

**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** discipline proceedings against  
Mark Harper Kannon, a member of the Ontario College of Teachers.

Heard: July 14, 2003

PANEL: Bernard J. Adam (Chair)  
Ernie Checkeris  
Audrey J. Hadfield

**BETWEEN:**

**ONTARIO COLLEGE OF TEACHERS**

**- and -**

**MARK HARPER KANNON  
CERTIFICATE #199961**

**REASONS FOR DECISION, DECISION AND ORDER (S)**

David Leonard, McCarthy Tétrault, for Ontario College of Teachers,  
assisted by Trevor Evans, Senior Law Clerk

Bernard Hanson, Cavalluzzo Hayes Shilton McIntyre & Cornish for Mark  
Harper Kannon

Christopher Wirth, Stockwoods, Independent Legal Counsel

Mark Harper Kannon was present.

This matter came on for hearing before a panel of the Discipline Committee on July 14, 2003 at the Ontario College of Teachers at Toronto.

A Notice of Hearing dated June 6, 2003 was served on Mark Harper Kannon, requesting attendance before the Discipline Committee of the Ontario College of Teachers on June 17, 2003 to set a date for a hearing, and specifying the charges.

Mark Harper was in attendance at the hearing. The Notice of Hearing and proof of service of was presented and accepted by the panel (Exhibit 1).

#### The Allegations

The allegations against Mark Harper Kannon (the "Member") in the Notice of Hearing dated June 6, 2003 are as follows:

**IT IS ALLEGED** Mark Harper Kannon is guilty of professional misconduct as defined in sections 30(2) and 40 (1.1) of the 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 or emotionally contrary to Ontario Regulation 437/97, subsection 1(7);
- (c) he failed to comply with the Act and the *Education Act*, R.S.O. 1990 c.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 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.

Counsel for the College advised the Committee that the College was withdrawing the allegations set out in paragraphs (b) and (f) of the Notice of Hearing.

**PARTICULARS OF THESE ALLEGATIONS ARE AS FOLLOWS:**

1. Mark Harper Kannon (the "Member") is a member of the Ontario College of Teachers.
2. At all material times, the Member was employed by the Catholic District School Board of Eastern Ontario as a teacher at [REDACTED] ("the School"), Cornwall.

3. During the 2001-2002 school year, the Member sent e-mails containing graphic sexual material, which included nude photographs of women, to male students of the School and discussed those photographs and the pornographic websites with them.
4. On or about 11 June 2002, the Member forwarded an e-mail to which was attached ten photographs of a pornographic nature, depicting a nude female in various poses, to [REDACTED], a fifteen year old male student in Grade 9, who was one of his students. That e-mail, with attached photographs, was then forwarded by [REDACTED], on or about [REDACTED] June 2002, to at least eleven other individuals, including [REDACTED], brother, who was a student of [REDACTED] School in Cornwall. [REDACTED] then sent the e-mail, in its entirety, on or about 19 June 2002, to at least twenty-two other individuals. One of the recipients of that mailing was [REDACTED], another twelve year old male student who was also attending [REDACTED] School, and who opened the e-mail in the computer lab at that school.
5. The e-mail referred to in the previous paragraph was entitled, "For You!" and contained the message, "CHECK OUT THE NICE CARPET BURNS ON HER KNEES.....!!!!", which refers to the photographs, which were attached to the e-mail.
6. On or around 11 June 2002, the Member also forwarded the same e-mail message, with the attached photographs, referred to in paragraphs 5 and 6 above, to [REDACTED], an eighteen year old male student of the School, to whom the Member had also forwarded at least five other e-mails containing jokes and pictures of a sexual nature, during the 2001-2002 school year.
7. During the 2001-2002 school year, the Member sent several other e-mails containing pornographic material to [REDACTED] and would afterwards ask [REDACTED] if he enjoyed the pictures that had been sent to him.

8. During the 2001-2002 school year, the Member engaged in inappropriate communications and conversations with students of the School, both on and off of school premises. Those conversations and communications included sexual innuendos and sexual overtones.
9. On or about 25 June 2002, the Member was suspended by the Board, and on 20 August 2002, was dismissed from the Board's employ.

#### Publication Ban

On July 14, 2003, the Discipline panel made an order that there be no publication of any information which may disclose the identity of the students involved in this matter.

#### Member's Plea

Mark Harper Kannon admitted the allegations set out in paragraphs numbered (a), (c), (d), (e) and (g) in the Notice of Hearing dated June 6, 2003.

#### Agreed Statement to Facts

Counsel for the College advised the panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts (Exhibit 2) which provides as follows:

1. Mark Harper Kannon (the "Member") is a member of the Ontario College of Teachers.
2. On 29 May 2003 an interim order was made by the Executive Committee of the Ontario College of Teachers suspending the Certificate of Qualification and Registration of the Member with effect from 30 May 2003, until the complaint made by the Registrar against the Member is disposed of by the Discipline Committee.

Attached to the Agreed Statement of Facts and marked as Exhibit “A” and “B” respectively were copies of the Ontario College of Teachers’ Registry System Status of the Member and Interim Order of the Executive Committee of the Ontario College of Teachers dated 29 May 2003.

3. At all material times the Member was employed by the Catholic District School Board of Eastern Ontario as an English and Geography teacher at [REDACTED] School (the “School”) in Cornwall, Ontario.
4. During his tenure at the School, the Member met regularly with male and female students in his classroom, particularly during the lunch hour. The door to the classroom was always open. Other teachers in the School met with students in their classrooms over the lunch hour from time to time. The School’s administration was aware that the Member met with students in his classroom over the lunch hour. On at least one occasion, the School’s administration spoke to the Member about keeping appropriate professional boundaries between himself and his students.
5. Between February 2002 and 11 June 2002, the Member, sent e-mail messages with attachments containing graphic sexual material, which included nude colour photographs of women, to at least two male students of the School, [REDACTED] and [REDACTED]. The Member also discussed those photographs and pornographic websites with students, including [REDACTED] and [REDACTED].
6. The Member forwarded two e-mail messages of the type described in paragraph 5 above to [REDACTED], then an eighteen-year-old Grade 12 student of the School. [REDACTED] had not been a student of the Member but did routinely attend in the Member’s classroom during lunch hour.
7. The Member forwarded approximately nine e-mail messages of the type described in paragraph 5 above to [REDACTED], then a 15 year old male student who had been in the Member’s Grade 9 English class two years earlier. [REDACTED] had initially requested the Member to send him e-mail messages with attachments containing photographs of

the type described in paragraph 5 above, after hearing a discussion between the Member and an older student. While most of the e-mail attachments sent by the Member to [ ] depicted nude females, usually in their twenties, one depicted two nude females engaged in sexual activity with each other. On occasion, the Member asked [ ] whether he liked the pictures that he received from the Member and offered to forward other photographs to [ ]

8. On or about 11 June 2002, the Member forwarded to [ ] one such e-mail to which was attached nine photographs of a nude female in various suggestive poses and one photograph of a close-up of the said female's pudendum. The e-mail was entitled, "For You!" and contained the message, "CHECK OUT THE NICE CARPET BURNS ON HER KNEES.....!!!!", which refers to the photographs, which were attached to the e-mail. Attached as Exhibit "C " to the Agreed Statement of Facts was a copy of that e-mail and its attachments listed as [ ].
9. On or about 17 June 2002 the e-mail referred to in paragraph 8, with attached photographs, was forwarded by [ ] to at least eleven other individuals, including [ ], [ ]'s brother, who was then a student at [ ] School in Cornwall.
10. On or about [ ] June 2002 [ ] forwarded the same email and attachments to at least twenty-two other individuals, including male and female students at [ ] School and [ ] School in Cornwall. One of the recipients of that mailing was [ ], another 12-year-old male student who was then attending [ ] School and who opened the email and attachments in the computer lab at that school. [ ]'s teacher saw the e-mail and attachments on the monitor and contacted the school's administration, who in turn contacted the Board and the Cornwall police. An investigation ensued and determined that the Member was the original source of the e-mail and attachments.
11. As a result of the discovery of the e-mail message of 11 June 2002 and the subsequent investigation, [ ] became upset, withdrawn and unfocused for approximately six

months. He refused, and still refuses, to discuss the incident with his parents. He has not been seen by a counsellor.

12. On or about 25 June 2002, the Member was suspended by the Board, and on 20 August 2002, was dismissed from the Board's employ.
13. On or about 29 April 2003, Dr. R. Kunjukrishnan, Associate Professor and Associate Director of Forensic Psychiatry of the Faculty of Medicine of the University of Ottawa, prepared a report concerning his psychiatric assessment of the Member, whom he examined on 7 January 2003, 20 January 2003 and 22 April 2003. A copy of that report was attached to the Agreed Statement of Facts as Exhibit "D."
14. At the request of Dr. Kunjukrishnan, Dr. A. G. Ahmed, a staff psychiatrist with the Forensic Psychiatry Program of the Royal Ottawa Health Care Group, also interviewed the Member and conducted a sexual behaviours assessment, including phallometric testing, and found that there was no clinical or laboratory evidence to support a paraphilia, particularly pedophilia. The Member's sexual orientation was stated to be strictly homosexual, but there was no evidence to support any pedophilic interests. Dr. Ahmed also concluded that although the Member had engaged in questionable behaviour with regard to his interactions with the student by sending nude female photographs, that did not appear to be on a background of sexual disorder. A copy of Dr. Ahmed's report was attached to the Agreed Statement of Facts as Exhibit "E."

By the fact that the Member's counsel signed the Agreed Statement of Facts on his behalf, the Member, Mark Harper Kannon, accepts that the matters referred to in paragraphs 5 to 8 above constitute professional misconduct and pleads guilty to the allegations of professional misconduct against him being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(14), 1(15), 1(18), and 1(19). Further, the Member accepts that in engaging in the matters referred to in paragraphs 5 to 8 above, 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 certificate held by the Member should be made subject to terms, conditions or limitations, contrary to Regulation 437/97 s. 30(3) of the *Act*.

### **The Evidence**

In addition to agreeing to the truth and accuracy of the facts as outlined in the Agreed Statement of Facts, the Member called two witnesses. Dr. Reghuvaran. Kunjukrishnan, Director of Education, Division of Forensic Psychiatry, Faculty of Medicine of the University of Ottawa was the first to testify. The Member, Mark Harper Kannon, then testified on his own behalf.

#### *Evidence of Dr. Kunjukrishnan*

Dr. Kunjukrishnan gave evidence as to his academic qualifications. He indicated that he had been called as an expert witness in the field of forensic psychiatry on a number of occasions, both in the criminal courts, in civil litigation matters and also at the Law Society of Upper Canada.

Dr. Kunjukrishnan identified his medical report of April 29, 2003 (Tab D of Exhibit 2). He indicated that he did not specialize in sexual disorders. He indicated that in preparation of his report he had relied in part on the assessment of the Member by Dr. A.G. Ahmed, who was a specialist in sexual behavioural assessment. Dr. Ahmed, a Staff Psychiatrist in the Forensic Psychiatry Program at Royal Ottawa Hospital had consulted

with the Member in February 2003 and had subsequently prepared his findings (Tab E of Exhibit 2).

Dr. Kunjukrishnan confirmed the findings contained in his report, namely that in his assessment of Mark Kannon and in relying on the findings contained in Dr. Ahmed's report, he found no evidence of any mental illness or disorder; that he found no evidence of sexual deviant behaviour and found no evidence to indicate that Mr. Kannon had any pedophilic or hebephilic urges or tendencies.

Dr. Kunjukrishnan stated that he believed that there was very minimal, if any, risk that the Member would again engage in conduct similar to that which was before this Committee. He also stated that although motives of individuals are hard to determine, he did not believe that the Member was sending the photographs for any grooming purposes. He believed the member thought "it was a joke at the moment" and that Mr. Kannon had made an error in judgment.

Under cross-examination, Dr. Kunjukrishnan admitted that at the time he had prepared his report on the Member he thought that the activity engaged in by the Member was an isolated incident. He was unaware at the time that the Member had in fact sent similar electronic transmissions a total of 11 times to the two students involved.

In re-examination, Dr. Kunjukrishnan testified that once he had received additional information from the Member's counsel, including copies of further e-mails that had

been sent, he met again with the Member. He indicated that the receipt of additional information did not change his opinion, that his diagnosis and conclusions contained in his report remained as outlined in that report.

*Evidence of the Member*

The Member testified that he had been terminated by the Catholic District School Board of Eastern Ontario as a result of the complaint against him, which formed the subject matter of this hearing. He indicated that a police investigation had been held and that no criminal charges had been laid. After his termination he had moved from Cornwall to Ottawa and had obtained employment with the Ottawa-Carleton District School Board until the allegations of misconduct came to light, at which time he was removed from the supply teachers' list until the resolution of this matter.

The Member testified that prior to the matter at hand, he had never been disciplined in his 12 years of teaching. He indicated that prior to his move to Ottawa he had been earning \$60,000 per year but that in 2003 he had earned \$18,000.

Mr. Kannon indicated that sending these electronic messages to students was "the stupidest thing I ever did", that he deeply regretted it, that he would not do it again and that he wanted to move on. He said, "it was stupid; it was an error in judgment; I regret it."

Under cross-examination the Member admitted that he had filed a grievance, hoping to get his teaching job back with the Catholic District School Board of Eastern Ontario.

When asked if he had told the Ottawa-Carleton District School Board about the incident with his former board, he indicated that he had provided the name of his former principal to his new employer.

The Member agreed that he did not disclose to Dr. Kunjukrishnan that he had sent multiple e-mails to the student and said that, as a teacher, he could understand the upset of parents, the schools and the board upon discovery of the electronic communications he had sent to students. He also admitted that such action was contrary to his role as a teacher.

### Decision

Based on the Agreed Statement of Facts, the submissions made by counsel, and the evidence received, the Committee finds that the facts support a finding of professional misconduct and finds that Mark Harper Kannon committed an act of professional misconduct as alleged, being more particularly breaches of Ontario Regulation 437/97, subsections 1 (5), 1 (14), 1 (15), 1 (18), and 1 (19) and as set out in paragraph (g) of the Notice of Hearing dated June 6, 2003.

### Penalty

Based on the evidence heard and on the submissions as to penalty, the Discipline Committee:

- (1) directs the Registrar to suspend Mark Harper Kannon's Certificate of Qualification for a period of seven months effective May 30, 2003 until December 31, 2003;
- (2) requires the Member to receive instruction in a program approved by the Registrar of the College regarding boundary violations. The assignment of such course of instruction is to be completed by the Member at the member's own expense and proof of the member's successful completion of such program is to be received by the Registrar of the College from the Member by December 31, 2003; and
- (3) directs that pursuant to Section 30 (5) (iii) of the Ontario College of Teachers Act, the orders and findings of this hearing, as well as the name of the member, be published in summary in the official publication of the Ontario College of Teachers, *Professionally Speaking /Pour parler profession.*

The Committee also orders that the names of the students not be published.

#### Penalty Decision

The panel concluded that the penalty is reasonable and serves and protects the public interest in that:

- a) the order meets the objective of general deterrence, i.e. a message to the profession to deter members of the profession from engaging in similar misconduct;
- b) the order meets the objective of specific deterrence to the Member; and
- c) the order will remediate the Member by the completion of an appropriate course of instruction.

**DATED AT TORONTO, THIS 31st DAY OF JULY, 2003  
BY ORDER OF THE DISCIPLINE COMMITTEE.**

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Bernard J. Adam, **Chair**

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Ernie Checkeris

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Audrey J. Hadfield