

**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 Kelly Adrienne Pickard, a member of the Ontario College of Teachers.

PANEL: Rosemary Fontaine, Chair
 Annilee Jarvis
 John Tucker

BETWEEN:	)	David Leonard,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -)	
	)	John Monger,
KELLY ADRIENNE PICKARD	)	Paliare Roland Rosenberg
(CERTIFICATE # 420566)	)	Rothstein LLP,
	)	for Kelly Adrienne Pickard,
	)	assisted by Debra Newell, Law Clerk
)	
	)	Martha Cook and Scott Hutchison,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
)	
	)	Heard: January 24, February 1,
	)	April 20, 2007

REASONS FOR DECISION, DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on January 24, 2007, February 1, 2007 and April 20, 2007 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated June 17, 2005 (Exhibit 1) was served on Kelly Adrienne Pickard (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 January 24, 2007, as the date for the hearing on the merits.

Kelly Adrienne Pickard was in attendance at the hearing.

THE ALLEGATIONS

IT IS ALLEGED that Kelly Adrienne Pickard 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 April 20, 2007, College counsel sought to withdraw the allegations of professional misconduct contained in paragraphs (c), (d) and (e) above. The Committee agrees that these allegations shall be withdrawn.

After two days of hearings on January 24 and February 1, 2007, Counsel for the College advised the Committee on April 20, 2007, that subject to ratification by the Committee, agreement between the parties had been reached on the facts. *An Agreed Statement of Facts, Guilty Plea and Joint Submission on Penalty* was introduced. The *Agreed Statement of Facts, Guilty Plea and Joint Submission on Penalty* provides as follows:

AGREED STATEMENT OF FACTS

The Member

1. Kelly Adrienne Pickard (the “Member”) is a member of the Ontario College of Teachers. Attached and marked as **Exhibit “A”** is a copy of the Ontario College of Teachers Registered Member Information in respect of the Member.
2. The Member has been a teacher for 12 years. She has taught special education throughout her career. She taught for several years on the Peguis Reserve in Manitoba under the authority of a letter of permission. In 1998 she graduated from Queen’s University and became qualified in Ontario to teach as a member of the College of Teachers. She subsequently became employed by the Hastings and Prince Edward District School Board (the “Board”).

3. The Member was employed in the Special Education department at Moira Secondary School in Belleville for approximately 5½ years. For the first 3 years she was a Services teacher, following which she was promoted to the position of “Interdepartmental Special Education Head” (“ISEH”), a position within the teachers’ bargaining unit.
4. The Special Education Department was composed of 7.5 or 8 FTE teachers and 7.5 educational assistants. As the ISEH, the Member was a resource for the front line teachers in terms of curriculum guidance, classroom management, and resolving issues and problems pertaining to individual students. She had no evaluative function in relation to these or any other teachers or educational assistants at any point, and was not responsible for giving them work direction. (A copy of the role document for the Member’s position is attached as **Exhibit “B”**).
5. As the ISEH, the Member reported to and received work direction from Moira’s Vice Principal, Joan Bennett, and Principal, Diane Fair.
6. In February, 2004, the Member was removed from her ISEH position, and transferred to Bayside Secondary School to be a special education teacher, with the loss of pay taking effect at the end of the school year, as an agreed to response by the School Board for her involvement in the manner in which the 2003 EQAO tests were administered at Moira. She has worked in that position since being transferred.

Background

7. 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.
8. Since that time, the OSSLT has been administered on an annual basis at the direction of the Education Quality and Accountability Office (“EQAO”).
9. 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.
10. 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 “C”**.
11. 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.

12. 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.
13. 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
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14. The responsibilities of the teachers administering the test are also clearly set out in the Guide, and include ensuring that the test is administered according to the procedures in the Guide. The Guide identifies the role of teachers administering the OSSLT as follows:

Before the Test

- Provide a positive atmosphere to encourage and support students.
- Ensure the security of all administrative and test materials. Do not copy the test materials or read or show them to anyone.
- Review your school or board emergency procedures.
- Review the Teacher’s Script for OSSLT Information Sessions. The script is provided to ensure that all students receive the same information prior to the test.
- Read the script to the students at the information session(s), if assigned by the principal. (Please use the overheads of Appendix A.)
- Organize the room(s) for the test to ensure that students work independently. They must not be able to see other students’ answers.
- Remove from the walls and display areas in the test administration rooms any instructional materials related to reading or writing (e.g. EQAO Tips for Student Reading and Tips for Student Writing or any rules related to writing conventions). Remove dictionaries and thesauruses, as students are not allowed to use them.
- Each morning of the test, pick up the completed STS and the corresponding bundled sets of test materials required for the test administration.

During the Test

- Ensure that the test is administered according to the procedures in this guide.

- Follow the policy for late and absent students.
- Follow the directions outlined in the *Guide for Accommodations, Special Provisions, Deferrals and Exemptions* when assisting students receiving accommodations. Do not provide assistance to students unless accommodations have been granted in accordance with the *Guide for Accommodations, Special Provisions, Deferrals and Exemptions*.
- If applicable, oversee the work of non-teaching personnel who are providing support to students requiring accommodations or special provisions.

After the Test

- Count all student materials.
- Return *all* test booklets, used *or* unused, the Student Questionnaires and the STSs to the principal immediately.

Events at Moira Secondary School in October, 2003

15. On October 22 and 23, 2003, the OSSLT was administered at Moira.
16. 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 “D”**, the percentage of students at Moira who received accommodation was not unusual within the Hastings and Prince Edward District School Board.
17. As established by the EQAO Guide, the Principal of the school had primary responsibility for the overall administration of the OSSLT at the School. The Principal, the Vice Principal and Kim Gartenburg, (Moira’s Literacy Co-ordinator and representative on the Hastings and Prince Edward County District School

- Board Literacy Subject Counsel) and the Member, in her capacity as the ISEH, all had responsibilities associated with preparing for and administering the test.
18. The Member and Ms Gartenburg played a material role in preparing Moira's students for the OSSLT. Both spent a 20 day period ensuring that every student received individual instruction on how to write the test effectively. In addition, Ms Gartenburg ran a "literacy camp" for students who had previously failed the test, and other identified "at risk" students, in order that they be better prepared for the test in 2003. The Member (as ISEH) had substantial responsibility for identifying students in need of accommodation, and planning for that accommodation.
 19. Prior to the day of testing the problem (which had been experienced in other years) of students not completing their tests was discussed. The Member was a party to that discussion, as was Ms. Fair (and possibly others). The parties to 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 decision was openly discussed, after the fact, with others, prior to the start of the test.
 20. During the testing process, the Member, with the full knowledge of the Principal and the Vice Principal :
 - (a) contrary to EQAO instructions, told the scribes and others involved in the administration of the tests (including a Board Superintendent who was

acting as a scribe) not to seal the tests after the students were finished writing.

- (b) instructed the scribes that they “held the pens”, encouraged them to “do the best job they can” for the students, indicated that their role involved “levelling the playing field”, which comments were interpreted by some in attendance (none of whom sought clarification from the Member) as an instruction by the Member to provide the students with inappropriate assistance during the testing.
- (c) contrary to EQAO instructions, during the test, responded to certain accommodated student’s queries as to whether specific questions had been answered correctly by responding “look at the question again” or “you need to look at that more closely” (or with phrases of similar meaning), rather than indicating she could be of no assistance.
- (d) broke the seal on one test, as the student had sealed his test at a scheduled interim break, rather than at the end of the exam period, because he believed his time was up. The test was unsealed, and the student continued with the test after the break.
- (e) contrary to EQAO instructions, as accommodated (non-scribed) students finished their tests, on both days, reviewed those tests for completeness. If tests were not complete, the Member would not let the students leave until they completed their work. Ultimately these students were directed to seal their tests.
- (f) contrary to EQAO instructions, on the first day of the test, with the Principal and Vice-Principal of the School, Ms Gartenburg, and other teachers, went through the test booklets of the non-accommodated students and of the accommodated (scribed) students, after the students had finished 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 of these two groups of students were sealed.

- (g) contrary to EQAO instructions, on the second day of the test, engaged in a similar course of conduct described in paragraph 20(f) above. However, on this day the Member reviewed only a small number of these tests, as she was occupied with attempting to locate a missing test of an accommodated (non-scribed) student.

- 21. The Member does not and has never denied her involvement as described above.
- 22. 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.

GUILTY PLEA

- 23. By this document, the Member admits the truth of the facts and Exhibits referred to in paragraphs 1 to 22 above (“the Admitted Facts”). The Member hereby acknowledges that her conduct, as described particularly in paragraphs 19 and 20 of the Admitted Facts, constitutes conduct which is unprofessional and pleads guilty to the allegations of professional misconduct against her being more particularly breaches of Ontario Regulation 437/97 1(5),(11), and (19).

- 24. The Member states that:

- (a) she understands fully the nature of the allegations against her;

- (b) she understands that by pleading guilty to the 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; and
 - (d) she understands and acknowledges that she is executing this Agreement voluntarily, unequivocally and with the benefit of legal counsel.
25. 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

26. 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 six months, commencing on April 28, 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 August 28, 2007 and the last two months of the suspension, from August 29 2007 to October 28, 2007, 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 August 15, 2007, of 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 August 15, 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.
27. In making this joint submission, it is acknowledged that the facts agreed to are substantially the same as those Ms. Pickard admitted at the start of this matter, and that Ms. Pickard has never suggested her conduct was without fault. In addition, consideration has been given to the fact that but for the circumstances relating to these charges, Ms. Pickard is considered by many in her professional community to be dedicated, capable and caring teacher.

28. 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 Submissions 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 Kelly Adrienne Pickard 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.

The protocols of EQAO were clearly defined in detailed written instructions to schools and provided to the Member. (Exhibit 6, Tab C, Guide for Administering the Ontario Secondary School Literacy Test) The Member deliberately chose to disregard the protocols, particularly with respect to sealing of individual students' tests, time allowances and responding inappropriately to students' queries during the test. By these actions, the Member failed to maintain the standards of the profession.

The Member, who was a department head, failed to supervise adequately scribes and students. The Member told the scribes and others involved in the administration of the tests not to seal the tests after the students were finished writing. The Member also indicated to the scribes that their role involved “levelling the playing field” by the fact they “held the pens”. Some scribes interpreted this to mean that they should provide the students with inappropriate assistance during the testing. In addition, the Member, after reviewing the test booklets, arranged for the students and scribes to finish any incomplete sections of the test. These actions were contrary to EQAO instructions.

The Member held a position of leadership and additional responsibility in her school. She knew the protocols and procedures to be followed for the testing and chose to disregard them. Teachers are expected to set an example of ethical behaviour. Her failure to act dutifully has caused members of the public to question the integrity of the profession and contributed to a review by EQAO of the irregularities in administering the 2003 OSSLT at the Member’s school. The Member’s behaviour is conduct unbecoming a member.

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 that the fact of the reprimand 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 six months, commencing on April 28, 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 August 28, 2007 and the last two months of the suspension, from August 29, 2007 to October 28, 2007, 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 August 15, 2007, of 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 August 15, 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 Committee accepted the joint submission on penalty for the following reasons:

The Member has pleaded guilty to the allegations and has admitted that she was at fault.

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

With regard to suspension of certificate, the Committee took into consideration the fact that the Member has already experienced a demotion with consequent loss of salary and damage to her reputation. Since her transfer to a different school in February 2004, the Member has worked to re-establish her reputation as a dedicated, capable and caring teacher as evidenced by the letters of reference provided to the Committee. (Exhibit 7, Brief of References) The suspension ordered is a real penalty which removes her right to teach, and results in loss of reputation and salary.

It is important that the Member be encouraged to take the ethics course. The Committee agreed that two months of the suspension be removed if the Member successfully completes such a course. The course will be rehabilitative to the Member. It will help her to understand the motivation for the 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 completion back to the Registrar, supports transparency and serves the public interest.

The reprimand, the six-month suspension and the course on ethics are appropriate in these circumstances. These sanctions act as specific deterrents to ensure that the Member understands the consequences of her behaviour and will not engage in similar behaviour.

Publication of the findings and order of the Committee with the name of the Member serves as a further deterrent to the Member and a general deterrent to members of the profession that engaging in such misconduct will have serious consequences.

In the view of this Committee, the penalty ordered is appropriate, having regard to all the circumstances and is in the public interest.

Date: April 26, 2007

Rosemary Fontaine
Chair, Discipline Panel

Annilee Jarvis
Member, Discipline Panel

John Tucker
Member, Discipline Panel