

DISCIPLINE COMMITTEE
ONTARIO COLLEGE OF TEACHERS

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 David Brian Lynch.

The Discipline Committee held a hearing on March 27, 2003,

BETWEEN:

ONTARIO COLLEGE OF TEACHERS

- and -

DAVID BRIAN LYNCH
Certificate #196627

REASONS FOR DECISION, DECISION AND ORDERS

PRESENT:

Members of the Panel

Nancy Hutcheson (Chair)
George Merrett
Karen Mitchell

Christopher Wirth of Stockwoods, Independent Counsel to the Committee

Carole Jenkins, McCarthy Tétrault, Counsel for the Ontario College of Teachers, assisted by Jennifer Robinson, Law Clerk

David Brian Lynch was not present, nor was he represented by counsel.

A Notice of Hearing, dated August 7, 2002 was served on David Brian Lynch, requesting attendance before the Discipline Committee of the Ontario College of Teachers on September 23, 2002 to set a date for a hearing, and specifying the charges.

It is alleged that David Brian Lynch is guilty of professional misconduct as defined in sections 30(2) 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 failed to comply with the Act and the *Education Act*, Revised Statutes of Ontario, 1990, Chapter E. 2 and particularly section 264 (1) (c) thereof, and the Regulations made under those Acts, contrary to Ontario Regulation 437/97, subsections 1 (14) and (15);
- (c) he contravened laws, the contravention of which is relevant to his 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);
- (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 his 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.

On March 27, 2003, the Discipline Committee of the Ontario College of Teachers conducted a hearing into whether David Brian Lynch was guilty of professional misconduct.

David Brian Lynch was not in attendance at the hearing. Proof of service of the Notice of Hearing was presented and accepted by the panel.

The Notice of Hearing states that David Brian Lynch is a member of the Ontario College of Teachers and therefore comes under the jurisdiction of the Ontario College of Teachers.

EVIDENCE

Counsel for the Ontario College of Teachers referred to the charges set out in the Notice of Hearing, alleging that David Brian Lynch 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, subsections 1 (5), (14), (15), (16), (18), and (19). Particulars of the alleged misconduct are set out in the Notice of Hearing. An Agreed Statement of Facts, Guilty Plea and Joint Submission on Penalty was filed as Exhibit 2. The Statement of Facts, Guilty Plea and Joint Submission on Penalty dated March 7, 2003, had been signed on behalf of the College by Carole Jenkins of McCarthy Tétrault and by the Member, David Brian Lynch.

FINDINGS OF FACT:

Based on the Agreed Statement of Facts, Guilty Plea and Joint Submission on Penalty, the panel finds the following facts:

1. David Brian Lynch, (the “Member”), is a member of the Ontario College of Teachers.
2. At all material times, the Member was employed by [XXX] (“the School”), a [XXX] school [XXX] in Toronto, Ontario.
3. On or about February 15, 2002, the Member was charged with three counts of possession of child pornography and one count of importing child pornography pursuant to the *Criminal Code*.
4. On January 31, 2003, the Member pleaded guilty before Mr. Justice Knazen to count 3, namely, that he “*on or about the 15th day of February in the year 2002 in the City of Toronto Region did have in his possession child pornography to wit: images depicting children under the age of 18 years in sexually explicit poses*”. The Member was convicted of the charge and was sentenced to 9 months conditional sentence and 24 months probation, subject to terms. The following terms were also imposed:
 - (a) [XXX];
 - (b) Section 161 (a) and (b) for 5 years, namely, prohibiting the Member from:
 - (i) attending a public park or public swimming area where persons under the age of fourteen years are present or can reasonably be expected to be present, or a daycare centre, schoolground, playground or community centre; or
 - (ii) seeking, obtaining or continuing any employment, whether or not the employment is remunerated, or becoming or being a volunteer in a capacity that involves being in a position of trust or authority towards persons under the age of fourteen years.

(c) Section 164 Order.

[This order permits, *inter alia*, a judge to issue a warrant to seize crime comics, obscene publications and child pornography located at a place within the jurisdiction of the judge.]

(d) The Member was fined a \$100.00 victim surcharge.

5. As per Exhibit 2, Tab 5, pages 9 and 10, the Member befriended small children, ages 8, 9, and 10 and brought them to his apartment, where they then accessed pornographic material.
6. David Brian Lynch acknowledges that this charge and conviction and the media coverage resulting therefrom conveyed to students, parents and the public, a reputation and image inconsistent with that expected of a teacher.
7. By signing the Agreed Statement of Facts, Guilty Plea and Joint Submission on Penalty, the Member, David Brian Lynch accepts that the matters referred to in paragraphs 3 and 4 above 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 (14), 1 (15), 1 (16), 1 (18), and 1 (19), as set out in the Notice of Hearing.
8. In light of the admitted facts and circumstances, the Ontario College of Teachers and the Member submit that the Discipline Committee find the Member guilty of professional misconduct, and jointly submit that the appropriate penalty to be imposed by the Discipline Committee in this case would be that the Committee:
 - (a) direct the Registrar to revoke immediately the Certificate of Qualification and Registration held by the Member, which certificate the Member

surrendered on January 29, 2003, at the same time undertaking not to seek reinstatement of said certificate and not to teach or seek employment with any educational institution whatsoever in Ontario, public or private, at any time in the future.

- (b) direct that the findings and order of the Committee be published with the name of the Member in the official publication of the College, *Professionally Speaking/Pour parler profession.*

DECISION AND ORDERS:

Having examined the Exhibits filed and based on the admitted facts and circumstances and on submissions by both parties, the Committee accepts the Member's Agreed Statement of Facts, Guilty Plea and Joint Submission on Penalty and finds David Brian Lynch, Certificate of Registration #196627, guilty of professional misconduct under sections 1 (5), 1 (14), 1 (15), 1 (16), 1(18) and 1 (19) of the Professional Misconduct Regulation 437/97.

The Committee directs the Registrar of the Ontario College of Teachers to revoke the Certificate of Qualification and Registration of David Brian Lynch 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, *Professionally Speaking /Pour parler profession.*

The Committee accepts the Member's undertaking not to seek reinstatement of his certificate and not to teach or seek employment with any educational institution whatsoever in Ontario, public or private, at any time in the future.

**DATED AT TORONTO, THIS 27th DAY OF MARCH, 2003
BY ORDER OF THE DISCIPLINE COMMITTEE.**

Nancy Hutcheson, **Chair**

George Merrett

Karen Mitchell