

**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  
Patrick Joseph Herlihey, a member of the Ontario College of  
Teachers.

PANEL:                    Bernard J. Adam, Chair  
                                 Paul Charron  
                                 Diane Leblovic

BETWEEN:	)	
	)	
	)	Nadine Carpenter,
ONTARIO COLLEGE OF TEACHERS	)	Dispute Resolutions Administrator,
	)	for Ontario College of Teachers
- and -	)	
	)	
PATRICK JOSEPH HERLIHEY	)	Rich Evenson, Evenson, Bundgard,
(CERTIFICATE #157090)	)	Flynn, for Patrick Joseph Herlihey
	)	
	)	Christopher Wirth, Stockwoods,
	)	Independent Legal Counsel
	)	
	)	Heard: December 4, 2003

**REASONS FOR DECISION, DECISION AND ORDER(S)**

This matter came on for hearing before a panel of the Discipline Committee on  
December 4, 2003 at the Ontario College of Teachers at Toronto.

A *Notice of Hearing* dated November 24, 2003 was served on Patrick Joseph Herlihey, requesting attendance before the Discipline Committee of the Ontario College of Teachers on December 4, 2003 to set a date for hearing, and specifying the charges.

Patrick Joseph Herlihey was in attendance at the hearing.

### The Allegations

The allegations in the *Notice of Hearing* dated November 24, 2003 are as follows:

**IT WAS ALLEGED** that Patrick Joseph Herlihey is guilty of professional misconduct as defined in sections 30(2) and 40(1.1) 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 physically, sexually, verbally, psychologically or emotionally contrary to Ontario Regulation 437/97, subsection 1 (7);
- (c) he failed to comply with the Act, the regulations or the bylaws, contrary to Ontario Regulation 437/97, subsection 1(14);
- (d) he failed to comply with the *Education Act*, R.S.O. 1990, c. E.2 and specifically paragraph 264 (1)(c) or the regulations made under that Act, contrary to Ontario Regulation 437/97, subsections 1(15);
- (e) he contravened a law that is relevant to the member's suitability to hold a certificate of qualification and registration, contrary to Ontario Regulation 437/97, subsections 1(16);
- (f) he committed an act 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); and
- (h) he engaged in sexual abuse of a student of a nature defined in sections 1 and 40(1.1) of the Act.

**PARTICULARS OF THESE ALLEGATIONS ARE AS FOLLOWS:**

1. Patrick Joseph Herlihey (the “member”) is a member of the Ontario College of Teachers (Registry number 157090).
2. At all material times, Patrick Joseph Herlihey was a member of the College and an ordained Roman Catholic priest.
3. During the period from the fall of 1984 until the summer of 1985, [REDACTED] (the “Student”) attended the Church where the member was a parish priest.
4. During the period from 1984 to 1988, the member sexually assaulted [REDACTED], a minor, and touched [REDACTED] for a sexual purpose. At that time [REDACTED] was between 14 and 17 years of age.
5. During the period from 1984 to 1988, the member engaged in an inappropriate relationship with [REDACTED] which included:
  - (a) hugging him;
  - (b) kissing him on the lips;
  - (c) having the [REDACTED] sit on his lap;
  - (d) rubbing his back, his buttocks, and his legs, while they were in bed together naked;
  - (e) sleeping naked with him; and
  - (f) having [REDACTED] lie on top of him while both were naked.
6. In or around December 1989 or early January 1990, [REDACTED] disclosed the nature of his relationship with the member to his mother and his sister-in-law.

7. In or around 2000, [ ] provided the Ontario Provincial Police with information regarding his relationship with the member.
8. On January 26, 2001, the member was convicted of sexual assault and touching for a sexual purpose contrary to sections 271 and 153(a) of the *Criminal Code of Canada*.

#### Publication Ban

On December 4, 2003, the Panel made an order that there be no publication of any information that may disclose the identity of the student involved in this matter.

#### Member's Plea

The Member Patrick Joseph Herlihey admits that the matters referred to in paragraphs 1 through 8 of the *Notice of Hearing* constitute professional misconduct and pleads guilty to the allegations of professional misconduct against him, 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) and sections 1 and 40(1.1) of the Act, as set out in the *Notice of Hearing* dated November 24, 2003.

#### Memorandum of Agreement

Counsel for the College advised the panel that subject to ratification by the panel, agreement had been reached on the facts and introduced a *Memorandum of Agreement*, which provides as follows:

The parties agree to resolve the matter as follows:

1. By this document, the member pleads guilty to professional misconduct as alleged in the *Notice of Hearing*, issued on November 24, 2003, and attached and marked as Appendix "A", and in so doing, accepts as true the particulars of the

- allegations set out therein. The member agrees and acknowledges that he engaged in the conduct described in the *Notice of Hearing* and that conduct is professional misconduct as alleged.
2. The member understands the nature of the allegations contained in the *Notice of Hearing* and understands that by admitting those allegations, he is waiving the right to require the College to prove the case against him and the right to have a hearing.
  3. The member agrees that he voluntarily admitted to the allegations contained in the *Notice of Hearing*.
  4. The parties agree and understand that the terms of this *MOA* constitute a proposed settlement of this matter and that the terms are subject to ratification by the Discipline Committee of the College. Accordingly, this *MOA* is not considered final and binding on the parties until such time as it is ratified by the Discipline Committee.
  5. The parties agree and undertake that if the Discipline Committee ratifies this *MOA*, there shall be no appeal, by either party, to any forum, of any or all of the terms of this *MOA*, or from any decision of the Discipline Committee on any issue.
  6. The parties agree and undertake to take no further action with respect to the complaint provided that the terms of this *MOA* are complied with.
  7. The member agrees and understands that for the purpose of considering this matter, the Discipline Committee will be provided with a copy of this *MOA* and it will be marked as an Exhibit at the hearing and will, together with the *Notice of Hearing*, constitute the evidence against the member and the evidence upon which the guilty plea will be accepted, the finding of guilt will be made, and the penalty will be imposed.
  8. The member agrees and understands that for the purpose of considering this matter, the Discipline Committee will be provided with a summary of the matter including the allegations contained in the Registrar's complaint and the *Notice of Hearing*.
  9. The member agrees and understands that once this *MOA* is ratified by the Discipline Committee, the Discipline Committee will find him guilty of professional misconduct and, pursuant to subsection 30(4) of the *Ontario College of Teachers Act, 1996*, will direct the Registrar to revoke his certificate of qualification and registration immediately.

10. The member agrees and understands that upon ratification of this *MOA* by the Discipline Committee, he will immediately surrender his certificate of qualification and registration to the Registrar.
11. The member agrees and undertakes that upon ratification of this *MOA* by the Discipline Committee, he shall not apply to the College for reinstatement and for a new certificate of qualification and registration for a period of three years from the date of the ratification of this *MOA*.
12. The member agrees and understands that should he apply for reinstatement and a new certificate of qualification and registration, pursuant to subsection 33(1) of the *Ontario College of Teachers Act, 1996*, the Discipline Committee shall review this *MOA* in considering the member's application.
13. Subject to paragraph 11 of the *MOA*, the member agrees and undertakes not to seek or engage in employment where a certificate of qualification and registration is required.
14. The member agrees and understands that upon ratification of this *MOA*, a notation on the public register maintained by the Registrar, in accordance with section 23 of the *Ontario College of Teachers Act, 1996*, will include the following information:
  - (a) on December 4, 2003, Patrick Joseph Herlihey pleaded guilty to professional misconduct which included the sexual assault and sexual touching of a 14 year old male; and
  - (b) on December 4, 2003, the Discipline Committee of the Ontario College of Teachers directed the Registrar to revoke the member's certificate of qualification and registration.
15. The member agrees and understands that upon ratification of this *MOA* by the Discipline Committee, the College will publish the member's name with a summary of the complaint and its resolution as contained in this *MOA*. Such publication will be made in the College's official publication, *Professionally Speaking/Pour parler profession* and on the College's web site.
16. The member agrees and understands that upon ratification of this *MOA* by the Discipline Committee, the College will maintain a copy of the Decisions and Reasons of the Discipline Committee, including this *MOA*, in the College's Margaret Wilson Library. The Decision and Reasons will be available for review by the public.
17. The member agrees and understands that upon ratification of this *MOA* by the Discipline Committee, the College will provide notice of the revocation of the member's certificate of qualification and registration to any Canadian school or school board, any Canadian teacher federation or affiliate, the Ontario Directors of Education and Heads of Private Schools, and the teacher licensing and

governing bodies in Canada and elsewhere who are routinely notified by the College of disciplinary action.

18. The member agrees and understands that upon ratification of this *MOA* by the Discipline Committee, the College will provide the member's former employer, the Peterborough Victoria Northumberland and Clarington Catholic District School Board, with the committee's Decision and Reasons, including this *MOA*, pursuant to section 43.4 of the *Ontario College of Teachers Act, 1996*.
19. The parties agree and understand that if any phrase or paragraph of this *MOA* is null and void, the *MOA* shall be read as though the phrase or paragraph was stricken from the *MOA* and the amended *MOA* shall remain in force and effect.
20. The member agrees and understands that this *MOA* is the entire agreement between himself and the College and that there have been no oral or written representations made by the College as an inducement or threat to enter into this *MOA*.
21. The member agrees and understands that should he breach this *MOA* by seeking or engaging in employment where a certificate of qualification and registration is required, the College may provide a copy of this *MOA* to any employer, licensing body, or education authority who inquires about the member's record with the College.
22. The member agrees and understands that, in the event he breaches a term of this *MOA*, he is estopped from alleging, by way of defense, that the College failed to dispose of the matter in a timely manner and that he has been prejudiced by such delay.
23. The member agrees and understands that, in the event he breaches a term of this *MOA*, the College may conduct an investigation or hearing into this matter as permitted under the *Ontario College of Teachers Act, 1996*.
24. The member agrees and understands that, in the event he breaches a term of this *MOA*, the College may provide the Investigation, Executive, Discipline or Fitness to Practise Committees with all the information necessary to fulfil its statutory mandate.
25. The member agrees and understands that:
  - (a) if the Discipline Committee requests any modifications to this *MOA*, the Dispute Resolutions Administrator, will consult the parties as to whether the modifications are acceptable. If the parties accept the modifications, they will sign and date the revised *MOA* and return it to the College, within ten business days from the date of the discussion with the Dispute Resolutions Administrator. The revised *MOA* is considered final and binding once the Discipline Committee has ratified it; and

- (b) if the Discipline Committee does not ratify the *MOA*, or the parties do not accept all of the modifications, the matter will proceed through the hearing process at the College and will be considered by another panel of the Discipline Committee without prejudice. The second panel of the Discipline Committee will not be provided with, nor will it consider, this *MOA*.

### Decision

The Panel considered the *Memorandum of Agreement* and finds that the facts support a finding of professional misconduct, and in particular finds that Patrick Joseph Herlihey committed acts of professional misconduct as alleged, 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); and that he engaged in sexual abuse of a student of a nature defined in sections 1 and 40(1.1) of the *Ontario College of Teachers Act, 1996*.

### Penalty

The Memorandum of Agreement contains a joint submission as to penalty as set out above.

### Penalty Decision

The Committee accepts the joint submission as to penalty as set out in the *Memorandum of Agreement*.

The Committee accordingly directs the Registrar of the Ontario College of Teachers to revoke the certificate of qualification and registration of Patrick Joseph Herlihey, which certificate the Member is to immediately surrender to the Registrar.

The Committee orders that the Member shall not apply to the Registrar under section 33 of the *Ontario College of Teachers Act* for reinstatement to have a new certificate of qualification and registration issued for a period of three years from the date of this order.

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 summary in the official publication of the Ontario College of Teachers, *Professionally Speaking /Pour parler profession*.

The Committee concluded that the proposed penalty is appropriate, having regard to all the circumstances and is in the public interest.

Date: December 4, 2003

---

Bernard J. Adam  
Chair, Discipline Panel

---

Paul Charron  
Member, Discipline Panel

---

Diane Leblovic  
Member, Discipline Panel