

**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 James Hugh Westcott, a member of the Ontario College of Teachers.

PANEL: Annilee Jarvis, OCT, Chair
 Alexander Bass, OCT
 Pauline Smart

BETWEEN:)	
	)	Eli Mogil,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -)	
)	
JAMES HUGH WESTCOTT)	)	James Hugh Westcott,
(CERTIFICATE #217037)	)	was not present or represented
)	
)	
	)	Julie Maciura & Rebecca Durcan,
	)	Steinecke Maciura LeBlanc,
	)	Independent Legal Counsel
)	
	)	Heard: September 28, 2010

DECISION, REASONS FOR DECISION, AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on September 28, 2010 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated August 26, 2010 (Exhibit 1) was served on James Hugh Westcott (the “Member”), providing him with notice that the Discipline Committee of the Ontario College of Teachers would meet on September 15, 2010 to set a date for a hearing. The Member did not appear on September 15, 2010 at the set date hearing and the Discipline Committee subsequently set September 28, 2010 as the date for the hearing on the merits.

James Hugh Westcott was not in attendance. He was aware that the hearing would take place on September 28, 2010 in Toronto. The Member was served with the *Notice of Hearing* on September 1, 2010 as outlined in the Affidavit of Service of Michael Duffy (Exhibit 3), Process Server, sworn September 2, 2010.

The Committee also was presented with an Affidavit of Audley Trevor Evans (Exhibit 4), Senior Law Clerk with McCarthy Tétrault LLP, sworn September 24, 2010 wherein Mr. Evans confirmed he had advised the Member the hearing would commence at 9:00 a.m. on September 28, 2010. Mr. Evans’ Affidavit indicates that the Member acknowledged receiving the documentation which had been served upon him and advised that he would not be participating in the hearing. The Member stated that he did not consider that he is a member of the College as he had retired and that the criminal charges did not arise out of a matter relating to education. The Member stated that he did not really care if his licence was taken away, but he objected to his name being published in *Professionally Speaking/Pour parler profession*. The Member then stated he would not be making any written submissions to the Committee.

The Committee was satisfied that the Member was properly served, was aware of the date of the hearing and proceeded in the absence of the Member.

THE ALLEGATIONS

The allegations against James Hugh Westcott in the *Notice of Hearing*, (Exhibit 1) dated August 26, 2010 are as follows:

IT IS ALLEGED that James Hugh Westcott 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 *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, subsection 1(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 contravened a law, the contravention of which has caused students under the Member’s professional supervision to be put at or to remain at risk contrary to Ontario Regulation 437/97, subsection 1(17);
- (e) 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
- (f) he engaged in conduct unbecoming a Member, contrary to Ontario Regulation 437/97, subsection 1(19).

PARTICULARS OF THESE ALLEGATIONS ARE AS FOLLOWS:

1. James Hugh Westcott (the “Member”) was employed by the Ottawa Catholic School Board up until his retirement on 30 June, 1998, as an elementary school teacher.

2. Between the approximate dates of 1 July 2008 and 13 December 2008, the Member:

- (a) allowed a young female child to touch the fly of his pants;
- (b) opened his pants exposing his penis to that young female child;
- (c) allowed that young female child to touch his penis.

3. On or about 16 September, 2009, the Member pleaded guilty in the Ontario Court of Justice to a charge that he between 1 July 2008 and 13 December 2008, at the City of Ottawa, for a sexual purpose, invited a person under the age of sixteen years to directly touch with a part of her body, the body of the Member, contrary to section 152 of the *Criminal Code* (Canada), and was found guilty of that charge.

4. On or about 21 July, 2010, the Member was sentenced to eight months incarceration to be followed by two years probation. In addition, the Member was banned from attending public places where children may be present.

PUBLICATION BAN

A non-publication and non-broadcast order was issued under subsection 486.4 of the *Criminal Code*, in the proceedings in the Ontario Court of Justice. The Committee is required to maintain this publication ban imposed in the matter of *Her Majesty The Queen v. James Hugh Westcott* by the Ontario Court of Justice. There shall be no publication of any information that might tend to identify the victim involved in this matter.

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 of James Hugh Westcott (Exhibit 2)

A Brief of Court Documents - Her Majesty the Queen v. James Hugh Westcott (Exhibit 5) with respect to the criminal proceedings against the Member was submitted into evidence. This *Brief* consisted of:

1. Certified copy of Indictment dated January 21, 2009,
2. Transcript of Plea of Guilty before the Madam Justice Nicholas on September 16, 2009,
3. Probation Order dated July 21, 2010,
4. Prohibition Orders Imposed at Sentencing dated July 21, 2010 and
5. Transcript of Sentencing Proceedings before the Madam Justice Nicholas on July 21, 2010.

These Court Documents verify that on or about 16 September, 2009, the Member pleaded guilty in the Ontario Court of Justice to a charge that he between 1 July 2008 and 13 December 2008, at the City of Ottawa, for a sexual purpose, invited a person under the age of sixteen years to directly touch with a part of her body, the body of the Member, contrary to section 152 of the *Criminal Code* (Canada), and was found guilty of that charge. Further, that on or about 21 July, 2010, the Member was sentenced to eight

months incarceration to be followed by two years probation. In addition, the Member was banned from attending public places where children under the age of 16 may be present, for a period of 15 years commencing on his release from imprisonment for the offence. This ban also applies to volunteer or employment activities in a capacity that involves being in a position of trust or authority towards persons under the age of 16 years.

DECISION

(i) Onus and Standard of Proof

The College bears the onus of proving the allegations in accordance with the civil standard of proof, being the balance of probabilities using clear, cogent and convincing evidence.

(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 James Hugh Westcott committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(15), 1(16), 1(17), 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.

In absence of evidence to the contrary, the Committee accepts the specific findings of fact contained in the *Brief of Court Documents* (Exhibit 5) that on or about 16 September, 2009, the Member pleaded guilty in the Ontario Court of Justice to a charge that he between 1 July 2008 and 13 December 2008, at the City of Ottawa, for a sexual purpose, invited a person under the age of sixteen years to directly touch with a part of her body, the body of the Member, contrary to section 152 of the *Criminal Code* (Canada), and was found guilty of that charge July 21, 2010. There was no evidence presented of an Appeal by the Member of his conviction and/or sentence.

The Committee finds that the Member's criminal conviction supports a finding of professional misconduct, being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), and 1(15).

The Member's criminal conviction is relevant to his suitability to hold a Certificate of Qualification and Registration, pursuant to Ontario Regulation 437/97, subsections 1(16).

At the time of the offence the Member held a valid teaching certificate and was in good standing with the Ontario College of Teachers. The nature of the offence has caused students to be put at risk, pursuant to Ontario Regulation 437/97, subsections 1(17).

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

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; 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 between the dates of July 1, 2008 and December 13, 2008

- (a) allowed a young female child to touch the fly of his pants;
- (b) opened his pants exposing his penis to that young female child;
- (c) allowed that young female child to touch his penis.

On or about 16 September, 2009, the Member pleaded guilty in the Ontario Court of Justice to a charge that he between 1 July 2008 and 13 December 2008, at the City of Ottawa, for a sexual purpose, invited a person under the age of sixteen years to directly touch with a part of her body, the body of the Member, contrary to section 152 of the *Criminal Code* (Canada), and was found guilty of that charge.

On or about 21 July, 2010, the Member was sentenced to eight months incarceration to be followed by two years probation. In addition, the Member was banned from attending public places where children may be present.

The serious nature of the criminal conviction against the Member requires that his Certificate of Qualification and Registration be revoked to ensure that he does not have an opportunity to take advantage of children. Further, the Member is prohibited by court order from seeking employment or being in the presence of children under the age of 16 years for a period of 15 years, commencing upon his release from imprisonment. Revocation guarantees the protection of young children in Ontario schools.

The Committee finds the Member's conduct is disgraceful, dishonourable and unprofessional and is conduct unbecoming a member of the profession. The Member, as a result of his actions, has breached the public trust and has forfeited the privilege of holding a teaching certificate. Revocation demonstrates that the Member's conduct is unacceptable to the profession and to the public whose interests the Committee is bound to serve.

The Committee considered the Member's request to withhold publication of his name. The Committee felt there were compelling reasons to publish the Member's name. The fact and the serious nature of the Member's criminal conviction and his breach of the sacred trust of a child warrant publication of his name to inform and to protect the public. Publication of the findings and order of the Committee, in summary, along with the name of the Member acts as a specific deterrent and general deterrent and informs the profession that such conduct will not be tolerated and will result in the harshest penalty.

Publication also serves the public interest by reassuring and informing the community that the profession acts decisively when matters of this nature are brought to its attention.

In conclusion, the Committee is confident that the penalty serves the interests of the public and the profession.

Dated: September 28, 2010

Annilee Jarvis, OCT, Chair
Chair, Discipline Panel

Alexander Bass, OCT
Member, Discipline Panel

Pauline Smart
Member, Discipline Panel