

**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
Jocelyne Bene, a member of the Ontario College of Teachers.

PANEL: Jacques Tremblay, Chair
 Danny Anckle
 Hanno Weinberger

BETWEEN:	)	Caroline Zayid,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -)	
	)	William Markle and
JOCELYNE BENE	)	Stephanie Carey,
(CERTIFICATE # 221974)	)	Markle & Phibbs
	)	for Jocelyne Bene
)	
	)	Luisa Ritacca
	)	Stockwoods LLP,
	)	Independent Legal Counsel
)	
	)	Heard: February 10, 2009

REASONS FOR DECISION, DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on February 10, 2009 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated August 19, 2008 (Exhibit 1) was served on Jocelyne Bene (the “Member”), providing her with notice that the Discipline Committee of the Ontario College of Teachers would meet on September 17, 2008 to set a date for a hearing, and specifying the charges. The Discipline Committee subsequently set February 10, 2009, as the date for the hearing on the merits.

THE ALLEGATIONS

The *Notice of Hearing* sets out the following allegations:

IT IS ALLEGED that Jocelyne Bene is guilty of professional misconduct as defined in section 30(2) of the *Ontario College of Teachers Act, 1996* (the “Act), in that:

- (a) she failed to maintain the standards of the profession, contrary to Ontario Regulation 437/97, subsection 1(5);
- (b) she signed or caused to be issued in her professional capacity, a document or documents that she knew or ought to have known contained a false, improper or misleading statement, contrary to Ontario Regulation 437/97, subsection 1(12);
- (c) she 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
- (d) she engaged in conduct unbecoming a Member, contrary to Ontario Regulation 437/97, subsection 1(19).

At the hearing on February 10, 2009, College counsel asked the Committee to make a finding of professional misconduct with respect to paragraphs (b) and (c) of the *Notice of Hearing*. College counsel advised that they would not be seeking a finding of professional misconduct with respect to the allegations contained in paragraphs (a) and

(d) of the *Notice of Hearing*, being alleged breaches of Ontario Regulation 437/97, subsections 1(5) and 1(19).

Counsel for the College advised the Committee that an agreement had been reached on the facts and introduced as *Exhibit 2*, an *Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty (ASF – Exhibit 2)* which provides as follows:

AGREED STATEMENT OF FACTS

1. Jocelyne Bene (the “Member”) is a member of the Ontario College of Teachers. Attached hereto and marked as **Exhibit “A”** is a copy of the Ontario College of Teachers Registered Member Information respecting the Member.

2. At all material times, the Member was employed by the Sudbury Catholic District School Board (“the Board”) and was a long term occasional teacher in a Grade 2 class at St, Bernadette School (the “School”), in Sudbury, Ontario. She had previously been the “teacher in charge” at the School.

3. On or about June 30, 2006, the last day of the school year, the Member advised a colleague that no copies of the year end report cards for this colleague’s twenty two (22) Grade 3/4 students had been made for their Ontario Student Record (“OSR”) files. The Member offered to assist her colleague.

4. The Member printed copies of the report cards from the electronic files. As the copies of the report cards were not printed from the School office’s computer, they bore the words “Teacher’s Working Copy”. The colleague signed her name on the report cards and gave them to the Member. The Member, unknown to the colleague, whited

out the words “Teacher’s Working Copy” from each report card and signed the Principal’s signature on each report card in the space identified for “Principal’s Signature”. She then placed the copies she had signed into the OSR file of each student.

5. At no time did the Member inform the Principal that the Member had signed the Principal’s signature on the report cards.

6. At the beginning of the new school year, September 2006, the Principal, upon reviewing a report card of one of the students who had been in the Member’s colleague’s 2005/2006 Grade 3/4 class, discovered that the signature on the report was not hers. This was the first time the Principal became aware of the situation.

7. During the Board’s investigation of the situation, the Member acknowledged to the Board that she had signed the Principal’s name without authorization.

PLEA OF NO CONTEST

8. By this document, the Member admits, for the purposes of this proceeding only, the truth of the facts and exhibit referred to in paragraphs 1 to 7 above and agrees that the Discipline Committee can accept these facts as correct.

9. The Member hereby acknowledges that the facts referred to in paragraphs 4 and 5 above constitute professional misconduct and pleads no contest to these allegations of professional misconduct against her, being more particularly a breach of Ontario Regulation 437/97 1(12) and 1(18).

10. By this document the Member states that:

- (a) she understands fully the nature of the allegations against her;

- (b) she understands that by signing this document she is consenting to the evidence as set out in paragraphs 1 to 7 above, including the referenced exhibit, being presented to the Discipline Committee at the hearing of this matter;
- (c) she understands that by pleading no contest to the allegations, she is waiving the right to require the College to prove the case against her, and the right to have a full hearing on these issues; and
- (d) she understands and acknowledges that she is executing this Agreement voluntarily, unequivocally and with the advice of legal counsel.

11. The Member provides this plea of no contest pursuant to Rule 3.02 of the Rules of Procedure of the Discipline Committee under protection of the *Evidence Act*, R.S.O. 1990, chapter E. 23, for the purpose of this proceeding under the *College of Teachers Act 1996*, chapter 12, and for no other purpose. The Member's plea of no contest does not constitute an admission by the Member as to the facts or findings in any other civil, criminal or administrative proceeding.

12. 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.

JOINT SUBMISSION ON PENALTY

13. The Ontario College of Teachers and the Member jointly submit that the appropriate penalty to be imposed by the Discipline Committee in this matter would be that the Committee:

- (a) requires the Member to appear before the Committee, immediately following the hearing of this matter, to be reprimanded, with the fact of the reprimand to be recorded on the Register;
- (b) directs that the findings and order of the Committee be published in the official publication of the College *Professionally Speaking/Pour parler profession*, without the Member's name.

14. By this document, the Member acknowledges her understanding that any agreement between the College and the Member with respect to the penalty proposed in this document does not bind the Discipline Committee.

DECISION

Having examined the Exhibits filed, and based on the plea of no contest, the *Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty*, and the submissions made by counsel, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that Jocelyne Bene committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1 (12) and 1(18 - unprofessional).

REASONS FOR DECISION

The Member acknowledged that the facts referred to in paragraphs 4 and 5 above of the *Agreed Statement of Facts* constitute professional misconduct and pleaded no contest to these allegations of professional misconduct. The Member signed the Principal's name on report cards without authorization and without the knowledge of the Principal. At no time did the Member inform the Principal that she had signed the Principal's signature on

the report cards. In doing so, the Member signed or caused to be issued in her professional capacity documents that she knew or ought to have known contained a false, improper or misleading statement contrary to Ontario Regulation 437/97, subsection 1(12). The Member's actions would also reasonably be regarded by members as unprofessional.

PENALTY DECISION

The Committee makes the following order as to penalty:

- (a) The Member is required to appear before the Committee following the completion of the hearing of this matter to be reprimanded and the fact of the reprimand is to be recorded on the Register of the Ontario College of Teachers.
- (b) The findings and order of the Committee, without the name of the Member, shall be published in summary, in the official publication of the College, *Professionally Speaking/Pour parler profession*.

REASONS FOR PENALTY DECISION

In making its decision, the Committee took into consideration that the Member had pleaded no contest to professional misconduct and had agreed to be reprimanded by the Committee. The Member was certified to teach in 1966 (Exhibit 2, Tab A), there was no record of any prior discipline during this lengthy career and this was an isolated incident of a relatively minor nature. While the Member made a poor decision in attempting to assist a colleague, there was no suggestion of benefit or gain to the Member and the

Member accepted responsibility for her actions. The Committee determined that a reprimand was an appropriate penalty in these circumstances.

Counsel submitted that specific deterrence was accomplished by the joint submission on penalty and that protection of the public was not an issue. The Committee considered the submissions of College Counsel and Counsel for the Member with respect to publication without the Member's name. The Committee agrees with Counsel that publication of the findings and order of the Committee, in summary, without the name of the Member will act as a general deterrent.

The Committee finds that the public interest will be served by notation on the public register of a finding of professional misconduct and reprimand of the Member.

Date: February 10, 2009

Jacques Tremblay
Chair, Discipline Panel

Danny Anckle
Member, Discipline Panel

Hanno Weinberger
Member, Discipline Panel