

**DISCIPLINE COMMITTEE
OF THE ONTARIO COLLEGE OF TEACHERS**

IN THE MATTER OF the *Ontario College of Teachers Act, 1996*, and Ontario Regulation 437/97 thereunder;

AND IN THE MATTER OF a discipline proceeding against Martin Richard Guibord, a member of the Ontario College of Teachers.

PANEL: Gabrielle Blais, Chair
 Rollande Lavictoire
 Jacques Pavesi

BETWEEN:	)	Colin Baxter,
	)	McCarthy Tétrault LLP,
ONTARIO COLLEGE OF TEACHERS	)	for Ontario College of Teachers,
	)	assisted by Christine Lonsdale and
	)	Patrick Veilleux
)	
- and -)	
)	
MARTIN RICHARD GUIBORD	)	Jean G. Legault,
(CERTIFICATE #199516)	)	Burke-Robertson LLP,
	)	Legal Counsel for Martin Richard
	)	Guibord
)	
	)	Paul Le Vay,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
)	
	)	Heard:
	)	October 16, 17 and 18, 2007;
	)	February 19, 20 and 21, 2008;
	)	August 11, 12 and 13, 2008

REASONS FOR DECISION

This matter was referred to a panel of the Discipline Committee of the Ontario College of Teachers (the “College”) in Toronto on October 16, 2007.

A *Notice of Hearing* dated January 3, 2005, was served on Martin Richard Guibord, instructing him to appear before the Committee on February 1, 2005, to set a hearing date. The hearing was scheduled for October 16, 2007 and continued on October 17 and 18, 2007, February 19, 20 and 21, 2008 as well as August 11, 12 and 13, 2008.

Mr. Guibord was in attendance at the hearings.

ALLEGATIONS

The following allegations were stipulated in the *Notice of Hearing* dated January 3, 2005 (Exhibit 1):

IT IS ALLEGED that Martin Richard Guibord (the “Member”) is guilty of professional misconduct and/or is incompetent pursuant to subsections 30(2) and 30(3) of the *Ontario College of Teachers Act* (the “Act”), in that he:

- (a) failed to maintain the standards of the profession, contrary to Ontario Regulation 437/97, subsection 1(5);
- (b) abused a student or students physically, sexually, verbally, psychologically or emotionally, contrary to Ontario Regulation 437/97, subsection 1(7);
- (c) failed to comply with the *Education Act*, Revised Statutes of Ontario, 1990, chapter E.2, and specifically paragraph 264(1)(c) thereof or the Regulations made thereunder, contrary to Ontario Regulation 437/97, subsections 1(14) and (15);
- (d) 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);
- (e) contravened a law, the contravention of which has caused students under the Member’s professional supervision to be put at or to remain at risk, contrary to Ontario Regulation 437/97, subsection 1(17);

- (f) 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);
- (g) engaged in conduct unbecoming a Member, contrary to Ontario Regulation 437/97, subsection 1(19); and
- (h) displayed in his professional responsibilities a lack of knowledge, skill or judgment or disregard for the welfare of a student of a nature or extent that demonstrates that the member is unfit to continue to carry out his professional responsibilities or that a certificate held by the member under this Act should be made subject to terms, conditions or limitations.

MEMBER'S PLEA

Martin Richard Guibord denied the allegations set out in the *Notice of Hearing*.

OVERVIEW

The hearing was held for the following reasons.

- 1) Martin Richard Guibord (the “Member”) is a member of the Ontario College of Teachers.
- 2) During the 2003-2004 school year, the Member was employed by the Catholic District School Board of Eastern Ontario (the “School Board”) as a teacher at [XXX] (the “School”), in [XXX].
- 3) During the 2003-2004 school year, [XXX], [XXX], [XXX], [XXX], [XXX], [XXX] and [XXX] were male students in the Member’s class at the School.
- 4) On or about October 17, 2003, the Member assaulted [XXX] in class by throwing him to the ground, crossing his arms and twisting his wrists.
- 5) Between the approximate dates of August 18, 2003 and October 16, 2003, the Member physically assaulted [XXX] at the School.

- 6) Between the approximate dates of August 18, 2003 and October 16, 2003, the Member physically assaulted [XXX] at the School.
- 7) Between the approximate dates of August 18, 2003 and October 16, 2003, the Member physically assaulted [XXX] at the School.
- 8) Between the approximate dates of August 18, 2003 and October 16, 2003, the Member physically assaulted [XXX] at the School.
- 9) Between the approximate dates of August 18, 2003 and October 16, 2003, the Member physically assaulted [XXX] at the School.
- 10) Between the approximate dates of August 18, 2003 and October 16, 2003, the Member physically assaulted [XXX] at the School.
- 11) On or about November 19, 2003, seven counts of assault in violation of section 266 of the *Criminal Code* (Canada) were lodged against the Member for assault committed in the City of [XXX] in the region of Eastern Ontario against [XXX], [XXX], [XXX], [XXX], [XXX], [XXX] and [XXX].

EVIDENCE PRODUCED BY THE COLLEGE

The events leading to the allegations lodged against the Member and addressed by this hearing took place in a [XXX] for students [XXX]. The College argued that on several occasions between August 28 and October 16, 2004, the Member resorted to physical force in dealing with insubordinate students. The College maintains that the situations in question by no means justified such behaviour by the Member.

Several witnesses and supporting documents were produced during the hearing. Only one student, [XXX], testified in person. However, the Committee received videocassettes of the questioning of [XXX], [XXX], [XXX], [XXX], [XXX], [XXX], [XXX] and [XXX]. The Committee also received the transcripts of these statements by [XXX], [XXX], [XXX] and [XXX]. At the hearing, legal counsel for the College informed the Committee that the College had no intention of proceeding with the allegations involving [XXX].

THE COLLEGE CALLED THE FOLLOWING WITNESSES:

Bruce Quevillon

Mr. Quevillon is the police officer who conducted the investigation and questioned most of the students. In his testimony, Mr. Quevillon described the process he followed during his investigation, from opening the file to transferring it to the College.

Tanya Lamarche

Ms. Lamarche was an intern in the Member's classroom at the time of the events. In her testimony, she described the contact and physical restraint used by the Member on the students, which she personally witnessed, particularly the restraint of October 16 on [XXX], as well as an incident sometime in September. Starting with the latest incident, she explained that on the day of a visit to the pool, [XXX] had forgotten his permission slip. He therefore did not want to go to the pool since he would not be allowed to swim. Ms. Lamarche testified that as the students were boarding the bus, she saw the Member hold the student by the wrists. When [XXX] was released, he was against the wall of the School and the joints of one hand were bleeding. Regarding the incident of October 16, [XXX] was supposed to have finished his journal by writing five sentences. He had written only three. When Ms. Lamarche tried to persuade him to finish his work, he refused, stood up and went to play with the Lego blocks. The Member then intervened and the intern went to correct work at the Member's desk. Suddenly, she heard [XXX] cry out. She testified that she saw the Member hold [XXX] in a restraining position, hands crossed in front with the Member standing behind the student. [XXX] said, "Let me go, that hurts." (Minutes, v. 1, p. 145) The student then went to the principal's office. Ms. Lamarche testified that at one point during the day, she saw marks on [XXX]'s wrists. She also testified that she never believed there was an imminent danger during this incident.

Ms. Lamarche also described situations involving the use of physical force by the Member against [XXX], [XXX] and [XXX]. In the case of [XXX], she testified that she

saw the Member intervene physically when the student did not want to return to his seat. In the case of [XXX], she testified that if the student refused to participate in activities, so the Member took away his chair or grabbed him by the arms to move him toward the activity. He also grabbed [XXX] by the arms.

Under cross-examination, Ms. Lamarche testified that the students occasionally refused to do as they were asked. In previous questioning, she had also used the words “unstable” and “uncooperative” to describe the state of mind and behaviour of some students. She had even seen students in crisis and throwing their desks.

In the case of [XXX], she testified that she had seen him throwing things. He was disruptive and made noises with his mouth. He could move around with his desk but she did not recall seeing him running around. In the case of [XXX], Ms. Lamarche accepted the statements made during earlier questioning in which she testified that [XXX] was running around and was out of control. Referring to [XXX]’s behaviour on October 16, 2003, she explained that the student was not himself that day. During part of the incident, her back was turned to what was happening between [XXX] and the Member. Following the restraint, she saw “red spots” on his wrists. Referring to the swimming pool incident, she saw [XXX]’s hand strike the brick while he was arguing. [XXX] went to see the School’s nurse for treatment. Ms. Lamarche testified that at the time of these interventions, the member was using a neutral tone of voice and speaking calmly most of the time.

[XXX]

In his testimony, [XXX] described the restraint used on him, and those he witnessed. At the Member’s request, counsel for the Member did not conduct cross-examination. He relied on the transcript of the direct examination and cross-examination of February 23, 2005 (Exhibit 31).

[XXX]

Ms. [XXX], the mother of [XXX], summarized the testimony she gave to the police following the events in question (Exhibit 3, Tab 6). She testified that at the meeting on October 1, the Member explained to her that he had used physical restraint on [XXX]. She remembered that during this meeting, Mr. Lecot voiced his disagreement regarding these measures. Ms. [XXX] had also requested explanations about an incident at the end of class in which the Member allegedly “twisted” [XXX]’s arm. She testified that the Member denied “twisting” the student’s arm, but since the latter was arguing, it was possible that his arm might have been “twisted” (Minutes, v. 2, p. 20). According to Ms. [XXX], the meeting ended positively, and the Member and [XXX] agreed to find other solutions to avoid such restraint. Ms. [XXX] suggested a few strategies to avoid the use of physical force. On a few occasions, she had warned the Member that the use of physical force was not the best method for intervening with her son. She also testified that she had previously used the “bear hug” technique at home, especially when her son was younger.

Under cross-examination, Ms. [XXX] described the meeting of October 1. She admitted that she might not have heard B. Lecot say that he disagreed with physical restraint and that there were other strategies. According to Ms. [XXX], the meeting ended on a friendly note and her son did not subsequently complain about other physical contact.

Maryse Dubé

During the period in question, Maryse Dubé was employed by the Prescott-Russell Services to Children and Adults. She was an Intake Worker. She became involved in this case on October 17, 2003 at the request of Youth Protection Worker Renée-Claude Raby. She testified that she had seen marks on both of [XXX]’s wrists.

The Committee deliberated on the eligibility of an exhibit produced in a context of “similar facts” by counsel for the College. It used the test of reliability and necessity to reach its decision. It was determined that the document in question did not meet the requirements of the test.

Chantal Payette

Ms. Payette is coordinator of the Robert Smart Centre, a mental health agency for adolescents 12 to 18 years of age. Her various responsibilities included teaching the TCI (*Therapeutic Crisis Intervention*), “Transiger avec l’adolescent agressif” [dealing with aggressive adolescents] and BMI (*Behaviour Management Intervention*) courses. She taught the “Transiger avec l’adolescent agressif” course in 2002 to a group of teachers. The purpose of the two-day course was to provide the teachers with tools to help children in a crisis situation, provide communication tools to help them regain a stable state, recognize children in a crisis situation and act when children are aggressive. Exhibit 1, Tab 19 contains the slides used in the course. In response to the questions raised by counsel for the Member, she admitted that it is possible participants were taught in this course how to use physical restraint.

Ms. Payette described strategies for dealing with children in a crisis situation. She maintained that the adult worker must be familiar with the child’s individual plan and use his relationship with the child in the process. Physical restraint is the last resort and must only be used if there is an immediate risk to the person or someone else.

Ms. Payette described the factors leading to a crisis situation, various restraint methods, as well as the strategies to be used to defuse a crisis situation.

Brian Ellerker

Brian Ellerker was recognized as an expert witness to address two questions.

1. When does a teacher use physical restraint on a child?
2. What are the appropriate methods for restraining a child and how must a teacher use these methods?

Mr. Ellerker gave the following answer:

“The use of force or the use of restraints in matters of disciplining a student is appropriate only when the student presents an imminent risk of injury or danger to himself or to

others... The method that should be used, should be methods that are chosen to minimize any risk of injury to the student or the staff member.” (Minutes, v. 3, p. 92)

In addition to his testimony, Mr. Ellerker submitted a report entitled *The Use of Physical Force to Restrain a Student* (Exhibit A, Memory Aid). Everyone agreed, however, that his testimony would constitute the evidence. Mr. Ellerker explained the conditions under which a restraint on students may be administered:

- (i) there is a risk of injury to the student or to others;
- (ii) it may never be used as a punishment;
- (iii) it may only be used if less intrusive techniques are or would be ineffective;
- (iv) the least possible force must be used;
- (v) it is in response to force initiated by the student;
- (vi) it should be monitored by another trained adult;
- (vii) it is part of a treatment plan and needs to be documented;
- (viii) it is the last resort; and
- (ix) it must be documented and reported to the parent guardian.

Mr. Ellerker also testified that the teacher must ask himself the following questions before initiating a restraint:

- (x) What is the level of risk?
- (xi) Who is at risk?
- (xii) What is the physical nature of the student and the health of the staff member involved?
- (xiii) What is the level of trust between the staff member and the student?
This is needed to rebuild the relationship.
- (xiv) What is the plan for getting assistance to the classroom?

- (xv) What is the physical environment? Any hazards?
- (xvi) What is the training of the staff in the classroom?

He also stated that it was important to know what the triggers were that led to a crisis situation and to intervene on these triggers. He then described a number of strategies that can be used in a crisis situation before deciding on a restraint. These include blocks and releases, and verbal and non-verbal interventions. The purpose of the block is to move the student away from you. He also described strategies for restraint and planned restraint. Finally, he provided the panel with an overview of the various types of training available, such as CPI, UMAB, TCI, PMAB and, more recently, BMS.

Mr. Ellerker was asked about the practice of “escorting” students. He responded that he disagrees with that approach in a school setting because it is dangerous since the participants are moving. In his opinion, in conflict situations, it is better to bring support to you to help you deal with the situation. As for the question of restraining small children on the floor, he testified that by 2003 programs had moved away from this approach as deaths had occurred as a result of positional asphyxia.

In dealing with young children, Mr. Ellerker stated that redirection (do a different task) was a successful strategy, as well as diversion and rewards. “Time outs” are more difficult, unless the child asks for it.

Counsel for the College presented Mr. Ellerker with hypothetical situations and asked for his expert opinion on each of these. Two sets of scenarios were presented.

In the first scenario, Hypotheticals regarding circumstances in which force is used, Mr. Ellerker was asked to respond to the following questions:

1. Was it appropriate for holdings or restraints to be used in these circumstances?
2. Would any slight change in the facts render it appropriate to use physical restraints?

In situations 1 to 4, Mr. Ellerker believed that physical restraint was inappropriate. In situations 5 and 6, he preferred blocking, while in situation 7, he recommended a form of physical restraint.

Referring to the second scenario, Hypotheticals regarding the form of restraint used, Mr. Ellerker was asked to answer the following question:

1. Please assume that the use of restraints is indicated in the circumstance and comment on the technique being employed.

For this scenario, Mr. Ellerker stated that: “In his opinion, based on the limited information provided about the circumstances of each incident, physical restraint was not indicated, i.e., none of the hypothetical situations appear to be ones where the student is presenting an imminent risk of injury to self and or others.” (Exhibit A, Memory Aid, p. 19)

The witness concluded his testimony by discussing the impact of a physical restraint on the student-teacher relationship. In his opinion, restraint adds an element of fear to a classroom and adversely affects the relationship of trust that must exist between a student and his teacher. To protect that relationship of trust, the teacher must use the strict minimum level of physical force during restraint and must opt for restraint only in circumstances in which there are no other options. The use of physical force in the classroom was not the norm in 2003, even in classrooms with special students. He also claimed that these classrooms contained the most vulnerable children and one of the teacher’s objectives had to be to teach these students methods other than the use of physical force to resolve their frustrations, anger, conflicts, etc.

Under cross-examination, Mr. Ellerker testified that the intervention methods taught in 2002 were not standardized throughout the province. Starting in 2000, teachers were expected to notify the administration of any use of physical force on a student. The *Violent Incident Form* was not always filled out because it could lead to suspension of the student under provincial policy.

Bruno Lecot

Bruno Lecot was Principal of the School at the time of the events in question. The School had six classes for special students. All students in the behaviour class had previously been identified because their behaviour adversely affected their academic performance. The class had fewer students and used specialized teachers, who worked on behaviour modification, especially self-worth and self-esteem, as well as self-control. Academic progress, however, remained the most important responsibility. Special students were primarily the responsibility of the Vice-Principal, Ms. Suzanne Ménard.

Mr. Lecot explained that he had been trained in working with special students and kept up to date with ad hoc training provided primarily by the School Board. He had been introduced to restraint once during training provided by the Robert Smart Centre in the 1990s. He did not recall seeing a School Board policy on restraint. Despite this, he had learned in his professional environment that physical restraint could be used only if there was a danger of personal injury. Mr. Lecot also described a few conversations he had had with the Member on the subject of his teaching and his behaviour toward students. He said that he cautioned the Member several times “not to touch the students.” He remembered one meeting in particular with [XXX] his mother, on October 1, 2003, and he testified that this was the first time he learned that the Member used physical restraint. He recalled telling the Member that he disagreed with the use of restraint and warning him not to touch the students.

Under cross-examination, Mr. Lecot testified that he did not request a written report from the Member, even after the meeting with Ms. [XXX] and [XXX] at which he learned that restraint had been administered on at least one occasion. He accepted the statement by counsel for the Member that the teacher was responsible for managing discipline in the classroom. On the matter of using the hall to remove students from the classroom, he explained that this approach could pose safety problems for the student in question.

Mr. Lecot testified that the School had a team to support teachers in a crisis situation: the Vice-Principal, remedial teachers and education consultants. He assumed that the

Member must have been aware of this since he had taught in other schools before this one. Referring to the School's code of conduct, he stated that the presence of a student in a behaviour class was no excuse for violating this code. The approach must be fair and equitable. However, during questioning in 2005, he admitted having testified that more chances were given to students in these classes because they were "fragile."

Mr. Lecot accepted the suggestions by counsel for the Member that students in the Member's class might display aggressive and occasionally violent behaviour. In earlier questioning, he also acknowledged having told the Member, during a discussion with him, to "try" to avoid touching the students, but that in that context (not the one at the meeting of October 1), this meant not touching the students. He did not recall being asked to provide a "time-out" room for the Member's class.

**LEGAL COUNSEL FOR THE MEMBER CALLED THE FOLLOWING
WITNESSES:**

Martin Guibord

The Member described his career path within the School Board as a teacher. He also described the training he received in April 2002, entitled *Transiger avec l'adolescent agressif* [dealing with aggressive students]. This training, organized by the School Board, was delivered by the Robert Smart Centre. This two-day course included a theory part and another part involving practice with intervention techniques. During this training, he was taught the criteria for using a technique called *small person restraint*:

- This is the last resort after first attempting several approaches;
- The student's size and weight must be considered;
- The teacher must exercise judgment and use this technique if he believes it can be safely and successfully used with the student;
- The teacher must ensure safety of the premises, the student, others, as well as himself; and

- There are other strategies that can be used, such as verbal or non-verbal techniques, attempting to understand the situation, offering choices, redirecting, positioning of the adult, tone of voice, body position, and silence.

The member described the stages in a crisis: emotional security, the triggering factor, agitation, refusal, the crisis, the decision by the adult whether to intervene, and feedback with the student. The Member also described the forms of restraint, holding and escorting he was taught. He testified that he was not taught the obligations to parents and the principal but he was taught the importance of filling out the forms to thoroughly document what occurred.

The Member described the purpose of his class, to modify the behaviour of the students. Before class started, he reviewed the students' files, including their OSR. He explained that in a [XXX], it is important to establish a stable routine. Certain tools were available to him, such as the behaviour record, a points system for assessing behaviour at regular intervals, use of privileges as rewards, messages displayed all around the classroom, and two carrels to help students with concentration problems, or those who need a few moments' time out. The Member used the hall to separate one student from another. The educator played an important role and was responsible for managing the performance records. The Member also submitted a summary profile of the students in his class. Finally, he described the daily class schedule.

The Member described his working relationship with the educator, Ms. Perrier-Patry. She was experienced and had experience with the use of physical restraint. Since she was pregnant, they had agreed that if a situation arose, they would try to protect her as much as possible.

He also explained that in August, he asked the Vice-Principal what measures he should use in the event of a crisis. He was told that he should not have to use physical restraint but that if this happened, he should thoroughly document the incident. When students lost control, the Member first used non-verbal and verbal techniques.

The Member explained that he used physical restraint during his time in the classroom. In his opinion, there was a difference between physical restraint and holding, as the student is in greater distress when physical restraint is used. The purpose of holding is to hold the student when he is too agitated and at risk of injuring himself. The Member denied lifting a student out of his chair but explained that he had grabbed a student by the hand to lead him toward an activity. (Minutes, v. 7, p. 15)

The Member described in detail the incidents in question. He denied lifting a student out of his chair. Instead, he supported the student by placing a hand on his shoulder to guide him. On September 9, he used physical restraint on [XXX], who had returned from art class agitated and aggressive. He was disturbing everyone. The Member seated [XXX] near him. When Ms. Perrier-Patry returned from lunch, [XXX] continued. The Member gave him other options but the student was vulgar and negative. The Member then took him by the wrist and helped him come back to sit down. The student was very aggressive toward the other students and his behaviour was disrespectful to them and the adults. The Member then restrained him with both arms crossed in front of his body. The technique did not work because the student was too dangerous and had “too much power” (Minutes, v. 7, p. 46). He was “out of control” (Minutes, v. 7, p. 47). The Member then opted to change position. He made the student kneel, and then seated him on the floor. After the restraint ended, [XXX] regained his composure and returned to his seat. [XXX] had an excellent afternoon. The Member did not inform the Principal of the restraint because he believed that classroom management was his responsibility. He did write a summary, however, and telephoned the student’s mother.

The second restraint on [XXX] occurred on September 30. The student returned from art period in a turbulent state and then became aggressive and dangerous. During the lunch period, he was walking all around and threatening others. When Ms. Perrier-Patry returned, they decided to intervene. The Member grabbed [XXX] by the wrists, crossed his arms, and seated him on the floor. Since [XXX] had too much control, the Member decided to turn him on his stomach. The restraint lasted approximately 10 minutes. During that time, the student was very aggressive, shouting, insulting and trying to kick.

Following the restraint and during the afternoon that followed, [XXX] had difficulty following instructions. The Member sent a note to his mother and requested a meeting with her the following morning. The Member said that he demonstrated the restraint at the meeting on October 1. Mr. Lecot allegedly then explained that it was unusual to use such restraint and that other methods were usually used first. The Member also testified that at the meeting, Mr. Lecot did not prohibit him from using restraint.

The Member explained the restraint used on [XXX] on October 16. Since the educator was not at the School, she had been replaced by a person who normally worked in the daycare centre and was not qualified as an educator. Ms. Lamarche was also present. At the start of class, the Member noticed that [XXX] was playing with Legos and talking with Ms. Lamarche. He learned that [XXX] had not wanted to finish his journal. The student was in a “state of refusal” and was using “aggressive” words and displaying a “lack of respect” (Minutes, v. 7, p. 83). The Member decided to take control of the situation. He attempted to communicate with [XXX] who, at first, refused to obey instructions. At that point, he grabbed the student by the wrist with his right hand and led him to his desk. The student was unhappy and stood back up. He displayed behaviour and an attitude that the Member had never seen before. He was using a “disrespectful” tone of voice and language. [XXX] then tore up his notebook, page by page. [XXX] was near his desk and there was little room; the Member did not want him to injure himself. [XXX] had already struck him in an earlier incident. The only effective option was to restrain his physical actions. The Member proceeded to administer restraint. During the restraint, [XXX] struck him with his head. In response to this act, the Member administered kneeling restraint and quickly managed to regain control. The Member admitted that [XXX] may have had “red spots” on his wrists; he may have had a “reaction” (Minutes, v. 7, p. 94). The Member testified that he had no intention of injuring or assaulting the student, or causing psychological after-effects.

The Member also testified that on September 18, he restrained [XXX] by crossing his arms in front of his body. The student was standing. [XXX] had been turbulent during his visit

to the washroom. On September 25, he also held [XXX]'s wrists with his arms crossed in front of his body. The student was agitated, turbulent and was throwing objects.

The Member testified that he also used the bear hug at some points but this was not to administer physical restraint but rather to help the student calm down. He remembered using this procedure with [XXX] (once) and [XXX] (twice).

In the case of [XXX], the Member testified that the student was verbally disruptive and could be turbulent. He had previously thrown everything in his desk. That was why the Member emptied his desk. The Member denied placing his finger on [XXX]'s throat. The Member also remembered escorting [XXX] to the bus while holding his hand, but denied twisting his arm. At the request of the Vice-Principal, the Member also escorted [XXX] to the bus one day when the student did not want to return home. The Member grabbed [XXX] by the wrist to escort him. Another time, the Member grabbed [XXX] by the wrist to move him, but he testified that he did not lift him off the floor. He denied using pressure on the students' shoulders to make them sit down. He also denied removing chairs from under the students.

Regarding the swimming pool incident involving [XXX] on September 26, the Member denied abrading [XXX]'s hand on the brick. He testified that he remained in the classroom to talk with [XXX] and stopped at the exit from the school.

Under cross-examination, the Member testified that he had not used restraint on a student in crisis before he arrived at the School in August 2003. Referring to the use of physical force on [XXX] on August 28, the Member voiced his agreement with counsel for the College that [XXX] did not pose a danger to people in the hall. Referring to the restraint used on [XXX] on September 9, the Member acknowledged the suggestion by counsel for the College that when he was at the computer, the student posed no risk to other people in the classroom. The Member testified that the restraint had been successful. He recalled that [XXX]'s mother had told him that physical force was not the best approach to take with her son, but he voiced the opinion that he disagreed with her because the student had had an excellent afternoon following the restraint. Referring to the September

30 incident, the Member refuted the testimony of B. Lecot and [XXX]'s mother that the Principal had stated his disagreement with the use of restraint. The Member confirmed that Ms. [XXX] explained that the restraint of the wrists had hurt her son. He maintained that if a child injured himself during restraint, it was not necessarily the result of the force exerted but rather because the child was moving.

The Member agreed with the statement by counsel for the College that before resorting to physical force, one must be convinced that there is an imminent risk, a danger to the child or to others. (Minutes, v. 8, p. 51)

When counsel for the College referred to Ms. Lamarche's testimony indicating that the Member was not at the School during the swimming pool incident, the Member denied this. (Minutes, v. 8, p. 57)

Nicole Perrier-Patry:

Ms. Perrier-Patry began working at the school in question as an educator in 2002. She worked in the Member's class during the period in question. Ms. Perrier-Patry had been trained to use restraint and, before the fall of 2003, had been required to do this once on a six-year-old girl. In response to a question asked by counsel for the Member, she gave her own definition of escorting (directing), holding (restraining with the body and arms) and physical restraint (on the floor/ holding).

Ms. Perrier-Patry described the daily routine in the classroom, the practices related to performance report cards, as well as the administrative structure at the School for special students. She said that physical force can only be used on a student if there is a danger to the student or others, or to the teacher (Minutes, v. 8, p. 100). She testified that in her opinion, there was no school board policy prohibiting physical restraint. It was only at a meeting in the fall of 2003 that the Principal asked the Member and Ms. Perrier-Patry to stop using physical restraint and to provide more information about what was happening in the classroom. She also described the interaction with the Principal when there were difficult situations involving students. In the office, she could be told to wait and often

the students came back from the office with Lego blocks, stickers and chocolate bars. She also testified that it was difficult to obtain the Principal's support. For example, when she requested a place where she could take students in crisis (because the Principal did not like to see students in the hall), she was told there was no space available.

Ms. Perrier-Patry testified that students in the classroom where the events occurred were difficult to deal with and that the first incidents began on the second day. The students' behaviour deteriorated when they returned from specialized courses such as art and physical education. The students could be aggressive with each other and she had previously been struck by some of them. Since she was pregnant, the Member had to intervene when a crisis situation arose. The Member had also been struck by some of the students.

Ms. Perrier-Patry made notes when there was a crisis situation. She testified that she even tried to show them to Ms. Ménard who told her "that's too long, I won't read it." (Minutes, v. 8, p. 103) She therefore stopped making notes because it took too much time. Following this discussion, she simply made her notes on the performance report cards.

Ms. Perrier-Patry described the incidents she had witnessed and which were cited in the allegations. She accompanied the Member during two incidents of restraint. In the case of [XXX], his behaviour was deteriorating in the carrel and one day he even broke it. Ms. Perrier-Patry administered holding on [XXX] when he was in crisis in the carrel. She did not report this action to the Principal but did inform the parents. [XXX] was also often moved to a different place, to find a place where he could work effectively. In the incident involving [XXX] on September 9, the student was running everywhere in the classroom and moving the desks. When Ms. Perrier-Patry returned from lunch, the situation had not improved. [XXX] was refusing to sit down at the carrel. The Member and Ms. Perrier-Patry administered restraint on his back but since they were experiencing difficulties, they decided to turn him onto his stomach. Ms. Perrier-Patry held the student's ankles. The restraint lasted approximately 30-40 minutes from start to end. Ms.

Perrier-Patry also explained the restraint used on [XXX] on September 30. The student returned to class in an agitated state and was running everywhere. He began to be violent and punched the Member with his fists. The restraint lasted approximately 15 minutes and the student was prone on his stomach. Ms. Perrier-Patry held his feet.

She testified that in general, restraint used by the Member was justified. The Member was calm in the classroom; he could raise his voice occasionally to attract the attention of a student who was running, etc. She testified that she had never seen the Member “squash” a student into his chair (Minutes, v. 8. p. 159). She described the meeting in early October with the Principal at which they were asked to stop using physical restraint. She was not at the School on October 16, 2003 during the final incident involving [XXX]

Under cross-examination, Ms. Perrier-Patry talked about the swimming pool incident involving [XXX] on September 26. She was already inside the bus. The Member and Ms. Lamarche were outside with [XXX] She saw [XXX]’s hand which had scrapes on the wrist and was bleeding a little. When he exited from the School, [XXX] was following the group and the Member was with him next to the wall. The two were talking.

Ms. Perrier-Patry testified that she did not see any holding incidents in which there was no imminent danger. Restraint was sometimes necessary in this class. When Ms. Lamarche spoke to the Member about her concerns in that regard, she told him that she disagreed and that he was physically taking up too much space in the classroom. She wanted this to stop because it was too dangerous.

DECISION

After hearing the testimony and reviewing the relevant and admissible exhibits, the Committee has determined that Martin Richard Guibord engaged in professional misconduct pursuant to subsection 30(2) of the *Act*, by:

- (a) failing to maintain the standards of the profession, contrary to Ontario Regulation 437/97, subsection 1(5);
- (b) abusing a student or students physically, verbally, psychologically or emotionally, contrary to Ontario Regulation 437/97, subsection 1(7);
- (c) failing 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);
- (d) 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) engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19).

REASONS FOR DECISION

The allegations made against Martin Richard Guibord relate to instances of physical contacts and restraint that the Member used on students [XXX], in a [XXX] between August 28 and October 16, 2003. The testimony heard and evidence produced at the hearing confirm that in most cases, the students in question were agitated and in a crisis situation (refusal to obey, verbal assault and inappropriate physical behaviour [acting-up]). The Member admitted using physical force and restraint in most of the cases, but in his testimony and statement, he stated that:

- i) he always carried out his duties while taking care to ensure the physical, intellectual and moral safety of the students placed under his professional supervision;
- ii) he had the necessary training to work in a [XXX] class;
- iii) at the request of the School Board, he had received Transiger training for dealing with aggressive adolescents, a professional development program

delivered by the Centre franco-ontarien de ressources pédagogiques and approved by the Ontario College of Teachers. This training had taught the Member non-violent physical intervention techniques (small person restraint) for use with students who pose a safety risk to teachers, interns, the educator, other students and themselves;

- iv) he was not teaching a regular class but a [XXX] class for students in whom the frequency, intensity and duration of certain aggressive behaviours had existed for at least six months;
- v) any restraint used on a student was non-violent, that he had learned the techniques during his professional training and that each restraint had been used on a student who posed a risk to the safety of the teacher, the intern, the educator, the other students or himself;
- vi) any other physical contact between himself and a student was a necessary and reasonable correction method in the context of a [XXX] class. The methods used by the Member were those that a caring, firm and reasonable parent might use;
- vii) the evidence produced at this hearing demonstrates that all instances of non-violent physical restraint used on a student were justified given the legal context applicable to the [XXX] class, the School's Principal, and the teaching and intervention methods;
- viii) he did not engage in professional misconduct.

The Discipline Committee has reviewed and analyzed the extensive testimony given and evidence produced. Since the events occurred more than five years ago, the Committee paid special attention to the testimony given at the time of the incidents because the witnesses had a more recent recall of events at that time.

In his brief, counsel for the College stated that the Member's behaviour was part of a pattern of use of physical force. On this matter, the Discipline Committee determined that

it had sufficient evidence on the specific allegations and thus did not need to consider arguments extending beyond the events in question to render its decision.

In support of its deliberations, the Committee established the following intervention criteria that should have guided a teacher at the time in deciding whether to use restraint:

1. Is there an imminent danger to the student or any other person?
2. Could other intervention methods be used?
3. Is restraint the last possible option?

These criteria were unanimously approved by the various professionals who testified at the hearing, including Mr. Ellerker, Ms. Payette and Ms. Perrier-Patry. The Member also demonstrated in his testimony that he was familiar with these criteria.

These criteria are linked to general principles governing the use of physical force and restraint in schools. These principles are based on the testimony of teaching experts and professionals and on the evidence produced.

1. Physical force must never be used to discipline a student.
2. Restraint must never be used as a sanction.
3. Where restraint is used, the physical force must be limited to “what is strictly necessary.”
4. There must be feedback with the student following any restraint.
5. If the background warrants, potential use of restraint must form part of a plan (IEP).
6. Any restraint and any serious physical contact must be documented.
7. The administration and parents/guardians must be informed of any physical contact or restraint.

These criteria and principles guided the Committee in its analysis of the cases of physical contact and restraint presented at the hearing. In the case of physical contact, although the criteria to be considered before using physical force are not as standardized as those for restraint, the approach essentially is the same.

The Discipline Committee has analyzed the allegations of fact specific to certain instances of physical contact and restraint.

[XXX]

It is alleged that on October 16, 2003, the Member assaulted [XXX] in class by throwing him to the ground, crossing his arms and twisting his wrist. [XXX] was physically restrained twice (once at his desk, the other time on the floor). Several witnesses testified on the details of the incident. When the intern, Ms. Lamarche, checked [XXX]'s journal, she noticed that he had written the same sentence three times in his journal although he was supposed to write five different sentences. Ms. Lamarche attempted in vain to convince [XXX] to leave the Legos and come back to finish his work. When he became aware of the situation, the Member intervened and asked [XXX] why he had written the same thing. The student replied, "That's all I did yesterday" (Exhibit 46). When the Member asked him to return to his desk to finish his journal, [XXX] refused to obey any instruction. The Member grabbed [XXX] by the wrist (Exhibit 46) and led him to his desk. [XXX] picked up his notebook and began tearing it apart. The Member testified that he had used restraint twice, once while [XXX] was seated at his desk and once while he was kneeling, because [XXX] was aggressive and the Member feared he would injure someone. In his testimony at the hearing, the Member said he decided to change position and restrain the student on the floor when [XXX] struck him with his head. This act, however, is not described in the Member's notes (Exhibit 46) and neither Ms. Lamarche nor Ms. Perrier-Patry testified that they saw this act. [XXX] made no reference to this act in his testimony (Exhibit 28). The Member therefore used restraint on the student, who was seated on the floor, his legs in front and his arms crossed, by holding his wrists (Exhibit 46, Appendix A). Ms. Lamarche, an eyewitness, testified to the same facts, as did Ms. Mélanie Roy, another eyewitness (Exhibit 3, Tab 5). When [XXX] stood back up, the Member "pulled on his arms with the force necessary to bring him down on his knees near me." (Exhibit 46, Appendix A)

The incidents of restraint left marks on [XXX]'s wrists. He reported this to the Principal's office. Ms. Lamarche testified that she saw them (Exhibit 17, p. 4). Ms.

Renée-Claude Raby, Youth Protection Worker, also noticed “small, very pale red marks... [and] several small red spots on the wrists” (Exhibit 3, Tab 8). Ms. Nadine Simoneau “noticed that there were definitely red marks and “spots” on the wrists” (Exhibit 3, Tab 4). [XXX] visited the physician with his mother and a report was written confirming the injuries to the wrists: “mild bruising to skin” (Exhibit 15). The Member testified that the marks on the wrist were the result of [XXX]’s actions as he struggled to free himself from the restraint, and not of aggression by the Member. (Member’s brief, p. 42)

The Discipline Committee applied the test it had developed to the two incidents of restraint of October 16, 2003. It concluded that except for the Member’s testimony, there was no evidence that there had been an imminent danger to the student or any other person. Furthermore, the Member could have used other methods. For example, to avoid being injured, the Member could have moved, allowed the student to return to the Lego blocks and come back once the student was calmer. In their testimony to the Superintendent of Education, Ms. Lamarche and Ms. Roy testified that [XXX] tended to become angry quickly but was able to “let go of his anger” quickly and calm down by himself (Exhibit 17). Restraint therefore was not the last option available to the teacher. The Committee found that the use of force in this incident was excessive and unjustified, and that it was abnormal for restraint to have physical after-effects.

In light of these facts and the test developed above, the Discipline Committee determined that the two incidents of restraint used on [XXX] on October 16, 2003 constitute professional misconduct, in that the Member abused [XXX] physically, verbally, psychologically or emotionally, in violation of Ontario Regulation 437/97, subsection 1(7).

[XXX]

It is alleged that the Member had physical contact with [XXX] On September 12, 2003, [XXX], who was refusing to do his work, was placed in a carrel. Once in the carrel, he made noise, broke the carrel shelf and refused to listen to instruction. The Member

admitted grabbing “the sides of the chair and placing the student’s chair back as it was” (Minutes, v. 8, p. 39). On the daily performance report card dated September 12, 2003, the Member wrote, “If I use physical force, [XXX] becomes insecure and his frustration increases further.” (Exhibit 41) The Discipline Committee applied the test that it developed to this incident and determined that there was in fact use of physical force at one or more moments. However, the Committee lacks sufficient information and evidence to determine that the Member engaged in professional misconduct by abusing [XXX] physically, verbally, psychologically or emotionally, in violation of Ontario Regulation 437/97, subsection 1(7).

[XXX]

[XXX] was restrained on September 18, 2003. Ms. Perrier-Patry witnessed the incident. The Member testified that when [XXX] was in the washroom, he was over-excited and was physically and verbally threatening the other students. When he began striking the other students, the Member decided to administer standing restraint, with the student in front of him, his arms crossed in front of his body. The Member noted this restraint on a performance report card dated September 18, 2003, on which he wrote: “[XXX] needed physical assistance from his teacher to calm down in the washroom. He tried to stand up to me instead of accepting his responsibilities as a student.” (Exhibit 43)

The Member testified that the restraint described above was indeed used. In his testimony, he did not demonstrate that there was an imminent danger to the student or to any other person. On the performance report card, the Member wrote that “he tried to stand up to me” but did not explain the danger existing at the time of the restraint (Exhibit 43). The Member did not testify on the techniques used to calm down the student, such as sending the other students back to the classroom with the educator. He therefore did not demonstrate that restraint was the last possible option.

After considering these facts and applying the test it developed, the Discipline Committee determined that the restraint used on [XXX] on September 18, 2003 constituted professional misconduct in that the Member abused [XXX] physically, verbally,

psychologically or emotionally, in violation of Ontario Regulation 437/97, subsection 1(7).

[XXX]

[XXX] was the subject of physical contact when the Member decided to escort him from the carrel to the corner of the classroom. The date of this incident is unknown but the Member testified that he grabbed [XXX] by the wrist, using his left hand to hold the student's left wrist. The student said he was pulled by the arm, lifted into the air and seated in the corner: "he pushed on my shoulders and it hurt." (Exhibit 26) The Member denied lifting [XXX] off the ground or applying pressure to the student so he would sit down. [XXX] testified that he did not report this incident to anyone. (Exhibit 26)

After reviewing the testimony and evidence, the Committee determined that physical force was used but that there was insufficient evidence to determine whether the Member was guilty of professional misconduct for abusing [XXX] physically, verbally, psychologically or emotionally, in violation of Ontario Regulation 437/97, subsection 1(7).

[XXX]

[XXX] was the subject of two incidents of physical contact on August 28, 2003 and of physical restraint on September 9 and 30, 2003.

The incidents of physical contact occurred on the third day of class. The Member testified that [XXX] did not want to return home because of the comment written on his performance report card. At the request of the Vice-Principal, who wanted [XXX] to take the bus, the Member grabbed the student by the wrist to take him to the bus. On [XXX]'s performance report card for August 28, 2003, we learn that the Member had already had previous physical contact with him earlier that day in the hall of the School. Based on the text written by the student in response to the question, "Can you give me your explanation of the incident of a few moments ago?", asked by the Member, [XXX] was walking and talking in the hall and "You grabbed me. I got angry. I wanted you to let me go but I was very angry. You let me go and I ran outside." (Exhibit 38)

A few weeks later, at the October 1, 2003 meeting between the Member, Mr. Lecot, Ms. Ménard, [XXX] and Ms. [XXX], the Member admitted holding [XXX] by the wrist to take him to the bus. Ms. [XXX] explained that this had hurt her son. At the hearing, when questioned about this by counsel for the College, the Member testified that if the child had been hurt, it was not necessarily because he was hurting him, but instead because the child was struggling.

In these two cases, the use of physical force was inappropriate because there was no imminent danger or need to protect the student or others. Regarding the situation in the hall, the Member could have isolated the student and discussed the problem with him. As for the bus incident, the Member could have tried taking the student to the bus and, if he still refused, could have insisted that the Vice-Principal telephone the mother to have her come pick up her child. The Committee also wishes to note that the use of force, even when justified, must be limited to what is necessary. It should not hurt the student, as reported in the incident involving the bus. After reviewing the testimony and evidence produced, the Committee determined that the Member was guilty of professional misconduct for abusing [XXX] physically, verbally, psychologically or emotionally, in violation of Ontario Regulation 437/97, subsection 1(7).

The first restraint used on [XXX] occurred on September 9, 2003. Upon returning from his art class, the student did not want to follow instructions and demanded a lot of attention (Exhibit 39). The Member tried to calm him down and gave him options, but in vain. The Member testified that at this point, the student did not pose any risk to others. The Member then asked [XXX] to sit down near him and he warned him that if he did not move, the teacher “would help him move. He ‘tested’ me and I did what I had told him I would do.” (Exhibit 39)

[XXX] continued walking around with his chair. After trying several times to make him sit down, the Member administered restraint with two arms on the chair. When [XXX] did not calm down, the Member, who did not release his grip, administered kneeling

restraint. After 10-15 seconds, he decided to move and to sit on the floor with the student between his legs. [XXX] fought back and the restraint lasted approximately 5 minutes. In his statement to the police, [XXX] described the same sequence of events. (Exhibit 25)

The Member testified that during this incident, the other students were at the computer or playing games. They therefore witnessed the restraint. Moreover, on [XXX]'s performance report card for September 9, 2003, [XXX]'s mother noted that [XXX] "was affected by the incident with [[XXX]] He did not like that at all, seeing two adults holding [*sic*] on the floor." (Exhibit 42) Following this incident, the Member informed [XXX]'s mother of the restraint by telephone. Ms. [XXX] testified that she told the Member that this approach would not work with her son (Exhibit 3, Tab 6).

The Discipline Committee applied the test it had developed to the restraint of September 9, 2003. It concluded that there was no evidence there had been an imminent danger to the student or any other person. Secondly, other intervention methods could have been used. It is obvious that the act of moving the student close to the teacher's desk simply made matters worse. Restraint therefore was not the last possible option.

After considering these facts and applying the test it developed, the Discipline Committee has determined that the restraint used on [XXX] on September 9, 2003 constituted professional misconduct in that the Member abused [XXX] physically, verbally, psychologically or emotionally, in violation of Ontario Regulation 437/97, subsection 1(7).

The second restraint occurred on September 30, 2003. The Member testified that after returning from art class, [XXX] was turbulent. He was angry for a reason unknown to the Member. The situation worsened during the noon period. [XXX] was walking all around, running, bumping chairs and threatening the other students; when she returned, Ms. Perrier-Patry and the Member decided to administer restraint. The Member grabbed [XXX] by the wrists, crossed his arms and seated him on the floor. Since the student had too much control, he turned him onto his stomach and continued the restraint. Ms.

Perrier-Patry acted as observer. She kneeled next to the student and held his legs. The restraint lasted approximately 10 minutes because [XXX] was very aggressive, shouting and trying to kick.

On [XXX]'s performance report card, the Member asked to meet with Ms. [XXX] the following morning. The Member, Ms. [XXX], [XXX], Ms. Ménard and Mr. Lecot attended. At the meeting, the Member admitted using restraint and described the methods used, both the "seated method" and the "floor method" (Exhibit 3, Tab 6). A discussion about the suitability of restraint ensued. Ms. [XXX] repeated her opinion that the use of physical force did not work with her son. She then suggested strategies for the Member to use in such situations. In testimony dated October 29, 2003, she identified options for an intervention, such as allowing him to leave the classroom to calm himself down in the hall, going to the Principal's office, and sitting in the carrel (Exhibit 3, Tab 6). Mr. Lecot testified that when he learned that restraint had been used, he voiced his disagreement and warned the Member "not to touch the students." The Member testified that Mr. Lecot did not make this comment but instead explained that administering restraint was unusual and that other methods were used first. In conclusion, at the meeting, the Member agreed to use other options with [XXX] [XXX] was not restrained again after that meeting.

The Discipline Committee applied the test it had developed to the restraint of September 30, 2003. The testimony of the Member and Ms. Perrier-Patry indicates that [XXX] was turbulent and that his verbal communication was deteriorating. However, neither witness testified that there had been an imminent danger to the student or anyone else. The Committee believes that other intervention methods could have been used but the Member did not offer [XXX] any alternatives. If the student's mother was able to suggest other options at the meeting the following day, we can expect the Member to be able to do the same. The Committee therefore has determined that restraint was not the last possible option.

After considering these facts and applying the test it developed, the Discipline Committee has determined that the restraint used on [XXX] on September 30, 2003 constituted

professional misconduct in that the Member abused [XXX] physically, verbally, psychologically or emotionally, in violation of Ontario Regulation 437/97, subsection 1(7).

[XXX]

The Member used restraint on [XXX] on September 25, 2003 and used physical force with him on various occasions. On the matter of physical force, Ms. Lamarche testified that when [XXX] did not want to get up, she saw the Member lift the student's chair several times and grab him by the arm. [XXX] had his desk near the Member's desk. He was making a lot of noise with his mouth. Since the student occasionally threw things from his desk, the Member emptied the desk of its contents. The Member testified that he had used the bear hug with smaller students such as [XXX] He described the intervention as follows: the Member would stand behind the student who was seated on a chair; he would place his hands on the child's forearm and wrap his own arms around the child. The Member testified that he did this during relaxation periods to help the student calm down.

It is also alleged that the Member twisted [XXX]'s arm while escorting him to the bus. The Member remembered that he had already escorted [XXX] to the bus but denied twisting the student's arm. [XXX] testified that the Member used physical force on him several times, either by grabbing his arms or by seating him in his chair, and in one instance when he placed his finger on his throat (Exhibit 27). The Member denied committing this act.

[XXX] was also removed from the class. On October 14, he spent the day in Ms. Ménard's office. The same occurred on October 15. [XXX] often went to the carrel to calm down and focus. This strategy was not always effective and Ms. Perrier-Patry testified that one day, he even broke the carrel. Ms. Perrier-Patry also testified that she had previously administered holding to [XXX] by seating him on the floor and placing him between her legs. She did not report this intervention to the Principal but did inform the parents.

[XXX], the Member and Ms. Lamarche testified that the Member used physical force with [XXX] to calm him down or make him obey instructions. These interventions were not intended to protect the student nor to prevent him from injuring himself or others. In situations involving discipline or agitation, other intervention methods are advocated by the teaching profession. The use of physical force as a strategy is not accepted or encouraged. On the subject of the bear hug, Mr. Ellerker testified that he *would not use it if he were a teacher*.

The Committee therefore has concluded that regarding the physical contact incidents described above, the Member engaged in professional misconduct in that he abused [XXX] physically, verbally, psychologically or emotionally, in violation of Ontario Regulation 437/97, subsection 1(7).

On September 25, after lunch, [XXX] was agitated and turbulent. He was throwing things. To calm him down, the Member held his wrists with his arms crossed. The intervention lasted approximately 12 minutes and was reported on the performance report card (Exhibit 44). The Member said that restraint was necessary because of the student's behaviour, which could pose a risk to himself and other persons in the classroom.

The Committee applied the test it had developed to this restraint to the test it had developed. Based on the Member's testimony, there was imminent danger to the student or another person. However, the Member did not testify that he used other techniques before resorting to physical restraint. He used the latter first. He therefore did not demonstrate that restraint was the last possible option.

The Committee therefore has concluded that the Member engaged in professional misconduct in that he abused [XXX] physically, verbally, psychologically or emotionally, in violation of Ontario Regulation 437/97, subsection 1(7).

Other grounds

The Member explained that the policies of the School and the School Board regarding physical restraint were not clearly stated. It is true that neither the school board nor the School had a specific policy on physical restraint. Despite all this, the Committee submits that the profession's standards and practices in this area were clear and well known in 2003. Mr. Ellecker explained them as an expert witness. Ms. Perrier-Patry and Ms. Lamarche presented the same concepts. Expert witnesses also described in detail the various approaches to administering restraint. However, the Committee has found that in this case, the matter at issue is not the type of restraint used but rather whether the Member was justified in using restraint or physical force. The Member attempted to draw distinctions between the various types of restraint. He also testified that he had received the necessary training to administer restraint. Even if this were the case, the Member had a professional responsibility for making a clear distinction between his training and the context in which he could administer restraint. The Committee has determined that the Member displayed a serious lack of judgment in this regard.

The frequency of the physical contact and restraint that occurred in the classroom over a few months demonstrates that these two intervention methods were not exceptions but rather common practice. By comparison, Mr. Ellerker testified that he used restraint only twice in his entire career. Ms. Perrier-Patry testified that she had administered restraint only once from 1998 to 2003. Mr. Lecot testified that he had administered restraint only a few times in his entire career. The Member's behaviour over the long term could have led to a decision of incompetence, as he demonstrated a serious lack of judgment. The Committee has decided, however, that the school board's intervention following the incident of October 16, i.e., removing the teacher from the classroom, put an end to this behaviour.

The Committee also noted that the Member did not use the tools and support available in a school. For example, although he was aware of the importance of this tool, the Member in his testimony rarely made a connection between the students and their Individual Education Plan (IEP) when he explained his decision-making process for administering restraint. Secondly, he did not make use of the various specialists present in the school

environment to support his teaching and to obtain advice and strategies. Moreover, the Member voiced the opinion that classroom management was his responsibility and that his experience had given him a good idea of what was the proper thing to do. Thirdly, in his testimony, the Member did not describe any systematic follow-up following the incidents of restraint or physical contact. Although the follow-up and documentation procedures were not clearly established in 2003, the Member testified that Ms. Ménard had advised him to clearly document his actions and the evidence has shown that after some incidents of restraint, he made personal notes. On some occasions, he also conducted follow-up with the student who had been restrained. He also occasionally telephoned the parents. In general, however, he did not systematically follow up on interventions that should be the exception in a classroom and normally receive special attention from the school administration.

The Committee concurs with certain witnesses that restraint and the use of physical force reduce the student's personal space and can lower self-esteem. Ms. Perrier-Patry voiced this opinion in her testimony. Mr. Ellerker said, "It is important that educators do not initiate the use of physical force – to do so only reinforces the student's belief that it's acceptable to use force to get what you want." (Exhibit A, memory aid, p. 7)

In several cases, the Member did not describe crises but rather situations in which the student in question was challenging authority. In both his testimony and the evidence, the Member used words such as "behaviour that was totally disrespectful"; "He tested me" (Exhibit 39); "He tried to stand up to me" (Exhibit 43); and "He continually lacked respect toward his teacher" (Exhibit 40) to justify his use of physical restraint. These opinions do not show a teacher facing imminent danger but rather a teacher focused on control and discipline in the classroom.

The *Education Act* stipulates that teachers have an obligation to instil certain basic values of Judeo-Christian morals not only through precepts but also by example. Frequently resorting to force to resolve behavioural issues runs counter to these principles. After assessing the Member's behaviour against the expectations of the profession, the

Committee has determined that the Member engaged in professional misconduct in that he failed to comply with the *Act* and the *Education Act*, Revised Statutes of Ontario, 1990, chapter E.2, specifically paragraph 264(1)(c) thereof and the Regulations made thereunder, in violation of Ontario Regulation 437/97, subsections 1(14) and (15).

After reviewing all of the testimony and evidence, as well as the other grounds set out above, the Committee has determined that the Member failed to maintain the standards of the profession, in violation of Ontario Regulation 437/97, subsection 1(5); committed acts that, having regard to all of the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, in violation of Ontario Regulation 437/97, subsection 1(18); and engaged in conduct unbecoming a Member, in violation of Ontario Regulation 437/97, subsection 1(19).

Finally, the College failed to present arguments regarding allegations d) and e) in the *Notice of Hearing*. The Committee therefore cannot determine the validity of these allegations.

The Committee having now rendered its decision, a hearing shall be convened to determine the appropriate sanction.

Date: February 23, 2009

Gabrielle Blais
Chair, Discipline Panel

Rollande Lavictoire
Member, Discipline Panel

Jacques Pavesi
Member, Discipline Panel

