

ONTARIO COLLEGE OF TEACHERS

DISCIPLINE COMMITTEE

REASONS FOR DECISIONS AND ORDERS

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 Kimberley Margaret Newton.

The Discipline Committee held a hearing beginning May 31, 1999

BETWEEN:

ONTARIO COLLEGE OF TEACHERS

- and -

KIMBERLEY MARGARET NEWTON

PRESENT:

Members of the Panel
Karen Mitchell (Chair)
George Merrett
Larry Capstick

The Honourable Lloyd Houlden, Independent Counsel to the Panel

Ms. Caroline Zayid and Mr. Chris Sach-Anderson, McCarthy Tétrault, Counsel for the Prosecution

Mr. William Markle and Ms. Stephanie Carey, Markle May Phibbs, Counsel for the Defense. Kimberly Margaret Newton was present at the hearing.

A Notice of Hearing, dated February 16, 1999 was served on February 18, 1999, requesting attendance before the Discipline Committee of the Ontario College of Teachers to set a date on March 22, 1999, and specifying the charges. The hearing was scheduled for May 31, 1999.

It is alleged that Kimberley Margaret Newton is guilty of professional misconduct in that:

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

The Notice of Hearing states that Kimberley Margaret Newton is a member of the Ontario College of Teachers and therefore comes under the jurisdiction of the Ontario College of Teachers (Exhibit 1).

On May 31, June 1 and 2, 1999, the Discipline Committee of the Ontario College of Teachers conducted a hearing into whether Kimberley Margaret Newton was guilty of professional misconduct.

Kimberley Margaret Newton was in attendance at the hearing, and was represented by counsel. Proof of service of the Notice of Hearing was presented and accepted by the panel (Exhibit 1).

EVIDENCE:

Counsel for the Ontario College of Teachers referred to the charges set out in Exhibit 1, alleging that Kimberley Margaret Newton is guilty of professional misconduct in that her acts were contrary to the Professional Misconduct Regulation made under the *Ontario College of Teachers Act, 1996* and filed as Ontario Regulation 437/97 on December 4, 1997, in particular, sections 5, 7, 15, 18 and 19. Particulars of the alleged misconduct are set out in Exhibit 1 and they are to the effect that:

1. Kimberley Margaret Newton is a member of the Ontario College of Teachers.
2. At all material times, Kimberley Margaret Newton was employed as an occasional teacher at St. Peter's Elementary School, Peterborough, by the

Peterborough Victoria Northumberland and Clarington Catholic District School Board (formerly the Peterborough Victoria Northumberland and Clarington Catholic Separate School Board).

3. On or about June 11, 1996, Kimberley Margaret Newton supplied as an occasional classroom teacher [REDACTED] at St. Peter's Elementary School in Peterborough.
4. On or between June 11 and 13, 1996, Kimberley Margaret Newton physically assaulted student [REDACTED] by grabbing her arm, pushing or pulling her from her chair, causing her to fall to the floor and occasioning a bruise and slight abrasion to [REDACTED]'s left arm.
5. On or between June 11 and 13, 1996, Kimberley Margaret Newton physically assaulted student [REDACTED] by kicking her in the shin, causing a bruise thereto, and stepping on her fingers.
6. On or between June 11 and 13, 1996, Kimberley Margaret Newton physically assaulted student [REDACTED] by kicking him in the head.
7. On or between June 11 and 13, 1996, Kimberley Margaret Newton physically assaulted student [REDACTED] by squeezing her shoulder.
8. On or about June 14, 1996, a group of parents, including but not restricted to those of the aforementioned students, met with the principal at St. Peter's Elementary School to request an investigation into the activities of Kimberley Margaret Newton. As a result, the member was replaced in her said position at the said school.

9. Arising out of the aforesaid, on June 17, 1996, Kimberley Margaret Newton was charged with physical assault on students [█], [█] and [█] pursuant to section 266 of the *Criminal Code of Canada*.
10. On September 4, 1996, Kimberley Margaret Newton entered into a peace bond in respect of the matters with which she had been charged, as a result of which two of the said charges were withdrawn and the member's plea of not guilty to the third charge was accepted by the Court.
11. Under the terms of the peace bond, the member agreed to have no contact with any student in the class at St. Peter's Elementary School over which she had control between June 11 and 13, 1996, for a period of one year.

Counsel presented evidence that Kimberley Margaret Newton is a member of the Ontario College of Teachers (Exhibit 1). At all material times, Kimberley Margaret Newton was employed by Peterborough Victoria Northumberland and Clarington Catholic District School Board (formerly the Peterborough Victoria Northumberland and Clarington Catholic Separate School Board) as an occasional teacher.

The Committee heard evidence from the student [█] that she was kicked in the leg by Kimberley Newton.

The Committee also heard evidence from [█]'s mother, [█], that [█] told her she was kicked and had her fingers stepped on by Kimberley Newton.

The Committee also heard evidence from the student [■] that Kimberley Newton had squeezed her shoulder causing a bruise and dug her nails into her head when she turned her around.

The Committee heard testimony from the students [■], [■] (female), [■] (male) and [■] regarding the allegations of physical assault by Kimberley Newton on students [■] and [■] as shown in Particulars 4 and 6 of the Notice of Hearing (Exhibit 1). [■] and [■] did not testify and counsel for the College had been unable to locate them.

The Committee also heard evidence from a variety of other witnesses including mother [■], mother [■], Constable Laine Schubert, Principal Laurie Bizero, teacher Carla Levere, and OECTA Occasional Teacher representative Sheila Genoe.

Character witnesses included teacher Elizabeth Deleff, teacher Colette Johnston, personal friend Beverly Graham, landlady Margot Loucks, teacher and personal friend Patricia Pearce.

FINDINGS OF FACT:

1. Kimberley Margaret Newton is a member of the Ontario College of Teachers.
2. At all material times, Kimberley Margaret Newton was employed as an occasional teacher at St. Peter's Elementary School, Peterborough, by the Peterborough Victoria Northumberland and Clarington Catholic District School

Board (formerly the Peterborough Victoria Northumberland and Clarington Catholic Separate School Board).

3. On or about June 11, 1996, Kimberley Margaret Newton supplied as an occasional classroom teacher [REDACTED] at St. Peter's Elementary School in Peterborough.
4. On or about June 14, 1996, a group of parents met with the principal at St. Peter's Elementary School to request an investigation into the activities of Kimberley Margaret Newton.
5. Arising out of the aforesaid, on June 17, 1996, Kimberley Margaret Newton was charged with physical assault on students [REDACTED], [REDACTED] and [REDACTED] pursuant to section 266 of the *Criminal Code of Canada*.
6. On September 4, 1996, Kimberley Margaret Newton entered into a peace bond in respect of the matters with which she had been charged, as a result of which two of the said charges were withdrawn and the member's plea of not guilty to the third charge was accepted by the Court.
7. Under the terms of that peace bond, the member agreed to have no contact with any student in the class at St. Peter's Elementary School over which she had control between June 11 and 13, 1996, for a period of one year.

The Panel finds on Particular 4, namely: that "on or about June 11 and 13, 1996, Kimberley Margaret Newton physically assaulted student [REDACTED] by grabbing her arm, pushing or pulling her from her chair, causing her to fall to the floor and occasioning a bruise and slight abrasion to [REDACTED]'s left arm", that the allegation is not proven in that the evidence and the testimony is inconsistent.

The Panel finds on Particular 5, namely: that “on or between June 11 and 13, 1996, Kimberley Margaret Newton physically assaulted student [REDACTED] by kicking her in the shin, causing a bruise thereto, and stepping on her fingers”, that the allegation is not proven in that the evidence and the testimony is inconsistent.

The Panel finds on Particular 6, namely: that “on or between June 11 and 13, 1996, Kimberley Margaret Newton physically assaulted student [REDACTED] by kicking him in the head”, that the allegation is not proven. The Panel does accept the possibility that some physical contact may have occurred. However, the Panel finds that if such contact did occur, it was accidental in nature.

The Panel finds on Particular 7, namely: that “on or between June 11 and 13, 1996, Kimberley Margaret Newton physically assaulted student [REDACTED] by squeezing her shoulder”, that the allegation was not proven. The Committee finds the testimony of student [REDACTED] to be inconsistent. The Committee also finds that if such physical contact did occur, it was of a guiding nature and was not an assault.

REASONS:

The Committee, on the basis of its findings, is satisfied that it has not been proved that Kimberley Margaret is guilty of professional misconduct as charged. Accordingly, the charges are dismissed. In these circumstances, there will be no order as to costs.

DECISIONS AND ORDERS:

The Committee finds Kimberley Margaret Newton not guilty of the allegations as set out in the Notice of Hearing.

**DATED AT TORONTO, THIS 5th DAY OF JULY, 1999
BY ORDER OF THE DISCIPLINE COMMITTEE**

Karen Mitchell, Chair

George Merrett

Larry Capstick