

**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 Maurice Gerald Kennedy, a member of the Ontario College of Teachers.

PANEL: John Tucker, Chair
 Brent Hamelin
 Jacques Tremblay

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|-----------------------------|---|----------------------------------|
| BETWEEN: |) | |
| |) | Yasmin Nizami |
| |) | McCarthy Tétrault LLP, |
| |) | for Ontario College of Teachers, |
| ONTARIO COLLEGE OF TEACHERS |) | assisted by Trevor Evans, |
| |) | Senior Law Clerk |
| - and - |) | |
| |) | |
| MAURICE GERALD KENNEDY |) | Maurice Gerald Kennedy |
| (CERTIFICATE #423808) |) | was not presented or represented |
| |) | |
| |) | |
| |) | Luisa Ritacca, |
| |) | Stockwoods LLP, |
| |) | Independent Legal Counsel |
| |) | |
| |) | Heard: October 22, 2008 |

REASONS FOR DECISION, DECISION AND ORDER

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on October 22, 2008 at the Ontario College of Teachers (the “College”) at Toronto.

A *Notice of Hearing*, dated June 23, 2008 (Exhibit 1) was served on Maurice Gerald Kennedy (the “Member”), providing him with notice that the Discipline Committee of the Ontario College of Teachers would meet on July 8, 2008 to set a date for a hearing, and specifying the charges. The member did not attend on July 8, 2008. The Discipline Committee set October 22, 2008 as the date for the hearing on the merits.

The College tendered a letter from the Member dated October 8, 2008 to A. Trevor Evans of McCarthy Tétrault (Exhibit 3) in which the Member responds and acknowledges the correspondence from Mr. Evans. The Member’s letter indicated that he was aware of the fact that the hearing was taking place and he would not participate. The Member did not appear at the hearing, nor was he represented by counsel. The Committee commenced the proceedings at 9:45 a.m. in the Member’s absence.

THE ALLEGATIONS

The allegations against Maurice Gerald Kennedy in the *Notice of Hearing*, (Exhibit 1) dated June 23, 2008 are as follows:

IT IS ALLEGED that Maurice Gerald Kennedy is guilty of professional misconduct as defined in section 30(2) 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 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);

- (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 1(16);
- (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); and
- (e) he engaged in conduct unbecoming a Member, contrary to Ontario Regulation 437/97, subsection 1(19).

PARTICULARS OF THESE ALLEGATIONS ARE AS FOLLOWS:

1. Prior to 10 April 2007, the Member was a high school teacher employed by the Niagara Catholic District School Board (the "Board").

2. On or about 12 December 2006, the Member was found guilty in the Superior Court of Justice of the following charges:

- (a) that he between 1 June 1973 and 30 June 1980 at the City of St. Catharines and elsewhere in the Province of Ontario indecently assaulted A, who was a male person between 8 and 16 years of age;
- (b) that he between 1 January 1974 and 30 November 1983 at the Town of Lincoln and elsewhere in the Province of Ontario indecently assaulted B, who was a male person between 8 and 18 years of age; and
- (c) that he between 1 September 1975 and 1 September 1977 at the City of St. Catharines and elsewhere in the Province of Ontario indecently assaulted C, who was a male person between 13 and 15 years of age.

3. On or about 13 March 2007, the Member was sentenced to five years in a federal penitentiary.

4. On or about 10 April 2007, the Member was dismissed by the Board.

MEMBER'S PLEA

As the Member was not present, nor represented by Counsel, the Committee proceeded on the basis that the Member denied the allegations set out in the *Notice of Hearing*. The Chair, on behalf of the Member, entered a plea of not guilty to the allegations.

THE EVIDENCE

Counsel for the College entered into evidence the following additional documents:

Registered Member Information

Maurice Gerald Kennedy is a member of the Ontario College of Teachers as shown on the *Registered Member Information*. (Exhibit 2)

Brief of Court Documents – Her Majesty the Queen v. Maurice Kennedy

Counsel for the College entered into evidence a *Brief of Court Documents* (Exhibit 4) with respect to the criminal proceedings against the Member as alleged in paragraphs 2 and 3 above, was submitted into evidence.

This *Brief* consisted of:

- A. Certified copy of Indictment dated May 15, 2006 with Judge's Endorsement re Finding of Guilt and Sentencing
- B. Reasons of Mr. Justice J.W. Quinn re Finding of Guilt on 12, December 2006

- C. Reasons for Sentence by the Honourable Mr. Justice J.W. Quinn at St Catharines dated 13 March 2007
- D. Certified copy of Endorsement of Court of Appeal for Ontario re Appeal of Maurice Kennedy and transcription of Judges' Endorsement dated 20 August 2008.

The evidence presented in these Court Documents confirms that on or about December 12, 2006 the Member was found guilty of three counts of indecent assault. These convictions were for assaults on three young male victims during the years 1973 to 1983. On or about 13 March 2007, the Member was sentenced to five years in a penitentiary. Mr. Justice Quinn further ordered that the Member [XXX] as well as a lifetime order pursuant to section 161(1)(a) of the Criminal Code.

The Member appealed the criminal conviction and sentence imposed on him. This appeal was dismissed on August 20, 2008. (Exhibit 4, Tab D)

DECISION

(i) Onus and Standard of Proof

The College bears the onus of proving the allegations in accordance with the standard of proof set out in *Re Bernstein and College of Physicians and Surgeons of Ontario* (1977) 15 O.R. (2d) 477. The standard of proof applied by the Committee, in accordance with the *Bernstein* decision, was a balance of probabilities with the qualification that the proof must be “clear and convincing” and based upon “cogent evidence” accepted by the Committee. The Committee also recognized that the more serious the allegation to be

proved, the more cogent must be the evidence. The Committee considered the allegations in this case to be very serious and assessed the evidence on that basis.

(ii) Decision

Having considered the evidence, onus and standard of proof, and the submissions made by Counsel for the College, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that Maurice Gerald Kennedy committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1 (5), 1(14), 1(15), 1(16), 1(18) and 1(19).

REASONS FOR DECISION

Rules 13.05 and 13.06 of the *Rules of Procedure of the Discipline Committee of the Ontario College of Teachers* allow the Committee to accept as proof that an offence was committed by a person, where there is a finding of guilt and conviction in a Canadian court, provided that there is no evidence to the contrary and that no appeal has been granted.

Having no evidence to the contrary, pursuant to Rules 13(05) and 13(06) of the *Rules of Procedure of the Discipline Committee*, the Committee accepts as proof that the Member on or about December 12, 2006, the Member was found guilty of 3 counts of indecent assault and on or about 13 March 2007, was sentenced to five years in a federal penitentiary. It was further ordered that the Member [XXX] as well as a lifetime order pursuant to section 161(1)(a) of the Criminal Code.

The Member appealed the conviction and the sentence. These appeals were dismissed.

The Committee finds that the Member's convictions for indecent assault of persons aged 8 to 18 years of age, as outlined herein constitutes acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(14) and 1(15).

The Member's criminal convictions contravened laws, the contraventions of which are relevant to his suitability to hold a Certificate of Qualification and Registration, pursuant to Ontario Regulation 437/97, subsection 1(16).

The Member's conduct was disgraceful, dishonourable, unprofessional and unbecoming a member contrary to Ontario Regulation 437/97, 1(18) and 1 (19).

SUBMISSIONS WITH RESPECT TO PENALTY

Counsel for the College submitted that the Member's certificate of qualification and registration should be revoked and that publication, with the name of the Member should follow. The Member, in his letter dated October 8, 2008 (Exhibit 3) asked to have his name withheld and not published.

PENALTY DECISION

The Committee makes the following order as to penalty:

1. The Registrar of the Ontario College of Teachers is directed to revoke the Certificate of Qualification and Registration of the Member, which Certificate the Member is to surrender immediately to the Registrar; of the Ontario College of Teachers; and
2. Pursuant to Section 30 (5) (3) of the *Ontario College of Teachers Act*, the findings and order of the Committee shall be published in summary, with the name of the Member in the official publication of the College, *Professionally Speaking/Pour parler profession.*

REASONS FOR PENALTY DECISION

The Member was convicted of three counts of multiple acts of indecent assault on three male minors over a lengthy period of time. The assaults evolved from touching, to oral sex, to attempted simulated anal intercourse. Some of these premeditated acts occurred while the Member was babysitting and were a serious abuse of a position of trust. In his findings, Mr. Justice Quinn noted the offences were committed by a predator, involved threats of violence and were within a [XXX] relationship. This conduct by the Member reflects a high degree of moral blameworthiness and culpability. (Exhibit 4, Tab C, page 8)

He was sentenced to be incarcerated for five years and ordered [XXX]. A lifetime order pursuant to section 161(1) (a) of the Criminal Code was imposed on the Member.

Section 161(1) (a) prevents the Member from attending in public areas where children under the age of 14 are likely or expected

to be present. In the Committee's opinion, this lifetime order restricts the Member from teaching in the schools of Ontario.

The Member committed multiple acts of indecent assault on minors over long periods of time. There were threats of violence. There was premeditation and gross abuse of trust. Sexual assault of children is among the most reprehensible and egregious acts that any member of society can commit. The Member's conduct is abhorrent to the profession and to the public.

Revocation of the Member's certificate of qualification and registration is the appropriate penalty, given the serious nature of the Member's criminal convictions and the need to protect children entrusted to the care of the teaching profession. Revocation of the Member's certificate ensures that he will not ever again teach in the schools of Ontario.

The Member, in his correspondence, asked that his name not be published. No compelling rationale was provided for such a request. The Committee notes there was widespread local media coverage regarding the Member's trial and sentencing. Given the nature of the misconduct, and the need to communicate a resolution to the teaching community, the Committee determined that publication, including the name of the Member was necessary. Publication of the findings provides a general deterrent to guide

members of the profession and informs the public that conduct of this nature will not be tolerated, resulting in revocation.

Dated: October 22, 2008

John Tucker
Chair, Discipline Panel

Brent Hamelin
Member, Discipline Panel

Jacques Tremblay
Member, Discipline Panel