

**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 Arthur Black, a member of the Ontario College of Teachers.

PANEL:        John Tucker, Chair  
                  Rosemary Fontaine  
                  Jacques Tremblay

BETWEEN:	)	
	)	David Leonard,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Jennifer Robinson,
	)	Law Clerk
- and -	)	
	)	
JAMES ARTHUR BLACK	)	James Arthur Black,
(CERTIFICATE #238839)	)	on his own behalf
	)	
	)	
	)	Luisa Ritacca,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
	)	
	)	Heard: February 20, 2009

**PENALTY DECISION**

On October 23, 2008, the Discipline Committee (the “Committee”) rendered a written decision finding James Arthur Black (the “Member”) guilty of professional misconduct. In particular, the Committee found that the Member committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(14), 1(18) (dishonourable and unprofessional) and 1(19) of the *Ontario College of Teachers Act*.

The Committee reconvened the hearing on February 20, 2009 to hear submissions on the issue of penalty.

At the outset of the penalty hearing, the Member argued that the Committee did not have jurisdiction to continue the hearing. He argued that with the written decision on guilt having been rendered, the matter was at an end.

Independent legal counsel (“ILC”) advised that under subsection 30(4) of the *Act* the Committee must consider the Order as to the Penalty. It was clear that the Committee continued to have jurisdiction in the matter. Counsel for the College argued that “there is no option but to continue”.

Following submissions on this issue, the Committee concluded that it would continue the hearing, receive submissions and determine the penalty. It gave as its reasons:

Section 30 (1)(4)(5) of the *Ontario College of Teachers Act* provides that the Committee shall hear and determine matters referred to it by the Investigation Committee. The Discipline Committee may find a member guilty of professional misconduct and impose a penalty which may include making an order directing the Registrar to revoke, suspend, or impose terms, requiring a reprimand, imposing a fine and directing publication of findings.

The Committee must receive submissions from both parties before rendering a decision on penalty.

A review of the transcript from the hearing on June 18, 2008 showed that Mr. Black inquired of the Chair of the Committee as to whether, in the event of a guilty verdict, he would have time to speak to the sentence. The Committee found that Mr. Black was aware that a continuation with respect to the submission on penalty was pending.

Given the Committee’s decision, the hearing proceeded.

## **SUBMISSIONS OF COLLEGE COUNSEL**

In its submission, the College cited the decision of the Committee wherein the Member was found guilty of breaching the *Ontario College of Teachers Act*:

“As a member of the Ontario College of Teachers’ Governing Council, the Member was bound by its by-laws, to remain silent with respect to confidential matters which came to his attention in the course of his duties even when his term of office was completed. In addition, the fact that the Member is a member of the teaching profession, binds him to comply with Ontario Regulation 437/97 (Professional Misconduct Regulation of the *Act*). In the Member’s act of disclosing information from a closed hearing, the Committee found that he failed to comply with the *Act*, including section 48(1), and with the By-law, including Schedule 1, contrary to Ontario Regulation 437/97, subsection 1(14).

In the regular course of their duties, it is not at all unusual for a teacher to become privy to confidential matters. Therefore, by divulging through his various letters, reports and e-mails, confidential information from a closed hearing, the Committee found that the Member failed to maintain the standards of the profession (1(5)). The Committee further found that the Member’s actions would reasonably be regarded by members as dishonourable and unprofessional (1(18)) and conduct unbecoming a member (1(19)).”

The College made the following submissions as to penalty:

- (i) that the Member appear before the Committee immediately following the completion of the hearing of this matter, to be reprimanded and the fact of the reprimand to be recorded on the public register of the Ontario College of Teachers,
- (ii) that the Registrar be directed to suspend the Member’s Certificate for a period of twenty four months and the fact of the suspension is to be recorded on the public register of the College.
- (iii) that the findings and Order of the Committee, including the Member’s full name, be published in summary in the official publication of the College, *Professionally Speaking/Pour parler profession.*

In its submission with respect to suspension of the Member's certificate, the College emphasized the gravity of the misconduct and the necessity to send a strong message to the public and the profession that the College takes these matters seriously. The College further argued that the reprimand would serve as a specific deterrent to the Member and would educate him in that the reprimand would allow the Committee to express their concerns with respect to his conduct.

Publication of the Member's name and the finding will demonstrate that the College's disciplinary process is open and transparent. This will restore public and membership confidence in the College of Teachers disciplinary procedures and serve as a general deterrent to members of the profession.

The College argued that the penalty must demonstrate that the College holds members to a high standard of professionalism and therefore Council members must hold themselves to that same high standard. The suggested penalty indicates how the Ontario College of Teachers deals with a breach of trust.

### **SUBMISSIONS OF THE MEMBER**

The Member indicated he did not dispute the "so-called facts" of the case. He posed the question, "What are we saying to the profession if Council members are not allowed to oppose policies?" As a member of Council, he believed he had a moral and ethical responsibility to do so.

He referred to the two cases which were submitted by the College for information purposes where the members were found guilty for breach of trust and similar penalties were imposed. The Member suggested these cases were not relevant because unlike the members in the above cases, he himself had never stolen or cheated.

In response to the advice of Independent Legal Counsel, the Member submitted that the imposition of any penalty would be a continuation of reprisals made against him with the intent to punish him for embarrassing the College. He stated he had not acted against the

public interest in raising the (re-instatement) issue. The Member suggested the College was of the position that the procedure of confidentiality is a higher principle than the protection of children. He further submitted that a fine would be an unreasonable hardship for him and stated that it would set a dangerous precedent by making him an example which would dissuade other teachers from speaking out when they witness professional or criminal misconduct.

### **ORAL AND WRITTEN SUBMISSIONS FROM INDEPENDENT LEGAL COUNSEL**

ILC provided advice to the panel after hearing submissions on penalty from both parties. In the advice, counsel advised that penalties are within the jurisdiction of the Committee, under section 30 (4) (5) of the *Act*.

The Committee was reminded that the goals of penalty are not to punish the Member or to serve as retribution, but that the role of penalty is to ensure that the penalty protects and serves the public interest. The penalty should match the professional standard expected of and by the College, and preserve and protect the public opinion in the profession and of the College.

ILC advised the Committee to take into consideration the aggravating and mitigating factors with regard to penalty. Mitigating factors referred to were the facts that the Member was a long standing member, with no evidence of previous disciplinary issues. Aggravating factors were a lack of integrity, and a breach of trust.

Finally, ILC advised the panel to weigh the factors in light of specific and general deterrence in the penalty decision.

Following the arguments, the panel sought further submissions from the parties, and advice from ILC on the application of a fine as part of penalty. Specifically, the Committee requested a written opinion from ILC on whether a fine could be viewed as rehabilitative as regards the public opinion and/or public image of the College, its

disciplinary practices (with special regard to members of Council who stray from obligation) and maintenance of standards.

ILC's written response, in part, stated, "The goal of the panel's penalty decision, therefore, should not be to punish the member and exact retribution, but rather to protect the public, maintain high standards and preserve public confidence in the teaching profession. The principles of sentencing most commonly considered as goals of a penalty decision include (a) specific deterrence, (b) general deterrence, and (c) rehabilitation. In considering the appropriate penalty, you should ensure that you apply these principles of sentencing within the context of your public interest mandate. Generally, the imposition of a fine would be considered as a penalty that addresses both specific and general deterrence...The panel should only impose a penalty (i.e. a fine) in addition to the penalties proposed by the College, where it finds that the public interest and public safety are not adequately addressed by the College's proposal."

## **PENALTY DECISION**

The Committee makes the following Order as to Penalty:

1. The Registrar is directed to suspend the Member's Certificate of Qualification and Registration for a period of twenty four months commencing from the date of this written penalty decision.
2. The Member is required to pay a fine of one thousand dollars (\$1,000.00) to the Minister of Finance for payment into the Consolidated Revenue Fund;
3. The Member is required to appear before the Committee to be reprimanded and the fact of the reprimand is to be recorded on the public register;
4. 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 full name of the Member, in the official publication of the College, *Professionally Speaking/Pour parler profession.*

## **REASONS FOR PENALTY**

The Discipline Committee has a duty to serve and protect the public interest.

Members of College Council must set an example for the profession as a whole. The Committee believed that the penalty should not punish the Member, but rather protect the public, maintain high professional standards and preserve the public confidence in the teaching profession. In the decision the Committee sought to ensure that specific deterrence, general deterrence and rehabilitation of the public confidence in the College and its processes would be addressed by the penalty.

The twenty-four month suspension serves as a specific deterrent to the Member. The fact of the suspension will indicate to the public and the Member the seriousness of the breach of confidentiality. This will also afford the Member an opportunity to reflect upon the gravity of his actions.

A reprimand by his peers will demonstrate to the Member the Committee's concerns with respect to his misconduct and will educate him on the importance of maintaining ethical standards.

In the Committee's view, the College penalty proposal only partially addressed the goals of general and specific deterrence, and rehabilitation of the public image of the College, its processes and the profession. The proposal did not fully address the issue of public interest and public safety.

Trust and integrity are intrinsic to the standards of the profession. A breach of confidentiality at the College or at the school level has serious impact and can have strong ramifications on public confidence, public interest, and public safety. Any parent needs to feel secure in speaking with their child's teachers with respect to discretionary matters. It follows that any member of the public must have confidence in trusting College Council members with a confidential matter. In this case, the breach of confidentiality from a closed hearing may have damaged the professional image of the

College and its members. The need for a strong general deterrent is imperative in this matter.

The Committee made the decision to impose a reasonable fine, balancing the goal of general deterrence and specific deterrence to the Member. The imposition of a fine has precedent at the College. This specific penalty serves as a strong general deterrent to the profession. By imposing a fine, the Committee has no intention to punish the Member, but rather to indicate to any future Council members or persons who serve on a panel that a breach of confidentiality has strong consequences.

The public and members involved in a closed hearing must be assured that matters will remain confidential. They must trust in the process and be made to feel that they can participate freely. The role of a Committee member in a closed hearing is crucial to ensure this confidence. The Committee considered the Member's position that the College was using him as an example to dissuade other teachers from speaking out. The Committee agreed that all members of the profession have an obligation to report professional misconduct or criminal activity in the general sense. But in this case, the Member was privy to information which by the *Act* was deemed to be confidential. The Member violated the provisions of the *Act* and the By-Laws of the College.

This case has generated a significant amount of media attention. The public and the profession must be informed to the fact that the matter has been addressed. Publication of the findings and order of the Committee, in summary, with the name of the Member, in *Professionally Speaking/Pour parler profession* provides both a specific deterrent to the Member and a general deterrent to the profession while advising and serving the public interest. It also reassures the public that the College will address issues of misconduct of Council Members as seriously as with all members who are found guilty of professional misconduct.

The Committee is satisfied that the penalty in its entirety addresses the professional standard expected of College members by the public. This decision preserves and protects the public opinion of the profession and the College.

Dated: July 27, 2009

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John Tucker  
Chair, Discipline Panel

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Rosemary Fontaine  
Member, Discipline Panel

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Jacques Tremblay  
Member, Discipline Panel