

ONTARIO COLLEGE OF TEACHERS

DISCIPLINE COMMITTEE

REASONS FOR DECISIONS AND ORDERS

IN THE MATTER OF THE ONTARIO COLLEGE OF TEACHERS ACT, 1996, and the Regulation (Ontario Regulation 437/97) thereunder:

AND IN THE MATTER OF discipline proceedings against JM.

The Discipline Committee held a hearing on December 14, 2001,

BETWEEN:

ONTARIO COLLEGE OF TEACHERS

- and -

JM
CERTIFICATE #[XXX]

PRESENT:

Members of the Panel

Mark Lefebvre (Chair)
Sterling Campbell
Karen Mitchell

The Honourable Lloyd Houden, retired judge, Independent Counsel to the Panel

Catherine Hawara, McCarthy Tétrault, Counsel for the Ontario College of Teachers, assisted by Trevor Evans, Senior Law Clerk

The member did not attend, nor was he represented.

This decision is subject to a publication ban. On December 14, 2001, the Discipline Committee made an order directing that there may be no publication of any information which may disclose the identity of the victim or the member involved in this matter. In addition, any reference to the geographic location of this matter shall be referred to as South West Central Ontario.

A Notice of Hearing dated November 14, 2001 was served on counsel for the member, requesting attendance before the Discipline Committee of the Ontario College of Teachers on November 29, 2001 to set a date for hearing, and specifying the charges. The hearing date was set for December 14, 2001.

It is alleged that JM 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 Act or the Education Act, Revised Statutes of Ontario, 1990, c.E2 and particularly, section 264(1)(c) thereof or the regulations made under those Acts, contrary to Ontario Regulation 437/97, subsections 1(14) and (15);
- (c) 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 16;
- (d) he performed acts or omissions 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 judgement 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 duties or that the member's Certificate should be made subject to terms, conditions or limitations.

On December 14, 2001, the Discipline Committee of the Ontario College of Teachers conducted a hearing into whether JM was guilty of professional misconduct.

JM was not in attendance at the hearing, nor was he represented by counsel. Counsel for the member notified the College that the member had directed him not to attend the hearing to contest the allegations before the Committee.

EVIDENCE:

Counsel presented evidence that JM is a member of the Ontario College of Teachers (Exhibit #2). At all material times, JM was employed by a South West Central Ontario school board as a teacher.

Detective Sgt. Daniel Linkenheld was called by counsel for the Ontario College of Teachers. Detective Sgt. Linkenheld testified that on July 21, 1998 he received a detailed complaint of an alleged sexual assault from the victim, [XXX] He further testified that a similar complaint had been filed two years previously at which time the victim did not feel strong enough to file a

formal complaint. He further testified that, as a result of his investigation, a number of criminal charges were laid against JM. Detective Sgt. Linkenheld subsequently testified that the member was found guilty of seven counts of sexual assault against [XXX] under section 271 of the *Criminal Code of Canada*, in May of 2000. The member is currently serving a four-year concurrent sentence at a federal facility.

Relevant court documents were submitted by counsel for the College corroborating the evidence of Detective Sgt. Linkenheld.

[XXX], Administrator of Employee Relations for the relevant District School Board, testified that JM began teaching with the Board in 1978. He testified that the principal of the school in which the member was teaching informed him of the police investigation and resulting criminal charges in September of 1998. [XXX] stated that the member was put on administrative leave which was converted to unpaid leave in September of 1999, after which time he filed a grievance. A Memorandum of Agreement, dated September 2000 (Exhibit #7), was signed between the school board, OSSTF and counsel for JM, resulting in the member's retirement on September 30, 2000.

FINDINGS OF FACT:

JM was found guilty in criminal court of seven counts of sexual assault relating to charges that between September 2, 1995 and February 1997, he sexually assaulted [XXX] under the *Criminal Code of Canada* (Exhibit #4). He was sentenced to four years on Count 1, and four years to run concurrent on Counts 2-7 (Exhibit #5).

DECISIONS AND ORDERS:

Accordingly, the Committee finds JM guilty of professional misconduct under subsections 1 (5), (14), (15), (16), (18) and (19) of the Professional Misconduct Regulation, as alleged, and directs the Registrar to revoke JM's Certificates 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 be published in the official publication of the Ontario College of Teachers, using only two initials to identify the victim and the member. In addition, any reference to geographic location shall be referred to as South West Central Ontario.

DATED AT TORONTO, THIS 10th DAY OF JANUARY , 2002

BY ORDER OF THE DISCIPLINE COMMITTEE

Mark Lefebvre, **Chair**

Sterling Campbell

Karen Mitchell