulletin boards, set up classroom work stations and undertake daily tasks in his classroom. [XXX], and [XXX] all volunteered. [XXX] testified that the girls would assist Daniel Burnie approximately two to three evenings per week.

According to [XXX], the evening assistance would commence between 5:45 and 6:00 p.m. and last until approximately 8:30 to 8:45 pm. She testified that the girls worked primarily on decorating bulletin boards and passing out papers. The girls would work for approximately one-to-one-and-one-half hours after which the girls would drink

chocolate milk, eat cookies and socialize. [XXX] testified that on many occasions, the girls would be allowed to go to the gymnasium and use the available equipment. According to [XXX], this help and social activity was a common occurrence during her Grade [XXX] year. She recalled that [XXX] assistance fell off during that time. [XXX] described her interaction with Daniel Burnie during her Grade [XXX]-year as fun and enjoyable and described Daniel Burnie as kind, courteous, and friendly during that time.

[XXX] testified that she felt that Daniel Burnie first behaved in an uncharacteristic manner during her Grade [XXX] graduation. According to [XXX], a boy had wanted to take her to her graduation dance. [XXX] testified that Daniel Burnie asked her why she would want to go to the dance with the boy when the rest of his group of class helpers were going to McDonalds and that she would have more fun with Daniel Burnie and the group. [XXX] described Daniel Burnie's behaviour at the graduation dance as pleasant and appropriate.

[XXX] testified that during the summer of her graduation from Grade [XXX], she, [XXX] and Daniel Burnie became good friends. According to [XXX], the three would go swimming at [XXX], go horseback riding and went to McDonalds for lunch on about four or five occasions.

In 1975, as a [XXX]-year-old Grade [XXX] student at [XXX], [XXX] testified that she continued to help Daniel Burnie after school. [XXX] stated that at that time, she was "quite fond of him." According to [XXX], and [XXX] stopped helping Daniel Burnie during the evening. [XXX] testified that she and [XXX] would help Daniel Burnie until approximately 8:30 to 9:00 p.m. about three times per week. Daniel Burnie would often

provide the two girls with a snack. [XXX] recalled that she and [XXX] received identical gold watches from Daniel Burnie during Christmas of 1975. According to [XXX], she also received a card with the watch that was signed "Love Dan."

[XXX] testified that Daniel Burnie would often drive the girls home when it became dark after helping him during the evening. According to [XXX], she and [XXX] would take turns sitting in the front and rear seats of Daniel Burnie's vehicle so that the girls would alternately be dropped off at home last. [XXX] stated that she remembered [XXX] and [XXX] also getting rides on occasion from Daniel Burnie and that she and [XXX] would negotiate who would get dropped off at home last.

[XXX] stated that she and Daniel Burnie were quite close by this time. [XXX] stated that she looked at Daniel Burnie as someone she cared very much for and had a "great fondness" for him. According to [XXX], Daniel Burnie shared personal information about his own family.

[XXX] stated that she remembered Daniel Burnie really enjoyed music and he would play music on the school intercom while the girls assisted him in his classroom.

According to [XXX], Daniel Burnie had a "thing" about the girls not knowing how old he was and was obsessive about losing his hair. [XXX] stated that Daniel Burnie knew how fond of him she was.

[XXX] testified that during the spring of 1976, while she was a Grade [XXX] student at [XXX], she and [XXX] were playing basketball in the gymnasium of [XXX] one evening

after helping Daniel Burnie. According to [XXX], she, Daniel Burnie and [XXX] were running around the gym until they were breathless. [XXX] testified that a large mat had been placed under a rope in the gym. According to [XXX], she, Daniel Burnie and [XXX] flopped down on the mat and [XXX] cuddled under Daniel Burnie's left arm while [XXX] was lying in a "T" position away from [XXX] and Daniel Burnie. [XXX] testified that Daniel Burnie began to rub her back. Daniel Burnie continued rubbing down [XXX]'s back and slid his hand beneath her underpants and massaged her lower back for approximately five minutes. [XXX] testified that Daniel Burnie brought up the incident to her on another occasion. According to [XXX], Daniel Burnie told her how warm the experience had been and told [XXX] how special she was to him. [XXX] testified that the incident disturbed her because she had no previous sexual experience of any kind. [XXX] testified that she disclosed this incident to [XXX]. According to [XXX], [XXX] became upset when she was advised of Daniel Burnie's conduct. [XXX] also testified that Daniel Burnie's demeanor towards her became abrasive after her disclosure to [XXX]. She testified that after that disclosure, he would not give her a ride home from the school parking lot after dark. [XXX] testified that following her disclosure to [XXX], Daniel Burnie became more attentive to [XXX] who sat on his knee and discussed going out on the town.

[XXX] testified that on one occasion towards the end of her Grade [XXX] year, she and [XXX] helped Daniel Burnie after school. According to [XXX], the girls dumped a bucket of water causing Daniel Burnie to become angry with both of them. [XXX] testified that Daniel Burnie instructed the girls to leave. According to [XXX], [XXX] left and she remained. [XXX] testified that she began to cry. Daniel Burnie came over to her and

kissed her forehead and cheek. Daniel Burnie sat [XXX] on his knee and fondled her breasts. According to [XXX], she tolerated this in order to be in Daniel Burnie's "good graces". [XXX] testified that she would have been prepared to do anything to be in his good graces.

[XXX] also testified that Daniel Burnie took her and [XXX] for a drive out to [XXX] on one occasion. According to [XXX], Daniel Burnie rubbed [XXX]'s back the same way he had rubbed hers on a previous occasion.

[XXX] testified that during the month of June in 1976, she and [XXX] went to watch Daniel Burnie play baseball with a group of teachers. [XXX] testified that Daniel Burnie would "sometimes" drink one or two beers after such a game.

According to [XXX], on one occasion Daniel Burnie drove the girls to the school after the baseball game. [XXX] went home to baby-sit leaving [XXX] and Daniel Burnie alone at the school. [XXX] testified that as she and Daniel Burnie reached the top of the stairs to go to Daniel Burnie's classroom, Daniel Burnie took her by the hand into the nursing station. According to [XXX], Daniel Burnie began kissing her. She testified that she was afraid because she had no experience kissing in a sexual manner but that she did not want to do anything that would jeopardize his feelings for her. [XXX] testified that Daniel Burnie moved her over to the bed in the nursing station. He reportedly took her jeans down and undid his own pants, which were described as yellow baseball uniform pants. [XXX] testified that she did not want Daniel Burnie to "put it in" her because she did not have any sexual experience. Daniel Burnie reportedly told [XXX] that he loved her, she was pretty, and that everything would be O.K. [XXX] testified that Daniel

Burnie did not ejaculate inside her. She and Daniel Burnie moved to the bathroom to clean up with brown paper towels. Shortly thereafter, Daniel Burnie took her home. [XXX] described Daniel Burnie as very kind and loving toward her.

[XXX] testified that she was totally infatuated with Daniel Burnie at that time. Daniel Burnie told her that their sexual encounter was part of loving someone. According to [XXX], she made the decision that she would “get used to it”. She testified that she did not tell her parents because she was too ashamed. She testified that she went to the school willingly.

[XXX] also testified that she had intercourse with Daniel Burnie on another occasion at an apartment. [XXX] stated that she remembered that there was a mattress on the floor of the bedroom and that she remembered that occasion because it was the only time the two of them had intercourse with their clothes completely removed.

[XXX] also testified that she and Daniel Burnie would go to the top of the hill at the [XXX] on some occasions when she was the last student to be dropped off. The two would begin kissing until Daniel Burnie would become aroused at which point he would push the top of [XXX]’s head or neck down onto his lap so that she could perform oral sex on him. [XXX] recalled that Daniel Burnie did not ejaculate on those occasions when she would perform oral sex on him. [XXX] testified that by the time she was a Grade [XXX] student at [XXX], she understood that she was Daniel Burnie’s girlfriend. According to [XXX], her parents had become concerned about a girl of her age spending too much time in Daniel Burnie’s company. In examination-in-chief, [XXX] described

the types of sexual activity that took place between her and Daniel Burnie as mostly fondling, kissing and her performing oral sex on him.

[XXX] stated that this type of activity would occur in the supply cupboard, in the boy's change-room across from Daniel Burnie's classroom, on the staffroom couch, and in the library at [XXX]. According to [XXX], Daniel Burnie told her that they would get engaged when she was 16 years old and that they talked about having three children.

[XXX] testified that the relationship between herself and Daniel Burnie ended during a car ride to a function. According to [XXX], Daniel Burnie indicated to her that he wanted oral sex from her. When she refused, Daniel Burnie became enraged and called her a slut. According to [XXX], Daniel Burnie told her that he was going to tell every male in Peterborough that she was a slut, that she was used goods, and that no decent man would want her as a girlfriend. According to [XXX], Daniel Burnie proceeded to drive her home in a rage. When they got home, [XXX] informed Daniel Burnie that she would not participate in any further sexual activity.

According to [XXX], after their relationship had ended, Daniel Burnie told her on several occasions that if anyone knew about their relationship it would damage his career and he would be fired. [XXX] stated that she did not socialize with Daniel Burnie or [XXX] as adults.

During cross-examination by counsel for Daniel Burnie, [XXX] acknowledged that Daniel Burnie and her husband would speak together on occasion as the two men worked for the same board of education for 18 years. [XXX] also acknowledged that her husband [XXX] with Daniel Burnie in 1984, and that she and her husband went to the Burnie home on two occasions. [XXX] acknowledged that her son also [XXX] as Daniel Burnie's son in 1998. She described her conversations with Daniel Burnie during that time as superficial and polite. [XXX] acknowledged that Daniel Burnie had solicited her help in addressing his mother's Alzheimer condition two years prior to their sons [XXX]. During cross-examination, [XXX] reiterated that prior to the spring of 1976, Daniel Burnie's behaviour towards her was professional. She stated that she disclosed her relationship with Daniel Burnie to a health care professional in the spring or summer of 1983.

[XXX] described an instance in which she confronted Daniel Burnie alone in the parking lot of [XXX] in an effort to ascertain if Daniel Burnie was remorseful for his actions towards her. According to [XXX], Daniel Burnie proceeded to invite her to the Holiday Inn for a drink.

[XXX] admitted during cross-examination that specific details concerning several of her allegations against Daniel Burnie were not included in her letter of complaint to the College nor did they appear in the notes of the College's investigator. She stated that she felt that a College discipline proceeding against Daniel Burnie was the appropriate venue to describe the details of her relationship with him, and that she felt that she had

given the College enough information at the time of her complaint and in her discussions with the College's investigator.

[XXX] testified that the reason she came forward with a complaint to the College in 1999 was that Daniel Burnie continued to deny their sexual relationship and that she believed that he remained a risk for repeating such behaviour. She testified that she complained about her relationship with him to the school board in 1990. [XXX] testified that she did not proceed at that time on advice from her lawyer.

[XXX] testified during cross-examination that she reported her allegations to the police in 1999, and that she also elected not to proceed after consulting with police about issues of mutual consent according to the law as it was in the 1970s. She responded to a question from counsel for Daniel Burnie concerning her failure to report the details of any sexual activity between herself and Daniel Burnie, at [XXX] and other locations such as [XXX], to the detective she spoke to at the time. [XXX] testified that she had recalled the events to the officer as they had occurred, but that he may not have written the details down.

During re-examination, [XXX] testified that she did not specifically disclose Daniel Burnie's name to her physician, Dr. Armour, because she did not want her family to know.

[XXX], the father of [XXX], testified that he first heard about Daniel Burnie as a teacher at [XXX]. [XXX] testified that during [XXX]'s Grade [XXX] and Grade [XXX] years, [XXX]

would regularly tell him that she was going to help Daniel Burnie in his classroom after the family's 5:15 p.m. meal. [XXX] testified that this would occur between three to four times weekly during the evenings through [XXX]'s Grade [XXX] year, and while she was a student of [XXX] during Grade [XXX], and for part of Grade [XXX].

[XXX] testified that at times Daniel Burnie dropped [XXX] back home sometime between 9:30-10:00 p.m. [XXX] described Daniel Burnie's car as a grey Camaro. He testified that, on occasion, he would walk by Daniel Burnie's car while he and [XXX] were inside the vehicle talking as it was parked in the [XXX] driveway. [XXX] testified that if Daniel Burnie's vehicle was parked in their family's driveway for more than one hour, he would turn on the outdoor light as a signal to [XXX] that it was time to come into the house. [XXX] testified that at times he would see three people in the car.

[XXX] testified that during [XXX]'s Grade [XXX] year, he expressed his displeasure at a 27-year-old male teacher spending so much time with a teenager. He testified that at times he and his wife would drive [XXX] to evening swimming practice and that his daughter would tell them that Daniel Burnie would be picking her up to take her over to the school once practice had finished.

[XXX] testified that [XXX] and Daniel Burnie went to a fundraising dance at [XXX]. [XXX] were also present at that dance. [XXX] recalled a day during the summer of 1977 when Daniel Burnie went to the [XXX] [XXX] with [XXX], [XXX] and two children [XXX] had been babysitting. [XXX] was able to identify Daniel Burnie in a photograph taken at the [XXX] [XXX] at that time.

[XXX] testified that he first became aware of his daughter's allegations against Daniel Burnie in April or May of 1990 following the [XXX].

He testified that he and [XXX] and her husband had approached the school board superintendent to explain what had happened, but that that was the extent of his knowledge about any complaint to the board. [XXX] also testified that he and his wife wrote Daniel Burnie a letter in 1997 or 1998 explaining their feelings and anxiety to him because they had thought that their daughter, as a student, was in good hands with him. [XXX] did not keep a copy of the letter.

Under cross-examination by counsel for Daniel Burnie, [XXX] stated that he was prepared to support his daughter and tell the facts as he remembered them. He testified that prior to his daughter's disclosure to him about the alleged inappropriate relationship with Daniel Burnie in 1990, there had been no discussion about Daniel Burnie. [XXX] testified that the details of [XXX] allegations against Daniel Burnie were not discussed with the school board superintendent in [XXX] presence and that he did not recall any specific details other than it was a sexual relationship.

[XXX] testified that he could not recall any significant change in [XXX]'s personality during the time of the alleged relationship and that he had no indication of anything happening.

[XXX] testified on behalf of the College that she would help out in Daniel Burnie's classroom after school and on the odd Saturday when she was a Grade [XXX] and Grade [XXX] student at [XXX]. [XXX] testified that on one occasion, Daniel Burnie took herself and [XXX] to a [XXX] on a Saturday. [XXX] also testified that Daniel Burnie took [XXX], [XXX] and herself to the beach at [XXX] on a weekend during the school year.

[XXX] testified under cross-examination that she first heard about the allegations concerning Daniel Burnie about ten years ago when someone, who may have worked for the school board, interviewed her, and that she had supplied essentially the same information that was being provided to the Committee at that interview.

Counsel on behalf of the member called twelve witnesses. [XXX], née [XXX], testified that she was a classmate of [XXX] at [XXX] and provided assistance to Daniel Burnie along with [XXX], [XXX], and [XXX]. She testified that she would assist Daniel Burnie with setting up audio-visual equipment and with marking papers. This assistance continued into her Grade [XXX] year at [XXX]. [XXX] testified that she would help Daniel Burnie on weekends if she saw his car at the school.

[XXX] testified that in her opinion, Daniel Burnie showed no favouritism to any of his female helpers. She stated that she had never felt uncomfortable around him and that she had not heard any negative comments made about the member at the time. [XXX] testified that she received a telephone call in 1990 concerning allegations against Daniel Burnie and that she had been named as a corroborating source. [XXX] testified that she couldn't corroborate the allegations against Daniel Burnie because she did not see anything.

On cross-examination by College counsel, [XXX] testified that she was currently a friend of Daniel Burnie's wife, [XXX], née [XXX]. [XXX] testified that she and the Burnies had deliberately not been in contact for the past few years until the allegations against Daniel Burnie had been dealt with. She testified that she did recall going [XXX] with Daniel Burnie [XXX] when she was a student of his. [XXX] also testified that she recalled Daniel Burnie taking herself, [XXX], [XXX], [XXX], and [XXX] swimming at [XXX] during the summer when she was in Grade [XXX], in Grade [XXX], and in Grade [XXX].

[XXX] also testified that she would be alone with Daniel Burnie at times when she would be helping him at school, and that on more occasions than not, there were no other adults in the school at night.

[XXX], née [XXX], testified that she, [XXX], [XXX], [XXX] and [XXX] used to provide assistance to Daniel Burnie on a regular basis, which she described as being three or four nights per week. She did not recall [XXX] helping out on a regular basis. She testified that she assisted Daniel Burnie when she was in grades [XXX] and [XXX], but did not recall providing help when she went to [XXX]. She testified that she could recall crash mats used for gymnastics being stored on the wall of the gym. She stated that the mats would not be on the floor for other activities.

[XXX] testified that it was possible that she had been with [XXX] and Daniel Burnie in the gym but that the majority of the time it would have been with all the girls present. She testified that [XXX] had never approached her about any incident at the time the

alleged incident was said to have occurred. She testified that she had never heard any complaints about Daniel Burnie and that nothing that Daniel Burnie did at that time caused her any concern. [XXX] stated that all the girls were treated equally and that Daniel Burnie showed no preference for any one of them. On cross-examination by counsel for the College, [XXX] indicated that she continued to be a friend of [XXX], née [XXX], although they did not see each other on a regular basis. She agreed with College counsel that the crash mats would have been placed on the floor for protection when the trampoline was in use in the gym.

Joseph Sabatino, Daniel Burnie's former principal at [XXX] and [XXX] Schools, was called by counsel for the member and testified that, to the best of his recollection, the school gymnasium would normally be used during the evening as many as two to three times per week. He recalled that there was a washroom immediately outside of the school gymnasium. Joseph Sabatino also recalled that the second floor nurse's room was across from the school staff room. The school custodian, Mr. Holland, would work from 8 a.m. until 5 p.m. unless he was requested to come in during the evening.

Joseph Sabatino testified that he was transferred to [XXX] during the 1976/77 academic school year. He requested that Daniel Burnie transfer to [XXX] because of the strength of his classroom management skills. Joseph Sabatino testified that he was not aware of any complaint from a student, or of any inappropriate conduct by Daniel Burnie during his tenure as principal of the two schools.

Under cross-examination by counsel for the College, Joseph Sabatino testified that he probably would have been concerned that Daniel Burnie had taken two Grade [XXX] girls to a [XXX] had he been aware of it. He testified that he was not aware that Daniel Burnie took students to [XXX] or that Daniel Burnie drove students home in the evenings between 8:30 p.m. and 9:30 p.m. Joseph Sabatino testified that he did not feel he needed to give teachers any direction about being alone with students in the school in the evening and that he was not aware it was occurring on a regular basis. He testified that teachers would have a key for the school to access the school for purposes of planning and preparation.

In re-examination by counsel for the member, Joseph Sabatino testified that it would not be inappropriate in the 1970s for a teacher to drive students home from school in the evenings for their safety. In responding to questions posed by the Committee, Joseph Sabatino testified that the school policy was to request a signed note from a parent when a student was going to be taken to any location to indicate parental awareness.

Nancy Neary was called by counsel for the member and testified that she was on staff with Daniel Burnie at [XXX] from the late 1970s until her retirement in 1994. Nancy Neary testified that she was never aware of any complaints about the conduct of Daniel Burnie and that female students had nothing but praise for him.

Margaret Shaughnessy was called by counsel for the member, and testified that she taught with Daniel Burnie at [XXX] during the 1975/76 and 1976/77 academic school

years. Margaret Shaughnessy testified that she was not aware of any inappropriate conduct by Daniel Burnie, or of any complaints against him while she worked at [XXX].

Bob Garvey was called by counsel for the member and testified that he taught Grade [XXX] at [XXX] from 1975 to 1978. He further testified that his classroom was located beside Daniel Burnie's. He stated that [XXX] had been his student, but that [XXX], [XXX], [XXX] and [XXX] had graduated the year prior to his being assigned to [XXX]. Bob Garvey testified that Daniel Burnie was a hardworking teacher, and he had never received a complaint about Daniel Burnie or made any observation concerning the conduct of Daniel Burnie that would cause him concern. Under cross-examination by College counsel, Bob Garvey testified that it was possible that he had taught with Daniel Burnie for only one year.

Lorna Alderson was called by counsel for the member, and testified that she worked with Daniel Burnie at [XXX] for one year during the 1974/75 academic school year. Lorna Alderson testified that the students had a great deal of respect for Daniel Burnie, who spent time with the students and spoke to them. She testified that she was never made aware of any complaints or concerns about Daniel Burnie. Lorna Alderson also testified that Daniel Burnie played baseball with her husband for a number of years. She further testified that she attended all of her husband's baseball games. She recalled young people being at those games, but that they may not necessarily have been students.

Bonnie Nolan was called by counsel for the member and testified that she worked with Daniel Burnie at [XXX] for a two-year period starting in the 1974/75 academic year.

Bonnie Nolan testified that staff became aware that highschool girls were making overly frequent visits to Daniel Burnie's classroom. She testified that there was discussion that Daniel Burnie seemed oblivious to the position he was putting himself in.

Under cross-examination by counsel for the College, Bonnie Nolan testified that it did not seem right that female students were in Daniel Burnie's classroom as frequently as they were. On re-examination, Bonnie Nolan testified that she had no knowledge concerning what the female students were doing in the member's classroom.

Sergeant Daniel Robert Smith of the Peterborough/Lakefield Community Police Service was called to give evidence by counsel for the member and testified that he received a complaint about Daniel Burnie from [XXX] on March 15, 1999. Sergeant Smith testified that [XXX] reported that Daniel Burnie had abused her at [XXX], beginning when she was [XXX] years old. Sergeant Smith testified that he had no information about other locations, and that [XXX]'s allegations involved non-consensual intercourse followed by a period of consensual intercourse.

Sergeant Smith testified that on March 17, 1999 [XXX] and [XXX] went to the police station and told Sergeant Smith that she did not want to proceed with her complaint because she did not see any benefit to charging Daniel Burnie criminally and that she could not have dealt with the proceedings emotionally. On cross-examination by

counsel for the College, Sergeant Smith testified that he did not conduct a detailed interview with [XXX].

Sister Ruth Hennesy was called by counsel for the member and testified that she worked with Daniel Burnie in the 1970s at [XXX] School. Sister Ruth Hennesy testified that [XXX] and [XXX] Schools shared the elementary school's gymnasium and that the highschool used the gym after school and during the evenings. She further testified that she was not aware of any complaints, and did not have any concerns about Daniel Burnie. She stated that parents and staff had high praise for the member.

Daniel Burnie was called by his counsel to give evidence. Daniel Burnie testified that he taught at [XXX] from 1973 until 1976 and at [XXX] School from 1976 to the present.

Daniel Burnie testified that he married [XXX] on July 2, 1983. From 1973 until 1976, he [XXX] and helped out with [XXX]. The member testified that he would arrive at school between 8:00 a.m. and 8:30 a.m. and would be home for 6:00 p.m. He would usually return to the school at 7:00 p.m. He testified that the reason he would return to school was to prepare his lesson plans.

Daniel Burnie testified that [XXX] would help him during the 1973/74 school year.

During the 1974/75 school year, the girls who were previously mentioned in the other witnesses' testimony would provide assistance to him. During the 1975/76 school year, Daniel Burnie testified that he thought that [XXX] stopped coming to help in his class and that the others came periodically to give assistance. The assistance provided included tidying up the room, straightening up desks, marking papers and running off

stencils. Daniel Burnie testified that he never made it a point to invite the girls. The girls made it a point of asking if he needed help. If his work was finished, he would give them a ride home. Daniel Burnie testified that on a lot of occasions, when the girls would need to go home, they would leave for home by themselves between 8:00 p.m. and 8:15 p.m.

Daniel Burnie testified that he had keys to the school. He testified that the number of teachers at the school after 7:00 p.m. varied, but that there was no teacher there on a regular basis like himself. Daniel Burnie also testified that he would let his helpers decide what activity they wanted to play in the school gymnasium if they were finished working, between 7:00 p.m. and 8:00 p.m. The activities that were frequently played included using the trampoline, basketball, and volleyball.

Daniel Burnie testified that, during the 1975/76 academic year, he recalled that [XXX] would assist him in the evening fairly frequently if she got word from [XXX] or one of the other girls that they would be assisting him.

He testified that he did not follow any set pattern when he dropped the students off at home, but that he would let [XXX] and [XXX] off first, followed by [XXX] and [XXX] because those girls lived closest to his home. Daniel Burnie testified that the girls understood that he would drive them home on some nights if it was after 9:00 p.m., or during the winter time, and that the girls' parents would not come to [XXX] to pick up their daughters in the evening.

Daniel Burnie also testified that the gymnasium at [XXX] would be used every evening. He would use the gymnasium every Monday night for parent volleyball and every Wednesday night for indoor sports, and stated that the gymnasium would be in use by the highschool during the other evenings.

Daniel Burnie testified that during the 1976/1977 academic year, [XXX] and [XXX] would come to [XXX] to provide assistance during the evening. The girls would generally provide assistance between one and two times a week. On occasion, the girls might have provided assistance three times per week. Daniel Burnie stated that [XXX] and [XXX] would provide assistance together most of the time, but not all of the time. He agreed with his counsel that it was quite possible that one of the girls would be at the school providing assistance by themselves. Daniel Burnie testified that during the 1977/1978 academic year, [XXX] said some sort of goodbye after which [XXX] was the only student who would provide assistance to him.

Daniel Burnie testified that he would take the girls to McDonalds or Dairy Queen on occasion as a reward for assisting him. He stated that he also recalled giving a group of girls a ride home from [XXX] because they had requested it. Daniel Burnie testified that he recalled [XXX] and himself being invited to the [XXX] [XXX] by [XXX] on a hot day in July, and that he drove [XXX] to the [XXX]. Daniel Burnie testified that he was only at the [XXX] [XXX] on that one occasion and never returned to the [XXX].

Daniel Burnie testified that he was a bit concerned about [XXX] at that time, because he was invited over to the [XXX]'s on a frequent basis, and [XXX] told him that [XXX] seemed to be able to have him over to the [XXX] house and that she could not.

Daniel Burnie testified that he did not recall being alone in the gymnasium of [XXX] with [XXX] and [XXX] in the spring of 1976. He stated that [XXX]'s testimony, in which she described placing his hand down her back into her buttocks and rubbing her underwear in the gymnasium, did not happen. Daniel Burnie testified that he did not recall a water fight with [XXX] and [XXX] during the spring of 1976 and that [XXX]'s testimony, in which she described being seated on his knee while he fondled her breasts, never occurred.

Daniel Burnie also testified that he played baseball in a men's industrial league twice a week in 1975 and 1976, that [XXX] and [XXX] would be in attendance at the odd game and that he did not return to the school after the games. Daniel Burnie agreed with his counsel that there may have been occasions in which he would drive either or both of the girls home from the baseball games. He testified that he never consumed alcohol after a baseball game in [XXX]'s presence, and that he was never drunk in her presence.

Daniel Burnie testified that he never engaged in sexual intercourse with [XXX] in the school nurse's room and that there was never an occasion in which he went to [XXX] to engage in sexual activity with her. Daniel Burnie also testified that [XXX]'s testimony, concerning sexual activity at [XXX], never occurred.

Daniel Burnie testified that he shared an apartment on Pearl Street with Paul Roy for a five to six week period in the summer of 1976 before moving back into his parent's residence. He testified that [XXX]'s testimony, concerning sexual intercourse with him at the apartment, never occurred. Daniel Burnie testified that [XXX]'s testimony regarding sexual intercourse in the staff lounge at [XXX], mutual oral sex in the library of the school following a dance, and sexual activity in the closet of his classroom in the fall of 1976, all never occurred.

Daniel Burnie testified that he did not recall being in attendance at a fundraising dance for [XXX]'s [XXX]. Daniel Burnie also testified that he recalled taking [XXX] to an athletic function because she wanted him to see her routine and she needed a ride. He agreed with his counsel that there would be times when he would remain at girls' homes for a brief period to speak with them when he dropped the girls off in his car. Daniel Burnie testified that he recalled that the last time that [XXX] provided assistance to him at [XXX] School was in September or October of 1977.

Daniel Burnie testified that after the fall of 1977, he occasionally saw [XXX] in passing, during teacher baseball fundraising events with both of their respective families until 1988 or 1989, and a few times at his home with her husband, [XXX], with whom Daniel Burnie [XXX] for approximately two years. Daniel Burnie also testified that [XXX]'s son and his son [XXX] in 1997 and that he and [XXX] had attended a fundraiser before the start of the season and had played progressive euchre together. Daniel Burnie testified that he and [XXX] talked about their families and that the tone of the conversation was very friendly.

Daniel Burnie testified that his relationship with [XXX] became uneasy after her complaint to the school board. He received letters from [XXX] and [XXX] in 1999 but did not respond because, according to Daniel Burnie, what he was going to say might make things worse and that [XXX]'s accusations were not true. Daniel Burnie testified that he became aware of [XXX]'s complaint to the Ontario College of Teachers in September of 1999.

Daniel Burnie testified that he did not recall giving [XXX] and [XXX] watches for Christmas, or that he took the girls horseback riding. He testified that [XXX]'s testimony that the two of them went running or jogging together, did not occur. Daniel Burnie also testified that he never had any conversation with [XXX] about her employment at Farm Boy, about being a couple and bringing their relationship out into the open, about a possible engagement, or about the possibility of marriage.

Daniel Burnie testified that he and [XXX] had had a discussion concerning his mother's Alzheimer's condition in 1997. Daniel Burnie testified that the two of them met approximately two weeks later to discuss placing his mother into an Alzheimer's unit, and that [XXX]'s mood was fine.

Daniel Burnie testified that the testimony of [XXX] concerning a 1983 meeting between the two of them in his Stewart Street apartment to discuss the impact on her adolescence never took place. He also testified that [XXX]'s testimony concerning their meeting in

the parking lot of [XXX] to discuss the same issue prior to each party's marriage to their current spouses did not take place.

He further testified that prior to the start of school in 1976 or 1977, he and [XXX] drove to Oshawa to a [XXX] but did not recall [XXX]'s attendance on that trip.

Daniel Burnie testified that, in the fall of 1977, [XXX] went to [XXX] to discuss her reasons for not continuing to visit him after school hours. He testified that [XXX] told him that she was having a hard time getting to [XXX], and because he did not have a car she was finding it difficult, and that [XXX] was assisting him.

On cross-examination by counsel for the College, Daniel Burnie testified that [XXX] would help with bulletin boards after school, but did not come in the evening to help. During the 1974/1975 school years, the girls would help in the evenings between two and three times per week. During the 1975/1976 year, the girls would also help out between two and three times per week. During the 1976/1977 year, they would help one to two times per week. Daniel Burnie testified that [XXX] and [XXX] were the only two girls who helped him when he moved to [XXX] and that the girls would help him on the weekend during the winter months.

On cross-examination by counsel for the College, Daniel Burnie testified that he received verbal permission from the parents of [XXX] and [XXX] to take them to the [XXX] during the summer while he was purchasing school materials, because they had helped him in his classroom. Daniel Burnie testified that he may have picked up [XXX] the odd time

to bring her to [XXX] to help him, but that it was not a regular occurrence. Daniel Burnie testified that he feels that anything he did was not inappropriate by 1970 standards or today's standards.

Daniel Burnie testified that he would drop [XXX] off at home first from [XXX] because her house was closer to the school than [XXX]'s. He testified that on occasion, he and [XXX] would sit in his vehicle while parked in the [XXX] driveway and talk when he drove her home. Daniel Burnie stated that this seldom occurred, and, if it did, it lasted only for a period of about 15 minutes.

Daniel Burnie testified under cross-examination that, in 1976, when he was 27 years old and [XXX] was [XXX] years old, he was not concerned that [XXX] was infatuated with him because they had a friendship in which they would talk and she would help him at school. Daniel Burnie stated that it was not a strong friendship. He agreed that he spent some of his spare time in 1977 with 13, 14, and 15-year-old girls. He also agreed with counsel for the College that he accompanied [XXX] to a fundraising dance for an [XXX].

In response to a question from the Committee, Daniel Burnie testified that [XXX] was [XXX] years old when he drove her to Oshawa to [XXX].

Daniel Burnie testified that, in 1976, when he was 27 years old and [XXX] was [XXX] years old, they had a friendship in which they would talk and she would help him at school. He also testified that he spent some of his spare time in 1977 with 13, 14, and 15-

year-old girls. Daniel Burnie further testified that during the 1977/78 academic year, [XXX] said some sort of goodbye to him.

[XXX] testified that one occasion, Daniel Burnie took herself and [XXX] to a [XXX] on a Saturday. [XXX], née [XXX], testified that she did recall going [XXX] with Daniel Burnie [XXX] when she was a student of his. Daniel Burnie testified that prior to the start of school in 1976 or 1977 he and the then [XXX]-year-old [XXX] drove to Oshawa to a [XXX].

Joseph Sabatino, Daniel Burnie's principal at the time the allegations were purported to have occurred, testified that he probably would have been concerned that Daniel Burnie had taken two Grade [XXX] girls to a [XXX] had he been aware. He testified that the school policy was to request a signed note from a parent when a student was going to be taken to any location to indicate parental awareness.

[XXX] testified that Daniel Burnie took [XXX], [XXX] and herself to the beach at [XXX] on a weekend during the school year. [XXX] also testified that she recalled Daniel Burnie taking herself, [XXX], [XXX], [XXX], and [XXX] swimming at [XXX] during the summers when she was in grades [XXX], [XXX], and [XXX]. Daniel Burnie testified that he recalled giving a group of girls a ride home from [XXX] because they had requested it.

Daniel Burnie also testified that he recalled taking [XXX] to an athletic function because she wanted him to see her routine and she needed a ride.

FINDINGS OF FACT:

Based on the evidence presented that the Committee finds to be clear, cogent and compelling, the Committee finds the following facts:

1. Daniel Burnie is a member of the Ontario College of Teachers and was employed by the Peterborough Victoria Northumberland & Newcastle Roman Catholic Separate School Board, now the Peterborough Victoria Northumberland & Clarington Catholic District School Board, at [XXX] and [XXX] School, both in Peterborough, Ontario, during the years from September 1973 to June 1977.
2. During the school year, 1974 to 1975, [XXX], née [XXX], was in her Grade [XXX] year at [XXX] and became an assistant to Daniel Burnie helping with his after school projects and activities.
3. Between September 1974 and June 1977, a number of students in addition to [XXX] assisted Daniel Burnie in his classroom after school and in the evenings.
4. During the 1974/75 school year, a number of other girls including [XXX], [XXX], née [XXX], and [XXX], née [XXX], helped Daniel Burnie in his classroom in the afternoon and evenings.
5. During the 1975/76 school year [XXX] continued to spend evenings helping the member in his classroom along with [XXX], [XXX] and [XXX]. Between September 1974 and June 1977, Daniel Burnie would drive the girls who were assisting him in the classroom home in his car.
6. Daniel Burnie took two Grade [XXX] students [XXX] [XXX] in or about the spring of 1975.
7. The member drove [XXX], [XXX] [XXX] and [XXX] to the beach at [XXX].

8. [XXX] continued her assistance in Daniel Burnie's classroom throughout her Grade [XXX] and Grade [XXX] years with the result that [XXX] developed a friendship with Daniel Burnie.
9. Prior to the 1976-1977 school year Daniel Burnie drove [XXX]-year-old [XXX] to Oshawa [XXX].
10. During the summer of 1977 Daniel Burnie drove [XXX], [XXX] and other children to the [XXX] [XXX].

In reaching a decision, the Committee looked for consistency in the evidence that was presented. The Committee found all witnesses to be credible.

The Committee notes that the following evidence was particularly clear, cogent, and compelling:

[XXX] testified that Daniel Burnie rubbed her back, slid his hand beneath her underpants and massaged her lower back for approximately five minutes while she was playing in the school gymnasium with [XXX] nee [XXX]. The Committee noted that, in her letter of complaint to the College, [XXX] wrote that that particular incident "did not last long." In addition, [XXX] testified that [XXX] never approached her about Daniel Burnie allegedly rubbing her back and buttocks at the time the incident was said to have occurred.

Sergeant Daniel Robert Smith of the Peterborough/Lakefield Community Police Service testified that [XXX] reported to him that Daniel Burnie had abused her at [XXX],

beginning when she was [XXX] years old. Sergeant Smith testified that [XXX]'s allegations involved non-consensual intercourse followed by a period of consensual intercourse.

Daniel Burnie testified that, in 1976, when he was 27 years old and [XXX] was [XXX] years old, they had a friendship in which they would talk and she would help him at school. He also testified that he spent some of his spare time in 1977 with 13, 14, and 15-year-old girls. Daniel Burnie further testified that during the 1977/78 academic year, [XXX] said some sort of goodbye to him.

[XXX] testified that he could not recall any significant change in [XXX]'s personality during the time of the alleged relationship between his daughter and Daniel Burnie.

[XXX] testified that one occasion, Daniel Burnie took herself and [XXX] to a [XXX] on a Saturday. [XXX], née [XXX], testified that she did recall going [XXX] with Daniel Burnie [XXX] when she was a student of his. Daniel Burnie testified that prior to the start of school in 1976 or 1977 he and the then [XXX]-year-old [XXX] drove to Oshawa to a [XXX].

Joseph Sabatino, Daniel Burnie's principal at the time the allegations were purported to have occurred, testified that he probably would have been concerned that Daniel Burnie had taken two Grade [XXX] girls to a [XXX] had he been aware. He testified that the school policy was to request a signed note from a parent when a student was going to be taken to any location to indicate parental awareness.

[XXX] testified that Daniel Burnie took [XXX], [XXX] and herself to the beach at [XXX] on a weekend during the school year. [XXX] also testified that she recalled Daniel Burnie taking herself, [XXX], [XXX], [XXX], and [XXX] swimming at [XXX] during the summers when she was in grades [XXX], [XXX], and [XXX]. Daniel Burnie testified that he recalled giving a group of girls a ride home from [XXX] because they had requested it. He also testified that he recalled taking [XXX] to an athletic function because she wanted him to see her routine and she needed a ride.

Bonnie Nolan testified that staff became aware that highschool girls were making overly frequent visits to Daniel Burnie's classroom. She testified that it did not seem right that female students were in Daniel Burnie's classroom as frequently as they were.

DECISIONS AND ORDERS:

The Committee finds Daniel Francis Burnie guilty of professional misconduct under subsection 1 (19) of the Professional Misconduct Regulation, as alleged, and directs the Registrar to suspend Daniel Burnie's Certificates of Qualification and Registration for a period of 10 days from the date this Decision and Order is signed. The Committee further orders Daniel Burnie to appear before it for a reprimand at a date and time agreed upon by the member and the Registrar.

Notice

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

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

**DATED AT TORONTO, THIS 28th DAY OF JANUARY, 2002
BY ORDER OF THE DISCIPLINE COMMITTEE**

Mark Lefebvre, **Chair**

Sterling Campbell

Karen Mitchell