

ONTARIO COLLEGE OF TEACHERS

DISCIPLINE COMMITTEE

IN THE MATTER OF ONTARIO COLLEGE OF TEACHERS ACT, 1996, and the Regulation (Ontario Regulation 437/97) thereunder:

AND IN THE MATTER OF discipline proceedings against Nicola Micomonaco.

The Discipline Committee held a hearing on November 26, 2002,

BETWEEN:

ONTARIO COLLEGE OF TEACHERS

- and -

NICOLA (NICK) MICOMONACO
Certificate #155627

REASONS FOR DECISION, DECISION AND ORDER

PRESENT:

Members of the Panel

Marilyn Laframboise (Chair)

Bernard Adam

Karen Mitchell

Chris Worth, Stockwoods, Independent Legal Counsel to the Committee

Awanish Sinha, McCarthy Tétrault, Counsel for the Ontario College of Teachers, assisted by
Jennifer Robinson, Law Clerk

The member did not attend, nor was he represented.

On behalf of the member who did not attend the hearing, College Counsel presented a request that the name of the school board not be published. The Committee denied this request.

A Notice of Hearing, dated February 18, 2002 was served on Nicola Micomonaco (Nick Micomonaco), requesting attendance before the Discipline Committee of the Ontario College of Teachers on November 22, 2002, and specifying the charges.

It is alleged that Nick Micomonaco is guilty of professional misconduct 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, and the *Education Act*, Revised Statutes of Ontario, 1990, Chapter E.2, and the Regulations made under those Acts contrary to Ontario Regulation 437/97, subsections 1(14) and 1(15);
- (c) he committed acts or omissions that, having regard to all of 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).

The Notice of Hearing states that Nick Micomonaco is a member of the Ontario College of Teachers and therefore comes under the jurisdiction of the Ontario College of Teachers.

On November 26, 2002, the Discipline Committee of the Ontario College of Teachers conducted a hearing into whether Nick Micomonaco was guilty of professional misconduct.

The member was not in attendance at the hearing, nor was he represented by counsel. Proof of service of the Notice of Hearing was presented and accepted by the panel.

EVIDENCE

Counsel for the Ontario College of Teachers referred to the charges set out in the Notice of Hearing, alleging that Nick Micomonaco is guilty of professional misconduct in that his acts were contrary to the Professional Misconduct Regulation made under the Ontario College of Teachers Act and filed as Regulation 437/97 on December 4, 1997, in particular, sections 1 (5), (14), (15), (18) and (19).

Counsel presented evidence that Nick Micomonaco is a member of the Ontario College of Teachers (Exhibit #1).

An Agreed Statement of Facts and Guilty Plea was filed as Exhibit #2. That statement was dated October 20, 2002 and had been signed by Awanish Sinha, McCarthy Tétrault on November 8, 2002, on behalf of the Ontario College of Teachers, and by Nick Micomonaco, the member, and Shawn West, the witness.

FINDINGS OF FACT:

Based on the Agreed Statement of Facts, the panel finds the following facts:

1. Nick Micomonaco is a member of the Ontario College of Teachers.
2. At all material times, the member, whose date of birth is April 12, 1950, was employed by the Huron-Superior Catholic District School Board as Information Technology Coordinator to the board.
3. From in or about 1992, the member sold to third parties, computers and related equipment purchased pursuant to board purchase orders and paid for by the board.
4. In some cases, the purchasers bought computer equipment from the member believing it to be equipment he was properly authorized by the board to sell. The purchasers were told by the member and believed that the funds they paid to the member would be reimbursed to the board.
5. In other cases, the purchasers believed that the member had made proper arrangements to purchase equipment from suppliers on their behalf. These purchasers placed confidence in the member because of his status as a teacher and his role and experience at the board. They believed their funds would be paid to the supplier.
6. The member used his position at the board to purchase the equipment in the name of the board, without authorization. He used the funds of the board to purchase the equipment, but kept the funds paid by the purchasers for his own use and benefit.
7. Following an investigation undertaken on behalf of the board, it was determined that more than eighty-nine (89) persons or institutions were improperly sold

- computer equipment by the member. The proceeds of these sales, unaccounted for by the member to the board, totalled approximately \$348,837.00.
8. The member has admitted his wrongdoing and agreed to make restitution.
 9. The member resigned his position with the board effective February 28, 2001.
 10. The member executed a Promissory Note dated September 17, 2001, between the member and the Ontario School Board Insurance Exchange (OSBIE) pursuant to OSBIE's reimbursement to the board of the amount referred to in paragraph 7 above.

The member pleaded guilty to the allegations.

The Committee accepts that the member is aware of these proceedings. The Committee further accepts that the member has signed the Agreed Statement of Facts and Guilty Plea and believes that this document represents a suitable resolution to this matter and protects the public interest.

DECISION AND ORDERS:

Accordingly, the Committee finds Nick Micomonaco guilty of professional misconduct under section 1 (5), (14), (15), (18) and (19) of the Professional Misconduct Regulation, as alleged, and directs the Registrar to revoke the member's certificate of qualification and registration immediately.

With regard to Schedule B attached to the Agreed Statement of Facts and Guilty Plea, the Committee orders that the digital information at the bottom of each cheque be blacked out,

that the address and phone number of the issuer of each cheque be blacked out, and that any other personal account information as well as any social insurance numbers be blacked out, due to the sensitive nature of the information.

Notice

It is important to the College's role in the governance of the profession to provide evidence to members that the College is active in self-regulation and is vigilant to breaches of its bylaws and rules of conduct. Such evidence is provided through notification of the decisions and orders of the College's disciplinary Committees, and is, in the opinion of the panel, a practice that has significant general deterrent value.

Pursuant to Section 30(5)(iii) of the Ontario College of Teachers Act, the Committee orders that the findings of this hearing, as well as the name of the member, be published in the official publication of the Ontario College of Teachers.

**DATED AT TORONTO, THIS 12th DAY OF DECEMBER, 2002
BY ORDER OF THE DISCIPLINE COMMITTEE**

Marilyn Laframboise, **Chair**

Bernard Adam

Karen Mitchell