

**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 Kevin Robert L. Kirton, a member of the Ontario College of Teachers.

PANEL:            John Tucker, Chair  
                      Dean Favero  
                      Rosemary Fontaine

BETWEEN:	)	
	)	Yasmin Nizami
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Jennifer Robinson,
	)	Law Clerk
- and -	)	
	)	Kevin Robert L. Kirton,
	)	was not present,
KEVIN ROBERT L. KIRTON	)	or represented by counsel
(CERTIFICATE #255261	)	
	)	
	)	Christopher Wirth,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
	)	
	)	Heard: November 12, 2008

**REASONS FOR DECISION, DECISION AND ORDERS**

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on November 12, 2008 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated November 21, 2007, was served on Kevin Robert L. Kirton, requesting his attendance before the Discipline Committee of the Ontario College of Teachers on December 6, 2007 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for November 12, 2008. Kevin Robert L. Kirton was not in attendance at the hearing.

### **THE ALLEGATIONS**

The allegations against Kevin Robert L. Kirton in the *Notice of Hearing, (Exhibit 1)* dated November 21, 2007, are as follows:

**IT IS ALLEGED** that Kevin Robert L. Kirton is guilty of professional misconduct as defined in section 30(2) of the *Ontario College of Teachers Act, 1996* (the “Act”), and /or is incompetent as defined in section 30(3) of the Act, in that:

- (a) he failed to maintain the standards of the profession, contrary to Ontario Regulation 437/97, subsection 1(5);
- (b) he abused a student or students physically, sexually, verbally, psychologically or emotionally, contrary to Ontario Regulation 437/97, subsection 1(7);
- (c) he failed to keep records as required by his professional duties, contrary to Ontario Regulation 437/97, subsection 1(10);
- (d) he 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).

At the hearing on November 12, 2008, College counsel informed the Committee that the College would be seeking a finding of incompetence as defined in section 30(3) of the *Act* and not professional misconduct. Therefore, College counsel sought to withdraw the allegations of professional misconduct contained in paragraphs (a), (b), (c) and (d) of the *Notice of Hearing*, being alleged breaches of Ontario Regulation 437/97, subsections 1(5), 1(7), 1(10) and 1(18) of the *Act*. The Committee agrees that these allegations shall be withdrawn.

Counsel for the College advised the Committee that an agreement had been reached and introduced an *Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty (ASF – Exhibit 2)* which provides as follows:

#### **AGREED STATEMENT OF FACTS**

1. Kevin Robert L. Kirton (the “Member”) is a member of the Ontario College of Teachers. Attached hereto and marked as **Exhibit “A”** is a copy of the Ontario College of Teachers Registered Member Information respecting the Member. The Member’s current status is ‘Suspended – Non-payment of fees’.
2. At all material times, the Member was employed by the Peel District School Board (“the Board”) and taught at the elementary level at Byngmount Beach Public School (“the School”) in Mississauga, Ontario.
3. In early 2004, prior to the formal assessment of his teaching performance, assistance was provided to the Member to address some areas of concern which had been identified. Attached hereto and marked as **Exhibit “B”** is a copy of the Member’s letter to the Board Superintendent of Education, thanking her for the opportunity to address the

areas of concern and expressing his appreciation for that assistance offered to him by the Board.

4. By letter dated September 28, 2004, a copy of which is attached and marked as **Exhibit “C”** hereto, the Member was advised that his performance would be evaluated during the 2004/2005 academic year.

5. The Member’s teaching performance was assessed following Pre- and Post-Observations meetings and a classroom observance on November 3, 2004. The Member received an *unsatisfactory* rating, as is set out in the Summative Report attached and marked as **Exhibit “D”** hereto.

6. Following this *unsatisfactory* Teacher Performance Appraisal, and pursuant to the Annual Learning Plan prepared for and canvassed with the Member, Teacher Improvement Plans were developed to assist the Member in addressing the areas of concern. Copies of the Annual Learning Plan and the Teacher Improvement Plans are attached hereto and marked as **Exhibit “E”**. As well, the Principal attempted to assist the Member by meeting with him regularly and providing tools and resource materials designed to enhance and improve his teaching skills. Attached hereto and marked as **Exhibit “F”** are three letters from the Principal to the Member dated February 4, 8 and 11, 2005, which speak to these meetings between the Member and his Principal in that regard.

7. The Member’s performance was then evaluated following two formal visitations and many informal visitations, a Pre- and Post-Observation meeting, and a classroom observation on February 21, 2005. By Summative Report dated March 1, 2005, which is

attached hereto and marked as **Exhibit “G”**, the Member again received an *unsatisfactory* rating. The Principal found that the Member had failed to provide evidence of improvement in the areas of concern identified in the previous assessment of his teaching skills.

8. The Principal continued her efforts to provide the Member with the necessary guidance, support and encouragement to improve his classroom management and teaching skills. The Member was encouraged to submit weekly lesson plans, but failed or refused to prepare and submit these plans.

9. By letter dated September 28, 2005, which is attached hereto and marked as **Exhibit “H”**, the Member was advised that his performance would be evaluated again during the 2005/2006 academic year.

10. On October 4, 2005, the Member signed a Pre-Observation Meeting form, which is attached hereto and marked as **Exhibit “I”**. The specific expectations of the Principal were set out in detail and were discussed with the Member who acknowledged its contents and his appreciation of the various concerns to be addressed by him and the steps necessary for improvement.

11. Classroom observations were conducted by the Principal on October 12 and 13, 2005. Again, the Member’s classroom management skills, his curriculum knowledge and delivery, his lesson planning and preparation, his teaching performance, his evaluation of student work and progress and his assessment practices failed to meet the standards expected of a teacher with his training and experience. Overall, the Member failed to provide an effective learning environment for his students.

12. Attached hereto and marked as **Exhibit “J”** is a draft Post-Observation Report dated October 17, 2005. In all 5 areas of competency, the Member’s classroom management skills were found wanting. These deficiencies included, but were not limited to the Member’s failure to:

- (a) effect long range and short-term planning that aligns curriculum expectations to daily classroom lessons and activities;
- (b) differentiate instructional and assessment strategies to meet the diverse needs of students;
- (c) keep complete and detailed assessment records;
- (d) use effective assessment practices; and
- (e) make effective use of classroom time and routines in order to reduce the significant amount of teacher and student off-task time.

13. At a meeting on October 17, 2005, attended by the Member and his union representative, the Member was advised that his performance rating was again *unsatisfactory*.

14. By letter dated October 19, 2005, which is attached hereto and marked as **Exhibit “K”**, the Member resigned his position as a teacher at the School, effective October 20, 2005.

#### **PLEA OF NO CONTEST**

15. By this document, the Member does not contest the truth of the facts and exhibits referred to in paragraphs 1 to 14 above (the “admitted facts”). The Member hereby acknowledges that the admitted facts demonstrate a lack of knowledge, skill or judgment of a nature or extent that demonstrates that the Member’s certificate should be made

subject to terms, conditions or limitations as defined in Section 30(3) of the *Ontario College of Teachers Act, 1996*, and pleads no contest to the allegation of incompetence against him.

16. By this document the Member states that:

- (a) he understands fully the nature of the allegations against him;
- (b) he understands that by pleading no contest to the allegations, he is waiving his right to require the College to prove the case against him and the right to have a hearing;
- (c) he voluntarily decided to plead no contest; and
- (d) he understands and acknowledges that he is executing this Agreement voluntarily, unequivocally, and without the advice of legal counsel.

17. The Member provides this plea of no contest pursuant to Rule 3.02 of the Rules of Procedure of the Discipline Committee under protection of the *Evidence Act, R.S.O. 1990, c. E. 23*, for the purpose of this proceeding under the *College of Teachers Act, 1996*, chapter 12, and for no other purpose. The Member's plea of no contest does not constitute an admission by the Member as to the facts or findings in any other civil, criminal, or administrative proceeding.

18. In light of the admitted facts and circumstances and the Member's plea of no contest to the allegation of incompetence against him, the Ontario College of Teachers and the Member submit that the Discipline Committee find that the Member displayed a lack of knowledge, skill or judgment of a nature or extent that demonstrates that the Member's certificate should be made subject to terms, conditions or limitations.

## JOINT SUBMISSION ON PENALTY

19. The Ontario College of Teachers and the Member jointly submit that the appropriate penalty to be imposed by the Discipline Committee in this matter would be that the Committee:

- (a) directs the Registrar of the Ontario College of Teachers to impose the following terms, conditions or limitations on the Member's Certificate of Qualification and Registration, the fact of such terms and conditions and limitations to be recorded on the Register of the College until such time as they are fulfilled:
  - (i) prior to accepting a teaching position for which a Certificate of Qualification and Registration is required, the Member shall immediately advise the Registrar, in writing, of same, and shall provide the name and address of his employer. The Member can only begin teaching if he has provided written notice to the Registrar of the employer's name and address and the intended position;
  - (ii) prior to commencing a teaching position as contemplated in paragraph (i) above, the Member shall enrol in and complete, at his own expense, a course of instruction in classroom management, pre-approved by the Registrar and shall provide to the instructor of such course, copies of the Teacher Performance Appraisals dated November 24, 2004, March 1, 2005 and October 17, 2005 being **Exhibits "D", "G" and "J"** hereto, and request of the instructor that the instruction be tailored to address those areas of concern identified in these Performance Appraisals;

- (iii) the Member shall deliver directly to the Registrar, proof of his successful completion of the course referred to in paragraph (ii) above, within thirty (30) days of its completion;
- (iv) within thirty (30) days of his return to his teaching duties the Member shall make a written request to his employer for a written undertaking to conduct a performance appraisal of the Member (as described in O. Reg. 99/02 to the *Education Act*, R.S.O. 1990, c. E. 2), within twelve (12) months of the date of the Member's return to his teaching duties, and shall provide to the Registrar a copy of his written request and the undertaking received in response. Should the Member change employers, he will immediately take all reasonable steps to obtain such an undertaking from his new employer;
- (v) the Member shall advise the Registrar immediately should the request to the employer, referred to in paragraph (iv) above, not be granted;
- (vi) if the request to the employer referred to in paragraph (iv) above is not granted, the Member shall, within thirty (30) days obtain from his Principal or other such representative of his employer as the Registrar deems appropriate ("his Supervisor"), and provide to the Registrar within five (5) days of its receipt, a written undertaking from his Supervisor to advise the Registrar immediately if there are any concerns about the Member's classroom management, classroom discipline, lesson planning, instructional strategies or his assessment of student performance, which in the opinion of the Supervisor are substantive concerns that require any form of redress other than a minor verbal response. Such undertaking from the Member's Supervisor shall remain in effect for a period of two

(2) years from the date on which it is provided to the Registrar. Should the Member change employers or Supervisors, he will immediately take all reasonable steps to obtain such an undertaking from his new Supervisor;

(vii) if the request to the employer referred to in paragraph (iv) above is granted:

A. the Member shall advise the Registrar, in writing, within thirty (30) days of the completion of the performance appraisal conducted by the Member's employer following his return to his teaching duties and in accordance with the requirements set out in paragraph (iv) above, that the performance appraisal has taken place and shall, as soon as the appraisal is available to the Member, provide the Registrar with a copy of same. If the performance appraisal conducted of the Member is found to be unsatisfactory, this matter may be referred back to the Discipline Committee, or any panel thereof, on notice to the Member; and

B. the Member shall notify the Registrar immediately if the performance appraisal referred to in paragraph (iv) above does not occur within the twelve (12) month period following the Member's return to his teaching duties, and the Member shall undertake all reasonable efforts to have his employer conduct a performance appraisal as soon as possible and the Member shall advise the Registrar of his employer's response; and

(viii) within six (6) months of accepting a teaching position as contemplated in paragraph (i), the Member will complete an

Additional Basic Qualification Course (ABQ) in the division or subject area that the Member is contracted to teach and shall, within thirty (30) days of his completion of the course, provide evidence to the Registrar, in writing, of his successful completion of same.

20. By this document, the Member acknowledges his understanding that any agreement between the College and the Member with respect to the penalty proposed in this document does not bind the Discipline Committee.

### **DECISION**

Having considered the evidence, onus and standard of proof, and based on the Member's plea of no contest, *the Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty* and the submissions made by Counsel for the College, the Committee finds that Kevin Robert L. Kirton is incompetent as defined in section 30(3) of the *Act*, in that he displayed a lack of knowledge, skill or judgment that demonstrates that his certificate should be made subject to terms, conditions and limitations.

### **REASONS FOR DECISION**

The Member does not contest the truth of the facts and exhibits referred to in paragraphs 1 to 14 (the "admitted facts") of the *Agreed Statement of Facts, Plea of No Contest, and Joint Submission on Penalty* (ASF-Exhibit 2). The Member acknowledges that the admitted facts demonstrate a lack of knowledge, skill or judgment of a nature or extent that demonstrates that his Certificate should be made subject to terms, conditions or

limitations, as defined in Section 30(3) of the *Ontario College of Teachers Act, 1996* and pleaded no contest to the allegation of incompetence against him.

## **ORDER**

The Committee makes the following order:

The Registrar of the Ontario College of Teachers is directed to impose the terms, conditions or limitations on the Member's Certificate of Qualification and Registration, the fact of such terms and conditions and limitations to be recorded on the Register of the College as outlined in paragraph 19 of the Joint Submission above, until such time as they are fulfilled.

## **REASONS FOR ORDER**

The Member has demonstrated and admitted incompetencies in his teaching practice. In spite of improvement plans developed between the Member and his principal, he failed to provide evidence of improvement in the areas of concern identified in his performance appraisals. Overall the Member failed to provide an effective learning environment for his students.

The public can be assured that the College has taken the necessary steps to address the Member's incompetence.

The public interest is served by requiring that, prior to commencing a teaching position, the Member shall undertake a course of instruction in classroom management tailored to address the areas of concern identified in his performance appraisals. He must provide evidence to the Registrar in writing of successful completion of this course. This will

assist the Member in acquiring the skills necessary for a successful return to teaching responsibilities.

The Member's performance will be monitored not only by his employer but by the College. The Member is required to submit a teacher performance appraisal or an undertaking by his Supervisor to the Registrar following his return to any teaching duties. This monitoring of the Member's progress has the objective that the Member transfers theory to practice.

Adherence to this order will rehabilitate the Member so that he can return to teaching and remediate his skills, allowing him to display the competencies expected by the profession and the public.

Date: November 12, 2008

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John Tucker  
Chair, Discipline Panel

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Dean Favero  
Member, Discipline Panel

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Rosemary Fontaine  
Member, Discipline Panel