

**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 Joseph Fernand Jacques Yves Thérien (“Yves Thérien”), a member of the Ontario College of Teachers.

PANEL: Nancy Hutcheson, Chair
Gabrielle Blais
Jacques Tremblay

BETWEEN:	)	Christine Lonsdale,
	)	McCarthy Tétrault LLP,
ONTARIO COLLEGE OF TEACHERS	)	for Ontario College of Teachers,
	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -)	
)	
JOSEPH FERNAND JACQUES	)	Julie Skinner,
YVES THÉRIEN	)	Nelligan O’Brien Payne
also known as	)	for Joseph Fernand Jacques
Yves Thérien	)	Yves Thérien
(Registration No. 218410))	
)	
	)	Paul Le Vay,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
)	
	)	Heard: September 13, 2006

DECISION AND ORDER

This matter came for a hearing before a panel of the Discipline Committee (the “Committee”) of the Ontario College of Teachers (“the College”) on September 13, 2006 at Toronto.

A *Notice of Hearing*, dated May 31, 2005, was served on Yves Thérien, requesting attendance before the Discipline Committee of the College on June 14, 2005 to set a date for a hearing. The hearing was subsequently set for September 13, 2006.

Mr. Thérien was in attendance at the hearing.

THE ALLEGATIONS

The allegations against the Member in the *Notice of Hearing* (Exhibit 1), dated May 31, 2005, are as follows:

IT IS ALLEGED that Joseph Fernand Jacques Yves Thérien is guilty of professional misconduct and/or is incompetent as defined in subsections 30(2) and 30(3) of the *Ontario College of Teachers Act* (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 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); and
- f) 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 CONCERNING THE ALLEGATIONS

1. Yves Thérien (the “Member”) is a member of the College.
2. At all material times, the Member was employed by the Conseil scolaire de district public du Centre-Sud-Ouest (the “Board”) as a teacher of Grades 2 and 3 at École élémentaire Marie-Curie (the “school”).
3. During the 2003-2004 school year, [■] and [■] were male students in the Member’s Grade 2 class.
4. Around September 2003, during a class he was teaching at the school, the Member either grabbed [■] by the shoulders, lifted him up and put him back in his chair, or pulled him by the arm.
5. On an unspecified date prior to April 27, 2004, the Member assaulted [■] at the school by hitting him in the back.

6. On or about April 27, 2004, the Member assaulted [■] at the school by hitting him on the head.

AGREED STATEMENT OF FACTS

Counsel for the College advised the panel that an agreement had been reached on the facts and introduced an *Agreed Statement of Facts, Guilty Plea and Joint Submission on Penalty* (Exhibit 2).

The *Agreed Statement of Facts, Guilty Plea and Joint Submission on Penalty* provides as follows:

1. Yves Thérien is a member of the Ontario College of Teachers. Attached hereto is a copy of the College's Registered Member Information on the Member (Tab A).
2. At the times in question, the Member was employed by the Conseil scolaire de district public du Centre-Sud-Ouest as a teacher of Grades 2 and 3 at École élémentaire Marie-Curie.
3. The parties agree that a Notice of Hearing was issued on May 31, 2005 with respect to the Member, alleging that the Member was guilty of professional misconduct for using inappropriate force against certain students. Attached hereto is a copy of the Notice of Hearing dated May 31, 2005 with respect to the Member (Tab B).
4. The Member admits to the truth of the following facts and that the actions described below constitute professional misconduct:

- (a) During the 2003-2004 school year, [■] and [■] were male students in the Member's Grade 2 class;
- (b) On an unspecified date prior to April 27, 2004, the Member struck [■] in the forehead using three fingers of his right hand; and
- (c) Around April 2004, while he was teaching a class at the school, the Member dragged [■], a disturbed student, out of his class by the arm.

GUILTY PLEA

- 5. The Member pleads guilty to professional misconduct as defined in subsections 30(2) and 30(3) of the Act, in that he admits that:
 - a) he failed to maintain the standards of the profession, contrary to Ontario Regulation 437/97, subsection 1(5);
 - b) he abused two students physically, 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 paragraph 264(1)(c) thereof, or the Regulations made under those Acts, contrary to Ontario Regulation 437/97, subsections 1(14) and 1(15);
 - d) he committed acts that, under all 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).
- 6. The Member understands that he is not, except in exceptional circumstances, to touch any child in the school environment.
- 7. In light of the aforementioned facts and the Member's guilty plea, the College and the Member submit that the Discipline Committee find the Member guilty of professional misconduct.

JOINT SUBMISSION ON PENALTY

- 8. The parties jointly submit that the appropriate penalty to be imposed by the Discipline Committee in this matter would be that:
 - (a) the Discipline Committee order the Member to appear before the Discipline Committee immediately following the hearing in this matter in order for the Committee to impose an oral reprimand, and that the fact of the reprimand be recorded on the public register;
 - (b) the Discipline Committee order the Registrar to suspend the Member's certificate for a period of six months. However, the suspension of the Member's certificate will be postponed for a period of five months.
 - (c) The suspension will not be imposed if the Member meets the following terms within that time:

- (i) the Discipline Committee requires the Member to take, at his own expense, the Additional Qualification course: Special Education, Part II offered by Laurentian University;
 - (ii) the Discipline Committee requires the Member to provide the Registrar with proof that he has successfully completed the Additional Qualification course: Special Education, Part II offered by Laurentian University;
 - (d) the terms of this decision shall be recorded on the public register; and
 - (e) a summary of the findings and order of the Committee be published in a regular issue of *Professionally Speaking/Pour parler profession* and that the Member's name be published as it appears in the public register.
9. By this document, the Member acknowledges his understanding that any agreement between the College and the Member with respect to the penalty proposed in this document does not bind the Discipline Committee.

DECISION AS TO FINDING

Having examined the submissions made by counsel and the Exhibits filed, and by consent of the parties, the Committee accepts the Member's guilty plea.

The Committee finds that the facts support the *Agreed Statement of Facts* to the effect that the Member demonstrated professional misconduct as defined in subsections 30(2)

and 30(3) of the Act, and specifically subsections 1(5), 1(7), 1(14), 1(15), 1(18) and 1(19) of Ontario Regulation 437/97.

DECISION AS TO PENALTY

The Committee accepts the Joint Submission on Penalty set out in the *Agreed Statement of Facts, Guilty Plea and Joint Submission on Penalty* and makes the following order:

- (a) that the Member appear before the Discipline Committee immediately following the hearing in this matter in order for the Committee to impose an oral reprimand, and that the fact of the reprimand be recorded on the public register;
- (b) that the Committee direct the Registrar to suspend the Member's certificate for a period of six months. However, the suspension of the Member's certificate will be postponed for a period of five months.
- (c) that the suspension is not imposed if the Member meets the terms below within that time:
 - (i) the Discipline Committee requires the Member to take, at his own expense, the Additional Qualification course: Special Education, Part II offered by Laurentian University;
 - (ii) the Discipline Committee requires the Member to provide the Registrar with proof that he has successfully completed the Additional Qualification course: Special Education, Part II offered by Laurentian University;
- (d) that the terms of this decision be recorded on the public register; and

- (e) that a summary of the findings and order of the Committee be published in a regular issue of *Professionally Speaking/Pour parler profession* and that the Member's name as it appears in the public register be published.

REASONS FOR DECISION AND ORDER

The Committee accepts the facts admitted in the *Agreed Statement of Facts, Guilty Plea and Joint Submission on Penalty*.

Notwithstanding the fact that the Member understands that he is not, except in exceptional circumstances, to touch any child in the school environment, the Committee confirms that it is not the fact of having touched a student that constitutes professional misconduct, but the use of force against a student that constitutes the element of misconduct.

Even though the Member's actions are relatively minor, the Committee recognizes that the use of force against a student, except in extraordinary circumstances, is inappropriate.

The Committee is satisfied that the penalties will encourage the Member to reflect on his professional conduct and will protect the public interest. The course will enable the Member to acquire the knowledge and skills he needs to improve his performance.

Date: October 19, 2006

Nancy Hutcheson
Chair, Discipline Panel

Gabrielle Blais
Member, Discipline Panel

Jacques Tremblay
Member, Discipline Panel