

ONTARIO COLLEGE OF TEACHERS

DISCIPLINE COMMITTEE

REASONS FOR DECISIONS AND ORDERS

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 **FRANK ERNEST MUSICO.**

The Discipline Committee held a hearing on November 26, 1998

BETWEEN:

ONTARIO COLLEGE OF TEACHERS

- and -

**FRANK ERNEST MUSICO
CERTIFICATE #231328**

PRESENT:

Members of the Panel

Solette N. Gelberg (Chair)

George Merrett

Larry Capstick

The Honourable Patrick T. Galligan, Independent Counsel for the Panel

Mr. L. Thomas Forbes, Q.C. and Mr. Chris Sach-Anderson, Counsel for the Ontario College of Teachers

Frank Musico was not present nor was he represented.

A Notice of Hearing, dated September 25, 1998 was served on Frank Ernest Musico, requesting attendance before the Discipline Committee of the Ontario College of Teachers on November 26, 1998, and specifying the charges. It is alleged that Frank Ernest Musico is guilty of professional misconduct in that he contravened Regulation 437/97, subsections 1(5), 1(7), 1(15), 1(16), 1(18) and 1(19). The Notice of Hearing states that Frank Ernest Musico is a member of the Ontario College of Teachers and therefore comes under the jurisdiction of the Ontario College of Teachers (Exhibit 1).

On November 26, 1998, the Discipline Committee of the Ontario College of Teachers conducted a hearing into whether Frank Ernest Musico was guilty of professional misconduct.

Mr. Musico 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.

EVIDENCE:

Counsel for the Ontario College of Teachers referred to the charges set out in Exhibit 1, alleging that Frank Ernest Musico 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), 1(7), 1(15), 1(16), 1(18) and 1(19). Particulars of the alleged misconduct are set out in Exhibit 1.

Counsel presented evidence that Frank Ernest Musico is a member of the Ontario College of Teachers (Exhibit 1). At all material times, Frank Ernest Musico was employed by Sudbury District Roman Catholic Separate School Board as a music education consultant, formerly Director of Music.

An Agreed Statement of Facts was filed as Exhibit 5. That statement had been signed by Mr. Musico and witnessed by Mr. John Van Luven, Mr. Musico's parole officer.

FINDINGS OF FACT:

Based on the Agreed Statement of Facts, the panel finds the following facts:

1. Frank E. Musico ("the member") is a member of the Ontario College of Teachers.
2. The member was employed by the Sudbury District Roman Catholic Separate School Board (now the Sudbury Catholic District School board) from 1 September 1961 until his retirement on 11 November 1994.
3. Up until the time of his retirement the member had responsibilities for supervising the music curriculum at several schools in the Sudbury area including St. Paul the Apostle Elementary School.
4. At various times between 1971 and 1978, [REDACTED] and [REDACTED] were students at St. Paul the Apostle School, were enrolled in that school's musical program, were known to the member as such and, at his request, babysat the member's child or children on occasions. [REDACTED] was born on [REDACTED] and was therefore 11 year old in 1971 and [REDACTED] was born on [REDACTED] and was aged 12 years in 1971.

5. In the summer of 1977, the member indecently exposed himself in public and was subsequently convicted of that offence. The member did not advise his employers of that conviction.
6. On 21 September 1994, the member was charged with six sexually-related criminal charges involving students [■] and [■] between 1971 and 1977.
7. On 9 December 1996 the court made a finding of guilt in respect of five of the six charges, to wit:
 - (a) sexual intercourse with a previously chaste female under 16 years old and over 14 years old;
 - (b) indecent assault;
 - (c) indecent assault;
 - (d) sexual intercourse with a previously chaste female under 16 years old and over 14 years old; and
 - (e) gross indecency – cunnilingus.
8. In respect of those convictions, the court sentenced the member to a total jail term of thirty months and, thereafter, probation for 30 months.
9. Following the arrest of the member and the bringing of the criminal charges referred to in paragraphs 6 and 7 hereof, terms of settlement for the member's resignation were agreed upon between the member and the school board as set out in the Memorandum of Settlement dated 13 December 1994.
10. As a result of that agreement, the member retired from his employment with the school board effective 11 November 1994.

REASONS:

The Committee accepts that Mr. Musico had sexual intercourse with a student under the age of 16 and over the age of 14 , that he indecently assaulted a student and that he did commit an act of gross indecency.

DECISIONS AND ORDERS:

The Committee has no reason to grant Mr. Musico's request that he be allowed to resign from the Ontario College of Teachers.

The Committee finds Frank Ernest Musico guilty of professional misconduct under subsections 1(5), 1(7), 1(16), 1(18) and 1(19) of the Professional Misconduct Regulation, as alleged, and directs the Registrar to revoke Frank Ernest Musico's Certificate of Qualification and Registration immediately.

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.

**DATED AT TORONTO, THIS 26TH DAY OF NOVEMBER, 1998
BY ORDER OF THE DISCIPLINE COMMITTEE**

Solette N. Gelberg, Chair

George Merrett

Larry Capstick