

**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
Arthur Randall Brown, a member of the Ontario College of Teachers.

PANEL: Nancy Hutcheson, Chair
Rosemary Fontaine
Lynne Mastin

BETWEEN:)	
	)	Jane Langford,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Paul West
)	
- and -	)	David Bloom,
	)	Cavalluzzo Hayes Shilton
ARTHUR RANDALL BROWN	)	McIntyre & Cornish LLP,
(CERTIFICATE #145984)	)	for Arthur Randall Brown,
	)	assisted by Amar Bhatia
)	
	)	Scott Hutchison,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
)	
	)	Heard: November 2, 2006

REASONS FOR DECISION, DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on November 2, 2006 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated June 17, 2005 was served on Arthur Randall Brown, requesting attendance before the Discipline Committee of the Ontario College of Teachers on July 11, 2005 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for November 2, 2006.

Arthur Randall Brown was in attendance at the hearing.

THE ALLEGATIONS

The allegations against Arthur Randall Brown in the *Notice of Hearing*, (*Exhibit 1*) dated July 11, 2005, are as follows:

IT IS ALLEGED that Arthur Randall Brown 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 supervise adequately a person who was under his professional supervision, contrary to Ontario Regulation 437/97, subsection 1(11);
- (c) he failed to comply with the *Act* and the *Education Act*, Revised Statutes of Ontario, 1990, chapter E.2, and specifically section 264(1)(c) thereof or the Regulations made under those Acts, contrary to Ontario Regulation 437/97, subsections 1(14) and (15);
- (d) 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
- (e) he engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19).

- (f) At the hearing of this matter, Counsel for the College withdrew several of the allegations of professional misconduct, namely allegations of breaches of Ontario Regulation 437/97, subsections 1(5), 1(14), 1(15) and 1(18), as outlined in (a), (c) and (d) above.

AGREED STATEMENT OF FACTS

- (g) 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 and Guilty Plea and Joint Submission on Penalty. (ASF – Exhibit 2)*
- (h) The Agreed Statement of Facts, Guilty Plea and Joint Submission on Penalty provides as follows:

The Member

1. Arthur Randall Brown (the “Member”) is a member of the Ontario College of Teachers. Attached and marked as **Exhibit “A”** is a copy of the Ontario College of Teachers Registered Member Information in respect of the Member.
2. During the 2003-2004 academic year, the Member was employed by the Hastings and Prince Edward District School Board (the “Board”) and was Superintendent of Educational Services of the Board.

Background

3. Commencing in or around the 2001-2002 school year, the Grade 10 Ontario Secondary School Literacy Test (the “OSSLT”) was made a requirement for students in the Province of Ontario who entered Grade 9 in a given school year and who were working towards obtaining an Ontario Secondary School Diploma.
4. Since that time, the OSSLT has been administered on an annual basis at the direction of the Education Quality and Accountability Office (“EQAO”).

5. In October 2003, the eligible candidates for the OSSLT were:
 - (i) students who entered Grade 9 in the 2002-2003 school year;
 - (j) students who did not pass the reading and/or writing component of the OSSLT in 2002;
 - (k) students who were absent or were deferred from taking the OSSLT in 2002; and
 - (l) students who were exempted from taking the OSSLT in 2002 but were, in October 2003, working towards an Ontario Secondary School Diploma.

6. The EQAO provided written instructions to schools with respect to the procedure for the proper administration of the OSSLT. This procedure was set out in a number of documents including the Teacher's Daily Script, which included instructions that students writing the OSSLT were to be handed a test booklet at the beginning of each section of the OSSLT and that sixty minutes after starting the test, students were to be instructed to seal their test booklet with a seal which was provided with the booklet.

Events at [■] School in October 2003

7. In October 2003, the OSSLT was administered at [■] (the "School"), a school within the Board.

8. The Member was asked and agreed to act as a scribe for a student at the School who was to write the OSSLT. On or around October 22 and 23, 2003, the Member was present with his student acting as a scribe during the administration of the OSSLT.

9. While the Member was the Superintendent of Educational Services for the Board, he had no previous experience or involvement with the administration of the OSSLT. His first direct involvement with the OSSLT was on or around October 22 and 23, 2003.

10. The morning of October 22, 2003, the Member attended a meeting of other scribes, who were principally teachers at the School and parents of students of the School. The meeting was held in the School's library and was presided over by the School's Head of Special Education, the School's Vice-Principal and the School's Principal. While the Member was only a member of the audience for this meeting, others present at the meeting, including other teachers at the School, recognized him and knew of his senior supervisory position with the Board.

1. At the scribe meeting, information was provided on how the OSSLT was to be administered and on the nature of the assistance to be provided to their student. During the course of this meeting, those in attendance were advised, among other things, that when the student completed a section of the test, the test booklet for that section was not to be sealed and was to be returned to the School's library in an un-sealed state. At this time, no written instructions were provided or referred to.

The Member's Acts of Misconduct

2. At the time of the testing the Member, as noted above, was not familiar with the EQAO's written instruction and procedure for the proper administration of the OSSLT. The Member did not specifically know that not sealing the completed test booklets was a breach of EQAO's written instructions and procedures. Therefore, at the meeting, the Member did not question or object to the instruction not to seal the completed booklets. The Member acknowledges that it could reasonably be expected that he should have questioned this direction given its nature and that he should have taken the necessary steps to ensure that EQAO written instructions and procedures were followed. The Member also acknowledges that, due to his senior position of responsibility with the Board, other teachers present could

have taken his silence as his agreement with and approval of the decision not to seal the completed test booklets.

GUILTY PLEA

3. By this document, the Member admits the truth of the facts and exhibits referred to in paragraphs 1 to 12 above (the “Admitted Facts”). The Member hereby acknowledges that the Admitted Facts, and in particular the facts referred to in paragraph 12 above, constitute conduct that is unprofessional and unbecoming a member of the College and pleads guilty to the allegations of professional misconduct against him being more particularly breaches of Ontario Regulation 437/97 s.1(11) and 1(19).
4. The Member states that:
 - (a) he understands fully the nature of the allegations against him;
 - (b) he understands that by pleading guilty to the allegations, he is waiving the right to require the College to prove the case against him and the right to have a hearing;
 - (c) he voluntarily decided to plead guilty; and
 - (d) he understands and acknowledges that he is executing this Agreement voluntarily, unequivocally and with the advice of legal counsel.
5. In light of the Admitted Facts, 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

6. 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) directs the Member to attend before the Committee to be reprimanded, and the fact of the reprimand be recorded on the public register of the Ontario College of Teachers;
 - (b) directs that the Member's Certificate be suspended for a period of one month commencing from the date of the Order of the Discipline Committee, and the fact of the suspension to be recorded on the public register of the College; and
 - (c) directs that there be publication of the findings and order of the Committee, in summary form, including the full name of the Member, in the Official Publication of the College.
7. By this document, the Member acknowledges his 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 AS TO FINDING

Having examined the Exhibits filed, and based on the plea of guilt, the *Agreed Statement of Facts, Guilty Plea 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 Arthur Randall Brown committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsection 1(11) and 1(19), as set out in the *Notice of Hearing*.

REASONS FOR DECISION

The Committee accepted the Member's guilty plea, the *Agreed Statement of Facts and Guilty Plea and Joint Submission on Penalty*.

Evidence showed that the Member, a supervisory officer, was present and remained silent at a meeting where teachers under his supervision advised scribes, in disregard of the protocols established by EQAO, not to seal the tests. The Committee found that the Member's silence constituted a tacit agreement by him that these protocols should be disregarded.

The Member did not question or correct the improper instructions given to the scribes. This failure to discharge his responsibility with regard to the protocols and procedures under which Ontario schools are expected to operate constitutes professional misconduct, more particularly a failure to supervise adequately persons under his professional supervision.

As a supervisory officer, the Member held a position of leadership, responsibility and authority. His error of omission and his failed leadership with regard to the ethical behaviour appropriate to the Ontario Secondary School Literacy Test constitute conduct unbecoming a member.

PENALTY DECISION

The Committee accepts the Joint Submission on Penalty and makes the following order as to penalty.

1. The Member is required to appear before the Committee to be reprimanded, and the fact of the reprimand will be recorded on the Register of the Ontario College of Teachers;
2. The Registrar of the Ontario College of Teachers is directed to suspend the Certificate of Qualification and Registration of the Member for a period of one month from the date hereof, and the fact of the suspension will be recorded on the Register of the Ontario College of Teachers;

3. 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 DECISION

The Committee finds that the penalty balances the interests of the public, the individuals at the School and the Member. The suspension alerts members and the public that supervisory officers must be aware of their role and set strong examples of ethical leadership. Condoning cheating, specifically on the OSSLT, is unprofessional and will not be tolerated by the profession. By this decision, the public can be reassured that the EQAO test is delivered consistently and properly to ensure that every student will have achieved an adequate standard of literacy upon graduation.

The reprimand by his peers in respect of these actions serves as a specific deterrent to the Member and publication of the findings and order of the Committee, in summary, with the name of the Member, in *Professionally Speaking/Pour parler profession*, serves as a general deterrent to the profession, sending a message that ethical behaviour is required by members of the College.

Date: November 2, 2006

Nancy Hutcheson
Chair, Discipline Panel

Rosemary Fontaine
Member, Discipline Panel

Lynne Mastin
Member, Discipline Panel