

ONTARIO COLLEGE OF TEACHERS

DISCIPLINE COMMITTEE

REASONS FOR DECISION, DECISION AND ORDER

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 William F. Majovsky.

The Discipline Committee held a hearing on October 10, 2002,

BETWEEN:

ONTARIO COLLEGE OF TEACHERS

-and-

**WILLIAM FRANCIS MAJOVSKY
CERTIFICATE #164053**

PRESENT:

Members of the Panel

Marilyn Laframboise (Chair)

Nancy Hutcheson

Ernie Checkeris

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

Jane Langford, McCarthy Tétrault LLP, Counsel for the Ontario College of Teachers,
assisted by Trevor Evans, Senior Law Clerk

The member did not attend.

On October 10, 2002, the Discipline Committee made an order directing that there may be no publication of any information which may disclose the identity of the students involved in this matter.

A Notice of Hearing dated February 11, 2002 was served on William F. Majovsky (William Majovsky) requesting attendance before the Discipline Committee of the Ontario College of Teachers on February 25, 2002 to set a date for hearing, and specifying the charges. The hearing date was set to commence on October 10, 2002. An Amended Notice of Hearing, dated September 13, 2002 was subsequently served on the member.

It is alleged that William Majovsky 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 1 (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) contrary to the Ontario College of Teachers Act, subsection 30(3), 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 responsibilities or that the member's Certificate should be made subject to terms, conditions and limitations.

The Amended Notice of Hearing states that William Majovsky is a member of the Ontario College of Teachers and therefore comes under the jurisdiction of the Ontario College of Teachers.

On October 10, 2002, the Discipline Committee of the Ontario College of Teachers conducted a hearing into whether William Majovsky was guilty of professional misconduct.

William Majovsky 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. The panel also examined a record of communication (Exhibit #1) which included the Affidavit of Audley Trevor Evans of McCarthy Tétrault, as well as a number of exhibits documenting the member's receipt of several letters stating that the hearing date would commence on October 10,2002, and several telephone communications in which the October 10 hearing date was discussed.

EVIDENCE:

Counsel for the Ontario College of Teachers referred to the charges set out in the Notice of Hearing, alleging that William Majovsky 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).

Counsel presented evidence that William Majovsky is a member of the Ontario College of Teachers (Exhibit #2, Tab 1). At all material times, the member was employed by the Lambton Kent District School Board and its predecessor board, as a teacher.

Ian Sutherland, currently the Superintendent of Employee and Community Relations at Lakehead District School Board, and former Principal of Alexander Mackenzie Secondary School, testified on behalf of the Ontario College of Teachers. He explained that Alexander Mackenzie Secondary School is a vocational school with no advanced level programs. He testified that, as principal, he ensured that staff was aware that there were procedures in place with regard to dealing with agitated students: the teacher shall remain calm and shall calm the student; if this proves impossible, the student shall be sent to Room 20, a cool-down area, or the teacher shall contact the office for assistance from the vice-principal or the principal. He also stated that the board policy prohibiting the use of physical discipline was well known. He stated that teachers, in their pre-service training, were also taught about the restrictions on physical discipline. He testified that non-violence workshops were available to staff.

He referred to his dayplanner [sic] notes with regard to three incidents regarding the member using physical discipline (Exhibit#2, Tab 2).

As a result of a complaint, Ian Sutherland was asked to participate in a meeting on October 10,1997 with student [REDACTED], [REDACTED]'s father, the vice-principal and the member. At this meeting, the member acknowledged pushing [REDACTED] The principal and vice-principal apologized to the parent and indicated that the incident should not have happened. Ian Sutherland stated he made clear to the member that the member was not to use force again and Ian Sutherland is certain that the member understood.

On October 29, 1998, the principal learned about a second incident of use of force by the member from Vice-Principal Sean Keane. In a meeting with the member, William Majovsky stated he was too much like the students at the school. He did admit to pushing [REDACTED] As a result of this incident, Ian Sutherland wrote a letter to the member (Exhibit #2, Tab 5) confirming their discussion with regard to this incident and stating clearly that, "Such actions are inappropriate and could place your teaching career in jeopardy. Should there be a further incident of physical contact, use of force or inappropriate behaviour toward a student, disciplinary action will be taken." It was also indicated that the letter would be placed in the member's file. There was a meeting with Ian Sutherland, the vice-principal, William Majovsky and, his union representative, M. Smith, requesting that the discipline letter be placed in William Majovsky's file. The member expressed his displeasure. The request to have the letter removed was denied.

On or about March 31, 1999, Ian Sutherland became aware of an incident involving student [REDACTED]. A number of witnesses were interviewed by the principal and vice-principal and following a thorough investigation, it was determined that the member had used physical force to remove a student from his classroom. The member did admit to physically directing the student out the door. As a result of this incident, a letter dated April 7, 1999 (Exhibit #2, Tab 8) was sent to the member indicating concerns regarding his use of physical force against students and advising him of a five-day suspension without pay. The letter also indicated that any further behaviour of this nature would result in "further disciplinary action up to and including dismissal."

Student [REDACTED] testified to the incident of October 28, 1998. He confirmed that the member had shoved him with two hands to the chest.

Sean Keane, currently vice-principal at Northern Collegiate in Sarnia, was the vice-principal at Alexander Mackenzie Secondary School from 1998 to 2001. He reiterated to the Committee that board policy, as well as school procedures, indicated that force was not to be used with aggressive and agitated students. He referred to his handwritten notes (Exhibit #2, Tab 3) to testify about an additional incident in September 1998, involving a student in a physical education class. The vice-principal received a telephone call from a parent. The vice-principal asked the member to call the mother to explain what had occurred. His notes indicate that during a second conversation with the mother that the member had indicated to her that he had a right, under the Education Act, to use force if acting as a judicious parent. Sean Keane stated that the Education Act does not give the right to a teacher to shove a student.

Sean Keane confirmed the meeting between himself, the principal and William Majovsky regarding the incident with [REDACTED], in which the member admitted that he should not have shoved the student. Sean Keane testified that he had no doubt that the member knew that he was not to put his hands on a student.

Sean Keane testified to the incident of March 1999. He stated that he interviewed a number of witnesses and came to the conclusion that the member had shoved [REDACTED] (Exhibit #2, Tab 6). He further testified that the member had difficulty not escalating situations with agitated students. He stated that the member also had difficulty recognizing that he is the adult and does not have to respond to comments by students with violence or shouting.

Mac Leitch became the Manager of Human Resources at the Lambton Kent District School Board in 1991. He testified that he became involved with William Majovsky as a result of a number of grievances filed on his behalf beginning in November 1998. These grievances were resolved as part of a negotiated settlement in February 2001.

Mac Leitch also stated that in November, 1999 he became aware of criminal charges against the member. He attended the member's trial as part of an ongoing internal investigation. He testified that on February 28, 2000; a Memorandum of Agreement (Exhibit #2, Tab 9) was reached between the board, the Ontario Secondary School Teachers' Federation (OSSTF) and the member to provide for a paid suspension during which the member would receive counselling. He stated that no monthly progress reports were ever received as stipulated in the agreement. Mac Leitch then prepared a

report for the Board (Exhibit #2, Tab 11) giving the results of the internal investigation in which a recommendation was made to dismiss the member from employment and to advise the Ontario College of Teachers. Mac Leitch testified that William Majovsky filed a complaint against the Lambton Kent District School Board and its officers with the Ontario Human Rights Commission (Exhibit #2, Tab 24) on the grounds of ancestry and ethnic origin as it related to his employment. The Commission denied the complaint (Exhibit #2, Tab 25). He added that an appeal of this decision had been filed by the member in May 2002 but that he is not aware of any decision. Mac Leitch also referred to two newspaper articles regarding the member's criminal proceedings.

College counsel referred the Committee to Rule 13.06 (Exhibit #3) of the Discipline Committee Rules of Procedure, *Findings of Fact in Prior Proceedings* in which the Discipline Committee may admit findings of fact made in prior criminal proceedings as proof in the absence of evidence to the contrary of the facts so found.

On April 27, 2000, the member was found guilty of two counts of assault and one count of operating a motor vehicle in a manner dangerous to the public (Exhibit #2, Tab 15) for which he was given a conditional discharge, twelve months probation and 50 hours of community service work.

On January 9, 2001, the member was found not guilty of assault.

Also on January 9, 2001, the member was found guilty of two counts of failing to comply with a court order for which he was given a conditional discharge. However, on

October 2,2001, as a result of further incidents, the conditional discharge was revoked and the member was sentenced to two periods of incarceration of fifteen days, to be served consecutively, as well as three years probation (Exhibit #2, Tab #16).

On July 30,2001, he was found guilty of one count of failing to comply with the court order for which he was given 60 days incarceration and three years probation. He was also found guilty of one count of uttering a death threat, one count of assault and one count of theft of a vehicle over \$5,000 for which he was given 60 days each to be served concurrently, and three years probation also to be served concurrently (Exhibit #2, Tab 18).

College counsel referred to Rule 13.03(2) of the Discipline Committee Rules of Procedure (Exhibit #4):

Unless there are reasonable grounds to believe that injustice to the member would result, the Discipline Committee shall admit prior testimonial statements in evidence at a proceeding where;

- (a) *there is substantial similarity between the material issues to which, the prior testimonial statement was relevant in the former proceeding and is relevant in the present proceeding; and,*
- (b) *there was an opportunity at the former proceeding for the member or his or her counsel to cross-examine the maker of the prior testimonial statement .*

College counsel provided evidence of relevance and opportunity to cross-examine the maker of the testimonial statements by way of Exhibit #2, Tab 20, court transcript of the

Sentencing Hearing on June 28, 2001 and Tab 21, Transcript of Sentencing Hearing on July 9,2001.

College counsel presented evidence that David Terrence O'Brien had been deemed to be an expert in threat assessment of potentially violent individuals by Mr. Justice G.M. Hornblower at the Sentencing Hearing of June 28,2001.

At that hearing, David O'Brien testified that William Majovsky fits the typology of a simple obsessional stalker. These are individuals who are prone to violent behaviour and considered volatile. The member has a demonstrated inability to cope with stressors; he shows recent violent behaviour including a conviction for two assaults. He has shown a negative response to counselling or treatment; he has a history of failure to comply with court orders; he has what is known as sexual jealousy; he minimizes his behaviour; he has made a threat to kill the victim; he has recently been terminated from his job as a teacher, and he has a demonstrated inability to cope with stressors. There are ten factors associated with identifying this type of stalker and the different levels of violence associated with the different types of stalkers. David O'Brien stated that with respect to those factors, eight or more constitutes a high risk and it is his opinion that William Majovsky poses a high risk for potential violence.

FINDINGS OF FACT:

The Committee finds the following facts:

1. The Committee accepted evidence from school personnel and one of the students involved, that the member used inappropriate physical force to discipline three students, [█], [█] and [█]
2. William Majovsky was found guilty of three counts of physical assault on [█] and [█], contrary to section 266 of the *Criminal Code of Canada*.
3. William Majovsky was found guilty of operating a motor vehicle in the City of Sarnia, in a manner dangerous to the public, contrary to section 249(1) of the *Criminal Code of Canada*.
4. William Majovsky was found guilty failure to comply with an undertaking, contrary to section 145(5.1) of the *Criminal Code of Canada*;
5. William Majovsky was found guilty of two counts of failure to comply with a probation order, section 733.1(1) of the *Criminal Code of Canada*;
6. William Majovsky was found guilty of one count of threatening to cause death contrary to section 264.1(1)(a) of the *Criminal Code of Canada*
7. William Majovsky was found guilty of theft exceeding \$5000, contrary to section 334(a) of the *Criminal Code of Canada*.

DECISION AND ORDERS:

Accordingly, the Committee finds William Majovsky guilty of professional misconduct under subsections 1 (5), (14), (15), (16), (18) and (19) of the Professional Misconduct Regulation as alleged. The Committee also finds the member incompetent as well as contravening the *Ontario College of Teachers Act*, subsection 30(3). The Committee also finds the member guilty of displaying 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 responsibilities or that the member's certificate should be made subject to terms, conditions and limitations. The Committee directs the Registrar to revoke the member's certificate of qualification and registration immediately. This Order is effective as of November 26,2002

In the event that William Majovsky applies for reinstatement, the College would require, at the member's expense:

1. Proof of successful completion of an anger management program approved by the Registrar.
2. A current criminal records check.
3. A psychological report from a practitioner satisfactory to the Registrar attesting to the member's ability to control his behaviour, and
4. An evaluation by an expert in threat assessment of potentially violent individuals, satisfactory to the Registrar, that would assess his risk as a simple obsessional stalker.

Notice

It is important to the College's role in the governance of the profession to provide evidence to members that the College is active in self-regulation and is vigilant to breaches of its bylaws and rules of conduct. Such evidence is provided through notification of the decisions and orders of the College's disciplinary Committees, and is, in the opinion of the panel, a practice that has significant general deterrent value.

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*.

**DATED AT TORONTO, THIS 12th DAY OF DECEMBER, 2002
BY ORDER OF THE DISCIPLINE COMMITTEE**

Marilyn Laframboise, **Chair**

Nancy Hutcheson

Ernie Checkeris