

**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 Diane Margaret Fair, a member of the Ontario College of Teachers.

PANEL:            Gabrielle Blais, Chair  
                      Tianna Travaglini-Babic  
                      Jacques Tremblay

BETWEEN:	)	David Leonard,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -	)	
	)	Richard R. Evenson,
DIANE MARGARET FAIR	)	Evenson Bundgard Flynn,
(CERTIFICATE # 110871)	)	with Sarah Colman, General
	)	Counsel, Ontario Principals’
	)	Council,
	)	for Diane Margaret Fair,
	)	
	)	Scott Hutchison,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
	)	
	)	Heard: May 14, 2007

**REASONS FOR DECISION, DECISION AND ORDERS**

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on May 14, 2007 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated June 17, 2005 (Exhibit 1) was served on Diane Margaret Fair (the “Member”), providing her with notice that the Discipline Committee of the Ontario College of Teachers would meet on July 11, 2005 to set a date for a hearing, and specifying the charges. The Discipline Committee subsequently set May 14, 2007, as the date for the hearing on the merits.

The hearing took place on May 14, 2007 at which time the Committee rendered its decision orally and reserved its reasons for decision. These are those reasons.

Diane Margaret Fair was in attendance at the hearing.

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

**IT IS ALLEGED** that Diane Margaret Fair 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 failed to supervise adequately a person who was under her professional supervision, contrary to Ontario Regulation 437/97, subsection 1(11);
- (c) she falsified a record relating to her professional responsibilities, contrary to Ontario Regulation 437/97, subsection 1(13);
- (d) she 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);
- (e) 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

- (f) she engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19).

At the hearing on May 14, 2007 College counsel sought to withdraw the following particulars contained paragraphs (c), (d) and (e) of the *Notice of Hearing*, being alleged breaches of Ontario Regulation 437/97, subsections 1(13), 1(14), 1(15) and 1(18). The Committee agrees that these allegations shall be withdrawn.

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, Guilty Plea and Joint Submission on Penalty. (ASF – Exhibit 2)*

The *Agreed Statement of Facts, Guilty Plea and Joint Submission on Penalty* provides as follows:

## **AGREED STATEMENT OF FACTS**

### ***The Member***

1. Diane Fair is a member of the Ontario College of Teachers (the “Member”). 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 the Principal of Moira Secondary School (“Moira”) in Belleville, Ontario. The Member retired from the Board at the end of the 2003-2004 academic year.

3. During her thirty-four years in public education, the Member has been employed in roles of increasing responsibility. She was a teacher, a Department Head, a Systems Curriculum Co-ordinator, a Vice Principal and a Principal with two Boards of Education (the Kawartha Pine Ridge District School Board and the Board). She was highly respected in all of these roles and had an unblemished record until the events of October, 2003.

### ***Background***

4. 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.
5. Since that time, the OSSLT has been administered on an annual basis at the direction of the Education Quality and Accountability Office (“EQAO”).
6. In October 2003, the eligible candidates for the OSSLT were:
  - (a) students who entered Grade 9 in the 2002-2003 school year;
  - (b) students who did not pass the reading and/or writing component of the OSSLT in 2002;
  - (c) students who were absent or were deferred from taking the OSSLT in 2002; and
  - (d) students who were exempted from taking the OSSLT in 2002 but were, in October 2003, working towards an Ontario Secondary School Diploma.
7. The EQAO provided detailed written instructions to schools with respect to the procedure for the proper administration of the OSSLT, including the EQAO Guide For Administering The Ontario Secondary School Literacy Test (the “Guide”), attached as **Exhibit “B”**.
8. These procedures were reiterated in other 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.
9. The procedures allowed for students with special needs to receive certain forms of accommodation, including being granted additional time, a favourable

writing environment, or having “scribes” assigned to assist in recording the student’s test responses in the testing process.

10. The Guide, at pages 5 – 21, provides a detailed “Responsibility Checklist” for the entire process of administering the test, which makes it clear that the each school’s principal had primary responsibility for the proper administration of the test. The EQAO summarised the “Principal’s Role” at page 32 of the Guide, as follows:

The Principal’s role encompasses seven key elements:	
1.	Identify and document student eligibility, as well as facilitate decision making on student eligibility, exemptions, deferrals, accommodations and special provisions.
2.	Ensure the training and supervision of teachers administering the test and of staff managing the materials and assist with accommodations for students with special needs.
3.	Ensure that all students have access to the student preparation materials on the EQAO Web site and to teacher support in using those materials.
4.	Ensure appropriate test conditions.
5.	Ensure the confidentiality and security of test materials.
6.	Receive and account for all test materials and ensure that the assessment materials are kept in a secure location.
7.	Return all necessary materials to the EQAO immediately following the administration of the OSSLT

### ***Events at Moira in October, 2003***

11. On October 22 and 23, 2003, the OSSLT was administered at Moira.
12. At Moira, of the 165 students writing the 2003 OSSLT, approximately 45 students received time accommodation, and 24 students had scribes assigned. As is shown by the chart attached as **Exhibit “C”**, the percentage of students at Moira who received accommodation was not unusual within the Hastings and Prince Edward District School Board.
13. As established by the EQAO Guide, the Member, as Moira’s Principal, had primary and overall responsibility for the administration of the OSSLT at

Moira. The member delegated responsibility for training scribes and making the appropriate arrangements for the accommodated students to Moira's Interdepartmental Special Education Head, Kelly Pickard ("Ms. Pickard"). In addition to Ms. Pickard the Member, was also assisted by Moira's Vice Principal, Joan Bennett ("Ms Bennett") and Moira's Literacy Co-ordinator and representative on the Hastings and Prince Edward County District School Board Literacy Subject Counsel, Kim Gartenburg ("Ms Gartenburg"). All had responsibilities associated with preparing for and administering the test.

14. The problem of students not completing their tests, which had occurred in prior years, and other problems with the administration of the 2003 OSSLT were discussed. The Member was a party to that discussion. Those involved in the discussion believed that other schools had a practice of not sealing tests until they were checked for completeness, and it was decided that at Moira, the tests would not be sealed until checked for completeness. The Member was aware during and following that discussion that what was being discussed was contrary to EQAO instructions.
15. During the testing, contrary to EQAO instructions, with Ms Bennett and Ms Pickard, and perhaps others, the Member went through the test booklets, after the students had finished and left the testing area, to ensure they were complete. Where incomplete test answers were found, arrangements were made for the student (and the scribe if the student had a scribe) to return to complete the test answers. Ultimately the test booklets were sealed.
16. The Member acknowledges that by being present for and participating in the activities described in paragraph 15 above, she was signalling to those present her approval of and agreement with actions being taken by her and others.
17. Following a review of the irregularities that occurred at Moira in relation to the administration of the 2003 EQAO literacy test, the EQAO determined that the irregularities did not lead to a different pass/fail outcome for any Moira student and that there was no adverse effect on any student.

## **GUILTY PLEA**

18. By this document, the Member admits the truth of the facts and exhibits referred to in paragraphs 1 to 17 above (the "Admitted Facts"). The Member hereby acknowledges that the Admitted Facts, and in particular the facts referred to in paragraphs 14 – 16 above, constitute conduct that is unprofessional and pleads guilty to the allegations of professional misconduct against her, being more particularly a breach of Ontario Regulation 437/97 sections 1(5), 1(11) and 1(19).

19. The Member states that:
- (a) she understands fully the nature of the allegations of professional misconduct against her;
  - (b) she understands that by pleading guilty to these allegations, she is waiving the right to require the College to prove the case against her and the right to have a hearing;
  - (c) she voluntarily decided to plead guilty the allegations; and
  - (d) she understands and acknowledges that she is executing this Agreement voluntarily, unequivocally and with the advice of legal counsel.
20. In light of the Admitted Facts and circumstances, and in particular the facts set out in paragraphs 14 – 16 above, the Ontario College of Teachers and the Member submit that the Discipline Committee find the Member guilty of professional misconduct.

#### **JOINT SUBMISSION ON PENALTY**

21. 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 completion of the hearing of this matter, to be reprimanded and that 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 ten months, commencing on May 15, 2007, and the fact of the suspension be recorded on the public register of the College. However, if the Member fulfills the requirements of paragraphs (c) and (d) below, the suspension will end on January 14, 2008 and the last two months of the suspension, from January 15, 2008 to March 14, 2008, will be suspended and will only take effect if the Member does not fulfill the requirements of paragraph (c) and (d) below;
  - (c) directs that the Member must enrol in and complete, at her own expense, prior to September 30, 2007, a course of instruction, pre-approved by the Registrar, regarding ethics in the profession;

- (d) directs that the Member shall provide to the Registrar proof of successful completion of the course referred to in (c) above prior to October 30, 2007; and
  - (e) directs 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.
22. 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 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 Diane Margaret Fair committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5) 1(11) and 1(19).

## **REASONS FOR DECISION**

The Member acknowledged that her actions constituted conduct which is unprofessional and pleaded guilty to the allegations of professional misconduct.

In her role as principal, the Member was expected to fulfill the responsibilities prescribed to her by the EQAO and to ensure that the protocols under which the EQAO literacy tests are administered are followed by all. One of the key elements in the principal's role is to

ensure the confidentiality and security of test materials. Still, the Member proceeded to take part in discussions about ensuring that student booklets were complete before being sealed, and by going through the test booklets herself. The Member has admitted that she was aware that these actions contravened EQAO protocols. By taking part in these actions, the Member demonstrated disregard for the EQAO testing process, which is considered a key component in ensuring that students graduate with the literary skills that they require to be successful. The fact that the irregularities that occurred in this case did not lead to a different pass/fail outcome for any Moira student, and consequently had no adverse effect on any student, is irrelevant and does not alleviate the gravity of the actions. By these actions, the Member failed to maintain the standards of the profession.

As the principal of the School, the Member had the responsibility to lead and supervise the staff assigned to her in accordance with Ministry policies and protocols. In the case of the EQAO literacy tests, one of the key elements of the principal's role is to ensure the training and supervision of teachers administering the test and of staff managing the materials, and assisting with accommodations for students with special needs. Even though some tasks could be delegated, such as the training of scribes, the Member, as principal, had primary and overall responsibility for the administration of the OSSLT. The Member disregarded the protocols established by the EQAO by allowing and taking part in discussions that would result in staff being directed to contravene EQAO protocols. The Member has also admitted that by being present and participating in activities contrary to EQAO protocols, she was signaling to those present her approval of and agreement with actions being taken by her and others. Furthermore, the Member

misguided the staff under her leadership by allowing them to perform acts that jeopardized their professional standing. As a result, the Member failed to supervise adequately the staff under her professional supervision.

Members of the profession are expected to set a strong example of ethical behaviour. In this case, the Member's tampering with test booklets amounted to cheating and is contrary to the values of the educational system. Members of the profession, as mentors and guides, are expected to be models with respect to honesty generally, and academic honesty in particular. By her actions, the Member failed to live up to these expectations and caused members of the public to question the integrity of the educational system. The public has a right to have faith in the integrity of the process, ensuring that every student graduating from high school has achieved an adequate standard of literacy, without intervention. The Member's actions were inappropriate and unacceptable. As a result, the Member engaged in conduct unbecoming a member of the profession.

## **PENALTY DECISION**

The Committee accepts the Joint Submission on Penalty and

- (a) requires the Member to appear before the Committee immediately following the completion of the hearing of this matter, to be reprimanded and the fact of the reprimand is to be recorded on the public register of the Ontario College of Teachers;
- (b) directs the Registrar to suspend the Member's Certificate for a period of ten months, commencing on May 15, 2007, and the fact of the

suspension is to be recorded on the public register of the College. However, if the Member fulfills the requirements of paragraphs (c) and (d) below, the suspension will end on January 14, 2008 and the last two months of the suspension, from January 15, 2008 to March 14, 2008, will be suspended and will only take effect if the Member does not fulfill the requirements of paragraph (c) and (d) below;

- (c) directs that the Member must enrol in and complete, at her own expense, prior to September 30, 2007, a course of instruction, pre-approved by the Registrar, regarding ethics in the profession;
- (d) directs that the Member shall provide to the Registrar proof of successful completion of the course referred to in (c) above prior to October 30, 2007; and
- (e) directs 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*.

## **REASONS FOR PENALTY DECISION**

The suspension of the Member's certificate and qualification alerts members and the public that principals must assume their role and responsibilities and set strong examples of ethical leadership. In the case of this Member, it will result in loss of reputation and the inability to work in the education system for a period of ten months. The length of

the suspension reflects the seriousness of the misconduct and informs the profession and the public that condoning cheating, specifically on the OSSLT, will not be tolerated.

Even though the Member is retired, she has not indicated that she intends to resign from the College and is therefore able to work in the education system. Consequently, the Member needs to be reminded of the ethics of the profession and to reflect on them. The ethics course recommended will be rehabilitative and will help her understand the motivation for her misconduct, the impact it has had and why she should not engage in similar behaviour in the future. Pre-approval of the ethics course by the Registrar and the Member's responsibility to report back to the Registrar supports transparency. The Committee recognizes the importance of the course and has agreed that two months of the suspension will be removed if the Member successfully completes such a course.

The reprimand by her peers serves as a specific deterrent to the Member. This censure on behalf of the profession and the public reinforces to the Member that her conduct was unacceptable.

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 not tolerate cheating and will ensure that such misconduct is dealt with appropriately.

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

Date: June 7, 2007

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Gabrielle Blais  
Chair, Discipline Panel

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Tianna Travaglini-Babic  
Member, Discipline Panel

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Jacques Tremblay  
Member, Discipline Panel