

**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 Linda Marjorie Resmini, 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 -)	
)	
LINDA MARJORIE RESMINI	)	Terri Hilborn,
(CERTIFICATE #152431)	)	Green & Chercover LLP,
	)	for Linda Marjorie Resmini,
)	
)	
	)	Phil Tunley,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
)	
	)	Heard: April 23, 2007

REASONS FOR DECISION, DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on April 23, 2007 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated June 6, 2005 was served on Linda Marjorie Resmini, requesting attendance before the Discipline Committee of the Ontario College of Teachers on July 11, 2005 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for April 23, 2007.

Linda Marjorie Resmini was not in attendance at the hearing.

THE ALLEGATIONS

The allegations against Linda Marjorie Resmini in the *Notice of Hearing*, (*Exhibit 1*) dated June 6, 2005 are as follows:

IT IS ALLEGED that Linda Marjorie Resmini 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 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) she contravened a law, and the contravention 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) 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).

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* provides as follows:

1. Linda Marjorie Resmini (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.
2. In March 1993, the Member, was hired by the former Niagara South Board of Education, which is now a part of the District School Board of Niagara (the “Board”), as an occasional teacher.
3. In September 1993, the Member was hired on a probationary contract by the Board. She became a permanent employee in September 1995, and was a

high school teacher at a number of high schools during her 10 years of employment with the Board.

4. At all material times, the Member was also a registered nurse who was employed by the Hamilton Health Sciences Centre (“HHSC”).

5. Between the approximate dates of 17 August 1987 and 15 November 2002, the Member was the Facilitator of the Cleft Lip and Palate Team at HHSC. In that capacity, the Member co-ordinated a program that was funded by the Ontario Ministry of Health to serve patients with cleft lips and palates (the “Program”).

6. Between the approximate dates of 1 April 1997 and 15 November 2002, the Member and her common law spouse, Thomas Leslie Newburgh, defrauded HHSC and the Program, as follows:

- (a) the Member 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) the Member submitted fraudulent cheque requisitions to the Program and reimbursement cheques were issued to the Member and Mr. Newburgh;
- (c) The Member received cheques issued by HHSC payable to Mr. Newburgh totalling more than Six Hundred Thousand Dollars

(\$600,000.00). The cheques were deposited into a joint bank account of the Member and Mr. Newburgh;

(d) The Member received cheques issued by HHSC payable to the Member totalling more than Four Hundred Thousand Dollars (\$400,000.00). The cheques were also deposited to the joint bank account of the Member and Mr. Newburgh;

(e) The Member and Mr. Newburgh received and cashed or deposited the cheques referred to in sub-paragraphs (c) and (d) above, knowing that neither Mr. Newburgh nor herself were entitled to the funds, and/or that they had been obtained by fraudulent means.

7. On or about 13 May 2003, charges were laid against the Member for fraud, conspiracy to commit fraud, and knowingly using a forged document. On or about 13 May 2003, the Member was suspended by the Board, with pay and on or about 5 June 2003, she was suspended indefinitely without pay or benefits. On or about 24 March 2004, the Member's employment with the Board was terminated.

8. 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, she did by deceit, falsehood, or other fraudulent means, defraud HHSC of monies of a value exceeding five thousand dollars (\$5,000.00) by means of receiving and depositing to the accounts of the Member and Mr. Newburgh, cheques of HHSC made payable to ineligible medical health 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 Mr. Newburgh, showing the details of the plea of guilt and of sentencing referred to below.

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

10. On or about 2 May 2005, the Member was sentenced to serve a term of imprisonment of two years in a penitentiary to be followed by three years probation. Further, the Member and Mr. Newburgh were ordered to make restitution in the amount of \$400,000.00.

11. The transcript of the Reasons for Sentence by Mr. Justice R. Harris of the Superior Court of Justice at Hamilton, Ontario on 2 May 2005, is attached as **Exhibit “D”**.

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

PLEA OF NO CONTEST

13. By this document the Member, admits the truth of the facts and Exhibits referred to in paragraphs 1 to 12 above (“the Admitted Facts”). The Member hereby acknowledges that her conduct, as described generally in the Admitted Facts, constitutes conduct which is unprofessional and pleads no contest to the

allegations of professional misconduct against her being more particularly breaches of Ontario Regulation 437/97 1(5),(14),(15),(16),(18) and (19).

14. The Member states that:

- (a) She understands fully the nature of the allegations against her;
- (b) She understands that by pleading no contest 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 no contest; and
- (d) She understands and acknowledges that she is executing this Agreement voluntarily, unequivocally and with the benefit of legal counsel.

15. 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

16. 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.

17. 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.

18. Although Counsel were in agreement that the findings and order of the Committee should be published in Professionally Speaking/Pour parler profession, they were not in agreement as to whether or not the Member's name should be published.

Penalty

The Committee received submissions from both counsel with respect to publication of the Member's name in *Professionally Speaking/Pour parler profession*, which was not expressly dealt with in the joint submission.

Counsel for the College argued that the Member's name should be published. He indicated that by committing serious fraud to the health care system, the Member breached the public trust. He stressed that hearings are open to the public and that to support the transparency of the proceedings publication of the Member's name should follow. He indicated that publication of the name of the Member served as a specific deterrent to the member and as a general deterrent to the profession. Counsel indicated that there should be compelling reasons not to publish the name of the Member and argued that the Member had not provided compelling reasons. Counsel concluded that the severity of the conduct and the revocation of the Member's certificate warranted publication with the Member's name.

Counsel for the Member directed the Committee to Section 30(5) 3 of the Ontario College of Teachers Act that states:

3. Directing that the finding and the order of the Committee be published, in detail or in summary, with or without the name of the member, in the official publication of the College and in any other manner or medium that the Committee considers appropriate in the particular case.

She stressed that there was no presumption that the name had to be published and that each case should be determined on its own merits. Counsel argued that in order to educate members as to the appropriate conduct of members, it is the nature of the conduct that needs to be communicated, not the name of the Member. Counsel argued that publication would not act as a specific deterrent to the Member as she had already been sufficiently deterred by her sentence of imprisonment, by the restitution order and loss of her teaching certificate. With

respect to general deterrence, Counsel asked the Committee to consider whether members require the name of the Member to be published in order to understand that a criminal act of this nature will lead to revocation. Counsel further argued that open hearings are transparent and it is therefore not necessary to publish the name of the Member. Counsel asked the Committee to consider the efforts of the Member to re-establish her reputation and asked that the Committee assist the Member, rather than hinder this process, by not publishing her name.

Both counsel provided case law to the Committee in support of their positions. Counsel for the College presented three cases that had been decided by Discipline Committees of the Ontario College of Teachers. Counsel for the Member presented four Ontario College of Teachers cases and three cases from the BC Supreme Court and one from the BC Court of Appeal with respect to BC College of Teachers decisions.

Independent Legal Counsel summarized the arguments of both counsel and indicated it was at the discretion of the Committee whether to publish or not publish the Member's name. He indicated that Section 32 (6) of the Act mandates that, in most cases, hearings are open to the public but that the Act also gives the Committee the discretion whether or not to publish pursuant to Section 30 (5) 3 of the Act. He confirmed that both counsel were in agreement that publication is a general deterrent but were in disagreement about inclusion of the Member's name.

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 Linda Marjorie Resmini 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 she was sentenced to two years imprisonment to be followed by three years probation. She was further ordered to make restitution in the amount of \$400,000.00. The sentence has not been overturned.

The Member acknowledged that the admitted facts and exhibits referred to in the *Agreed Statement of Facts* constitute conduct which is unprofessional and pleaded no contest to the allegations of professional misconduct as alleged. From August 1987 through November 2002, the Member co-ordinated a program that was funded by the Ontario Ministry of Health to serve patients with cleft lips and palates. Between April 1997 and November 2002, the Member defrauded the Hamilton Health Sciences Corporation (“HHSC”) of amounts exceeding one million dollars by creating fictitious clients in the names of M. Ogilvie (the member’s maiden name) and T. Newburgh (the Member’s common-law husband) and depositing the defrauded sums into two bank accounts. (ASF, Exhibit 2, Tab C)

In sentencing the Member, Mr. Justice Harris denounces the Member’s fraudulent actions by indicating:

You had brought yourself into a position of respect from nursing instructor, public health nurse, to clinic manager and nurse coordinator of the Cleft Lip and Palate Team at Chedoke Hospital. You were the administrator and you were the leader. There was no one else that could have had access to the funds that you did. ...while you were being paid, you exploited these people that you were helping. You turned their disfigurement into gold. (ASF 2, Tab D, Sentencing, p. 96)

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. The Member, over the course of five and one half years, "undertook intricate and tedious planning, with remarkable forethought, intelligence and cunning. It was high-end fraud. It was carried out by a person who took advantage of their special position in the health care industry, and she breached the trust." (ASF, Exhibit 2, Tab D, Sentencing, p. 96) In doing so, the Member has failed to maintain the standards of the profession, committed acts that would be considered disgraceful, dishonourable and unprofessional and engaged in conduct unbecoming a member. The Member abused her position of trust and authority and in so doing has forfeited the privilege of being a member of the teaching profession. Her criminal actions against vulnerable members of society have proven that she is unable to put the needs of others ahead of her own. She dishonoured the trust of children and cannot be a role model for them. She does not belong in the profession.

The Member, in her Affidavit, (Exhibit 3) indicates that she will not be seeking employment that requires a teaching certificate but at the same time believes that if her name is published in *Professional Speaking/pour parler profession* it will undermine her rehabilitation efforts and make it more difficult to find full-time work in her community. Since *Professional Speaking/pour parler profession* is a magazine that is directed to members of the teaching profession, the Member's

ability to seek work outside the profession will not be hampered by publishing her name.

The Committee acknowledges the argument of defence counsel that there is no presumption that the name of the Member needs to be published and that each case should be determined on its own merits. However, the Committee has determined in this case, that due to the nature of the Member's misconduct, the abuse of public trust, the severity of 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 professionals, whether in health care or the teaching profession, abuse the public trust to the extent that this Member has done, they will be identified to the public and their peers. This assures the public of the transparency of the proceedings.

The Committee does not agree with the Member's counsel that publication of the Member's name is not necessary as a specific deterrent. Publication of the Member's name will solidify for the Member the consequences of her actions, which occurred over a lengthy period of time. This was not an isolated incident and ended only because the Member's employment was terminated. The Committee believes that serving the public interest overrides the Member's desire for anonymity in these circumstances.

In summary, publication of the Member's name and a summary of the facts serve as a further rebuke 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