

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 Richard Michael Costello.

The Discipline Committee held a hearing on Monday, July 17, 2000

BETWEEN:

ONTARIO COLLEGE OF TEACHERS

- and -

RICHARD MICHAEL COSTELLO
Certificate #248778

PRESENT:

Members of the Panel
Jean Hanson (Chair)
Larry Capstick
Solette N. Gelberg

The Honourable Lloyd Houlden, Independent Counsel to the Panel

Caroline Zayid, McCarthy Tétrault, Counsel for the Prosecution
assisted by Caroline Jageman, law student.

Don Bourgeois attended as a friend for Richard Michael Costello.

A Notice of Hearing, dated June 2, 2000, was served, requesting attendance before the Discipline Committee of the Ontario College of Teachers on June 12, 2000, and specifying the charges. The hearing was scheduled for July 17, 2000.

It is alleged that Richard Michael Costello 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 abused a student sexually, verbally, psychologically or emotionally, contrary to Ontario Regulation 437/97, subsection 1(7);
- c) he failed to comply with the *Education Act*, Revised Statutes of Ontario, 1990, chapter E.2, and specifically section 264(1)(c) thereof or the Regulations made under that Act, contrary to Ontario Regulation 437/97, subsections 1(14) and (15);
- d) he contravened laws and those contraventions are relevant to his suitability to hold a certificate of qualification and registration, contrary to Ontario Regulation 437/97, subsection 1(16);
- e) 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
- f) he engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19).

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

On July 17, 2000, the Discipline Committee of the Ontario College of Teachers conducted a hearing into whether Richard Michael Costello was guilty of professional misconduct.

Richard Michael Costello was not in attendance at the hearing, nor was he represented by counsel. Proof of service of the Notice of Hearing was presented and accepted by the panel.

EVIDENCE:

Counsel for the Ontario College of Teachers referred to the charges set out in Exhibit 1, alleging that Richard Michael Costello 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, section 1, subsections (5), (7), (14), (15), (16), (18) and (19).

Particulars of the alleged misconduct are set out in Exhibit #1 and they are to the effect that:

1. Richard Michael Costello (the "Member") is a member of the Ontario College of Teachers.

2. At all material times, the Member was employed by the Waterloo Catholic District School Board as a teacher at Resurrection Catholic Secondary School in Kitchener. He was also a swim coach at the school.
3. At all materials, [REDACTED] was a student at Resurrection Catholic Secondary School.
4. On or about 30 August 1999, the Member touched, for a sexual purpose, [REDACTED], who was then a [REDACTED] who attended Resurrection Catholic Secondary School.
5. [REDACTED] had been offered a job by the member during the first week of August, 1999 [REDACTED].
6. On two separate occasions some time between the first week of August 1999, and 30 August , 1999, the Member massaged [REDACTED]'s neck and shoulder area when he complained of a sore back.
7. After concluding his work [REDACTED] in the morning of August 30 1999, which was the last day he was to have been on the job, [REDACTED] was washing up in the basement of the Member's residence and getting ready for lunch. He was approached by the Member from behind. The Member began to massage [REDACTED]'s shoulders, chest and back because [REDACTED] was complaining of a sore back. The Member removed [REDACTED]'s shirt and continued to massage his abdomen and tail bone area and then proceeded to insert his hand inside the front of [REDACTED]'s pants and fondle genitals.
8. The member then took [REDACTED] to a spare room located on the second floor of the residence where he pulled down [REDACTED]'s pants and underpants and then performed fellatio on him. The Member then told [REDACTED] to masturbate himself while he stood behind [REDACTED] and rubbed his chest.
9. Immediately after the incident the Member told [REDACTED] not to tell anyone about the incident or he would be fired. He then took [REDACTED] to buy lunch. They returned to

the Member's home [REDACTED]. Later in the afternoon, the Member and [REDACTED] drove to the Home Depot in Waterloo and, when the Member went back into the store, leaving [REDACTED] alone for the first time since the incident, [REDACTED] left the Member's car and contacted the Waterloo Police by dialling 911 from a nearby store.

10. The member was subsequently charged that on 30 August 1999, at the City of Kitchener, he being in a position or trust or authority towards [REDACTED], a young person, did for a sexual purpose touch directly the body of [REDACTED], with a part of his body: his mouth and hands, contrary to section 153(1) of the *Criminal Code of Canada* , and that on 30 August, 1999, he committed a sexual assault on [REDACTED] contrary to section 271 of the *Criminal Code of Canada*.
11. On or about 20 October 1999, the Member pleaded guilty to a charge of sexual exploitation of a minor, contrary to section 153(1) of the *Criminal Code of Canada*, and the charge of sexual assault was withdrawn.
12. On or about 23 December 1999, the Member was given a four month conditional sentence to be served in the community, following which he was to be placed on probation for a period of one year. During the period of his conditional sentence and probation he was ordered not to be alone with a child under 18 years of age.
13. On or about 20 October the Member's employment with the Waterloo Catholic District School board was terminated.

Counsel presented evidence that Richard Michael Costello is a member of the Ontario College of Teachers, (Exhibit #1). At all material times, Richard Michael Costello was employed by the Waterloo Catholic District School Board as a teacher.

An Agreed Statement of Facts was filed as Exhibit #3. That statement had been signed by L. Thomas Forbes, solicitor for the Ontario College of Teachers and Richard Michael Costello.

FINDINGS OF FACT:

Based on the Agreed Statement of Facts, the panel finds the following facts:

1. Richard Michael Costello (the “Member”) is a member of the Ontario College of Teachers.
2. At all material times, the Member was employed by the Waterloo Catholic District School Board as a teacher at Resurrection Catholic Secondary School in Kitchener. He was also a swim coach at the school.
3. At all materials, [REDACTED] was a student at Resurrection Catholic Secondary School.
4. On or about 30 August 1999, the Member touched, for a sexual purpose, [REDACTED], who was then a [REDACTED] male student, who attended Resurrection Catholic Secondary School.
5. [REDACTED] had been offered a job by the member during the first week of August, 1999 [REDACTED]. He was to have started in the [REDACTED].
6. On two separate occasions some time between the first week of August 1999, and 30 August , 1999, the Member massaged [REDACTED]’s neck and shoulder area when he complained of a sore back.
7. After concluding his work [REDACTED] in the morning of August 30 1999, which was the last day he was to have been on the job, [REDACTED] was washing up in the basement of

- the Member's residence and getting ready for lunch. He was approached by the Member from behind. The Member began to massage [redacted]'s shoulders, chest and back because [redacted] was complaining of a sore back. The Member removed [redacted]'s shirt and continued to massage his abdomen and tail bone area and then proceeded to insert his hand inside the front of [redacted]'s pants and fondle genitals.
8. The member then took [redacted] to a spare room located on the second floor of the residence where he pulled down [redacted]'s pants and underpants and then performed fellatio on him. The Member then told [redacted] to masturbate himself while he stood behind [redacted] and rubbed his chest.
 9. Immediately after the incident the Member told [redacted] not to tell anyone about the incident or he would be fired. He then took [redacted] to buy lunch. They returned to the Member's home [redacted]. Later in the afternoon, the Member and [redacted] drove to the Home Depot in Waterloo and, when the Member went back into the store, leaving [redacted] alone for the first time since the incident, [redacted] left the Member's car and contacted the Waterloo Police by dialling 911 from a nearby store.
 10. The member was subsequently charged that on 30 August 1999, at the City of Kitchener, he being in a position or trust or authority towards [redacted], a young person, did for a sexual purpose touch directly the body of [redacted], with a part of his body: his mouth and hands, contrary to section 153(1) of the *Criminal Code of Canada* , and that on 30 August, 1999, he committed a sexual assault on [redacted] contrary to section 271 of the *Criminal Code of Canada*.
 11. On or about 20 October 1999, the Member pleaded guilty to a charge of sexual exploitation of a minor, contrary to section 153(1) of the *Criminal Code of Canada*, and the charge of sexual assault was withdrawn.

12. On or about 23 December 1999, the Member was given a four month conditional sentence to be served in the community, following which he was to be placed on probation for a period of one year. During the period of his conditional sentence and probation he was ordered not to be alone with a child under 18 years of age.
13. On or about 20 October the Member's employment with the Waterloo Catholic District School board was terminated.
14. By this document, the Member, Richard Michael Costello, accepts that the matters referred to in the preceding paragraphs constitute professional misconduct and pleads guilty to the allegations of professional misconduct set out in Exhibit #1 being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(7), 1(14), 1(15), 1(16), 1(18) and 1(19).
15. In light of the admitted facts and circumstances, the Ontario College of Teachers and the Member submit and ask that the Discipline Committee revoke the certificate of qualification and registration of Richard Michael Costello.
16. The Ontario College of Teachers and the Member ask that, in addition, the Discipline Committee order the finding and reocation to be published in the College's official publication, "Professionally Speaking".

The Committee received as evidence a letter dated July 4, 2000 from Richard Michael Costello to the Ontario College of Teachers in which he accepted the facts as outlined in the Agreed Statement of Facts. He concurred with the Ontario College of Teachers' prosecution's determination of professional misconduct and agreed to both revocation and publication.

Richard Michael Costello was found guilty of sexual exploitation, section 153 (1) under the Criminal Code of Canada (Exhibit #4) and was sentenced to imprisonment for four months conditional sentence and probation for one year .

The Committee also received a transcript of the Proceedings, before the Honourable Justice C.R. Westman dated October 20, 1999 (Exhibit #5) and the Ruling before the Honourable Justice C.R. Westman dated December 23, 1999 (Exhibit #6)

REASONS

The Committee accepts the Agreed Statement of Facts and Guilty Plea as presented.

DECISIONS AND ORDERS:

Accordingly, the Committee finds Richard Michael Costello guilty of professional misconduct under sections 1 (5), (7), (14), (15), (16), (18) and (19) of the Professional Misconduct Regulation, as alleged, and directs the Registrar to revoke Richard Michael Costello's Certificate of Qualification and Registration immediately.

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 and in any other manner or medium that the Committee considers appropriate in the particular case.

**DATED AT TORONTO, THIS 24th DAY OF JULY, 2000
BY ORDER OF THE DISCIPLINE COMMITTEE**

Jean Hanson, **Chair**

Larry Capstick

Soletter N. Gelberg