

**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 Thomas Leslie Newburgh, a member of the Ontario College of Teachers.

PANEL: Jacques Tremblay, Chair
Annilee Jarvis
Amin Saab

BETWEEN:)	
	)	David Leonard,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -)	
)	
THOMAS LESLIE NEWBURGH)	)	Thomas Leslie Newburgh
(CERTIFICATE #212643)	)	was not present or represented
)	
)	
	)	Phil Tunley,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
)	
	)	Heard: April 24, 2007

REASONS FOR DECISION, DECISION AND ORDER

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on April 24, 2007 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated March 7, 2005 (Exhibit 1) was served on Thomas Leslie Newburgh (the “Member”), providing him with notice that the Discipline Committee of the Ontario College of Teachers would meet on April 6, 2005 to set a date for a hearing, and specifying the charges. The Committee set April 24, 2007 as the date for the hearing on the merits. The Member was not in attendance at the hearing.

THE ALLEGATIONS

The allegations against Thomas Leslie Newburgh in the *Notice of Hearing*, (Exhibit 1) dated March 7, 2005 are as follows:

IT IS ALLEGED that Thomas Leslie Newburgh is guilty of professional misconduct as defined in section 30(2) of the *Ontario College of Teachers Act* (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* 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);
- (c) he contravened a law, the contravention of which is relevant to the Member’s suitability to hold a Certificate of Qualification and Registration, contrary to Ontario Regulation 437/97, subsection 1(16);
- (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).

AGREED STATEMENT OF FACTS

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, Plea of No Contest and Joint Submission on Penalty*. (ASF – Exhibit 2)

The *Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty* provides as follows:

1. Thomas Leslie Newburgh (the “Member”) is a member of the Ontario College of Teachers.
2. Attached hereto and marked as **Exhibit “A”** is a copy of the Ontario College of Teachers Registered Member Information respecting the Member.
3. In March 1994, the Member was hired by the former Niagara South Board of Education, which is now part of the District School Board of Niagara (the “Board”) as an occasional teacher.
4. In September 1994, the Member was hired on a probationary contract by the Board, and proceeded to teach English as a Second Language at various locations throughout Niagara, and regular Primary/Junior classes with the Board.
5. Between the approximate dates of 1 April 1997 and 15 November 2002, the Member and his common law spouse, Linda Marjorie Resmini (“Ms Resmini”), who was

employed as a registered nurse by the Hamilton Health Sciences Centre (HHSC) as the Facilitator of the Cleft Lip and Palate Team (the “Program”), defrauded HHSC and the Program as follows:

- a. Ms Resmini created false documents in the names of individuals who were not clients of the Program, listing treatments and services as having been provided to those individuals, but which had not been provided to them;
 - b. Ms Resmini submitted fraudulent cheque requisitions to the Program and reimbursement cheques were issued to the Member and Ms Resmini;
 - c. the Member received cheques issued by HHSC totaling more than \$600,000.00. The cheques were deposited into a joint bank account of the Member and Ms Resmini;
 - d. Ms Resmini received cheques issued by HSSC totalling more than \$400,000.00. The cheques were also deposited to the joint bank account of the Member and Ms Resmini; and
 - e. the Member and Ms Resmini received and cashed or deposited the cheques referred to in sub-paragraphs (c) and (d) above, knowing that neither Ms Resmini nor himself were entitled to the funds, and/or that they had been obtained by fraudulent means.
6. On or about 13 May 2003, charges were laid against the Member for fraud, conspiracy to commit fraud, and uttering forged documents.
7. On or about 25 February 2005, the Member pleaded guilty to a charge that on or between 1 April 1997 and 15 November 2002, in the City of Hamilton and elsewhere in

the Province of Ontario he did by deceit, falsehood, or other fraudulent means, defraud HHSC of monies of a value exceeding \$5,000.00 by means of receiving and depositing to the accounts of the Member and Ms Resmini cheques of HHSC made payable to ineligible recipients contrary to the provisions of Section 380(1)(a) of the *Criminal Code* (Canada). Other charges against the Member had been withdrawn at the time of the preliminary hearing into this matter. Attached as **Exhibit “B”** is a copy of the Indictment issued on 15 September 2004 against the Member and Ms Resmini, showing the details of the plea of guilt and of sentencing referred to below.

8. Attached as **Exhibit “C”** is the transcript of the proceedings before Mr. Justice R. Harris of the Supreme Court of Justice, at Hamilton, Ontario on 25 February 2005.

9. On or about 2 May 2005, the Member was sentenced to serve a term of eighteen months under House Arrest to be followed by three years probation Furthermore, the Member and Ms Resmini were ordered to make restitution in the amount of \$400,000.00.

10. The transcript of the Reasons for Sentence by Mr. Justice R. Harris of the Supreme Court of Justice at Hamilton, Ontario on 02 May 2005, is attached as **Exhibit “D”**.

11. The sentence imposed on the Member has not been overturned.

PLEA OF NO CONTEST

12. By this document the Member admits the truth of the facts and Exhibits referred to in paragraphs 1 to 11 above (“the Admitted Facts”). The member hereby acknowledges

that his conduct, as described generally in the Admitted Facts, constitutes conduct which is unprofessional and pleads no contest to the allegations of professional misconduct against him being more particularly breaches of Ontario Regulations 437/97 1(5), (14), (15), (16), (18) and (19).

13. The Member states that:

- a. he understands fully the nature of the allegations against him;
- b. he understands that by pleading no contest 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 no contest; and
- d. he understands and acknowledges that he is executing this Agreement voluntarily.

14. In light of the admitted 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

15. 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 Registrar of the Ontario College of Teachers to immediately revoke the Certificate of Qualification and Registration of the Member, which Certificate the Member is to immediately surrender to the Registrar of the Ontario College of Teachers; and
- b. directs that there be publication of the findings and Order of the Committee in summary form in the official publication of the College, *Professionally Speaking/Pour parler profession*. The parties have not agreed upon whether the Member's full name will be published in *Professionally Speaking/Pour parler profession* and submissions will be made to the Committee on that issue.

16. 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

Having examined the Exhibits filed, and based on the Member's plea of no contest, the *Agreed Statement of Facts*, and the submissions made by Counsel, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that the Member committed acts of professional misconduct as alleged, more particularly breaches of Ontario Regulation 437/97, subsections 1(5), (14), (15), (16), (18) and (19).

The Committee considered the joint submission on penalty and makes the following order as to penalty:

1. The Registrar is directed to revoke immediately the Certificate of Qualification and Registration of the Member, which Certificate the Member is to surrender immediately to the Registrar.

2. 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 name of the Member, in the official publication of the College, *Professionally Speaking/Pour parler profession*.

REASONS FOR DECISION

Rules 13.05 and 13.06 of the *Rules of Procedure of the Discipline Committee of the Ontario College of Teachers* allow the Committee to accept as proof that an offence was committed by a person, where there is a finding of guilt and conviction in a Canadian court, provided that there is no evidence to the contrary and that no appeal has been granted.

It is uncontested that the Member pleaded guilty to a charge of fraud exceeding five thousand dollars and that he was sentenced to a term of eighteen months under House Arrest to be followed by three years probation. Further, the Member and Ms Resmini were ordered to make restitution in the amount of \$400,000.00. The sentence has not been overturned.

The Member admits the truth of the facts and Exhibits referred to in paragraphs 1 to 11 above (“the Admitted Facts”). The Member acknowledges that his conduct, as described generally in the Admitted Facts, constitutes conduct which is unprofessional and pleads

no contest to the allegations of professional misconduct against him being more particularly breaches of Ontario Regulations 437/97 1(5), (14), (15), (16), (18) and (19).

The Committee, in reaching a decision to revoke the Member's certificate of qualification and registration, took into consideration the admitted facts, the plea of no contest, the joint submission on penalty and the criminal conviction.

Through the fraudulent activities of the Member's common law spouse, Ms Resmini, over a five and half year period (April 1997 to November 2002) the Member received cheques issued by HHSC totalling more than \$600,000.00. The cheques were deposited into a joint bank account of the Member and Ms Resmini. The Member received and cashed or deposited these cheques knowing that he was not entitled to the funds, and/or that they had been obtained by fraudulent means.

It was Ms Resmini who:

- had access to the public funds,
- created false documents in the names of individuals who were not clients of the Program, and
- submitted fraudulent cheque requisitions to the program which resulted in cheques being issued to the Member and Ms Resmini.

However, the Member willingly participated in the fraud and received its proceeds. He was supportive of Ms Resmini's actions and benefitted from them. Although perhaps not the originator of the fraudulent scheme, his conduct is no less culpable. The Member

personally profited from his criminal activities at the expense of vulnerable members of society and has therefore abused the public trust.

The Member's complicity in this fraud with Ms Resmini is a clear breach of the public trust. His involvement in this fraud and subsequent criminal conviction and sentence are inconsistent with the standards of the teaching profession. The Member has committed acts that would be considered disgraceful, dishonourable and unprofessional and engaged in conduct unbecoming a member. The Member has brought the profession into disrepute and must forfeit the privilege of holding a certificate of qualification and registration. He has dishonoured the trust of children and cannot be a role model for them. He does not belong in the profession.

The Member, in his document addressed to the Committee, (Exhibit 4) indicates that he believes that if the circumstances surrounding his criminal charges and conviction are once again publicized it will undermine his rehabilitation efforts. The Committee can only order publication in *Professional Speaking/pour parler profession* a magazine that is directed to members of the teaching profession so publication will not impede his rehabilitation efforts.

The Committee has determined in this case, that due to the nature of the Member's misconduct, the abuse of public trust, the criminal judgment and revocation of the Member's certificate, publication of the Member's name is warranted. Publication of the nature of the misconduct in which the Member engaged will deter the profession from

similar actions. Publication of this Member's name gives additional impact to the message that if any member of the teaching profession abuses the public trust to the extent that this Member has done, he or she will be identified to peers and the public. This assures the public of the transparency of the proceedings.

In summary, publication of the Member's name and a summary of the facts serve as a further censure of the Members' actions. Publication of the Committee's order also acts as a general deterrent to guide members of the profession and to inform that similar behaviour will result in a finding of professional misconduct and revocation of Certificate.

The Committee is satisfied that the penalty serves to preserve the reputation of the profession and to protect the interest of the public.

Dated: April 27, 2007

Jacques Tremblay
Chair, Discipline Panel

Annilee Jarvis
Member, Discipline Panel

Amin Saab
Member, Discipline Panel