

**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 Joanne Saundercook-Menard, OCT, a member of the Ontario College of Teachers.

PANEL: Danny Anckle, Chair
 Dean Favero, OCT
 Robert Ryan, OCT

BETWEEN:)	
	)	David Leonard,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Jennifer Robinson,
	)	Law Clerk
- and -)	
	)	William Markle and
	)	Stephanie Carey,
Joanne Saundercook-Menard	)	Markle & Phibbs LLP,
(CERTIFICATE #171806)	)	for Joanne Saundercook-Menard
)	
	)	Julie Maciura,
	)	Steinecke Maciura LeBlanc,
	)	Independent Legal Counsel
)	
	)	Heard: October 19, 2009

REASONS FOR DECISION, DECISION AND ORDERS

This matter came on for hearing before a panel of the Discipline Committee (“the Committee”) on October 19, 2009 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing* (Exhibit 1), dated January 12, 2006 was served on Joanne Saundercook-Menard, requesting attendance before the Discipline Committee of the Ontario College of Teachers on February 20, 2006 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for October 19, 2009.

The Member was in attendance at the hearing.

THE ALLEGATIONS

The allegations against Joanne Saundercook-Menard (“the Member”) in the *Notice of Hearing* are as follows:

IT IS ALLEGED that Joanne Saundercook-Menard is guilty of professional misconduct as defined in subsections 30(2) of the *Ontario College of Teachers Act* (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, 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) 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).

PARTICULARS OF THESE ALLEGATIONS ARE AS FOLLOWS:

1. Joanne Saundercook-Menard, (the “Member”), is a member of the Ontario College of Teachers.
2. At all material times, the Member was employed by the Dufferin-Peel Catholic District School Board (“the Board”).
3. From on or about July 5, 1999 to on or about July 20, 1999, the Member, during the course and scope of her employment by the Board and whilst engaged in activities on behalf of and as a representative of the Board, defrauded the Board of the sum of approximately Seven Thousand dollars (\$7,000.00).
4. From in or about July 1999 to in or about early November, 1999, the Member, during the course and scope of her employment by the Board and whilst engaged in activities on behalf of and as a representative of the Board, accepted an amount of Thirty Thousand dollars (\$30,000.00) from Larry Cash or Cash, Lehman and Associates. Such monies were paid to the Member by Larry Cash or Cash, Lehman and Associates by way of a bribe or secret commission, relating to the provision to Larry Cash or Cash, Lehman and Associates of Board contract business concerning or in connection with Human

Resources Development Canada grant money which was intended for use in providing Board students with career counselling and vocational training.

5. Following an extensive internal audit and investigation by the Board, charges were laid, on or about February 4, 2004, against the Member by Peel Regional Police, for fraud and bribery, contrary to sections 426 (1) (b) and 426 (1) (a) (ii) of the *Criminal Code*.

6. On or about February 5, 2004, the Member was suspended by the Board, with pay.

7. The criminal proceedings and a hearing of the criminal charges against the Member were scheduled to take place in April 2006.

8. The activities of the Member referred to in paragraphs 3 and 4 above, and the criminal charges of fraud and bribery laid against her by Peel Regional Police, have been the subject of extensive media coverage.

9. The conduct of the Member as described in paragraphs 3 and 4, and the publicity resulting from the media coverage referred to above, have resulted in a reputation and image inconsistent with that expected of a member, and may prevent the Member from discharging her duty to the public, the students and her employer.

MEMBER'S PLEA

The Member pleaded guilty to the allegations set out in the *Notice of Hearing*.

THE EVIDENCE

As outlined in paragraph 5 of the *Notice of Hearing*, two charges were laid on February 17, 2004 against the Member, one for Bribery of an Agent and one for Fraud Over \$5000. There was no evidence presented that the Member defrauded the Board of the sum of approximately \$7,000.00 as alleged in the particulars in paragraph 3. of the *Notice of Hearing*. This fraud charge was subsequently withdrawn by the Crown.

Counsel for the College entered into evidence the following additional documents:

Registered Member Information (Exhibit 2)

Joanne Saundercook-Menard is a member of the Ontario College of Teachers as shown on the *Registered Member Information*.

Brief of Court Documents and Transcripts (Exhibit 3)

A *Brief of Court Documents* with respect to the criminal proceedings against the Member was submitted into evidence. This *Brief* consisted of:

1. Information and Appearance sheets – February 17, 2004
2. Indictment – December 12, 2005
3. Reasons for Judgment of The Honourable Madam Justice Wein – January 5, 2007
4. Reasons for Sentence of The Honourable Madam Justice Wein – February 20, 2007
5. Endorsement of the Court of Appeal per Doherty, Juriansz JJ.A. ad Kent J. (*Ad Hoc*) – June 13, 2008

The evidence presented in the Court Documents confirms that on or about January 5, 2007, the Member was found guilty and convicted by the Superior Court of Justice (Ontario) of on the following charge:

“That she, over a one hundred and nine day period, last, past and ending on or about the 8th day of November, 1999, at the City of Mississauga, in the Central West Region, unlawfully did by being an agent of the Dufferin-Peel Catholic District School Board accept from Larry Cash a reward to wit: thirty thousand dollars as consideration for doing an act relating to the business of Dufferin-Peel Catholic District School Board to wit: facilitate the opportunity to provide services for the Dufferin-Peel Catholic District School Board, contrary to section 426 (1) (a) (ii) of the Criminal Code of Canada.”

The Member’s above conviction for accepting a secret commission, pursuant to 426 (1) (a) (ii) of the Criminal Code of Canada, proves the allegations referred to in paragraph 4 of the *Notice of Hearing*.

On or about February 20, 2007, the Member was sentenced to three months to be served in jail and ordered to make restitution of \$30,000. (Exhibit 3, Tab 4)

The Member appealed both the conviction and the sentence. On June 20, 2008, the Court of Appeal for Ontario upheld the conviction but set aside the term of imprisonment and replaced it with a conditional sentence of eighteen months. (Exhibit 3, Tab 5)

DECISION

Having examined the Exhibits filed, and based on the guilty plea and the submissions made by counsel for the College and counsel for the Member, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds

that Joanne Saundercook-Menard committed acts of professional misconduct, being more particularly breaches of Ontario Regulation 437/97 subsections 1(5), 1(14), 1(15), 1(16), 1(18) and 1(19).

REASONS FOR DECISION

Rule 13.05 of the *Rules of Procedure of the Discipline Committee of the Ontario College of Teachers* (“*Rules*”) allows 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.

Rule 13.06 of the *Rules* directs the Discipline Committee to also admit the specific findings of fact contained in the court’s reasons for judgment or reasons for sentence, which findings of fact are proof, in the absence of evidence to the contrary, of the facts so found.

It is uncontested that on or about January 5, 2007, the Member was found guilty and convicted of accepting a secret commission in the amount of \$30,000.00 contrary to of 426 (1) (a) (ii) of the Criminal Code of Canada. The Member was originally sentenced to 3 months incarceration and ordered to make full restitution of the \$30,000. On appeal, the conviction was upheld but the 3 months incarceration was replaced by an 18-month conditional sentence.

From July 1999 to November 1999, the Member was a classroom teacher who was seconded to the Board office to work on a number of projects funded by Human

Resources Development Canada (“HRDC”). During this time she continued to be an employee of the Board, reporting to Dr. Price, Principal of Secondary Renewal.

Dr. Price was asked by his supervisor, Beverly Williams, Superintendent of Programs, to focus on the procurement of federal project funding. His primary role was related to project writing and implementation strategies, while the Member’s was in meeting people, engaging politicians, and developing support for the projects. (Exhibit 3, Tab 3)

HRDC granted funding to the Board to run a project called ‘Way to Go’. This project was conceived, initiated and developed by Dr. Price and the Member. A private company, Cash Lehman and Associates, was contracted by the Board to provide services to this project. Once HRDC had decided to fund ‘Way to Go’, John Price asked Larry Cash, the principal of Cash Lehman and Associates, to pay Price and the Member \$30,000 each and Mr. Cash agreed. (Exhibit 3, Tab 3)

Dr. Price informed the Member about this agreement. The Member agreed to accept the payment from Cash Lehman. Between June 30, 1999 and October 1, 1999, the Member submitted invoices to Cash Lehman and was paid by cheque. The invoices were made out and paid to the Member’s sole proprietorship, MSJ ed.net. The total amount paid to the Member was \$30,000. While Dr. Price was aware of these transactions, these payments were never revealed to other senior officials of the Board. It is on the basis of these facts that the Member was found guilty and convicted of accepting a secret commission.

Judge Wein, in her Reasons for Judgment, stated that while the Member was not the instigator of this scheme, she was a willing and active participant in the opportunity that presented itself. Her actions demonstrate that she knew she was acting outside the bounds of approval: she was aware that she should not discuss the payments with colleagues, that they should be hidden by having them flow through the Member's company, MSJ ed.net, set up to avoid detection, and on a schedule that would make it appear to be for summer work rather than as a secret commission. Her efforts to maintain secrecy reinforce the fact that her intent was corrupt within the meaning of s. 426, and that this was a secret commission (Exhibit 3, Tab 3, paragraph 50).

The Committee accepts the Member's guilty plea to all of the allegations of professional misconduct. The Committee finds that the acceptance of a secret commission of \$30,000 and the subsequent conviction is relevant to the Member's suitability to hold a Certificate of Qualification and Registration, pursuant to Ontario Regulation 437/97, subsection 1(16). The Member's actions are also breaches of Ontario Regulation 437/97 subsections 1(5), 1(14), 1(15), 1(18) and 1(19). She failed to maintain the standards of the profession. Her actions were inconsistent with the duties of a teacher and she did not act as a moral example. She committed acts that having regard to all the circumstances would reasonably be regarded by members as disgraceful, dishonourable and unprofessional. The Member engaged in conduct unbecoming a member.

PENALTY SUBMISSIONS

Submissions of College Counsel

Counsel for the College submitted that the appropriate penalty be as follows:

1. revocation of the Member's certificate of qualification and registration; and
2. publication of the findings of the Discipline Committee, with the name of the Member, in *Professionally Speaking/Pour parler profession*.

Counsel asked the Committee to consider that the penalty should be in the public interest and preserve and maintain the reputation of the teaching profession. The penalty should also instil confidence in the profession.

The Committee was also advised that as a general deterrence we should send a message to the profession that this type of conduct is inconsistent with teachers' duties and cannot be tolerated in the education system. With regard to specific deterrence, counsel noted that in this case it is not necessary to deter this member.

Further, Counsel submitted that the Committee should consider the parameters of what is acceptable behaviour for members and what is not. The Committee should also consider what the consequences should be for crossing the line.

Counsel stated that this Member should not receive a lesser penalty than the two others involved whose certificates were revoked because her participation was less. He concluded his submission by stating that revocation will restore public confidence. However, if the Committee did not feel revocation was in order then they should consider terms, conditions and limitations on the Member's certificate.

Submissions of Counsel for the Member

Counsel for the Member submitted that revocation does not fit with the circumstances presented and that the Committee should fashion a lesser penalty. He suggested that a reasonable period of suspension may be appropriate. Counsel's argument was that the

Member had already paid a price, including being dismissed by her employer, loss of retirement benefits, and loss of reputation and standing in the education community. He also stated that the Member had made full restitution before she was required to do so.

He asked the Committee to consider the aggravating and mitigating factors, and stated that except for that moment when she accepted \$30,000, the Member has been an excellent educator. He said that specific deterrence and rehabilitation are not at issue because the Member has learned from this experience and would not place herself in this situation again. He noted that the Member had no previous record of discipline at the College and that she got into this predicament because she was naïve.

Counsel asked the Committee to consider the Member's character, the context, background, letters of reference and the price she has already paid. He also urged the Committee to balance the public interest with the interests of the Member.

In support of his arguments, Member's counsel submitted a brief which included court documents relating to the Member, exhibits at trial, income tax returns, portions of trial transcripts and character reference letters. The Brief also contained court proceedings related to *R v. Cash-Lehman and Associates* and *R. v. John Price*. (Exhibit 4)

Counsel asked the Committee to consider the gravity of the actions of Price and Cash, and the severity of their penalties, when considering the penalty for this Member.

Advice of Independent Legal Counsel

Independent Legal Counsel advised the Committee to consider the evidence and submissions of counsel and that it would not be appropriate for the Committee to re-litigate the criminal conviction of the Member. Counsel stated that it is not open to the

parties or the Committee to interpret or challenge the trial judge's findings. Counsel further advised that the Committee's role was to consider protection of the public, and general and specific deterrence. In doing so, the Committee may find it helpful to consider previous cases presented by the parties.

PENALTY DECISION

The Committee makes the following order as to penalty:

1. The Registrar of the Ontario College of Teachers is directed to revoke the Certificate of Qualification and Registration of the Member, and
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 PENALTY DECISION

The Committee found the Member's conduct to be disgraceful, dishonourable and unprofessional, and unbecoming a member of the profession. The Member's criminal conviction for accepting a secret commission of \$30,000 while acting as an employee of the Board, is relevant to her suitability to hold a certificate of qualification and registration. The Member abused her position for personal financial benefit by accepting the \$30,000 payment. These funds could have been directed to the Board for educational purposes, thereby benefitting students.

The Committee accepts the trial judge's finding that the Member's actions demonstrate that she knew she was acting outside the bounds of approval: she was aware that she should not discuss the payments with colleagues, that they should be hidden by having them flow through a company set up to avoid detection, and on a schedule that would make it appear to be for summer work rather than as a secret commission. While she was not the instigator of this scheme, the Member was a willing and active participant in the opportunity that presented itself.

By accepting the above findings of fact, the Committee determined that this Member violated the public's trust and brought the reputation of the profession into disrepute. When told by Dr. Price that he had arranged for Cash-Lehman to provide the Member with a \$30,000 payment, she should have refused to participate. Accepting a secret commission is deceitful and unethical. The Committee reviewed the case law submitted by the Member's counsel. While there were other members at the Board who were sanctioned by previous Discipline Committees for related misconduct, this Member's actions are, in and of themselves, unacceptable. The Committee accepts that the Member knowingly participated in this scheme and had ample opportunity to reconsider her involvement.

While the Member's Counsel stated that the Committee should consider that the Member was dismissed by her Board, lost her retirement benefits, reputation and standing in the education community, the Committee views this as natural consequences of her chosen actions.

The Committee also took into consideration that the Member had made full restitution of the \$30,000 before being ordered to do so. However, this does not mitigate the fact that she accepted the secret commission in the first place.

The Committee reviewed the Brief of Court Documents and Transcripts (Exhibit 3), the document entitled Discipline Hearing, including character reference letters (Exhibit 4) and the Case Law Binder in coming to its decision with respect to findings and penalty. The Committee based its decision on the Member's actions, criminal conviction and the facts surrounding the case and the subsequent upholding of the conviction by the Court of Appeal.

This Member has forfeited her privilege of membership in the profession. The only appropriate penalty to restore public confidence in the teaching profession is revocation of the Member's certificate. Any lesser penalty for such a serious breach of trust would seriously undermine the public confidence.

The Member's actions were criminal. Publication of the findings and order of the Committee, in summary, along with the name of the Member, in *Professionally Speaking/Pour parler profession* advises the profession of the nature of the Member's misconduct and the consequences for such behaviour. Publication, with name, acts as a general deterrent and informs the profession that such behaviour will not be tolerated and will result in revocation.

Publication serves the public interest by reassuring and informing the community that the profession acts decisively when matters of this nature are brought to its attention.

In conclusion, the Committee is confident that the penalty serves the interests of the public and the profession.

Dated: November 20, 2009

Danny Anckle
Chair, Discipline Panel

Dean Favero, OCT
Member, Discipline Panel

Robert Ryan, OCT
Member, Discipline Panel