

**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 Philbin, a member of the Ontario College of Teachers.

PANEL: Mel Greif, Chair
 Alexander Bass, OCT
 Jacques Tremblay, OCT

BETWEEN:	)	David Leonard,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -)	
	)	David Bloom,
DIANE PHILBIN	)	Cavalluzzo Hayes Shilton
(CERTIFICATE # 167452)	)	McIntyre & Cornish,
	)	for Diane Philbin
)	
	)	Bonni Ellis,
	)	Steinecke Maciura LeBlanc
	)	Independent Legal Counsel
)	
	)	Heard: November 25, 2009

REASONS FOR DECISION, DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on November 25., 2009 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated December 18, 2007 (Exhibit 1) was served on Diane Philbin (the “Member”), providing her with notice that the Discipline Committee of the Ontario College of Teachers would meet on January 21, 2008 to set a date for a hearing, and specifying the charges. The Discipline Committee subsequently set November 25, 2009, as the date for the hearing on the merits.

THE ALLEGATIONS

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

IT IS ALLEGED that Diane Philbin 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 keep records as required by her professional duties, contrary to Ontario Regulation 437/97, subsection 1(10);
- (c) she failed to comply with the Act and the *Education Act*, Revised Statutes of Ontario 1990, chapter E2 or the regulations made under those Acts, contrary to Ontario Regulation 437/97, subsections 1(14) and 1(15);
- (d) 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
- (e) she engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19).

At the conclusion of the hearing on November 25, 2009, College Counsel sought to withdraw the allegations of professional misconduct contained in part of paragraph (c), above, being alleged breaches of Ontario Regulation 437/97, subsections 1(14) and 1(15).

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, Plea of No Contest and Joint Submission on Penalty (ASF – Exhibit 2)* which provides as follows:

AGREED STATEMENT OF FACTS

1. Diane Philbin (the “Member”) is a member of the Ontario College of Teachers. Attached hereto and marked as **Exhibit “A”** is a copy of the Ontario College of Teachers Registered Member Information respecting the Member. The Member’s current status is ‘*Suspended – Non-payment of fees*’.

2. During the academic years of 2002/2003, 2003/2004 and 2004/2005 (“the material time”), while employed as a teacher, the Member was responsible for the organization of student trips to Europe, including various fundraising activities in connection therewith.

3. With respect to those activities, the Member:
 - (a) failed to deposit all funds intended for use in connection with these student trips to Europe into a separate school bank account for that purpose;
 - (b) failed to maintain adequate and accurate records of the amounts received by her from students for these trip expenses and fundraising activities;
 - (c) deposited monies received by her in connection with these student trips to Europe into her personal bank account where they were intermingled with her own funds; and
 - (d) from time to time made payments for her own personal expenses from this bank account when she knew or ought to have known that such payments included amounts related to the funds received from students for these European trip expenses and activities.

4. In 2005, the Member sold to one of her male students a complimentary trip which was donated by the tour company to enable volunteer chaperones to attend one of the school trips to Germany and Austria. The Member accepted monies from the student's parents in payment for this trip when she knew or ought to have known that same was the property of the school.

5. When discrepancies were noted in the subsequent accounting of the finances for these school-related trips to Europe during the material time, the Member made payments by way of reimbursement of the total it was determined was necessary to reconcile the differences between the amounts which were collected, deposited and expended by the Member from her personal bank account in connection with these school trips and her students' fundraising activities.

6. The Member submitted that her acknowledged failure to keep adequate records and to maintain full and accurate accounting documentation in connection with these school trip-related expenses and activities occurred during a period when she was unwell.

7. The Member has been and continues to be on long term disability leave from her teaching duties.

PLEA OF NO CONTEST

8. By this document, the Member admits for the purposes of this proceeding only, the truth of the facts and exhibit referred to in paragraphs 1 to 7 above (the "Admitted Facts"). The Member hereby acknowledges that her conduct as described in paragraphs 3 and 4 of the Admitted Facts, constitutes professional misconduct and pleads no contest to the allegations of professional misconduct against her, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(10), 1(18) and (19).

9. The Member states that:

- (a) she understands fully the nature of the allegations against her;
- (b) she understands that by signing this document she is consenting to the evidence as set out in the Admitted Facts and the exhibit above referred to being presented to the Discipline Committee;
- (c) she understands that by pleading no contest to the allegations referred to in paragraphs 3 and 4 above, she is waiving the right to require the College to prove the case against her and the right to have a hearing; and
- (d) she states that this plea of no contest was made voluntarily, unequivocally and with the benefit of independent legal counsel.

10. The Member provides this plea of no contest pursuant to Rule 3.02 of the Rules of Procedure of the Discipline Committee under protection of the *Evidence Act*, R.S.O. 1990, c. E. 23, for the purpose of this proceeding under the *College of Teachers Act, 1996*, chapter 12, and for no other purpose. The Member's plea of no contest does not constitute an admission by the Member as to the facts or findings in any other civil, criminal, or administrative proceeding.

JOINT SUBMISSION ON PENALTY

11. In light of the Admitted Facts and circumstances, 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) orders that the Member be reprimanded in writing, with the fact of the reprimand to be recorded on the Register;
- (b) directs the Registrar of the Ontario College of Teachers to suspend the Certificate of Qualification and Registration of the Member for a period of one (1) year;
- (c) directs the Registrar to impose the following terms, conditions or limitations on the Member's Certificate of Qualification and Registration,

the fact of such terms, conditions and limitations to be recorded on the Register until such time as they are fulfilled:

(i) following the Member's return to her teaching duties, she shall not handle any monies related to school activities, and shall refrain from any direct involvement whatsoever in the financial affairs of the school and/or her students; and

(d) directs that the findings and Order of the Committee shall be published in the official publications of the College, without the Member's name.

12. 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 no contest, the *Agreed Statement of Facts, Plea of No Contest 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 Philbin committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(10), 1(18 – dishonourable and unprofessional) and 1(19).

REASONS FOR DECISION

The Member acknowledged the truth of the facts referred to in paragraphs 1 to 7 above of the *Agreed Statement of Facts* and acknowledged that her conduct as described in

paragraphs 3 and 4 of the Admitted Facts, constitutes professional misconduct and pleaded no contest to these allegations of professional misconduct.

The Member, over a three-year period was responsible for student travel funds which she mishandled. She intermingled student money with her own money and was thereby unable to account for these funds. The Member sold a complimentary trip, intended for the benefit of all participants, to a student for her personal gain. She failed to maintain adequate and acceptable financial records of the monies in her care.

By her actions, the Member failed to maintain the standards of the profession, failed to keep records as required by her professional duties and committed acts deemed to be dishonourable and unprofessional and unbecoming a member.

PENALTY DECISION

The Committee makes the following order as to penalty:

- (a) The Member is to be reprimanded by the Committee following the completion of the hearing of this matter and the fact of the reprimand is to be recorded on the Register of the Ontario College of Teachers.
- (b) The Registrar is directed to suspend the certificate of qualification and registration of the Member for a period of one year from the date of November 25, 2009.
- (c) The Registrar is directed to impose the following terms, conditions or limitations on the Member's Certificate of Qualification and Registration, the fact of such terms, conditions and limitations to be recorded on the Register until such time as they are fulfilled:

- (i) following the Member's return to her teaching duties, she shall not handle any monies related to school activities, and shall refrain from any direct involvement whatsoever in the financial affairs of the school and/or her students.

- (d) The findings and order of the Committee shall be published in summary, without the name of the Member, in the official publication of the College, *Professionally Speaking/Pour parler profession.*

REASONS FOR PENALTY DECISION

The reprimand will educate the Member and serve as a specific deterrent. The fact that the Member was reprimanded will be on the Public Register and thereby will serve as a statement of transparency and the maintenance of the public trust.

The significant one year suspension of the Member's certificate serves to highlight the seriousness of the Member's actions and will notify the profession of the consequences of such behaviour. This suspension serves as both a specific and general deterrent. The length of the suspension reflects the fact that full restitution has been made by the Member and that the Member was unwell at the time and continues to be on long term disability. Without these mitigating circumstances, the Committee might have considered a more serious penalty.

In light of the serious nature of the Member's conduct, the Committee determined that it is appropriate that the Member refrain from any direct involvement whatsoever in the

financial affairs as reflected in the term placed on her certificate. This will protect and maintain the public trust.

The publication of the findings without the name of the Member in these circumstances will serve to inform the profession and the public about the consequences of such misconduct.

Date: November 25, 2009

Mel Greif
Chair, Discipline Panel

Alexander Bass, OCT
Member, Discipline Panel

Jacques Tremblay, OCT
Member, Discipline Panel