

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 Annie Mary Markson.

The Discipline Committee held a hearing on February 26, 27, 28 and March 1, 2001,

BETWEEN:

ONTARIO COLLEGE OF TEACHERS

- and -

**ANNIE MARY MARKSON
CERTIFICATE #265866**

PRESENT:

Members of the Panel
Mark Lefebvre (Chair)
Sterling Campbell
Ernie Checkeris

The Honourable Lloyd Houlden, Independent Counsel to the Panel

L. Thomas Forbes, Q.C. McCarthy Tétrault, Counsel for the Ontario College of Teachers,
assisted by Trevor Evans, Senior Law Clerk

William Markle, Markle May Phibbs, Defense Counsel, assisted by Eric Bundgard

Annie Mary Markson

Pursuant to section 32 (7) of the Ontario College of Teachers Act, the Committee orders that only two initials be used to identify the name of the student and his family in order to protect the identity of the student in this case.

A Notice of Hearing, dated June 2, 2000 was served on Annie Mary Markson (hereafter known as Annie Markson), requesting attendance before the Discipline Committee of the Ontario College of Teachers on July 5, 2000, to set a date for hearing, and specifying the charges. The hearing date was set for the week of February 26, 2001.

It is alleged that Annie Markson is guilty of professional misconduct in that:

- (a) she failed to maintain the standards of the profession, contrary to Ontario Regulation 437/97, subsection 1(5);
- (b) she abused a student physically, sexually, verbally, psychologically, or emotionally, contrary to Ontario Regulation 437/97, subsection 1(7);
- (c) she 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 that Act, contrary to Ontario Regulation 437/97, subsections 1(14) and (15);
- (d) she committed acts that, having regard to all of the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional, contrary to Ontario Regulation 437/97, subsection 1(18); and
- (e) she engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19).

The Notice of Hearing states that Annie Markson is a member of the Ontario College of Teachers and therefore comes under the jurisdiction of the Ontario College of Teachers (Exhibit #1).

Commencing on February 26, 2001, the Discipline Committee of the Ontario College of Teachers conducted a hearing into whether Annie Markson was guilty of professional misconduct.

EVIDENCE:

Counsel for the Ontario College of Teachers referred to the charges set out in Exhibit #1, alleging that Annie Markson is guilty of professional misconduct in that her 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), (7), (14), (15), (18) and (19).

Particulars of the alleged misconduct are set out in Exhibit #1 and they are to the effect that:

1. Annie Markson is a member of the Ontario College of Teachers.
2. At all material times, the member was employed by the York Catholic District School Board as an occasional teacher.
3. During the 1997/1998 school year, the member was employed by the York Catholic District School Board as an occasional teacher and, for an extended time

during the school year was a supply teacher working at the [XXX] in [XXX], Ontario.

4. While working at [XXX], Annie Markson sought the assistance of [XXX], student, in acquiring [XXX] skills. Annie Markson spent considerable time with [XXX] for the purported reason of doing [XXX] work during school breaks and after school hours.
5. Some time during the 1997/1998 school year, the member commenced an inappropriate relationship with [XXX], male student at [XXX] in [XXX], Ontario. The relationship continued until at least August 15, 1998.
6. The member permitted personal contact with [XXX] to extend to telephone communications and the exchange of notes and this contact continued into the summer of 1998. One such note, written by the member, contained the following statements:

"I love it how you say 'my sweet' and you sign off, 'I love you' "

"I think I love '[XXX]'."

"I don't want you to get any other or more experience except through me: it sounds so selfish but that's how I feel".

"You have been on 'dates' with me".

"I can't even think of you going on a 'date' with someone else - it would drive me nuts!"

"You can experience new things with me and only me".

"I'm feeling quite possessive!"

"Sorry, I would have to hurt someone if they came near you".

“Just the thought of you kissing/talking/breathing with another female except with me drives me crazy & makes me really upset!!!”

“It’s like your [sic] mine-that’s how I think & feel of you...you are mine & I am yours” .

“So...leave him alone!!!” .

“the only experience I want to ever have is with you only from now on” .

7. During the months of June, July and August 1998 the member continued to communicate with [XXX] to further the inappropriate relationship. This communication included telephone conversations, exchange of notes and a series of clandestine meetings, one of which occurred on August 15, 1998, in the Town of Markham.
8. As a result of the member’s conduct, [XXX] and his parents have required psychological counselling.

Counsel presented evidence that Annie Markson is a member of the Ontario College of Teachers (Exhibit #1). At all material times, the member was employed by York Region Catholic District School Board as a teacher.

The Committee heard evidence from four witnesses that Annie Markson engaged in an inappropriate relationship with [XXX] who was a [XXX] student at [XXX].

Constable Phil Shrewsbury of the Criminal Investigation Branch of the York Regional Police Service testified that he was requested to provide a computer examination report (Exhibit #5) on the contents of [XXX]’s father’s laptop computer. E-mail transmissions

between [XXX] and Annie Mary Markson were identified, which included the following excerpts from the member to [XXX]:

“you are sexy”

“you are hot”

“you have sexy biceps”

“you make me laugh”

“I love you, I love you

I miss you, I miss you

I need you, I need you

I love you always...

Goodnight sweetie...

I'll be thinking and dreaming of you as always”

“Usually [XXX] gets the phone (he is definitely a bit bossy in a negative way, not the cute and adorable and sexy way that you are)...Sorry, I always get carried away when I talk about you...”

An e-mail transmission from [XXX] to the member was also identified which contained the following excerpts:

“Dearest Annie,”

“Anyway, those three spots are able to be touched by your loving hands. I'll probably have a slight erection. And with your hand there, it won't help AT ALL... Am I holding

you tight enough? As well as our last visit, I kind of thought that I wasn't holding you that closely. Or that firmly."

"When can we see each other again?"

"I really want to hear your voice. No, I really NEED to hear your voice. I miss you. I don't really feel like going to football tonight. I miss you too much. Ahhhhh."

"So, just to go over it again...When I called, you were coming from McDonald's, or in McDonald's, or going into McDonald's? And then you had to do what to your panties because they were wet? I didn't hear too clearly on the phone, but didn't want you to repeat it because I knew how nervous you were. That's why, on e-mail, it isn't AS embarrassing."

"I feel that I don't have any stories to tell you because I haven't lived yet. You have. You've been to different places in the world."

"I'll try to reach you again, my sweet. I love you, Love, [XXX]"

The panel also heard evidence from [XXX] who testified that he met Annie Markson, who was teaching Grade six at his school, when a friend introduced him to her during recess one day. He stated that the member commented on how he knew [XXX] very well and wondered if he would be willing to give her a few pointers.

[XXX] testified that during recess, lunch hours and after school, he and the member met in the [XXX], which was located in the library of the school, to work on [XXX]. He stated that he had received a Thank You card from the member and another teacher that contained a pass to Canada's Wonderland after his graduation, for helping the two teachers with a yearbook. [XXX] testified that he and the member agreed to meet at a park adjacent to the school a week after his graduation from the school. He met the member on four additional occasions at three different locations within a three to four week period in a park, at [XXX] High School, and at the SilverCity Theatre in Richmond Hill. [XXX] and the member arranged these meetings by telephone and e-mail. He stated that he wanted to visit the member, and that she knew he wouldn't tell his parents about their meetings. [XXX] would tell his parents that he was going to a friend's house or to meet with a girlfriend.

[XXX] testified that he would greet the member with a hug, and on at least two occasions, kissed her on the cheek. He would also hug the member to say good-bye. According to [XXX], he and the member talked about what was going on in both their lives, and he shared his relationships with her. He acknowledged that he had a crush on the member, who was older and more experienced, and that she enjoyed their friendship.

The panel heard evidence from [XXX]'s mother, [XXX], who testified that she had been a long time volunteer in the school over some 18 years. She thought that [XXX] was spending too much time with the member instead of focusing on his academics. [XXX] spoke with Annie Markson, [XXX]'s [XXX], and the school librarian about the amount of

time [XXX] and the member were spending together as well as [XXX]'s crush on the member.

On another occasion, [XXX] met with the member about this concern when later in the spring, [XXX] observed [XXX] and Annie Markson sitting very closely side by side in the library at the school where the [XXX] was. Annie Markson had her right hand on the forehead of [XXX] This startled [XXX] According to [XXX], Annie Markson asked [XXX], "if she was o.k. with this. He ([XXX]) said it's o.k." [XXX] warned the member that [XXX] was at the "galloping hormone stage" and that he had a crush on her, to which the member appeared aghast and stated, "Oh my Lord, I never leave myself alone...teachers can never be too careful."

According to [XXX], her son became closed in and non-communicative during this time. [XXX] further testified that she was doing the family laundry in mid to late July when she found a note in [XXX]'s pocket, which she concluded, by a handwriting comparison with the Thank You card received previously, to be from the member (Exhibit #2). The note included the following phrases:

"I love it how you say 'my sweet', and you sign off 'I love you'."

"I think I love '[XXX]'."

"I don't want you to get any other or more experience except through me: it sounds so selfish but that's how I feel"

"You have been on 'dates' with me"

"I can't even think of you going on a 'date' with someone else - It would drive me nuts!"

"You can experience new things with me & only me"

"I'm feeling quite possessive! Sorry. I would have to hurt someone if they came near you"

"Just the thought of you kissing/talking/breathing with another female except with me drives me crazy & makes me really upset!!!"

"It's like your [sic] mine – that's how I think & feel of you...you are mine & I am yours"

"So.. leave him alone!!!"

"the only experience I want to ever have is with you only from now on".

[XXX] also testified that she found a slip of paper on the floor of their home in August of that year which contained the member's home telephone number and the member's sister's number.

The panel also heard evidence from [XXX]'s father, [XXX], who testified that when his wife found the note in [XXX]'s shorts pocket, he became terrified about the threats to [XXX]'s safety and the safety of his family that were contained in the note. According to [XXX], he was "afraid of the damage or injury to our son or our family". [XXX] testified that he found some numbers on his office telephone that he didn't recognize. [XXX] had marked them as Dracula 1 and Dracula 2 on the office phone. [XXX] looked in the telephone directory for the number listed to Dracula 1. According to [XXX], the number was registered to A. Markson. He proceeded to dial the phone number of Dracula 2 with his wife listening in, and heard a female respondent's voice that was recognized as the member's.

[XXX] testified that during the course of this occurrence, [XXX] “became closed in, non-communicative”. His answers about his whereabouts consisted of “grunts” and he was becoming very secretive, often going into his father’s office to be on the telephone. [XXX] testified that he and his wife endeavoured to contact their parish priest and failing that, confirmed the process of contacting a counsellor to try to get professional help on how to handle this issue with their son because, “[XXX] was a very angry young man.”

William Markle, counsel for the member, did not call any evidence on behalf of Annie Markson.

FINDINGS OF FACT:

The panel finds the following facts:

1. Annie Markson is a member of the Ontario College of Teachers, and was employed by the York Catholic District School Board as an occasional teacher during the 1997-1998 school year, at the [XXX] in [XXX].
2. [XXX] became [XXX]. During the last semester of [XXX]’s [XXX] year, he was asked to assist Annie Markson with respect to the [XXX] in the school, as he was knowledgeable about it.
3. From that time, shortly before or shortly after the school break in March, [XXX] assisted Annie Markson with respect to the [XXX] at different times, including recess, lunchtime and after school.

4. As [XXX] described, there developed a friendship between the member and himself. [XXX] liked to be with Annie Markson. He said he had a “crush” on her.
5. [XXX]’s mother, [XXX] observed that [XXX] was spending time with Annie Markson and was concerned about the amount of time and the effect upon [XXX]’s studies.
6. Later in the spring, [XXX]’s mother, [XXX], observed [XXX] and Annie Markson sitting very closely side by side in the library at the school, where the [XXX] was. Annie Markson had her right hand on the forehead of [XXX] This startled [XXX]
7. The next day, [XXX] against saw [XXX] sitting with Annie Markson at lunchtime in the library. Upon the member approaching [XXX] to ask whether [XXX] was comfortable with that which was taking place between Markson and [XXX], [XXX] told the member that she was concerned about [XXX]’s sports, academics and music. Annie Markson reported to [XXX] that those areas were fine. [XXX] told Annie Markson that [XXX] was at “a galloping hormones stage of life”. [XXX] also told the member that [XXX] had a crush on her.
8. The member responded by advising [XXX] that she did not permit herself to be alone with [XXX], remarking that a teacher must never be alone with a student.
9. At the end of the school year, Annie Markson and another teacher gave [XXX] a “Thank You” card for [XXX].
10. [XXX] said that he and Annie Markson spoke about seeing each other after school concluded. He wanted to continue his relationship with her.

11. Between the beginning of July and mid-August, five meetings between [XXX] and Annie Markson were arranged by [XXX] via telephone, and took place at three different locations; Turtle Park, [XXX] High School, and SilverCity Theatre.
12. [XXX] kept these meetings from his parents. He used as an excuse that he was going to a friend's house or was seeing a girlfriend or speaking to a girlfriend in order to prevent his parents from knowing that he was meeting with Annie Markson.
13. On some or most of these occasions, [XXX] greeted Annie Markson with a hug. She reciprocated the hug. Also on most of these occasions, [XXX] kissed Annie Markson on the cheek.
14. There were e-mails exchanged between [XXX] and Annie Markson, as evidenced by Exhibit #5, which includes one e-mail on July 2, 1998 and four e-mails on July 20, 1998. In the July 2 e-mail, [XXX] ended the e-mail with the words "I'll try to reach you again, my sweet. I love you. Love [XXX]".
15. There is no evidence to rebut the communication by [XXX] to Annie Markson on July 2, 1998, which makes reference to touching in a sexual fashion.
16. [XXX]'s evidence was that nothing other than hugs and kisses on the cheek occurred and yet there are references to sexual touching in [XXX]'s e-mail communication to the member.
17. In July, Exhibit #2 was given by the member to [XXX] The note begins "I love it how you say 'my sweet' and you sign off, 'I love you'".
18. The evidence is that the note that was given to [XXX] by the member during the latter part of July was found in his shorts by [XXX] when doing the laundry.

19. A note written by [XXX] (Exhibits #3a) suggested his feelings towards Annie Markson. [XXX] says that it was a collection of his thoughts towards her, which he intended to give to her, but he left it in his room.
20. The uncontradicted evidence is that the member knew or ought to have known that [XXX] had a crush on her before the conclusion of school as a result of their involvement with respect to [XXX]'s [XXX] assistance. She continued a relationship with a student who was less than one half of her age, meeting the student, hugging back the student when he hugged her hello and goodbye, and permitting the student to kiss her on the cheek.
21. During the summer months, [XXX] withdrew from the relationship with his parents, camouflaged the home telephone number of the member with the use of the name "Dracula" and created an e-mail address for himself using the name "Nelson Mandela", outside of the family's e-mail address. That address was used in the e-mails between the member and himself.
22. The parents were startled, concerned and afraid when they finally related the notes (Exhibit #2 with Exhibit #6), to the home telephone number of the member and sought help from their church and community service agency. They sought assistance to deal with the concern they had for their son, who they report had become an angry person, withdrawn, distant and secretive.

DECISION:

As a result of accepting these facts, the Committee finds Annie Mary Markson guilty of professional misconduct under subsections 1(5), (14), (15), (18) and (19) of the

Professional Misconduct Regulation, as alleged. The Committee finds that the Ontario College of Teachers did not provide sufficient evidence to find Annie Mary Markson guilty under subsection 1(7) of the Professional Misconduct Regulation.

DATED AT TORONTO, THIS 11th DAY OF MAY, 2001
BY ORDER OF THE DISCIPLINE COMMITTEE

Mark Lefebvre, **Chair**

Sterling Campbell

Ernie Checkeris