

ONTARIO COLLEGE OF TEACHERS

DISCIPLINE COMMITTEE

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

AND IN THE MATTER OF discipline proceedings against David Edward W. Cummins.

The Discipline Committee held a hearing on December 17, 2002.

BETWEEN:

ONTARIO COLLEGE OF TEACHERS

- and -

DAVID EDWARD W. CUMMINS

Certificate #107917

REASONS FOR DECISION, DECISION AND ORDERS

PRESENT:

Members of the Panel

Bernard J. Adam (Chair)

Janet Cornwall

Marilyn Laframboise

Paul LeVay of Stockwoods, Independent Counsel to the Committee

Caroline Zayid, McCarthy Tétrault, Counsel for the Ontario College of Teachers, assisted by Trevor Evans, Senior Law Clerk

John Judson, Lerner & Associates, Counsel for the member

David Edward W. Cummins was present.

This decision is subject to a publication ban with respect to the name of the student(s) who shall be identified by two initials only.

A Notice of Hearing, dated September 26, 2002 was served on David Edward W. Cummins, requesting attendance before the Discipline Committee of the Ontario College of Teachers on October 21, 2002 to set a date for a hearing, and specifying the charges

It is alleged that David Edward W. Cummins is guilty of professional misconduct as defined in sections 30(2) and 40 (1.1), 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 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 particularly section 264 (1) (c) thereof, and the regulations made under those Acts, contrary to Ontario Regulation 437/97, subsections 1 (14) and (15);
- (d) 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);
- (e) he engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1 (19);

- (f) 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
- (g) 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.

On December 17, 2002, the Discipline Committee of the Ontario College of Teachers conducted a hearing into whether David Edward W. Cummins was guilty of professional misconduct.

David Edward W. Cummins was in attendance at the hearing. Proof of service of the Notice of Hearing was presented and accepted by the panel.

EVIDENCE

Counsel for the Ontario College of Teachers referred to the charges set out in the Notice of Hearing, alleging that David Edward W. Cummins 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). Particulars of the alleged misconduct are set out in the Notice of Hearing. An Agreed Statement of Facts for Plea of No Contest was filed as Exhibit 1 and a Joint Submission on Penalty was filed as Exhibit 2. The Statement of Facts had been signed by David E. Leonard of

McCarthy Tétrault and the member, David Edward W. Cummins as well as the member's counsel, John W.J. Judson.

FINDINGS OF FACT:

Based on the Agreed Statement of Facts for Plea of No Contest and Guilty Plea, the panel finds the following facts:

1. David Edward W. Cummins, (the "Member"), is a member of the Ontario College of Teachers.
2. The Member was employed by the Toronto District School Board ("the Board"), and was a teacher, then a Vice-Principal, and eventually was appointed Principal. The Member fulfilled these roles, respectively, at a number of schools between 1966 and 1995.
3. [REDACTED] was an [REDACTED] male student [REDACTED] class during the 1971/1972 academic year. [REDACTED], who [REDACTED], would often assist the Member at School, as well as with the organization of [REDACTED].
4. On at least four different occasions throughout the 1971/1972 and 1972/1973 academic years, the Member took [REDACTED], along with other students, on school sponsored [REDACTED] including [REDACTED] near the Towns of [REDACTED] and [REDACTED]. Sometimes they were housed in [REDACTED] and sometimes in [REDACTED]. During the course of these [REDACTED] trips, the Member:
 - (a) fondled [REDACTED]'s genitals;
 - (b) performed fellatio on [REDACTED];
 - (c) insisted that [REDACTED] perform fellatio on the Member; and

- (d) told [] that what was happening ought to be kept secret and was a normal thing to happen when two people cared for each other.
5. During the summer of 1973, on an evening prior to a [] trip the following morning to [] where they were to spend two nights, [] and another student stayed overnight at the Member's home. Again, the Member fondled [] and performed fellatio on him. As well, on the second night of the [] trip, []
 6. At some time during []'s [] year, he would spend nights at the Member's home. On many of these occasions, when [] would sleep on a couch in the family room of the Member's home, the Member would join [] on the couch; would masturbate []; would perform fellatio on [], and would sometimes put his penis between []'s legs.
 7. During March break of []'s [], [] and a female high school student and friend of his, accompanied the Member on a driving trip to []. The Member and [] shared a motel room, while the female high school student stayed in a separate room. During the night, the Member performed fellatio on []
 8. Twenty (20) years later [] brought his complaint to the authorities and on October 10, 1997, after a full trial in the Ontario Court (General Division), the Honourable Justice Lane acquitted the Member of all charges relating to the allegations of sexual abuse and misconduct alleged against him by []
 9. Some time during 1983 and 1984, and while [], a female [] student was approximately [], the Member:
 - (a) kissed [] and fondled her breasts in a [] at a [] and [] and
 - (b) lay on top of [] when he was unclothed from the waist down, and fondled and kissed her.
 10. The Member resigned his employment with the Board on June 30, 1998 and retired from teaching.

DECISION AND ORDERS:

Having examined the exhibits filed and based on the submissions by both parties, the Committee accepts the member`s Agreed Statement of Facts for Plea of No Contest and finds David Edward W. Cummins, Certificate of Registration #107917, guilty of professional misconduct under sections 1 (5), 1 (7), 1 (15), 1(18) and 1 (19) of the Professional Misconduct Regulation 437/97 and under sections 1 and 40 (1.1) of the Act and that he displayed a lack of knowledge, skill or judgment and a disregard for the welfare of students of a nature or extent that demonstrates that the member is unfit to carry out his professional responsibilities.

The Committee orders the Registrar and Chief Executive Officer of the Ontario College of Teachers to revoke David Edward W. Cummin`s Certificate of Qualification and Registration immediately.

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, *Professionally Speaking /Pour parler profession.*

The Committee also orders that, in any publication, the names of the students not be published and that they may only be identified by two initials.

DATED AT TORONTO, THIS 6TH DAY OF MARCH, 2003
BY ORDER OF THE DISCIPLINE COMMITTEE

Bernard J. Adam, **Chair**

Janet Cornwall

Marilyn Laframboise