

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 James Edward Hutton.

The Discipline Committee held a hearing on November 26, 2002,

BETWEEN:

ONTARIO COLLEGE OF TEACHERS

- and -

JAMES EDWARD HUTTON

Certificate #133183

REASONS FOR DECISION, DECISION AND ORDER

PRESENT:

Members of the Panel

Marilyn Laframboise (Chair)

Bernard J. Adam

Karen Mitchell

Brian Gover and Chris Worth, Stockwoods, Independent Legal Counsel to the Committee

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

Maurice Green, Green and Chercover, Counsel for the member, assisted by Peter Lipman, OSSTF, Director of Educational Services

James Edward Hutton

On November 26, 2002, the Discipline Committee ordered a publication ban directing that there may be no publication of any information which may lead to the disclosure of the identity of the student and that he be identified only by two initials.

A Notice of Hearing, dated December 3, 2001 was served on James Edward Hutton (James Hutton), requesting attendance before the Discipline Committee of the Ontario College of Teachers on January 14, 2002, to set a date for hearing and specifying the charges. The hearing was scheduled to commence on November 25, 2002.

It is alleged that James Hutton 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 a student physically, sexually, verbally, psychologically or emotionally, contrary to Ontario Regulation 437/97, subsection 1(7);
- (c) he failed to comply with the Education Act, Revised Statutes of Ontario, 1990, chapter E.2 and particularly section 264(1)(c) thereof, and the Regulations made under that Act, contrary to Ontario Regulation 437/97, subsection 1(15);
- (d) he performed an act or acts that, having regard to all the circumstances, would reasonably be regarded by members as being disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 437/97, subsection 1(18); and
- (e) he engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19).

It was also alleged that he displayed a lack of knowledge, skill or judgement and/or a disregard for the welfare of his 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.

The Notice of Hearing states that James Hutton is a member of the Ontario College of Teachers and therefore comes under the jurisdiction of the Ontario College of Teachers.

On November 26, 2002, the Discipline Committee of the Ontario College of Teachers conducted a hearing into whether James Edward Hutton was guilty of professional misconduct.

Counsel for the member presented a motion to adjourn the hearing because of the late arrival of medical reports. It was suggested by counsel that a pre-hearing conference be held with the Chair of the panel as the Presiding Officer, in an attempt to avoid a lengthy adjournment in this matter. Even though this presented an unusual situation, the Committee agreed that a pre-hearing was a suitable approach and the pre-hearing took place immediately. As a result of the pre-hearing conference, an Agreed Statement of Facts and Plea of No Contest was subsequently presented.

EVIDENCE:

Counsel for the Ontario College of Teachers referred to the charges set out in the Notice of Hearing, alleging that James Edward Hutton 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, sections 1 (5), (7), (15), (18) and (19).

Counsel presented evidence that James Edward Hutton is a member of the Ontario College of Teachers. At all material times, the member was employed by the Toronto District School Board as a teacher.

An Agreed Statement of Facts (Exhibit #1) was filed under the heading, Particulars of the Allegations To Which James Edward Hutton Will Plead No Contest. That document was dated November 26, 2002 and had been signed by McCarthy Tetrault on behalf of the Ontario College of Teachers and by Green and Chercover on behalf of the member.

FINDINGS OF FACT:

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

The document included the following:

1. James Edward Hutton is a member in good standing of the Ontario College of Teachers.
2. At all material times, the member was employed and remains employed, by the Toronto District School Board. Since 1974 to the present, the member has taught Physical and Health Education, grades 9 - OAC at Northern Secondary School. From September 1974 to June 1989, he taught Mathematics, grades 9, 10 and 11.

- From 1994 to the present, he has held the position of Head of Physical and Health Education.
3. Throughout his lengthy and productive career, the member has never been accused of any unprofessional conduct, prior to the current charges.
 4. At all material times, the student was over eighteen (18) years of age and completing his last year at Northern Secondary School. The student was a member of Northern Secondary School [redacted] team. The member knew the student well, both professionally and through the member's children.
 5. At the time in question, the student had been hired by the member to provide [redacted] lessons in the gymnasium at the school from 7 p.m. until 9 p.m. during the Spring 2000 session.
 6. On the night in question, June 13, 2000, the member returned to the school in order to unlock a storage room in which the Nomads Rugby Club stored its equipment - the Rugby Club having used Northern Secondary School's grounds for practice for some period of time. Additionally, the member drove his daughter and another student to the school for a rugby practice that evening.
 7. Having dropped off his daughter and the other student, the member went to see the administrative assistant in order to obtain the key for the basement storage area. This was a pre-arranged encounter as neither could meet during the day to pass over the key. On the way to pick up the key, the member encountered the student. The member mentioned to the student that he still had not picked up his [redacted] jersey, which had been given to the student by [redacted].
 8. The member was aware that the term was coming to an end and that the student would be proceeding to university. The member was also aware that the student

- would be teaching [REDACTED] that particular evening. At that point in time, the member had kept the jersey in his third floor gym office for approximately two weeks.
9. The member eventually went to his office on the third floor. As he walked past the student, the student said "Hello" and said that he would pick up his jersey. At the same time, he asked the member whether he had a pen, as he needed one to take attendance. The member replied that he did, and for the student to come to the office. The student followed the member to his office and momentarily stood in the doorway.
 10. The member sat at his desk looking for a pen and invited the student to sit down. The door was closed. The student sat down on a chair. The member found a pen and retrieved the student's jersey. The member then turned towards the student. The member said to the student words to the effect that he had better pay attention to things in his life. At that stage, the member turned and rolled his chair over to the student's chair and uttered the following words in approximately the following manner: Are you circumcised? Because, you know after circumcision comes castration. The member also made reference, in the latter context, to helping students remember things. This was an ongoing rugby team joke for some of the players.
 11. As the member was handing the student the jersey, he touched the student's penis for a few seconds.
 12. Approximately three days later, the student's father called the member at home, before school started, and requested a meeting. The member agreed, and met with the father and student on Friday, June 16, 2000, at a local parkette. When they met, the member apologized for what occurred and stated that he meant

- nothing by his actions. The meeting was short and at the end, the member and student shook hands.
13. The father subsequently contacted the school board and an investigation occurred. The member cooperated throughout the investigation with assistance from his Federation. On September 22, 2000, the employer imposed a ten (10) day suspension on the member. The member suffered a loss of approximately \$3,000 and did not grieve the penalty, which remains on his record for five years.
 14. In the course of dealing with the employer, the member readily agreed to visit a psychiatrist in order to allay any fears the employer may have had, and to exclude other possibilities. The member saw Dr. Vivian Rakoff, past Director and Psychiatrist-in-Chief of the Clarke Institute (presently called the Centre for Addiction and Mental Health).
 15. Dr. Rakoff's conclusions and analysis show that the member does not possess the type of personality that would engage in any sexual contact or conduct of a non-heterosexual variety whether with a student or otherwise. The report places the member's statements in the full context of the "rugby world" and sports ethos. The report further confirmed that the member "has been profoundly upset by the events and its consequences, and will no doubt be hyper-vigilant in his relationships with students in the future".
 16. At the request of counsel for the College, the member readily agreed to undergo psychological testing and meet with a second psychiatrist in order to allay any fears the College may have concerning the events. Additionally, the member's wife agreed to meet with an assistant to the psychiatrist.

17. At all times, the member acknowledged the uninvited physical contact and its unintended consequences to the student.
18. The member therefore pleads no contest to the facts as set out herein, and agrees that by such conduct, he:
 - (a) failed to maintain the standards of the profession, contrary to Regulation 437/97, 1(5)
 - (b) committed an act of physical abuse contrary to Regulation 437/97, 1(7)
 - (c) performed an action, having regard to all the circumstances, that would reasonably be regarded by members as unprofessional, contrary to Ontario Regulation 437/97, subsection 1(18);and the Committee will make findings accordingly.
19. The member and the College agree that the appropriate penalty should be a reprimand by the Committee, to be placed on the register, followed by publication in the official publication of the College, *Professionally Speaking/Pour parler profession*.

The panel accepted the Agreed Statement of Facts as submitted by counsel, and believes that it represents an appropriate resolution to this matter and protects the public interest.

DECISION AND ORDER:

The Committee finds James Edward Hutton, Certificate #133183, guilty of professional misconduct in that he failed to maintain the standards of the profession, contrary to Regulation 437/97, subsection 1, part 5, that he committed an act of physical abuse contrary to subsection 1, part 7 and that he performed an action, having regard to all the circumstances, that would reasonably be regarded by members of the profession as unprofessional, contrary to subsection 1, part 18. It is noted that the member pleaded no contest to the allegations.

The Committee accepts the submission of counsel with regard to penalty. The Committee will issue a verbal reprimand and the fact of such reprimand will be placed on the Register.

James Hutton did appear before the Discipline Committee on November 26, 2002. A verbal reprimand was issued on that date to stress to the member the unacceptability of his behaviour as a teacher and as a specific deterrent to him.

Pursuant to Section 30(5)(iii) of the Ontario College of Teachers Act, the decision of the Committee will be published in the official publication of the Ontario College of Teachers, *Professionally Speaking/Pour parler profession* and will include the name of the member.

**DATED AT TORONTO, THIS 13th DAY OF DECEMBER, 2002
BY ORDER OF THE DISCIPLINE COMMITTEE**

Marilyn Laframboise, **Chair**

Bernard J. Adam

Karen Mitchell