

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 David James Perryman.

The Discipline Committee held a hearing on Monday, February 28, 2000,

BETWEEN:

ONTARIO COLLEGE OF TEACHERS

- and -

**DAVID JAMES PERRYMAN
CERTIFICATE #245230**

PRESENT:

Members of the Panel

Kathleen McFadyen (Chair)

George Merrett

Elizabeth Barkley

The Honourable Lloyd Houlden, Independent Counsel to the Panel

L. Thomas Forbes, Q.C., McCarthy Tétrault, Counsel for the Prosecution, assisted by
Chris Sach-Anderson, Senior Law Clerk

David James Perryman appeared briefly at the Hearing, however was not represented by legal counsel.

A Notice of Hearing, dated November 25, 1999 was served on David James Perryman, requesting attendance before the Discipline Committee of the Ontario College of Teachers on December 6, 1999 to set a date, and specifying the charges. The hearing date was set for February 28, 2000.

It is alleged that David James Perryman 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 failed to comply with the *Education Act*, Revised Statutes of Ontario, 1990, chapter E.2, and specifically section 264(1)(c) or the Regulations made under that Act, contrary to Ontario Regulation 437/97, subsections 1(15);
- c) he contravened a law, and that contravention is relevant to his suitability to hold a certificate of qualification and registration, contrary to Ontario Regulation 437/97, subsection 1(16);
- d) he committed acts that, having regard to all of the circumstances, would reasonably be regarded by members as 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).

The Notice of Hearing states that David James Perryman is a member of the Ontario College of Teachers and therefore comes under the jurisdiction of the Ontario College of Teachers (Exhibit #1).

On February 28, 2000, the Discipline Committee of the Ontario College of Teachers conducted a hearing into whether David James Perryman was guilty of professional misconduct.

David James Perryman attended the Hearing in order to present a statement and make a submission of letters of support. He was not represented by counsel.

EVIDENCE:

Counsel for the Ontario College of Teachers referred to the charges set out in Exhibit 1, alleging that David James Perryman 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), (15), (16), (18) and (19). Particulars of the alleged misconduct are set out in Exhibit 1 and they are to the effect that:

1. David James Perryman is a member of the Ontario College of Teachers.
2. David James Perryman was employed by the Upper Grand District Board of Education and its predecessor the Dufferin County Board of Education from or about September 1, 1978 to April 27, 1999 as an elementary school teacher.
3. [REDACTED] was, at all material times, a student of the Dufferin County Board of Education although not a student of David James Perryman. [REDACTED].
4. On July 19, 1980, David James Perryman married [REDACTED].

5. On July 19, 1980, on the evening of David James Perryman's marriage [█], David James Perryman entered the bedroom of [█], who was then aged [█] years, and stated to [█] that he wanted to see her breasts.
6. On other occasions between July 19, 1980 and 1986, David James Perryman made comments of a sexual nature to [█].
7. On or between July 19, 1980 and January 3, 1983, David James Perryman and [█] were lying on the floor watching TV, covered with a blanket when David James Perryman touched [█]'s breast. Between those dates, [█] was aged between [█] and [█] years.
8. On or about July 19, 1980 and January 3, 1983, David James Perryman asked [█] to touch his penis and, when she refused to do so, took her hand and placed it on top of his penis under his pants. David James Perryman then took out his penis and said to [█] "hold onto this."
9. On or between July 19, 1980 and January 3, 1983, when [█] was sitting on the floor in front of the couch on which David James Perryman was lying, he reached around and touched the breasts of [█].
10. In or around December 1983, when [█] was in grade [█] and aged [█] years, she and David James Perryman were lying on the couch when he placed his hand on the area of [█]'s clitoris.
11. In or between 1983 to 1986, David James Perryman engaged in sexual intercourse with [█] in [█], while [█] was away from their home.
12. In or between 1983 to 1986, David James Perryman told [█] that the relationship between [█] and himself was not wrong, and stated that he would be [█]'s teacher with respect to sexual activity.

13. In or around 1985 or 1986, David James Perryman told [REDACTED] that he wanted to have sex with her and when [REDACTED] refused, David James Perryman pulled her down onto a couch and endeavoured to kiss her, ignoring [REDACTED]'s statement to him that she did not wish to have a sexual relationship with him.
14. In or around 1985 or 1986, David James Perryman engaged in sexual intercourse with [REDACTED] in [REDACTED], while [REDACTED] was sleeping.
15. In or about 1989 or 1990, David James Perryman pushed [REDACTED] up against a wall and rubbed his body on hers.
16. At all material times David James Perryman was in a position of trust in relation to [REDACTED].
17. On or about November 6, 1996, David James Perryman was charged with indecently assaulting [REDACTED] between July 19, 1980 and January 3, 1983.
18. On or about June 24, 1998, the charge of indecent assault against David James Perryman was substituted by a charge of assault between July 19, 1980 and December 31, 1986 in respect to which, David James Perryman pleaded guilty on June 24, 1998 when the six incidents referred to in paragraphs 5, 7, 8, 9, 10 and 13 above, were read into the court record.
19. On July 17, 1998, David James Perryman was sentenced to 45 days imprisonment on the assault charge, to be served in the community on terms.
20. On April 20, 1999, David James Perryman resigned his employment with the Upper Grand District Board of Education effective April 27, 1999.

David James Perryman made an oral presentation to the Committee and submitted letters of support. At that point, he left the Hearing.

█ testified that David James Perryman did, on numerous occasions between the years of 1980 and 1986, touch █ in a sexual and inappropriate manner and that David James Perryman did have sexual intercourse with █ on two occasions and attempted on numerous other occasions to initiate sexual activity.

William George Blackie, Superintendent of Human Resources for Upper Grand District School Board testified that David James Perryman was employed by the Board, formerly known as Dufferin County Board of Education, beginning in September 1978 until his suspension in November of 1997. Mr. Blackie further testified that after the trial of David James Perryman, the Upper Grand District School Board conducted their own investigation and concluded that they would not put children at risk by continuing his employment. Mr. Blackie testified that Senior Administration felt that the plea bargain trivialized what had gone on, and that “a more serious event was being ignored and our concern for the safety of the children had to be recognized” and concluded that, in their opinion, David James Perryman should be terminated. The Board allowed David James Perryman to resign, effective April 27, 1998.

In his submission to the Committee, L. Thomas Forbes, Prosecution Counsel to the Ontario College of Teachers referred to the following Supreme Court of Canada decisions:

- 1) Ross v. New Brunswick School District No. 15, [1996] 1 SCR 825.
- 2) R. v. Audet , [1996] 2 SCR 171.
- 3) Toronto (City) Board of Education v. O.S.S.T.F., District 15, [1997] SCR 487.

FINDINGS OF FACT:

The panel finds the following facts:

- (1) On November 6, 1996 David James Perryman was charged with indecent assault contrary to section 149(1) of the *Criminal Code of Canada* (Exhibit #2).
- (2) On June 24, 1998, David James Perryman pleaded guilty to assault, contrary to section 266 of the *Criminal Code of Canada*. (Exhibit #3)
- (3) In the proceedings dated June 24, 1998 Mr. Stern, on behalf of David James Perryman, agreed that the conduct described could be called inappropriate. Furthermore, in the first referred incident, on instruction, Mr. Stern described the incident as an assault. (Exhibit #4)
- (4) In the Reasons for Sentence and Sentence given by the Honourable Judge J.B. Allen on July 17, 1998, (Exhibit #5), Judge J.B. Allen stated “the essence of it surely is that as the adult in the relationship and often in the context of playful exuberance and in the context of their mutual affection, he went beyond the bounds of acceptable behaviour toward a vulnerable girl”.
- (5) David James Perryman was found guilty of assault.
- (6) The Honourable Judge J.B. Allen sentenced David James Perryman to a term of 45 days imprisonment to be served in the community, with specified terms and conditions.

The Committee finds that the testimony of [■] was credible and accepts that while in a position of trust, David James Perryman did, on numerous occasions between the years of 1980 and 1986, touch [■] in a sexual and inappropriate manner.

Based on [redacted]'s testimony, the Committee also accepts that David James Perryman did have sexual intercourse with [redacted] on two occasions and attempted on numerous other occasions to initiate sexual activity.

REASONS:

The Committee accepts that the behaviour of David James Perryman constitutes professional misconduct and is persuaded that he breached a position of trust. The Committee further accepts that David James Perryman does not appreciate the significance of his misconduct outside the classroom.

Supreme Court decisions have confirmed “that teachers are very properly expected to maintain a higher standard of conduct than other employees because they occupy such an extremely important position in society.” [Toronto (City) Board of Education v. O.S.S.T.F , District 15, [1997] 1 SCR 487 at p. 510.]

“Section 264 1(c) of the Education Act requires teachers to inculcate by precept and example the highest regard for truth, justice, loyalty, love of country, humanity and benevolence. These are values that all parents wish their children to learn. In their position of trust, teachers must teach by example as well as by lesson, and that example is set just as much by their conduct outside the classroom as by their performance within it. Thus, misconduct which occurs outside regular teaching hours can be the basis for discipline proceedings.” [Toronto (City) Board of Education v. O.S.S.T.F., District 15, supra at p. 511.]

Further, “Teachers were inextricably linked to the integrity of the school system.

Teachers occupy positions of trust and confidence, and exert considerable influence over their students as a result of their positions. The conduct of a teacher bears directly upon the community’s perception of the ability of the teacher to fulfill such a position of trust and influence, and upon the community’s confidence in the public school system as a whole...”[Ross v. New Brunswick School District No. 15, [1996] 1 SCR 825.]

This was further affirmed in R. v. Audet , [1996] 2 SCR 171. In that decision, LaForest, J. quoted with approval the following partage from from the reasons of Proulx, J.A. of the Quebec Court of Appeal in Lèon v. La Reine, [1992] R.L. 478 at p. 483 about the “position of authority” concept: “In its primary meaning, the notion of authority stems from the adult’s role in relation to the young person, but it will be agreed that in the context of this statutory provision, to be in a ‘position of authority’ does not necessarily entail just the exercise of a legal right over the young person, but also a lawful or unlawful power to command which the adult may acquire in the circumstances.”

DECISIONS AND ORDERS:

Accordingly, the Committee finds David James Perryman guilty of professional misconduct under sections 1 (5), (15), 1(16), (18) and (19) of the Professional Misconduct Regulation, as alleged, and directs the Registrar to revoke David James Perryman’s Certificate of Qualification and Registration immediately.

Notice

It is important to the College's role in the governance of the profession to provide evidence to members that the College is active in self-regulation and is vigilant to breaches of its bylaws and rules of conduct. Such evidence is provided through notification of the decisions and orders of the College's disciplinary Committees, and is, in the opinion of the panel, a practice that has significant general deterrent value.

Pursuant to Section 30(5)(iii) of the Ontario College of Teachers Act, the Committee orders that the findings of this hearing, as well as the name of the member, be published in the official publication of the Ontario College of Teachers. The Committee also orders that, in any publication, whether that of the College or in any media, that the name of the victim not be published and that the victim may only be identified by two initials.

**DATED AT TORONTO, THIS 28th DAY OF FEBRUARY, 2000
BY ORDER OF THE DISCIPLINE COMMITTEE**

Kathleen McFadyen, **Chair**

George Merrett

Elizabeth Barkley