

**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
Brian Francis English, a member of the Ontario College of
Teachers.

PANEL: Anne Vinet-Roy, Chair
Ernie Checkeris
Doug Carter

BETWEEN:)	
	)	Carole Jenkins.,
	)	McCarthy Tétrault,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Jennifer Robinson,
	)	Law Clerk
- and -)	
)	
BRIAN FRANCIS ENGLISH	)	Brian Francis English was not
(CERTIFICATE # 100500)	)	present, nor was he represented
)	
	)	Christopher Wirth,
	)	Stockwoods,
	)	Independent Legal Counsel
)	
	)	Heard: September 15, 2004

REASONS FOR DECISION, DECISION AND ORDER (S)

This matter came on for hearing before a panel of the Discipline Committee (the
“Committee”) on September 15, 2004 at the Ontario College of Teachers at Toronto.

The College tendered an Affidavit of Service (*Exhibit 2, Tab A – Affidavit of Jennifer Robinson*), which confirmed that the *Notice of Hearing* had been served on the Member. The *Notice of Hearing* required the Member to attend before the Discipline Committee on June 22, 2004 to set a date for hearing. The Member was provided with all materials and was advised again of the date for hearing and information was provided to him as to his self-representation. Despite the personal service on the Member of the Notice of Hearing and the subsequent correspondence to him advising of the date set for the hearing in this matter, there was no response from him and he did not appear at the hearing. Accordingly, the Committee was satisfied that the Member knew that the hearing would proceed on this date and the Committee proceeded to hear the matter as scheduled in the Member’s absence.

The Allegations

The allegations against Brian Francis English in the *Notice of Hearing* are as follows:

IT IS ALLEGED that Brian Francis English 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 signed or issued, in his professional capacity, a document or documents that he knew or ought to have known contained a false,

improper or misleading statement, contrary to Ontario Regulation 437/97, subsection 1(12);

- (c) he failed to comply with the *Act* or 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 relevant to his suitability to hold a certificate of qualification and registration and that may cause a student who is under the Member's professional supervision to be put at risk, contrary to Ontario Regulation 437/97, subsections 1 (16) and 1 (17);
- (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); 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.

PARTICULARS OF THESE ALLEGATIONS ARE AS FOLLOWS:

1. Brian Francis English (the "Member") is a member of the Ontario College of Teachers.

2. On or about January 4, 1975, in Holyrood, Newfoundland, the Member indecently assaulted a 12-year-old male, [REDACTED], contrary to Sec. 156 of the *Criminal Code* (Canada).
3. On January 7, 1975, the Member pleaded guilty to the charge of indecent assault and was convicted of same. The Member received a suspended sentence and was placed on probation for two (2) years. A condition of the sentence was that psychiatric help be obtained for as long a period as may be deemed necessary.
4. On January 31, 1989, the Member made application for a teaching position to the Dufferin-Peel Roman Catholic Separate School Board (“the Board”). The Member answered “No” to the question of whether he had been convicted of any criminal offences.

Member’s Plea

As the Member was not present, 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 Evidence

The College called two witnesses, JoAnne Shepherd (“Shepherd”), Manager of Employee Relations with the Dufferin-Peel Roman Catholic Separate School Board (the

“Board”) and Bonnie Rittersporn (“Rittersporn”), Investigator, Ontario College of Teachers.

Evidence of Shepherd

Shepherd is Manager, Employee Relations for the Dufferin-Peel Roman Catholic Separate School Board. Shepherd explained that because of Regulation 521, an amendment to the Education Act that came into effect in 2001, all Boards were required to obtain criminal record checks for all employees by July 31, 2003. She explained the process used by her Board for obtaining such checks. The Member consented to having a criminal records check (CRC) done on his behalf.

When the Member’s CRC was received from the Ontario Provincial Police (OPP), it was positive and showed that the Member had been convicted of a criminal offence under section 156 of the *Criminal Code* (Canada) of an indecent assault on male on January 7, 1975 and received a suspended sentence and probation of 2 years. (*Exhibit 4, Tab 1 – Brief of Board Documents*). Shepherd testified that upon receipt of the CRC, employees were given 40 days to refute the information. The Member did not refute the information. The matter was then referred to the Board.

The Board suspended the Member, with pay, pending an investigation, as the Board was required to do by the *Education Act*. Shepherd testified that because the criminal offence was section 156 of the *Criminal Code* (Canada) the offence involved a minor.

Shepherd met with the Member and his federation representative. At the meeting they learned that the information received on the CRC was accurate and the Member did not refute it.

Shepherd presented the Member with the original of his teacher application form to the Board, dated January 31, 1989 where answered "No" to the question "Have you ever been convicted of any offence under the Criminal Code of Canada for which a pardon has not been granted?" When asked if he had been pardoned for the offence, the Member responded "No".

Following the meeting, Shepherd sought legal advice. The Board's lawyers provided Shepherd with a certified copy of the Information showing the date of the offence to be January 4, 1975, that the Member plead guilty and was convicted on January 7, 1975, and received a suspended sentence of 2 years. A condition of the sentence was that psychiatric help be obtained for as long a period as may be deemed necessary. (*Exhibit 4, Tab 1 - Brief of Board Documents*).

Following legal advice, the Board took steps concerning the Member's employment. A recommendation was made to the Executive Council of the Board to terminate the Member's employment and by Board motion the Member was subsequently terminated. The Member was informed by hand delivered letter dated August 27, 2003 to the termination. The board motion is obtained in that letter and reads as follows:

“That Brian English be dismissed, effective immediately, from the employ of the Board and that the Ontario College of Teachers be so notified because he was convicted of indecent assault on a male who was a minor, an offence under the Criminal Code (Canada) involving sexual conduct and minors, and was untruthful when he applied for employment with the Board as a teacher by indicating on the application form that he had not been convicted of any offence under the Criminal Code of Canada for which a pardon has not been granted, which is not true.”

A copy of the termination letter was sent to the Registrar of the Ontario College of Teachers.

Evidence of Rittersporn

Rittersporn is an Investigator of the Ontario College of Teachers who was assigned to this matter. She explained that she contacted [REDACTED], who was the victim of the indecent assault by the Member. [REDACTED] indicated that he was 12 years old at the time of the assault and indicated this on her Memo to File. (*Exhibit 5*)

Rittersporn explained the Memo to File Process of how she took her notes. While speaking with [REDACTED] on the telephone, she contemporaneously recorded the details of the conversation and indicated by quotation marks exact statements made to her.

The Committee found Rittersporn to be a credible witness and accepted her testimony that [■] was indeed the victim and that he was 12 years old when the Member indecently assaulted him.

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 allegation 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 the 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 Brian Francis English committed acts of professional misconduct as alleged, more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(12), 1(14), 1(15), 1(16), 1(17), 1(18) and 1(19) and he displayed a lack of knowledge and judgment to an extent that demonstrates that the Member is unfit to carry out his professional responsibilities.

Findings of Fact and Reasons for Decision

The Committee finds that Brian Francis English is a member of the Ontario College of Teachers as shown on the *Registered Member Information*. (Exhibit 3)

The Committee finds that or about January 7, 1975, the Member pleaded guilty to a charge of indecent assault on a 12-year-old male, contrary to Sec. 156 of the *Criminal Code* (Canada) and was convicted of same. The Member received a suspended sentence and was placed on probation for two (2) years. A condition of the sentence was that psychiatric help be obtained for as long a period as may be deemed necessary. By his own admission with Shepherd, the Member stated he had never applied for or received a pardon for this offence.

The Member applied for a teaching position to the Dufferin-Peel Roman Catholic Separate School Board (the "Board") on January 31, 1989. On his application for employment he answered "No" to the question "Have you ever been convicted of any offence under the Criminal Code of Canada for which a pardon has not been granted?"

The Committee found both witnesses to be credible and accepted their evidence in whole. Part of both witnesses evidence was hearsay. The Committee finds the evidence to be reliable, coherent and relevant to the allegations and accepts such evidence to be factual.

Reasons for Decision

It is uncontested that the Member was charged on January 4, 1975 and convicted on January 7, 1975 of indecent assault on a 12-year old male, contrary to section 156 of the *Criminal Code* (Canada). The Member was sentenced on January 7, 1975 and received a suspended sentence and was placed on probation for two (2) years. A condition of the sentence was that psychiatric help be obtained for as long a period as may be deemed necessary.

It is uncontested that the Member lied on his application for employment with the Board by indicating that he had never been convicted of a criminal offence for which a pardon had not been granted.

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

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 no appeal of the conviction or discharge was taken and the time for an appeal has expired.

The Member did not appeal the conviction or sentence.

Having no evidence to the contrary, the Committee accepts the proof of prior conviction and finds that the Member did commit an indecent assault on a 12-year-old male. This constitutes professional misconduct under Ontario Regulation 437/97, subsections 1(17).

The Committee also finds that the Member lied about his criminal record when he applied for a teaching position on January 31, 1989 with the Dufferin-Peel Roman Catholic Separate School Board when he answered “No” to the question of whether he had been convicted of any criminal offences. Such conduct is contrary to Ontario Regulation 437/97, subsection 1 (12).

Section 32.02 of the By-laws of the Ontario College of Teachers confirms that members of the College in their position of trust and influence must “maintain professional relationships with students”, “recognize and respect the privileged nature of the relationship that teachers maintain with students”, and “act with integrity, honesty, fairness and dignity”. The Committee finds that the Member breached these standards of the profession and accordingly breached section 264 (1) (c) of the *Education Act* and Ontario Regulation 437/97, subsection 1(5), 1(14) and 1(15) by indecently assaulting a 12-year-old male.

The Committee also finds that the Member’s indecent assault on a 12-year old male is contrary to Ontario Regulation 437/97, subsection 1(7) and 1(18) and as such engaged in conduct that would reasonably be regarded by members as disgraceful, dishonourable and unprofessional.

The Committee finds that by indecently assaulting a 12-year old male, the Member contravened laws relevant to his suitability to hold a certificate of qualification and registration, contrary to Ontario Regulation 437/97, subsection 1(16) and engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19).

Penalty

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

1. revocation of the Member's certificate of qualification and registration; and
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.
2. Pursuant to Section 30 (5) (iii) 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

It is a matter of fact that the Member was convicted of indecent assault on a minor and it is a matter of fact that the Member did lie on his application for employment as a teacher. These acts are reprehensible, illegal and inconsistent with the standards to which teachers must be held. Accordingly the Committee revokes the Member's certificate of qualification and registration because of the seriousness of the proven allegations and in order to protect the public interest.

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 was satisfied that revocation of the Member's certificate of qualification and registration is the appropriate penalty.

Date: September 17, 2004

Anne Vinet-Roy
Chair, Discipline Panel

Ernie Checkeris
Member, Discipline Panel

Doug Carter
Member, Discipline Panel