

**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
	)	
	)	
	)	Paul Le Vay,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
	)	
	)	Heard: June 17 & 18, 2008

**REASONS FOR DECISION**

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on June 17 & 18, 2008 at the Ontario College of Teachers (the “College”) at Toronto.

A *Notice of Hearing*, dated December 12, 2007 [Exhibit 1] was served on James Arthur Black (the “Member”), providing him with notice that the Discipline Committee of the Ontario College of Teachers would meet on January 21, 2008 to set a date for a hearing, and specifying the charges. The Member attended on March 25, 2008. On that date, June 17, 18 & 19, 2008 were set as the dates for the hearing on the merits.

The Member was in attendance at the hearing.

### **THE ALLEGATIONS**

The allegations against James Arthur Black in the *Notice of Hearing* [Exhibit 1] dated December 12, 2007 are as follows:

**IT IS ALLEGED** that James Arthur Black is guilty of professional misconduct as defined in section 30(2) of the *Ontario College of Teachers Act, 1996* (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 *Act*, including section 48(1) thereof, and with the By-law, including Schedule 1 thereto, contrary to Ontario Regulation 437/97, subsection 1(14);
- (c) 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
- (d) 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 Arthur Black (the “Member”) was at all material times a member of the Ontario College of Teachers (the “College”).
2. In 2006 and 2007, the Member disclosed confidential information which came to his knowledge in the course of his duties as a member of the College’s Discipline Committee.

**MEMBER’S PLEA**

The Member refused to enter a plea, citing that he did not understand the allegations. Therefore, on the Member’s behalf, the Chair entered a plea of not guilty to the allegations.

**EVIDENCE OF THE COLLEGE**

College Counsel presented the following evidence:

Exhibits 2 and 3 were an electronic version and written transcript of CTV’s ‘Whistleblower Report’ a CTV news story, broadcast November 15, 2006, which revealed how some teachers who have lost their licences can get back into the classroom under an appeal system unique to Ontario and British Columbia. This Report singled out [XX], whose certificate was reinstated in [XX], and the Member, who had been a member of the Committee who heard the reinstatement application. The Report disclosed information through the media about a confidential reinstatement hearing, adjudicated by a three-member panel, which included the Member. Furthermore, the

Report indicated that the Member was the sole panel member opposed to the reinstatement.

Exhibits 4 and 5 – Reasons for Decision and Orders of the Reinstatement Hearing [XX].

The public was excluded from accessing these exhibits pursuant to s. 32(7) of the *Act*.

Exhibits 6 and 7 - The Committee received the Ontario College of Teachers By-laws, Section 19 Code of Ethics, and Schedule 1 – Code of Ethics for Council Members regarding confidential matters. These were established in 1997 and remain in effect today. The Code of Ethics requires members of Council, among other things, to ensure that confidential matters coming to their attention are not disclosed.

Exhibit 8 – The Committee received the Registered Member Information of [XX], which indicated he is a member of the College in good standing.

Exhibit 9 - The Committee received the Registered Member Information of James Arthur Black, which indicated that he was a member of the College at the time of the allegations being brought against him, and remains a member currently.

Exhibit 11 – two page photocopy of a newspaper article from The Recorder and Times dated November 17, 2006.

Exhibit 16 – an e-mail to various members of provincial government, and provincial teaching organizations, including the Premier and the Minister of Education, sent by the Member on Oct. 23, 2006, outlines various concerns the Member had with the electoral process of the Ontario College of Teachers' Council, and discloses evidence from, and

other confidential information regarding a closed reinstatement hearing. This e-mail contemplates a television interview.

Exhibits 17, 19 and 20, were e-mails from the Member to various individuals, all of which contain a link to the CTV website and the detailed 'Whistleblower' story.

Exhibit 18 is an excerpt from a website authored by the Member, which contains a link to the CTV website and the detailed 'Whistleblower' story, and also discloses confidential information regarding a closed reinstatement hearing.

Exhibit 21 is an e-mail from the CTV reporter to the Member.

### **College Counsel's Position**

In his opening statement, Counsel for the College indicated that the Member disclosed confidential information to the media with respect to what had occurred during a reinstatement hearing, held under Section 33 of the *Act*, and in which the Member was a member of the panel which decided the matter. He maintained that the Member breached Section 48 of the *Act*, and that he did not abide by the College By-laws, more particularly Section 19, Code of Ethics for Council Members. The Member was featured in a national news report in which the reporter stated that the Member had been the only Committee member opposed to the reinstatement of [XX]. Counsel indicated that since only three persons could have provided the media with information about what occurred during deliberations, and that the other two members maintain that they did not divulge anything, then it would follow that it was only the Member who could have done so.

Since reinstatement hearings are closed hearings under Section 33 of the *Act*, any evidence and the written decision of the Committee are not available to the public.

In his summation, College Counsel maintained the only way that the news media could have learned about Mr. [XX]'s reinstatement was if someone present during the hearing had divulged that information. While the Member maintained that his position with respect to the [XX] reinstatement was never discussed with the media and the remarks by Kathleen Tomlinson of CTV were "editorial" on her part, Counsel submitted that the Member aggravated the situation by attaching a link to the broadcast in subsequent e-mails which he sent to various individuals. In addition to the CTV newscast, the Member sent out several e-mails, letters and a report in which he revealed personal opinions regarding the discipline and reinstatement processes of the College and disclosed information from a closed reinstatement hearing, both prior to and following the broadcast. Since the Member had been part of only one reinstatement hearing, it would further follow that the information he was divulging regarded the reinstatement of [XX].

## **EVIDENCE OF THE MEMBER**

The Member presented the following evidence:

Exhibit 10 was an updated version of the CTV News Livestream website dated November 25, 2006.

Exhibit 12 was an article from *Canadian Security* 1995, "Lobbying for Crime Prevention" dated February, March, 1995, in which the Member's activism is featured prominently.

Exhibit 13 consisted of four letters of reference regarding the Member, dating from 1982 to 2004.

Exhibit 14 was page 4 of a report (referred to in the hearing as the “Black Report”) submitted by the Member to the Education Ministry with respect to the revitalization of the Ontario College of Teachers. Page 4 dealt with, among other items, procedures associated with disciplinary and reinstatement hearings.

Exhibit 15 was a reply from a Ministry official thanking the Member for his submission and noting the concerns about procedures associated with discipline and reinstatement hearings.

### **The Member’s Position**

In his opening statement, the Member maintained that when he wrote about the reinstatement process of the College, he was speaking in general terms. He had been part of the reinstatement matter of [XX], and that he had had “concerns”, but had signed his name in agreement with the reinstatement. He stated that he did not know then exactly what the impact of [XX]’s behaviour had been on his victims, and when he learned of the extent of it, he was shocked. He maintained that the media had contacted him probably because he was on record as being opposed to the College’s reinstatement practices. He did not divulge Mr. [XX]’s name, and supposed the reporter had learned about it elsewhere, perhaps from the College Register, or from Mr. [XX] himself. The Member stated that he did not tell the reporter that he had been the lone member who opposed [XX]’s reinstatement, and that these were “editorial comments” on behalf of the reporter.

He further stated that the most important thing in his talking to the media was his concern for children and his desire to protect them.

During closing submissions, the Member referred to section 48 of the *Ontario College of Teachers Act, 1996*, which deals with confidentiality when engaged with the administration of the *Act*. The *Act* provides that secrecy shall be preserved “with respect to all matters which come to his (sic) knowledge in the course of his (sic) duties and (every person) shall not communicate any of those matters to any other person...”. The Member reminded the Committee of the importance of this section of the *Act* to his position by stating, “...if you don’t believe me, I don’t have a case to support me”.

Mr. Black referenced subsection (c) of section 48 of the *Act*: in that confidential matters shall not be communicated except “with the consent of the person to whom the information relates”. Mr. Black indicated that he received consent. College counsel in response reminded the Committee that Mr. Black’s reference to contacting an individual to receive consent was in reference to another case that was open to the public. Counsel further reminded the panel that there was no evidence that Mr. Black had Mr. [XX]’s consent.

Mr. Black also referenced subsection (d) of section 48 of the *Act*: in that confidential matters shall not be communicated except “to the extent that the information is available to the public under the *Act*”. Mr. Black contended that, “somebody in the newspaper business or anybody on the street” could deduce the reinstatement. In response, College Counsel stated that Mr. Black was the first interviewee on the Whistleblower broadcast and that his statements were bracketed by the reporter's statements about the process.

### **Testimony of Witnesses**

1. ***Testimony of Carole Ashurst***, archivist, CTV – Ms. Ashurst verified Exhibit 2 as a true copy of the “Whistleblower” segment broadcast November 15, 2006 on CTV News. She stated the broadcast was an edited version of the interview, but there were no longer any field tapes available.

2. ***Testimony of Susan Pelky***, Hearings Co-ordinator, Ontario College of Teachers – Ms. Pelky verified that the Member was a member of the Discipline Committee panel which heard the reinstatement matter of [XX] on [XX]. She was not party to any discussions with respect to the decision taken by the panel, but she confirmed that the decision had been signed by all three panellists. The Reasons for Decision and Orders [Exhibit 4] was a decision of a closed hearing, and has remained confidential since that time. No documentation (such as transcripts or the decision itself) with respect to this hearing has been provided to anyone.

3. ***Testimony of Richard Lewko***, Director of Corporate and Council Services, Ontario College of Teachers – Mr. Lewko testified that his role was to ensure that the by-laws of the College are adhered to by Council Members. Section 19 (of the College’s By-laws) Code of Ethics, was established in 1997 and remains in force today [Exhibits 6 and 7]. He further testified that, because the [XX] reinstatement hearing was closed, the decision was not made available as per the usual process when hearings are held in public. Mr. Lewko also testified that the only information available on [XX] on the public register is that Mr. [XX] is a member in good standing. Under cross-examination, he verified that the Registered Member Information of [XX] [Exhibit 8] indicated that Mr.

[XX]'s Certificate had been suspended by the Ministry of Education in 1991, but that Certificate did not indicate a reason for the suspension.

4. and 5. *Testimony of witnesses #4 and #5* – The hearing was closed at this point pursuant to s. 32(7) of the *Ontario College of Teachers Act, 1996* for the reason that to allow the public to hear the names of these two witnesses would be a breach of section 33(9) of the *Ontario College of Teachers Act, 1996*. Both witnesses testified that they were members of the Discipline Committee panel which considered the reinstatement of [XX]. Only three people were present when the matter was deliberated in the panel room, themselves and the Member. They verified that the decision to order reinstatement of [XX] had been a unanimous one. They further testified that neither of them disclosed any information with respect to the matter to anyone including Kathleen Tomlinson of CTV.

6. *Testimony of [XX]* – Mr. [XX] admitted to improper conduct in the past, as per the top of page 3 of Exhibit 5 [closed exhibit], which led to the suspension of his Certificate by the Ministry of Education in 1991. He testified that he had been present at his reinstatement hearing ([XX]) and had believed it to be closed to the public. He further testified that the only person to whom he had disclosed any information was his wife, and that information was the decision made by the panel to reinstate him. To the best of his knowledge, he affirmed, his wife had not disclosed any details of the hearing.

Upon viewing the CTV broadcast (November 15, 2006) [Exhibit 2], Mr. [XX] confirmed this showed all of Tomlinson's interview with him. In it, he told her there was "no

story”. He did not advise her of the Member’s involvement or give any information about the hearing.

[XX] testified that he believed that the Member had disclosed information regarding deliberations because of what he had seen on the CTV broadcast and what he had read in a newspaper article (November 17, 2006), which stated that the Member was the lone member of the panel who had been in opposition to his reinstatement [Exhibit 11].

7. ***Testimony of James Arthur Black*** – The Member testified that he began teaching in 1976 in the Northwest Territories. During this time, he became a justice of the peace and sat as such for approximately four years from about 1978 to 1982. He also indicated that he had served as registrar when he sat on the Justice of Peace Association. In the 1980’s he became involved with establishing the National Crime Prevention Council.

The Member testified that he had learned about Mr. [XX] from other sources after completing his term as a member of the College’s Council, and that the only thing the Member ever discussed publicly were general issues around reinstatement hearings. He noted his concerns were that the College’s policy was unfair to victims because the victims are “blocked” from testifying in closed hearings. He further testified that he had been contacted in the fall of 2006 and asked if he would be interested in discussing the issue. He said he would only speak to his objections to the process. When questioned by the reporter about section 10 of his “Black Report”, the Member indicated that he would not tell her anything. However, he did tell the reporter how she could cross-reference a teacher with a conviction with the Ontario College of Teachers’ register. The Member said that research regarding individuals who had been reinstated was done by CTV. He

learned that the reporter had found Mr. [XX] as well as other Members who had been reinstated. He testified that during the interview, he was asked how he felt about someone being reinstated who had a conviction of “this, this, and this” and that the replies he gave were general to the reinstatement process. He indicated that he found the research done by CTV into Mr. [XX] “surprised the daylights out of” him and that perhaps his reactions to this information may have led the reporter to believe that he had had something to do with it. He further testified that, to the best of his knowledge, he did not divulge any information about the hearing or the deliberations, and that the comments made about his opposition to reinstate [XX] were “editorial” on the part of the reporter, Kathleen Tomlinson.

Under cross-examination, the Member admitted that only three people were in the closed panel room discussions, and the only way anyone would know of his opposition to reinstatement was if any one of these three individuals divulged this information. He also admitted that following the broadcast, he did not contact Tomlinson to correct the reporter’s error (that is, that he was the lone member who voted against reinstatement) for two reasons: (i) the Member assumed she had spoken to someone else (i.e. [XX]); or (ii) the reporter had come to this conclusion based on the Member’s well-known position with regard to the reinstatement process of the College. He did not ask for a retraction of the comments or for his connection with the [XX] matter to be removed from the CTV website [Exhibit 10]. The Member admitted that he sent e-mails [Exhibits 17, 18, 19 and 20] to various individuals, groups and websites in which he referred the recipients to the CTV website. He also admitted that he sent an email in October 2006 [Exhibit 16] to the Minister of Education, and various other individuals in government, in which he stated

that he had witnessed a reinstatement hearing and went on to reveal part of the evidence heard. In this letter the Member said that he had been asked to appear on television to discuss this.

He further testified that in 2004 he had submitted a report to the Ministry of Education in which he had expressed concerns regarding the reinstatement process of the College [Exhibit 14, page 4]. In this submission he revealed evidence which had been presented in a reinstatement hearing. He also suggested that victims were not allowed to give impact statements or to attend the hearing. When further questioned on this, the Member agreed with College counsel that section 33(7) of the *Act* states that the parties to the reinstatement hearing are the College and the applicant, and that any witnesses called are not parties to the matter. After lengthy questioning, he admitted that under section 33(10) of the *Act* oral evidence can be given on behalf of either party.

During cross examination, the Member objected to the College Counsel submitting as Exhibit 16, a *Five page document of emails dated October 24, 2006 with heading [XX] in the upper right hand corner of the first page.* The Member stated that he had attempted to submit a similar document, which he then withdrew following an objection by the College.

College Counsel reminded the Committee that Exhibit 16 was not the same document that the Member had attempted to submit, but rather a series of emails. Mr. Black then agreed to the exhibit submission and examination continued.

### **Assessing Credibility**

The Committee found the testimony of witnesses one through five to be very credible. Mr. Lewko and Ms. Pelky answered questions directly with respect to the process followed when discipline decisions are rendered in both closed and open hearings. There is no reason to assume that this process was not followed in the [XX] matter in that the information was not made available to the public. Witnesses four and five (members of the [XX] reinstatement panel) were straightforward in their testimony and answers from both witnesses were consistent in that they both testified that there had been no vote taken during deliberations and that the decision to reinstate Mr. [XX] had been unanimous.

The Committee found Mr. [XX] to be credible for the following reasons:

[XX] had not wanted to be interviewed regarding his past. That was clear from the CTV video and from his testimony. The Committee did not believe that [XX] would have spoken to anyone about the hearing which he believed had been held in camera. As a party to the proceeding, he had received a copy of the decision which gave no indication that there had been a dissenting opinion. The Committee believed him when he said in response to a question put to him in cross-examination by the Member that he felt Mr. Black must have been talking about it, because that is what he saw on television and read about in the newspaper.

The Committee did not find Mr. Black's testimony to be credible. He made no attempts to have what he claimed were "editorial comments" by the CTV reporter clarified or retracted. In fact, long after the broadcast aired, he continued to attach links to this story

in his many e-mails. The Committee did not believe him when he insisted that he had been more concerned about the victims than correcting the errors.

The Committee also believed that the Member was attempting to confuse the issue with several misleading statements regarding section 33 of the *Act*, with respect to closed hearings, and victims' "rights" to attend closed hearings. He contended that victims were "blocked from attending hearings or giving impact statements." The Member repeatedly referred to closed reinstatement hearings as being a "practice" of the Ontario College of Teachers rather than as a legislative duty under the *Act*. Mr. Black was very evasive in his answers under cross-examination when questioned in regards to his understanding of section 33 of the *Act*. The Committee was not convinced that the Member, who had served as a justice of the peace, was an experienced member of the Ontario College of Teachers' Discipline Committee, and a teacher of Law in a secondary school did not know the difference between "parties" who are in attendance and "witnesses" who can be called by either party to give testimony during a hearing.

The Member did not answer directly many questions of College Counsel, with respect to the manner in which he responded to the CTV news item. He stated his comments in the e-mails, his report, and the news broadcast, with respect to the reinstatement process were general. However, since he had been part of only one reinstatement matter, the Committee could only conclude that he was referring to the [XX] matter, and that he was dispensing information that only those in attendance at that hearing would have known.

The Committee found that under cross-examination the Member was argumentative and sarcastic: instead of answering questions directly, he gave replies such as "Oh, give me a

break!"; "Would you like me to answer that?"; and "Do you really want the answer?". In one instance, when the Member was questioned with regard to his interview with CTV News, he attempted to avoid answering the specific question as to whether he had participated in an interview. He finally stated "Okay. I had an interview, obviously."

## **DECISION**

### **(i) Onus and Standard of Proof**

The College bears the onus of proving the allegations in accordance with the standard of proof set out in *Re Bernstein and College of Physicians and Surgeons of Ontario* (1977) 15 O.R. (2d) 477. The standard of proof applied by the Committee, in accordance with the *Bernstein* decision, was a balance of probabilities with the qualification that the proof must be "clear and convincing" and based upon "cogent evidence" accepted by the Committee. The Committee also recognized that the more serious the allegation to be proved, the more cogent must be the evidence. The Committee considered the allegations in this case to be serious and assessed the evidence on that basis.

### **(ii) Decision**

Having considered the evidence, onus and standard of proof, and the submissions made by Counsel for the College and by the Member, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that James Arthur Black 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 *Act* as set out in the *Notice of Hearing*.

## **REASONS FOR DECISION**

In its deliberations, the Committee considered the following legal issues:

Failure to Call a Witness

Mr. Black raised an issue regarding the fact that the College did not call the CTV reporter to testify as to how she obtained her information. He maintained that the College failed by not calling her and that whether or not this reporter was available, it was the responsibility of the College to present that witness.

J. Sopinka, S. Lederman & A. Bryant, *The Law of Evidence in Canada*, 2<sup>nd</sup> ed. (Toronto: Butterworths, 1999)

Excerpt from page 297:

“(ii) Failure to Testify or to Call a Material Witness or Other Evidence

§6.321 In civil cases, an unfavourable inference can be drawn when, in the absence of an explanation, a party litigant does not testify, or fails to provide affidavit evidence on an application, or fails to call a witness who would have knowledge of the facts and would be assumed to be willing to assist that party. In the same vein, an adverse inference may be drawn against a party who does not call a material witness over whom he or she has exclusive control and does not explain it away. Such failure amounts to an implied admission that the evidence of the absent witness would be contrary to the party’s case, or at least would not support it.”

The College did not call the reporter to testify, nor did the Member. The Committee found that it was also the Member’s responsibility to call the CTV reporter as a witness. By presenting the reporter as a witness, the Member could have had the opportunity to prove that the reporter obtained her information from someone other than him.

The Committee considered the context of Ms. Tomlinson’s role as a reporter on balance with the rest of the evidence presented. The Committee was satisfied that no unfavourable inference could be drawn on behalf of either party in this instance.

## Circumstantial Evidence

Both the Member and Counsel for the College admitted that the evidence presented was mainly circumstantial.

ILC indicated that both direct and circumstantial evidence are equally admissible.

Following is an excerpt from *The Queen v. Cooper [1978] 1 R.C.S. 873* on the subject:

“In this case circumstantial evidence is very important, and I direct you as a matter of law that where the evidence on which you rely is mainly circumstantial, before you may find an accused guilty on such evidence standing alone, you must be satisfied that such evidence is consistent only with the guilt of the accused and inconsistent with any other rational conclusion....”

Further, in *Cooper [supra]*, at page 875:

“...there was no doubt that a crime had been committed and the only question for the jury was whether the accused was the person who had committed it; whereas in the present case there is no doubt that the respondent was the person who conferred the benefits...”

In considering this matter, the Committee found some similarity with the *Cooper* case.

There is no doubt that there was a breach of confidentiality. The Committee concluded that the Member indirectly benefitted from that breach in the following manner: the Member testified that he was an activist on behalf of victims of sexual abuse and he subsequently used the leaked information to promote his own point of view with different activist groups and government bodies. [Exhibits 17, 18, 19 and 20]

The Committee noted the Member admitted during cross-examination that the fact that he was a member of the reinstatement panel as well as the panel’s deliberations, were confidential. The [XX] reinstatement hearing was closed, and the evidence introduced in that hearing was confidential, and had not been disclosed.

Taking into consideration witness testimony and evidence presented, who was present at the [XX] reinstatement hearing, and the predisposition or self-interests of the Member, the Committee concluded that it was more likely than not that the Member was the only person who revealed the confidential information from that closed reinstatement hearing.

The Committee found that there was no other rational conclusion from the circumstantial evidence presented.

The Committee agreed that on its face, the CTV newscast does not show the Member saying that he alone voted against the reinstatement of [XX], nor does he name him. The Committee believed however that this broadcast became the means by which the College became aware that the Member had previously divulged confidential information. As early as 2004, he stated in his report to the Ministry of Education, “Equally repugnant is the secret closed reinstatement hearings where personal letters of references from Directors of Education and letters from Superintends [Superintendents] can be read into the record supporting their friends coming back into the profession.” [Exhibit 14]. This is evidence from a closed hearing [Exhibit 5 – closed], and the only reinstatement hearing in which the Member was involved.

The Committee found Exhibit 16 to be particularly compelling. In October, 2006 the Member sent an e-mail [Exhibit 16] to various individuals in the Provincial Legislature, including the Premier and the Minister of Education, in which he stated, “I witnessed the reinstatement of a teacher who was sentenced to jail for having sex with a student. Behind closed doors, the College hearing, over my objections, reinstated him with nothing more than a letter from a Director of Education and Superintendent who

happened to be friends of his wife.” This is further evidence from the closed reinstatement hearing. [Exhibit 5 – closed]. In this e-mail, the Member went on to say that he had been contacted by a television crew who wanted him “to go in front of a camera to name names...”. In this e-mail, the Member also stated that he had had “objections” to the reinstatement of Mr. [XX]. This contradicts his testimony that Kathleen Tomlinson had merely inferred that the Member was “the lone member who voted against reinstatement”. The Member maintained that Kathleen Tomlinson had found ten other teachers who had been reinstated, but the broadcast references only Mr. [XX] by name. Since this was the only reinstatement matter with a link to the Member, the Committee concluded that the Member must have divulged information about Mr. [XX]’s reinstatement hearing, including his name.

In his testimony the Member indicated that the CTV reporter had asked many questions with respect to the hearings process prior to and during the November 2006 television interview. He testified that he never divulged names, but upon learning that the reporter had found Mr. [XX] and had interviewed him, the Member had been asked about the deliberation procedures and whether there had been a vote by the panelists with respect to the decision. The Committee did not find credible that the reporter would have assumed that the Member had been opposed to the reinstatement if he had not divulged that information.

In January 2007 [Exhibit 18] the Member posted comments to a website, *tomorrowstrust*, in which he gave further information regarding the reinstatement hearing. In his comments he gave details about what evidence had been provided by College Counsel to

the panel hearing the matter. Again this was evidence that only someone in attendance at a hearing would know.

Since the [XX] reinstatement was the only one that the Member had been a part of, the Committee concluded that in these instances, the Member could only be referring to this matter.

Following the broadcast in November 2006, the Member continued to send out e-mails and to post his thoughts regarding the reinstatement processes of the College of Teachers. [Exhibits 17, 18, 19, 20] In one instance the Member wrote, “I spoke up on National Television. Now it is your turn!” In all of these he attached a link to the CTV website where the broadcast/transcript of the “Whistleblower” segment could be found.

The Member did nothing to have the information that he had been opposed to the reinstatement corrected on the website, nor had he contacted the reporter to inform her that her comments were incorrect. The Committee believed that the fact that he continued to attach links to the website to his e-mails, actually gave credibility to what the Member termed the reporter’s “editorial comments”.

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)).

October 23, 2008

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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