

IN THE MATTER OF: *The Registered Teachers Act, 2015*
and Lisette T. Denis, registered teacher certificate # [REDACTED]

**PENALTY DECISION OF THE DISCIPLINE COMMITTEE FOR THE
SASKATCHEWAN PROFESSIONAL TEACHERS REGULATORY BOARD**

Counsel: Roger Lepage
for the Professional Conduct Committee

Jessie Buydens
for Lisette T. Denis

Nicholas Cann
for the Discipline Committee

Hearing Date and Location: May 15, 2017
Regina, Saskatchewan

Introduction

1. By a decision dated April 4, 2017, the Discipline Committee of the Saskatchewan Professional Teachers Regulatory Board found Ms. Denis guilty of one count of professional misconduct in that;

**While a registered teacher for the [REDACTED]
[REDACTED] operating the school called
[REDACTED] in [REDACTED]
Saskatchewan, you purchased two Helly Hansen jackets from
Student A. At the relevant time you should reasonably have
suspected that the student may be involved in selling stolen
products. Taking into account the context of your purchase of the
two Helly Hansen for \$175 and the fact that you asked the student
to keep this secret would have led a reasonable professional to not
become involved in the said purchases. You received a personal
benefit from these transactions.**

2. The findings of fact are set out in the Discipline Committee's Decision dated April 4, 2017.
3. The Penalty Hearing took place on May 15, 2017.

Legislative Authority

4. Section 40 of *The Registered Teachers Act* (the Act) gives the Discipline Committee the following authority;

Disciplinary powers

40(1) If the discipline committee finds a registered teacher guilty of professional misconduct or professional incompetence, it may make one or more of the following orders:

- (a) an order that the person's teacher's certificate be cancelled;**
- (b) an order that the person's teacher's certificate be suspended for a specified period;**
- (c) an order that the person's teacher's certificate be suspended pending the satisfaction and completion of any terms and conditions specified in the order;**
- (d) an order that the registered teacher may continue to practise only under terms and conditions specified in the order, which may include, but are not restricted to, an order that the registered teacher:**
 - (i) not do specified types of work;**
 - (ii) successfully complete specified classes or courses of instruction;**
 - (iii) obtain medical or other treatment or counseling or both;**
- (e) an order reprimanding the registered teacher;**
- (f) any other order that the discipline committee considers just.**

(2) In addition to any order made pursuant to subsection (1), the discipline committee may order:

- (a) that the registered teacher pay to the regulatory board, within a fixed period:**
 - (i) a fine in a specified amount not exceeding \$5,000; and**
 - (ii) the costs of the investigation and hearing into the registered teacher's conduct and related costs, including the expenses of the professional conduct committee and the discipline committee and costs of legal services and witnesses; and**
- (b) if a registered teacher fails to make payment in accordance with an order pursuant to clause (a), that his or her teacher's certificate be suspended.**

Submissions by the Professional Conduct Committee (PCC)

5. The PCC's position on penalty is that Ms. Denis' teacher's certificate should be suspended for between 3 to 12 months and that a reprimand be recorded on the Register. The PCC asks that Ms. Denis pay costs of \$15,000.
6. Counsel for the Professional Conduct Committee provided reference to three dispositions.
7. The first is a 2015 consent resolution between the British Columbia Commissioner for Teacher Regulation and David Mark Street.
8. Mr. Street admitted to stealing \$2,320 from various school accounts including breakfast program donations, sports fees, graduation fees and charity fundraisers. He was eventually convicted of theft pursuant to the criminal code and received a conditional discharge with probation. Mr. Street agreed to a reprimand.

9. The Discipline Committee is of the view that consent resolutions are often made to expedite resolution of the complaint and in this case not the best guidelines to sentencing.
10. The second precedent is a 2008 case between *Ontario College of Teachers and Andrea Roseanne Davidson*.
11. Davidson stole credit cards from other teachers and used them to buy personal items. She was eventually criminally convicted. Her professional regulator reprimanded her and suspended her for approximately eight months. This disposition supports the range suggested by the PCC.
12. Finally there is an arbitrator's decision between the *York Region District School Board and Ontario Secondary School Teachers Federation District 16* in the matter of Farhez Lakhani. In this case the teacher was dismissed from his employment after he admitted to providing a list of items that he wanted stolen and purchasing those items from a student. The arbitrator upheld his dismissal. This is really an issue of employment law and not of professional regulation. However, it does support the view that such conduct has serious repercussions.

Submissions by the Teacher

13. Ms. Denis' position is that the appropriate penalty is a reprimand and a fine in the range of \$500 - \$800. Counsel did not provide any authority for her submissions.

Law

14. In *Camgoz v College of Physicians and Surgeons of Saskatchewan (1993) 114 Sask. R. 161* the court approved considerations that are amended herein to apply to the teaching profession. The Discipline Committee considered the following principles in determining its Order:

- (a) The nature and gravity of the teacher's conduct;
- (b) The age and experience of the teacher;
- (c) The age of the student and the impact on the student;
- (d) The number of times the offence occurred;
- (e) Whether the teacher suffered from other serious consequences;
- (f) The presence or absence of mitigating circumstances;
- (g) The need to promote or specific or general deterrence;
- (h) The need to protect the public confidence in the profession; and
- (i) The range of sentences in other jurisdictions.

Disposition

15. The Discipline Committee must begin by repeating its denunciation of this misconduct. A teacher's duty is to transmit appropriate values as well as knowledge. A teacher's duty is to protect the student. She involved the student in potential criminal activity. A teacher's duty is to put the interest of the student first. She exploited a student for her own benefit. As was stated in the discipline decision, she failed to meet the standards expected of a teacher in several ways and used shockingly bad judgment.
16. The Discipline Committee is also aware of mitigating factors. As mentioned there was evidence that she cared about student A and continued to assist him even after leaving the school. For example she encouraged and helped him to enroll in postsecondary classes. As a sad postscript the incident in question probably did not cause real harm to the student as he was already deeply immersed in that behaviour.
17. The Discipline Committee also took into account that there was no evidence of any past misconduct by Ms. Denis and that the misconduct only occurred on one single occasion.

18. Finally the Discipline Committee took into account the significant economic loss incurred by the teacher. Loss of employment and the costs of these proceedings alone should serve as both specific and general deterrence for misconduct.
19. Pursuant to s. 40(1)(e) of *The Act*, the Discipline Committee orders that a reprimand be placed on Ms. Denis' certification.
20. Pursuant to s. 40(1)(b) of the *Act*, the Discipline Committee orders that Ms. Denis' teacher's certificate be suspended for one month from the date of this Decision.

Costs

21. Section 40(2)(a)(ii) of the *Act* permits the Discipline Committee to impose costs of the investigation and hearing on a registered teacher. The PCC provided an Affidavit setting out the costs of the investigation and hearing as of April 18, 2017 as \$63,904.88.
22. The Discipline Committee considered the following principles with respect to imposing a costs order:
 - (a) Whether the costs are so significant to be punitive;
 - (b) Whether the costs would prevent a member from raising legitimate defences;
 - (c) The member's financial status;
 - (d) The degree of success; and
 - (e) The efficient conduct of the hearing.
23. The Discipline Committee does not accept the submission of either counsel as to costs.
24. Counsel for the teacher made representation that no cost should be payable. The Discipline Committee is of the view that barring exceptional circumstances the teacher has some responsibility to the profession to bear a portion of the costs. Counsel for the

teacher also reminded the Discipline Committee that the Teacher was partially successful in that one of the two charges was dismissed. There were no submissions on the Teacher's ability to pay.

25. The Discipline Committee is also of the view that without further significant explanation the profession would view incurring costs of almost \$64,000 in the discipline process as shocking. This is not intended as a criticism of the PCC's management of costs. There may be good reason. But costs that appear to be excessive require more explanation. The Discipline Committee is of the view that costs of \$15,000 in this case would be perceived as an obstacle to teachers that may consider defending themselves against allegations of misconduct.
26. Counsel for the Professional Conduct Committee also suggested it was an appropriate costs consideration to provide information on failed Consensual Complaint Resolution Agreement discussions that took place between the parties. The Discipline Committee finds that while in some circumstances that kind of evidence would be both admissible and relevant, those circumstances are not present in this case.
27. Pursuant to s. 40(2)(a)(ii) of the *Act*, the Discipline Committee fixes costs in the amount of \$5,000. The costs shall be paid within 30 days of this Decision. If the costs are not paid as directed, Ms. Denis teacher's certificate shall be suspended pursuant to s. 40(2)(b) of the *Act* until such time as the costs are fully paid.

DATED at Regina, Saskatchewan, this 5th day of June, 2017.



Thomas Schonhoffer, Chair
Robin Bellamy
Candace Elliott-Jensen
Don Lee
Yasmina Lemieux