

**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
Terrance O'Brien, a member of the Ontario College of Teachers.

PANEL: Don Cattani, Chair
 Rosemary Fontaine
 Normand Fortin

BETWEEN:	)	David Leonard,
	)	McCarthy Tétrault,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -)	
)	
TERRANCE O'BRIEN	)	Terrance O'Brien was not
(CERTIFICATE # 138858)	)	present, nor was he represented
)	
	)	Brian Gover,
	)	Stockwoods,
	)	Independent Legal Counsel
)	
	)	Heard: October 6, 2004

REASONS FOR DECISION, DECISION AND ORDER (S)

This matter came on for hearing before a panel of the Discipline Committee (the "Committee") on October 6, 2004 at the Ontario College of Teachers ("the College") at Toronto.

Terrance O'Brien was not in attendance at the hearing.

The College tendered an Affidavit of Service (Exhibit 2), which confirmed that the Notice of Hearing had been served on the Member on July 7, 2004. The Notice of Hearing required the Member to attend before the Discipline Committee on July 12, 2004 to set a date for hearing. As set out in the *Affidavit of Audley Trevor Evans* ("Evans"), Senior Law Clerk (*"Affidavit of Evans"*), Exhibit 3, the Member did not appear on July 12, 2004, but did telephone Evans on July 12, 2004. On September 15, 2004 the matter was set for hearing on October 6, 2004. Evans spoke with the Member on August 25, 2004 and on September 13, 2004 confirming that the hearing date would be set for October 6, 2004. College counsel wrote two letters dated September 9, 2004 and September 14, 2004 confirming the time, date and place of the hearing. As of the date of Evans Affidavit, September 29, 2004, College Counsel had not received any communication from the Member advising that he wished the hearing date to be changed.

Evans did receive a letter from the Member dated September 7, 2004, which was provided to the Committee. (Exhibit 5). The Member, in his letter, indicated that he was not opposed to the College's right to withdraw his certificate. However, the Member was opposed to any publication until civil litigation with some of his former students had been concluded.

Accordingly the Committee was satisfied that the Member knew that the hearing would proceed on this date. The hearing was scheduled to commence at 9:00 a.m. The hearing commenced 9:30 a.m. The Member had still not appeared and accordingly, the Committee proceeded in the Member's absence.

The Allegations

The allegations against Terrance O'Brien ("the Member") in the *Notice of Hearing*) are as follows:

IT IS ALLEGED that Terrance O'Brien 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 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 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 a law, the contravention of which is relevant to the Member's suitability to hold a certificate of qualification and registration, contrary to Ontario Regulation 437/97, subsection 1 (16);
- (e) he contravened a law, the contravention of which has caused students under the Member's professional supervision to be put at or to remain at risk contrary to Ontario Regulation 437/97, subsection 1(17);
- (f) 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);
- (g) he engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19);
- (h) 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
- (i) 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. Terrance O'Brien, (the "Member") is a member of the Ontario College of Teachers.

2. The Member was employed as a teacher by The Renfrew County District School Board, or its predecessor, between the approximate dates of September 1970 and September 1997.
3. During that period the Member taught at various public and high schools in the Pembroke area, and between the approximate dates of September 1992 and 26 September 1997, the Member was employed as a teacher at a public school (the "School").
4. At all material times [XXX], [XXX], [XXX], [XXX], and [XXX] were male students of the Member.
5. Between the approximate dates of 1 September 1996 and 26 September 1997, the Member sexually interfered with [XXX] and [XXX], both being under the age of fourteen years.
6. Between the approximate dates of 1 September 1996 and 31 August 1997, the Member sexually assaulted [XXX] and [XXX]
7. Between the approximate dates of 1 January 1992 and 1 January 1996, the Member sexually assaulted [XXX]

8. On or about 6 February 2002, the Member was found guilty of the following charges brought in the Superior Court of Justice in Ottawa:
- (a) that between 1 September 1996 and 26 September 1997, he did for sexual purpose, touch the bodies of [XXX] and [XXX], persons under the age of fourteen years, contrary to s.151 of the *Criminal Code* (Canada);
 - (b) that between 1 September 1996 and 31 August 1997, he did sexually assault [XXX] and [XXX], contrary to s.271 of the *Criminal Code* (Canada);
 - (c) that between 1 January 1992 and 01 January 1996, he did sexually assault [XXX], contrary to s. 271 of the *Criminal Code* (Canada).
9. The finding of guilt referred to in paragraph 6 above, was based on the Member having pleaded no contest to an Agreed Statement of Facts which was filed with the Superior Court of Justice, and which included, but was not limited, to the following facts:
- (a) between the approximate dates of 1 January 1992 and 1 January 1996, the Member engaged [XXX], who was under the age of fourteen years, in acts of masturbation and fellatio. Further, during those dates:
 - (i) the Member watched pornographic movies and looked at pornographic magazines with [XXX]; and
 - (ii) the Member and [XXX] would kiss on the lips in public;

- (b) between the approximate dates of 1 September 1996 and 31 August 1997, the Member said sexually explicit things to [XXX], who was under the age of fourteen years. Further, during those dates, the Member:
- (i) rubbed [XXX]'s back and patted his bum;
 - (ii) gave [XXX] alcohol and rented pornographic movies;
 - (iii) tried to take off [XXX]'s pants and grabbed at [XXX]'s penis over his pants;
 - (iv) took [XXX]'s hand and had [XXX] touch the Member's genitals while the Member was naked; and
 - (v) attempted to penetrate [XXX]'s anus while [XXX] was wearing a pair of boxer shorts;
- (c) between the approximate dates of 1 September 1996 and 31 August 1997, the Member fondled the penis and testicles of [XXX], who was then approximately seventeen years of age. Further, during those dates the Member:
- (i) gave [XXX] alcohol and they watched a restricted movie with heterosexual sex scenes; and
 - (ii) put his penis in [XXX]'s anus;

- (d) in or around 01 September 1996 and 26 September 1997, the Member called [XXX] who was the under the age of fourteen years, “honey”. Further, during those dates, the Member:
- (i) patted [XXX]’s bum; and
 - (ii) put his hand down the front of [XXX]’s pants.
- (e) during the approximate dates of 01 September 1996 and 26 September 1997, the Member called [XXX], who was then under the age of fourteen years, “honey”, “cutie” and “gorgeous”. Further, during those dates, the Member
- (i) touched [XXX]’s buttocks outside his clothing;
 - (ii) hugged [XXX]; and
 - (iii) on one occasion, put his hand down the front of [XXX]’s pants and touched [XXX]’s penis.

10. On or about 21 February 2002, the Member was sentenced to be incarcerated for a total of five years.

11. The Member has not appealed the decision of the court.

Publication Ban

On October 6, 2004 the Discipline Committee made an order that there be no publication of any information that may disclose the identity of the students involved in this matter.

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

Counsel for the College entered into evidence the following additional documents:

Brief of Court Documents – Regina v. Terrance O'Brien (Exhibit 4)

A *Brief of Court Documents (Brief of Docs)* with respect to the criminal proceedings against the Member was submitted as evidence. This brief consisted of the following documents:

Tab A - Certified copy of Indictment R. V. Terrance O'Brien dated January 15, 2002, showing finding of guilt on all counts and details of sentencing;

Tab B - Plea of Guilty before Mr. Justice D. Cunningham on February 6 2002 - Superior Court of Justice;

Tab C - Transcript of Sentencing Hearing before Mr. Justice D. Cunningham on February 21, 2002 - Superior Court of Justice;

Tab D - Prohibition Order issued by Mr. Justice D. Cunningham on February 21, 2002.

The *Brief of Docs*, Tab B confirms the following:

On or about 6 February 2002, the Member was found guilty of the following charges brought in the Superior Court of Justice in Ottawa:

- (a) that between 1 September 1996 and 26 September 1997, he did for sexual purpose, touch the bodies of [XXX] and [XXX], persons under the age of fourteen years, contrary to s.151 of the *Criminal Code* (Canada);
- (b) that between 1 September 1996 and 31 August 1997, he did sexually assault [XXX] and [XXX], contrary to s.271 of the *Criminal Code* (Canada);
- (c) that between 1 January 1992 and 01 January 1996, he did sexually assault [XXX], contrary to s. 271 of the *Criminal Code* (Canada).

The finding of guilt referred to in the paragraph above, was based on the Member having pleaded no contest to an Agreed Statement of Facts which was filed with the Superior Court of Justice, and which included, but was not limited, to the following facts:

- (a) between the approximate dates of 1 January 1992 and 1 January 1996, the Member engaged [XXX], who was under the age of fourteen years, in acts of masturbation and fellatio. Further, during those dates:
 - (i) the Member watched pornographic movies and looked at pornographic magazines with [XXX]; and
 - (ii) the Member and [XXX] would kiss on the lips in public;

(b) between the approximate dates of 1 September 1996 and 31 August 1997, the Member said sexually explicit things to [XXX], who was under the age of fourteen years. Further, during those dates, the Member:

- (i) rubbed [XXX]'s back and patted his bum;
- (ii) gave [XXX] alcohol and rented pornographic movies;
- (iii) tried to take off [XXX]'s pants and grabbed at [XXX]'s penis over his pants;
- (iv) took [XXX]'s hand and had [XXX] touch the Member's genitals while the Member was naked; and
- (v) attempted to penetrate [XXX]'s anus while [XXX] was wearing a pair of boxer shorts;

(c) between the approximate dates of 1 September 1996 and 31 August 1997, the Member fondled the penis and testicles of [XXX], who was then approximately seventeen years of age. Further, during those dates the Member:

- (i) gave [XXX] alcohol and they watched a restricted movie with heterosexual sex scenes; and
- (ii) put his penis in [XXX]'s anus;

- (d) in or around 01 September 1996 and 26 September 1997, the Member called [XXX] who was the under the age of fourteen years, “honey”. Further, during those dates, the Member:
- (i) patted [XXX]’s bum; and
 - (ii) put his hand down the front of [XXX]’s pants.
- (e) during the approximate dates of 01 September 1996 and 26 September 1997, the Member called [XXX], who was then under the age of fourteen years, “honey”, “cutie” and “gorgeous”. Further, during those dates, the Member
- (i) touched [XXX]’s buttocks outside his clothing;
 - (ii) hugged [XXX]; and
 - (iii) on one occasion, put his hand down the front of [XXX]’s pants and touched [XXX]’s penis.

The Judge in his reasons for sentence (*Brief of Docs*, Tab C), found that the Member had manipulated and preyed on those boys who were most vulnerable by gaining their trust, and in some cases, their love. He was particularly troubled by the evidence as it related to [XXX] because of the length of time over which the behaviour occurred, but more particularly because of the circumstances in which it occurred.

[XXX] had been a student of the Member in grades [XXX]. [XXX]'s family setting was extremely unstable and he was having problems at school. [XXX] From 1992, when [XXX] was approximately 13 years old, to 1996 the Member engaged [XXX] in various sexual activities in his home, at his cottage, and upon one occasion during a trip to Montreal. The Member and [XXX] also watched pornographic movies and looked at pornographic magazines together. (*Brief of Docs, Tab B*)

Another victim, [XXX], was one of the Member's grade [XXX] students. [XXX] had trouble concentrating in school. The Member began his relationship with [XXX] by taking a special interest in him and giving him extra attention. The Member would say sexually explicit things to [XXX], would rub [XXX]'s back when he was taking a test, and pat his bum when he was walking in the school hallway. The Member invited [XXX] to his cottage by writing a note to [XXX]'s parents indicating that he needed help fixing things up at the cottage. At the cottage, the Member would sometimes walk around naked, play card games, which involved getting naked, give [XXX] alcohol and provide pornographic movies. On one occasion the Member attempted to penetrate [XXX] (*Brief of Docs, Tab B*)

[XXX] was a student of the Member in grades [XXX]. He had a lot of trouble in school. On one occasion, between September 1996 and August 1997 [XXX], who was approximately 17 years old, visited the Member's cottage along with others. On this occasion, the Member fondled the penis and testicles of [XXX], gave him alcohol,

watched a restricted movie with heterosexual sex scenes, and penetrated [XXX] A few months following these incidents [XXX] was admitted to a psychiatric hospital.

(Brief of Docs, Tab B)

[XXX] and [XXX] were best friends and both were students of the Member. Both had troubles in school. The Member would call them names such as “honey”, “cutie” and “gorgeous”. On occasions, while on yard duty, the Member put his hand down the front of [XXX] and [XXX]’s pants. The Member and some students would exchange sexually explicit jokes while at school. *(Brief of Docs, Tab B)*

On February 21, 2002, Justice Cunningham sentenced the Member to be incarcerated for a total of five years and ordered [XXX]. *(Brief of Docs, Tab C)*. He further imposed a Prohibition Order for a period of 10 years, barring the Member from any facility where there would be children under the age of 14. *(Brief of Docs, Tab D)*

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 allegations 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 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 Terrance O'Brien committed acts of professional misconduct as alleged, more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(7) 1(14), 1(15), 1 (16), 1(17), 1(18) and 1(19).

The Committee also finds that the Member engaged in sexual abuse of students of a nature defined in sections 1 and 40(1.1) of the *Act*. and that he displayed a disregard for the welfare of students of a nature and extent that demonstrates that the Member is unfit to carry out his professional responsibilities.

Reasons for Decision

It is uncontested that the Member was charged and convicted under sections 151, and 271 of the Criminal Code (*Canada*). He was convicted under section 151 of the Criminal

Code (*Canada*) that he did for sexual purpose, touch the bodies of persons under the age of 14 years. He was also convicted under section 271 of the Criminal Code (*Canada*) for two counts of sexual assault.

The Member has not appealed the conviction or sentence within the prescribed time limits.

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.

Having no evidence to the contrary, the Committee accepts the proof of prior conviction as described in the *Brief of Court Docs* (Exhibit 4) and finds that the Member did commit sexual assault on [XXX], [XXX] and [XXX] The Committee also finds that the Member did, for a sexual purpose, touch [XXX] and [XXX] This conduct is contrary to Ontario Regulation 437/97, subsection 1(16) and 1(17) and constitutes professional misconduct. As such, the Committee finds that the Member engaged in sexual abuse of a student of a nature defined in sections 1 and 40 (1.1) of the Act.

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 437/7, subsections 1(5), 1(7), 1(14) and 1(15) by his inappropriate touching of students, and his physical, verbal, psychological, sexual and emotional abuse of students.

The Committee finds that the Member’s physical, verbal, psychological, sexual and emotional abuse of students is contrary to Ontario Regulation 437/97, subsection 1(18) and 1(19) and finds that this is conduct that would reasonably be regarded by members as disgraceful, dishonourable and unprofessional, and conduct unbecoming a member.

The Committee finds that the Member’s touching of students for a sexual purpose and sexual assault of students showed 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 pursuant to section 30(3) of the *Act*.

Penalty

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

1. revocation of the Member's certificate of qualification and registration;
2. imposition of a ten year time limit within which the Member may not apply for reinstatement; and
3. 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(7) of the *Ontario College of Teachers Act*, the Member may not apply for reinstatement for a period of at least ten years following the date of this order.
3. Pursuant to Section 30 (5) (3) 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

The Committee finds that the actions of the Member violated the boundaries that must exist between teachers and students. The Committee also determines that the Member's actions violate the trust placed upon a teacher in interacting with students. He abused the power and trust vested in him in his role as a teacher by fostering sexual, emotional, psychological and physically abusive relationships with his students.

The Member had a pattern of behaviour, which involved grooming these students for his own sexual gratification. He sought out boys who were particularly needy, had poor family situations and/or had difficulties at school, and gained their trust. The victims' impact statements (*Brief of Docs, Tab C*), describe how, in all cases, the result of the Member's conduct has been devastating to them and how each of them is now struggling with his past. They are experiencing shame, guilt, and remorse and have relationship problems. Some have turned to drugs and alcohol and some have had suicidal thoughts.

Section 33 (4) of the *Ontario College of Teachers Act* specifies that an application for reinstatement following revocation shall not be made earlier than one year from the date of the order. This is of grave concern to the Committee due to the extent that there were criminal convictions, a jail term, a [XXX] and a Prohibition Order for a period of 10 years, barring the Member from any facility where children under age of 14 years are present.

For these reasons, the Committee concluded that Terrance O'Brien may not apply for reinstatement for a period of 10 years.

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 is satisfied that revocation of the Member's certificate of qualification and registration and publication of the findings and order, in summary, with the name of the Member is the appropriate penalty and is in the public interest.

Date: October 20, 2004

Don Cattani
Chair, Discipline Panel

Rosemary Fontaine
Member, Discipline Panel

Normand Fortin
Member, Discipline Panel