

**DISCIPLINE COMMITTEE  
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** discipline proceedings against Yves Joly, a member of the Ontario College of Teachers.

PANEL:        Gabrielle Blais, Chair  
                 Jacques Tremblay  
                 Nancy Hutcheson

BETWEEN:

THE ONTARIO COLLEGE	)	
OF TEACHERS	)	Colin Baxter,
	)	McCarthy Tétrault LLP, representing
	)	Ontario College of Teachers,
	)	assisted by Patrick Veilleux
	)	
	)	
- and -	)	Julie Skinner, Nelligan, O’Brien Payne LLP,
	)	
Yves Joly	)	representing Yves Joly
(CERTIFICATE #417765)	)	
	)	
	)	Paul Le Vay,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
	)	
	)	Heard: October 21, 2008

**REASONS FOR DECISION, DECISION AND ORDERS**

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on October 21, 2008 at the Ontario College of Teachers (“the College”) at Toronto.

Three Notices of Hearing (YVES JOLY #1, #2 and #3), each dated June 14, 2007, were served on the Member requesting his attendance before the Discipline Committee of the College on June 18, 2007 to set a date for a hearing. The hearing date was set for October 21, 2008.

The Member was present at the hearing.

## **ALLEGATIONS**

The allegations made against the Member in the Notices of Hearing (Exhibits 1, 2 and 3), each dated June 14, 2007, are as follows:

**IT IS ALLEGED** that Yves Joly is guilty of professional misconduct, as defined in subsections 30(2) and 30(3) of the *Ontario College of Teachers Act* (the “Act”), in that he:

- (a) failed to maintain the standards of the profession, contrary to subsection 1(5) of Ontario Regulation 437/97;
- (b) failed to supervise adequately a person who was under the professional supervision of the Member, contrary to subsection 1(11) of Ontario Regulation 437/97;
- (c) failed to comply with the Act and the *Education Act*, R.S.O., 1990, Chapter E.2, or the regulations made under those Acts, contrary to subsections 1(14) and (15) of Ontario Regulation 437/97;
- (d) 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);

- (e) engaged in conduct unbecoming a member, contrary to subsection 1(19) of Ontario Regulation 437/97;
- (f) displayed in his professional responsibilities a lack of knowledge, skill or judgment and/or disregard for the welfare of students of such a nature or extent that demonstrates that the member is unfit to continue to carry out his professional responsibilities or that a certificate held by the member under this Act should be made subject to terms, conditions or limitations.

At the hearing on October 21, 2008, College counsel requested the withdrawal of several of the allegations of professional misconduct, more particularly the allegation of having breached subsections 1 (14), 1 (15) and 1 (18) of Ontario Regulation 437/97 of the Act, as set out in paragraphs c) and d) above. He also sought to withdraw the allegation of incompetence, as indicated in paragraph f). The Committee agrees to the withdrawal of these allegations.

### **AGREEMENT ON THE FACTS**

College counsel indicated to the Committee that an agreement on the facts had been reached and filed as Exhibit 4, Agreed Statement of Facts, Guilty Plea and Joint Submission on Penalty, which has the following provisions:

1. Yves Joly (the “Member”) is a member of the College. Attached hereto is a copy of the Member’s Certificate of Qualification (Exhibit 4).
2. At all materials times, that is, during the entire period in question, the Member was employed by the Conseil scolaire public de district du Centre-Sud-Ouest as a teacher at École Gabrielle-Roy (the “school”) in Toronto.

3. The parties acknowledge that three (3) Notices of Hearing were issued to the Member on June 14, 2007 alleging that he was guilty of professional misconduct because of a lack of professionalism, inappropriate conduct and failure to supervise adequately a person who was under his professional supervision (Exhibit 4).

4. These are separate allegations that resulted from complaints made by various individuals. The parties agreed to consolidate the allegations contained in the three complaints that were referred by the Investigation Committee, and to proceed to the Discipline Committee with a single hearing.

5. The Member acknowledges that the following facts are true and that the actions described below constitute professional misconduct:

- (a) Between September and November 2005, the Member was frequently absent from the Grade 1 physical education course.
- (b) Between September and November 2005, the Member left his class unsupervised on more than one occasion and for such lengthy periods of time that, during these absences, the students organized guard duty at the door to monitor his return.
- (c) On October 4, 2005, between 10:20 and 11:20 a.m., the Member fell asleep for a few minutes on an exercise mat in the gymnasium during a Grade 3 physical education class, leaving 28 students unsupervised.
- (d) On October 4, 2005, between 12:20 and 12:50 p.m., the Member fell asleep for a few minutes on an exercise mat in the gymnasium, failing to collect Junior Kindergarten students from their classroom for physical education instruction.

- (e) On October 4, 2005, around 1:55 p.m., the Member fell asleep for a few minutes on an exercise mat in the gymnasium at the beginning of a Grade 4 physical education class.
- (f) Although no item of medical evidence is available, the Member stated that he was suffering from a bad case of influenza on October 4, 2005 and that he had taken some tablets to relieve the attending symptoms. He stated that he had mistakenly taken Tylenol Nighttime instead of Tylenol Daytime tablets.
- (g) On December 1, 2005, the Member was late for a meeting with the principal and [XXX] (parent and complainant). The Member's breath smelled of alcohol and he acknowledged that he had consumed a beer with dinner, that is, between the end of his work day and this meeting.

## **GUILTY PLEA**

6. The Member acknowledges that he is guilty of professional misconduct, as defined in subsections 30(2) and 30(3) of the Act, in that he:

- (a) failed to maintain the standards of the profession, contrary to subsection 1(5) of Ontario Regulation 437/97;
- (b) failed to supervise adequately a person who was under the professional supervision of the Member, contrary to subsection 1(11) of Ontario Regulation 437/97;
- (c) engaged in conduct unbecoming a member, contrary to subsection 1(19) of Ontario Regulation 437/97.

7. In light of the aforementioned facts and the Member's guilty plea, the College and the Member submit that the Discipline Committee find the Member guilty of professional misconduct.

**JOINT SUBMISSION ON PENALTY:**

8. The parties jointly submit that the appropriate penalty to be imposed by the Discipline Committee in this matter would be that:

- (a) the Discipline Committee order the Member to appear before the Discipline Committee immediately following the hearing in this matter; that the Committee impose a verbal reprimand; and that this reprimand be recorded on the College's public register.
- (b) the Registrar of the College suspend the Member's Certificate of Qualification for a period of three (3) months starting eight (8) months after the date of the Discipline Committee's order, and that the suspension be imposed and recorded on the College's public register if the Member fails to meet the requirements set out in paragraphs 8c) and 8d) below;
- (c) that within eight (8) months of the date of this order, the Member must enrol, at his own expense, in the customized three-hour course of instruction offered by Donat Boulerice entitled "Surveillance scolaire et responsabilisation de l'enseignant" ("School Supervision and Teacher Accountability"). The Member shall deliver directly to the Registrar proof of the successful completion of the course within thirty (30) days of its completion;
- (d) that within eight (8) months of this order, the Member must enrol in Module 1 of the online course of instruction entitled "Gestion de l'enseignement et de

l'apprentissage – Initiation” (“Introduction to Instructional and Learning Management”) offered by the Centre franco-ontarien de ressources pédagogiques.

The Member shall deliver directly to the Registrar proof of the successful completion of the course within thirty (30) days of its completion;

- (e) the terms of this finding shall be published on the College’s public register;
- (f) the Discipline Committee direct that a summary of the decision and order of the Discipline Committee be published in the next regular issue of *Professionally Speaking/Pour parler profession* and that the Member’s name, as it appears on the public register, be published.

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

## **DECISION**

Having considered the exhibits filed and relying on 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 and considers that the Member committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(11) and 1(19), as set out in the Notices of Hearing.

## **REASONS FOR DECISION**

The Committee accepted the Member's guilty plea as well as the truthfulness of the facts described in the Agreed Statement of Facts, Guilty Plea and Joint Submission on Penalty. Regardless of any excuses offered by the Member, it is inappropriate for a teacher to fall asleep repeatedly in the classroom at times when he has students under his responsibility. If the teacher felt that he was unable to fulfil his tasks adequately, he should have informed his supervisors so that he could be relieved of his duties for the day. The teacher's lack of judgment could have put the students involved at risk. The alleged actions support a finding of professional misconduct.

## **DECISION ON PENALTY**

The Committee makes the following order as to penalty:

- 1) the Discipline Committee orders the Member to appear before the Discipline Committee immediately following the hearing in order for the Committee to impose a verbal reprimand. The fact of the reprimand shall be recorded on the College's public register;
  
- 2) the Committee directs the College to suspend the Member's Certificate of Qualification for a period of three (3) months; however, this suspension shall not be imposed if the Member fulfils the following conditions during this period:
  - (a) the Member successfully completes, at his expense, the three-hour customized course offered by Donat Boulerice entitled "Surveillance scolaire et responsabilisation de l'enseignant" ("School Supervision and Teacher Accountability") and, also at his expense, Module 1 of the online course of instruction entitled "Gestion de l'enseignement et de l'apprentissage –

Initiation” (“Introduction to Instructional and Learning Management”) offered by the Centre franco-ontarien de ressources pédagogiques;

(b) the Member submits to the Registrar proof of the successful completion of the course within thirty (3) days of its completion;

3) the Committee directs the Registrar to impose the following terms, conditions or limitations on the Member’s Certificate of Qualification:

(a) within eight (8) months after the date of this order, the Member must enrol, at his expense, in the courses indicated above.

4) that the terms of this finding be recorded on the College’s public register;

5) the Discipline Committee requires that a summary of its decision and order appear in *Professionally Speaking/Pour parler profession*, without the Member’s name.

## **REASONS FOR DECISION ON PENALTY**

It is the opinion of the Committee that the Member’s alleged conduct was inappropriate and showed a lack of judgment on his part. Considering that these events represent an atypical period in his career and that the students did not suffer any serious consequences, the Committee accepts most of the joint submissions on penalty.

The reprimand administered to the Member expresses the Committee’s disappointment with respect to his judgment. This penalty has a deterrent effect on the Member.

The Committee acknowledges that the Member co-operated with the College by admitting that he engaged in inappropriate conduct. The Committee is satisfied that, in these circumstances, the Member is required to successfully complete the courses entitled “Surveillance scolaire et responsabilisation de l’enseignant” (“School Supervision and Teacher Accountability”) and “Gestion de l’enseignement et de l’apprentissage – Initiation” (“Introduction to Instructional and Learning Management”). These courses will help to fill in certain gaps in the Member’s knowledge in terms of his interactions with students. It is the opinion of the Committee that these courses, or suspension, if applicable, will serve the interests of the public and of the Member.

The Committee has decided that publication of the Member’s full name would not be in the interest of the Member, of the profession or of the public, for the following reasons:

- (a) The alleged actions have not recurred over time.
- (b) The consequences of the actions were not serious.
- (c) The Member co-operated with the College and expressed his regrets.
- (d) The nature of the alleged actions does not require that the Member be identified.
- (e) All parties involved have agreed that the Member may return to the classroom.

The Committee is, all the same, satisfied that publishing a summary of its findings in the College’s official publication, *Professionally Speaking/Pour parler profession*, without the Member’s full name, will have an educative and deterrent effect for the profession.

Overall, the penalty protects the public interest and demonstrates that inappropriate actions, such as the actions in this case, will be adequately penalized.

Date: December 9, 2008

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Gabrielle Blais  
Chair, Discipline Panel

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Jacques Tremblay,  
Member, Discipline Panel

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Nancy Hutcheson  
Member, Discipline Panel