

**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  
Michael James Mercer, a member of the Ontario College of  
Teachers.

PANEL:           Tianna Travaglini-Babic, Chair  
                    Rollande Lavictoire  
                    Jacques Tremblay

BETWEEN:	)	Brian Wasyliw,
	)	McCarthy Tétrault LLP
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans,
	)	Senior Law Clerk
- and -	)	
	)	
	)	
MICHAEL JAMES MERCER	)	Michael James Mercer was not
(CERTIFICATE #394048)	)	present, nor was he represented
	)	
	)	Johanna Braden,
	)	Stockwoods LLP
	)	Independent Legal Counsel
	)	
	)	Heard: September 13, 2007 and
	)	November 12, 2007

**REASONS FOR DECISION, DECISION AND ORDER**

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on September 13, 2007 and November 12, 2007 at the Ontario College of Teachers (“the College”) at Toronto.

A Notice of Hearing dated June 2, 2006, filed as Exhibit 1, was served on Michael James Mercer (the “Member”), providing him with notice that the Discipline Committee of the College would meet on September 13, 2006 to set a date for a hearing, and specifying the charges. The Member did not attend on September 13, 2006. The Discipline Committee set September 13, 2007 as the date for the hearing on the merits.

The hearing was scheduled for 9:00 a.m. on September 13, 2007. The Committee waited until 9:35 a.m. to begin the hearing but the Member did not appear. The Committee proceeded in the Member’s absence after satisfying itself that the Member was aware that a complaint had been filed against him and that it would proceed to a hearing, and that the College had made every reasonable attempt to contact the Member to advise him of the hearing date. This was established to the satisfaction of the Committee by Exhibits 1 and 2, the Affidavit of Service of Audley Trevor Evans and the Affidavit of Audley Trevor Evans.

### **THE ALLEGATIONS**

The Member was a teacher at Arnprior District High School. The allegations in this case essentially mirror the results of three Teacher Performance Appraisals conducted by the Member’s then-employer in 2004 and 2005. Although there are numerous allegations of professional misconduct, College Counsel advised that the heart of the College’s case was that the Member was incompetent.

The Notice of Hearing reads as follows.

IT IS ALLEGED that Michael James Mercer 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 failed to keep records as required by his professional duties, contrary to Ontario Regulation 437/97, subsection 1(10);
- (c) he failed to supervise adequately a person or persons who are under his professional supervision, contrary to Ontario Regulation 437/97, subsection 1(11);
- (d) he failed to comply with the Act and the *Education Act*, Revised Statutes of Ontario 1990, chapter E2 or the regulations made under those Acts, contrary to Ontario Regulation 437/97, subsections 1(14) and 1(15);
- (e) 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); and
- (f) he displayed a lack of knowledge, skill or judgement and/or a disregard for the welfare of his students of a nature or extent that demonstrates that the member is either unfit to carry out his professional responsibilities or that the member’s Certificate should be made subject to terms, conditions or limitations.

PARTICULARS OF THESE ALLEGATIONS ARE AS FOLLOWS:

1. Michael James Mercer (the “Member”) was at all material times a member of the Ontario College of Teachers.
2. At all material times, the Member was employed by the Renfrew County District School Board (the “Board”) as a teacher at Arnprior District High School.

3. The Member's performance as a teacher was unsatisfactory in his commitment to pupils and pupil learning in that he:

- (a) infrequently demonstrated commitment to the well-being and development of all students;
- (b) rarely demonstrated dedication in his efforts to teach and to support student learning and achievement;
- (c) provided a considerable amount of assignments and written work to students but gave very few specific or timely responses in respect of those assignments, despite the principal's advice to him that such responses were the most valuable way to impact student achievement;
- (d) seldom treated all students equitably and with respect;
- (e) was inconsistent in his dealings with students in that he often ignored students who were trying to ask questions, and listened to students who shouted;
- (f) infrequently provided an environment for learning that encouraged students to be problem-solvers, decisions-makers, life-long learners and contributing members of a changing society;
- (g) had very low standards with respect to quality of work and uniform completion of work, which tended to cause his students, especially those who were not self-motivated, to produce less work as their course with him progressed; and
- (h) gave lessons and assignments which were very teacher-directed thus requiring very little thinking, problem solving or decision-making from the students.

4. The Member's performance as a teacher was unsatisfactory in respect of his professional knowledge in that he:

- (a) infrequently demonstrated knowledge of a variety of effective teaching and assessment practices;
- (b) used "teacher lecture" too much. For instance, in his "Town Hall" meetings the Member made an editorial comment after the contribution of each student;
- (c) did not plan teaching styles effectively so that they work. For example, he asked students to do "mind maps" during certain activities and assignments but never taught them what a mind map was or instructed them as to how a good one could be produced;

- (d) assigned work that was generally trite and apparently optional, neither of which was a good thing for students in an open Grade 10 class;
- (e) rarely demonstrated knowledge of a variety of effective classroom management strategies;
- (f) having established a limited number of bathroom breaks as suggested in his improvement plan, did not then keep appropriate records with the result that it was impossible to establish proper references after the fact;
- (g) often neglected to take attendance and record late arrivals of students in his class;
- (h) was observed to start a class with a meaningless unspecific comment and end it by yelling at the students to be quiet;
- (i) rarely demonstrated knowledge of how students learn and factors that influence student learning and achievement; and
- (j) did not teach his students to be effective researchers. For instance, on a poster assignment, he downloaded the answers to the questions posed and passed the printout around the class for students to copy onto their posters. None of his assignment handouts stated anything about referencing or citations.

5. The Member's performance as a teacher was unsatisfactory in respect of his teaching practice in that he:

- (a) infrequently demonstrated use of professional knowledge and understanding of students, curriculum, legislation, teaching practices and classroom management strategies to promote the learning and achievement of his students;
- (b) often handed out checklists and rubrics that he obtained from a variety of sources but did not go over them with the students before they did their work, and did not use them in his evaluation of their work;
- (c) was seldom effective in communicating with pupils, parents and colleagues;
- (d) talked too much. In so doing, he used vocabulary that was beyond the level of his students, and which was often inappropriate for the situation. Further, he made poor choices of words while speaking to the students as well as in his written instructions to them;
- (e) infrequently conducted ongoing assessment of his students' progress or evaluated their achievements. Further, he did not regularly give results of reports to his students and parents;
- (f) gave out lengthy written instructions for many of his assignments, but did not ensure that they were received, read or understood by the students;

- (g) seldom adapted and refined teaching practice through continuous learning and reflection, using a variety of sources and resources;
  - (h) did not show improvement over three years in his ability to relate to and engage students, despite suggestions and being given books on how to be a better teacher; and
  - (i) rarely used his experience in technology to enhance the presentation of a lesson.
6. The Member's performance as a teacher was unsatisfactory in respect of his leadership and community in that he infrequently collaborated with other teachers and school colleagues to create and sustain a learning community in the classroom and in the school.
7. The Member's performance as a teacher was unsatisfactory in respect of his ongoing professional learning in that he:
- (a) seldom engaged in ongoing professional learning and applied it to improve teaching practice; and
  - (b) participated in a number of initiatives in place outside of Renfrew County but did not demonstrate any effective transfer of learning resulting from those initiatives in his teaching practice.
8. On or about 27 April 2005, the Member was dismissed by the Board.

**MEMBER'S PLEA**

As the Member was not present, the Committee proceeded on the basis that the Member denied the allegations set out in the Notice of Hearing. The Chair, on behalf of the Member, entered a plea of not guilty to the allegations.

## **THE EVIDENCE**

The College called two witnesses, Lauren Wilson (“Wilson”) and Roger Clarke (“Clarke”) both employees of the Renfrew County District School Board.

### **(a) Evidence of Wilson**

Wilson first met the Member in 2000 while she was seconded as a Secondary Curriculum Co-ordinator. Wilson was principal at Arnprior District High School (“Arnprior”) from November 2002 to June 2005, and as such was the Member’s principal during the relevant time. As principal, Wilson, conducted three performance appraisals of the Member. These Teacher Performance Appraisals (“TPAs”) were the heart of the College’s case.

The College prepared a document book entitled Brief of Material, which was entered as Exhibit 4. This Brief included all documentation related to the TPA process, written communications between the Member and Wilson, student surveys, attendance sheets, and exams. Wilson identified and relied upon much of this documentation in her oral testimony.

Some of the specific evidence relating to the allegations of professional misconduct and incompetence is outlined below in the Reasons for Decision. The thrust of Wilson’s evidence generally was that she rated the Member’s performance as Unsatisfactory on three separate, consecutive occasions.

As described by Wilson, the TPA process requires the principal to meet with the teacher for a Pre-Observation Meeting where the principal and teacher discuss the competencies that

are to be evaluated. The principal then observes and evaluates the teacher with respect to those various competencies, as outlined in the standard TPA Summative Report Form.

Wilson attended to this task with diligence and good faith. Her overall impression of the Member was that he genuinely cared about his students and wanted to be a good teacher, but he was simply unable to help his students learn. Her conclusions were recorded in the three Summative Report Forms, and were as follows.

**TPA #1: January to June, 2004**

*Commitment to Pupils and Pupil Learning*

Wilson rated the Member's performance as a teacher unsatisfactory in his commitment to pupils and pupil learning that he:

- (a) rarely demonstrated dedication in his efforts to teach and to support student learning and achievement;
- (b) infrequently treated all students equitably and with respect;
- (c) infrequently provided an environment for learning that encouraged students to be problem-solvers, decisions-makers, life-long learners and contributing members of a changing society; and
- (d) infrequently provided an environment for learning that encouraged students to be problem-solvers, decisions-makers, life-long learners and contributing members of a changing society.

*Professional Knowledge*

Wilson rated the Member's performance as a teacher unsatisfactory in respect of his professional knowledge in that he:

- (a) infrequently demonstrated knowledge of a variety of effective teaching and assessment practices;
- (b) rarely demonstrated knowledge of a variety of effective classroom management strategies; and
- (c) rarely demonstrated knowledge of how students learn and factors that influence student learning and achievement.

### Teaching Practice

Wilson rated the Member's performance as a teacher unsatisfactory in respect of his teaching practice in that he:

- (a) infrequently demonstrated use of professional knowledge and understanding of students, curriculum, legislation, teaching practices and classroom management strategies to promote the learning and achievement of his students;
- (b) was seldom effective in communicating with pupils, parents and colleagues;
- (c) infrequently conducted ongoing assessment of his students' progress or evaluated their achievements. Further, he did not regularly give results of reports to his students and parents; and
- (d) seldom adapted and refined teaching practice through continuous learning and reflection, using a variety of sources and resources.

### Leadership and Community

Wilson rated the Member's performance as a teacher unsatisfactory in respect of his leadership and community in that he infrequently collaborated with other teachers and school colleagues to create and sustain a learning community in the classroom and in the school.

### Ongoing Professional Learning

Wilson rated the Member's performance as a teacher unsatisfactory in respect of his ongoing professional learning in that he:

- (a) seldom engaged in ongoing professional learning and applied it to improve teaching practice; and
- (b) participated in a number of initiatives in place outside of Renfrew County but did not demonstrate any effective transfer of learning resulting from those initiatives in his teaching practice.

**TPA #2: September to December, 2004**

*Commitment to Pupils and Pupil Learning*

Wilson rated the Member's performance as a teacher unsatisfactory in his commitment to pupils and pupil learning that he:

- (a) infrequently demonstrated commitment to the well-being and development of all students;
- (b) rarely demonstrated dedication in his efforts to teach and to support student learning and achievement;
- (c) seldom treated all students equitably and with respect; and
- (d) infrequently provided an environment for learning that encouraged students to be problem-solvers, decisions-makers, life-long learners and contributing members of a changing society.

*Professional Knowledge*

Wilson rated the Member's performance as a teacher unsatisfactory in respect of his professional knowledge in that he:

- (a) infrequently demonstrated knowledge of a variety of effective teaching and assessment practices;
- (b) used "teacher lecture" too much. For instance, in his "Town Hall" meetings the Member made an editorial comment after the contribution of each student; and
- (c) rarely demonstrated knowledge of a variety of effective classroom management strategies.

### Teaching Practice

Wilson rated the Member's performance as a teacher unsatisfactory in respect of his teaching practice in that he:

- (a) infrequently demonstrated use of professional knowledge and understanding of students, curriculum, legislation, teaching practices and classroom management strategies to promote the learning and achievement of his students;
- (b) was seldom effective in communicating with pupils, parents and colleagues;
- (c) infrequently conducted ongoing assessment of his students' progress or evaluated their achievements. Further, he did not regularly give results of reports to his students and parents; and
- (d) seldom adapted and refined teaching practice through continuous learning and reflection, using a variety of sources and resources.

### Leadership and Community

Wilson rated the Member's performance as a teacher unsatisfactory in respect of his leadership and community in that he infrequently collaborated with other teachers and school colleagues to create and sustain a learning community in the classroom and in the school.

### Ongoing Professional Learning

Wilson rated the Member's performance as a teacher unsatisfactory in respect of his ongoing professional learning in that he:

- (a) seldom engaged in ongoing professional learning and applied it to improve teaching practice; and
- (b) participated in a number of initiatives in place outside of Renfrew County but did not demonstrate any effective transfer of learning resulting from those initiatives in his teaching practice.

### **TPA #3: January to April, 2005**

#### *Commitment to Pupils and Pupil Learning*

Wilson rated the Member's performance as a teacher unsatisfactory in his commitment to pupils and pupil learning that he:

- (a) infrequently demonstrated commitment to the well-being and development of all students;
- (b) rarely demonstrated dedication in his efforts to teach and to support student learning and achievement;
- (c) provided a considerable amount of assignments and written work to students but gave very few specific or timely responses in respect of those assignments, despite the principal's advice to him that such responses were the most valuable way to impact student achievement;
- (d) seldom treated all students equitably and with respect;
- (e) infrequently provided an environment for learning that encouraged students to be problem-solvers, decisions-makers, life-long learners and contributing members of a changing society.
- (f) had very low standards with respect to quality of work and uniform completion of work, which tended to cause his students, especially those who were not self-motivated, to produce less work as their course with him progressed; and
- (h) gave lessons and assignments which were very teacher-directed thus requiring very little thinking, problem solving or decision-making from the students.

#### *Professional Knowledge*

Wilson rated the Member's performance as a teacher unsatisfactory in respect of his professional knowledge in that he:

- (a) infrequently demonstrated knowledge of a variety of effective teaching and assessment practices;
- (b) did not plan teaching styles effectively so that they work. For example, he asked students to do "mind maps" during certain activities and assignments but never taught them what a mind map was or instructed them as to how a good one could be produced;

- (c) assigned work that was generally trite and apparently optional, neither of which was a good thing for students in an open Grade 10 class;
- (d) rarely demonstrated knowledge of a variety of effective classroom management strategies;
- (e) having established a limited number of bathroom breaks as suggested in his improvement plan, did not then keep appropriate records with the result that it was impossible to establish proper references after the fact;
- (f) often neglected to take attendance and record late arrivals of students in his class;
- (g) was observed to start a class with a meaningless unspecific comment and end it by yelling at the students to be quiet;
- (h) rarely demonstrated knowledge of how students learn and factors that influence student learning and achievement; and
- (i) did not teach his students to be effective researchers. For instance, on a poster assignment, he downloaded the answers to the questions posed and passed the printout around the class for students to copy onto their posters. None of his assignment handouts stated anything about referencing or citations.

Teaching Practice

Wilson rated the Member's performance as a teacher unsatisfactory in respect of his teaching practice in that he:

- (a) infrequently demonstrated use of professional knowledge and understanding of students, curriculum, legislation, teaching practices and classroom management strategies to promote the learning and achievement of his students;
- (b) often handed out checklists and rubrics that he obtained from a variety of sources but did not go over them with the students before they did their work, and did not use them in his evaluation of their work;
- (c) was seldom effective in communicating with pupils, parents and colleagues;
- (d) talked too much. In so doing, he used vocabulary that was beyond the level of his students, and which was often inappropriate for the situation. Further, he made poor choices of words while speaking to the students as well as in his written instructions to them;
- (e) infrequently conducted ongoing assessment of his students' progress or evaluated their achievements. Further, he did not regularly give results of reports to his students and parents;

- (f) gave out lengthy written instructions for many of his assignments, but did not ensure that they were received, read or understood by the students;
- (g) did not show improvement over three years in his ability to relate to and engage students, despite suggestions and being given books on how to be a better teacher; and
- (h) rarely used his experience in technology to enhance the presentation of a lesson.

#### Leadership and Community

Wilson rated the Member's performance as a teacher unsatisfactory in respect of his leadership and community in that he infrequently collaborated with other teachers and school colleagues to create and sustain a learning community in the classroom and in the school.

#### Ongoing Professional Learning

Wilson rated the Member's performance as a teacher unsatisfactory in respect of his ongoing professional learning in that he:

- (a) seldom engaged in ongoing professional learning and applied it to improve teaching practice; and
- (b) participated in a number of initiatives in place outside of Renfrew County but did not demonstrate any effective transfer of learning resulting from those initiatives in his teaching practice.

After each TPA Summative Report Form was completed, the principal and teacher would have a Post-Observation Meeting to review and discuss the Summative Report. After reviewing each TPA Summative Report Form, the Member was given an opportunity to respond. His written responses were included in the Brief submitted as evidence. The Committee recognized that these written responses constituted hearsay evidence and that the Member was not present to be cross-examined on his written responses. Having said

that, the Member's written responses indicated that he was open to communication with Wilson, and continually gave feed-back to Wilson. The Member's written responses provided explanations and clarifications which allowed the Committee to be made aware of his point of view.

Wilson supplemented the evidence contained in the TPA forms with additional documentary evidence, as well as oral evidence of her own observations of the Member and his students. After the Member received his third consecutive Unsatisfactory report, Wilson recommended that the Board terminate the Member's contract of employment. She felt that she had done all she could to assist the Member, but that he was not able to teach his students as they deserved to be taught. She went so far as to say that, by the end, she felt "ashamed" about the quality of teaching the Member's students were receiving.

Unfortunately, Wilson's opinion evidence was not buttressed by very many objective facts that the Committee could consider in order to make its own assessment of the Member's abilities. To the extent that Wilson did give factual evidence, as opposed to opinion evidence, some of it was hearsay which this Committee gave very little weight. For example, the Committee did not consider the written student surveys submitted by the College to be useful in assessing the Member's performance. These represent the opinions of only a few students compared to the number of students that the Member taught. More weight could have been given to the surveys had these students testified before the Committee.

(b) Evidence of Clarke

In 2002 Clarke was a principal (but not the Member's principal) and a member of a three-person review team. In October of 2002, he visited and observed the Member and wrote a report to place him on review. He identified a document giving notice of that decision to the Member (exhibit 5). He did not give any detailed evidence of the facts underlying that decision.

Clarke has been Superintendent responsible for Curriculum and Family of Schools for the Board for the last five years. In that capacity, and on the basis of a presentation made by Wilson, Clarke issued a letter dated April 25, 2005 recommending that the Member's contract of employment with the Board be terminated.

The Committee considered Clarke's testimony to be of little assistance in determining whether the Member was incompetent or guilty of professional misconduct. His involvement with the Member was as a member of an "On Review Team" in 2002, prior to the TPA process even having begun. As a Board Superintendent, he subsequently testified to the termination of the Member's contract of employment, which was not particularly relevant to the issues before this Committee. The fact that the Board apparently terminated the Member's contract of employment is not cogent and convincing evidence that the Member is incompetent under the *Act* or guilty of professional misconduct.

## **DECISION**

### **(i) Onus and Standard of Proof**

The College bears the onus of proving the allegations in accordance with the standard of proof set out in *Re Bernstein and College of Physicians and Surgeons of Ontario* (1977), 15 O.R. (2d) 477. The standard of proof applied by the Committee, in accordance with the *Bernstein* decision, was a balance of probabilities with the qualification that the proof must be “clear and convincing” and based upon “cogent evidence” accepted by the Committee. The Committee also recognized that the more serious the allegations to be proved, the more cogent must be the evidence. The Committee considered the allegations in this case to be serious and assessed the evidence on that basis.

### **(ii) Decision**

Having considered the evidence, onus and standard of proof, and the submissions made by Counsel for the College, and the documentation submitted, the Committee finds Michael James Mercer not guilty of professional misconduct, nor incompetent.

## **REASONS FOR DECISION**

As a general point, the Committee had strong concerns that the evidence provided was generally the observations and opinion evidence of only one person, Wilson. All three TPAs were conducted by her. The Committee recognized the value of Wilson’s observations and opinions, and does not doubt her sincerity or credibility. However, when her evidence is combined with the evidence of the Member’s responses, the Committee finds that it is insufficient to discharge the burden of proof on the College in this case.

(a) Failure to Keep Records

With respect to the allegation that the Member failed to keep records as required by Ontario Regulation 437/97, subsection 1(10), there were two elements to the College's case: attendance and exclusion records and student assessment records.

College Counsel presented some documentation with respect to the Member's attendance records, which was supported by the oral evidence of Wilson. The Committee reviewed the attendance records that were submitted into evidence and did note some inconsistencies regarding the Member's attendance recording procedures. However, the Committee also found that the Member received some confusing direction with regard to attendance keeping. In a memo from Wilson to the Member dated December 10, 2004, some directions are inconsistent. For example, Wilson directs the Member to mark certain students in his TAP class always present, even if they don't show up or if they show up late. These instructions would seem to contradict the *Education Act*. It is the duty of a teacher to ensure that students marked present are in fact present in the classroom. By indicating the student present on the attendance report, the teacher takes responsibility for that student's whereabouts.

The Committee finds the fact that the Member did not mark students present when they were absent, did not constitute a failure in his duty as a teacher and was not a failure to keep records as required by subsection 1(10) of Ontario Regulation 437/97.

In response to the second summative report, the Member addresses Wilson's concern regarding his attendance reporting by indicating that he will seek to refine his daily attendance and late procedures in accordance with administrative policies at the school.

As to the Member's student assessment record keeping, there are two different points of view. In her second Summative Report Form, Wilson indicates that the Member infrequently conducts ongoing assessment of his or her students' progress, evaluates their achievement and reports results to his students and parents regularly. However, the Member's written response indicates:

My mark book (for each course) contains appropriate codes, pertaining to whether or not a given project activity or test item is diagnostic, summative or formative. In both my civics and political science courses, I use an [individualized] file folder system that keeps track of student progress-providing ongoing assessment and refinement of student-teacher communications and critical reflections on student accomplishments. (Course handouts, clearly identify assessment strategies and specific objectives, etc.)

The mark book was not presented as evidence by the College. The Committee finds that the Member's response is some evidence that he had developed a record keeping system and shows that he was concerned about providing student feedback regarding their progress. The Member's method of record keeping may not be in line with the principal's expectations, however we cannot overlook that the Member was indeed "keeping records".

(b) Failure to Supervise

With respect to the allegation of failing to supervise adequately pursuant to Ontario Regulation 437/97, subsection 1(11), Wilson testified about several incidents, such as

students leaving a class held in the library without the Member's permission before the end of class. This consisted of some unsubstantiated hearsay evidence as to what certain unidentified students told her when she encountered them in the hall. Wilson also mentioned that the Member failed to show up for some on-calls. The Committee finds this evidence consisted of general observations about isolated incidents of a minor nature. The Committee needs to have received more precise and detailed evidence of dated incidents when on-calls were missed and when students were found in the halls during class time. It would have been useful to have had specific follow-up strategies employed by Wilson with the Member. The Committee finds that the evidence provided on this point was not clear and convincing, and consequently was not sufficient to find that the Member failed to supervise adequately.

(c) Failure to Meet the Standards of the Profession, Failure to Comply With the Education Act, Acting Unprofessionally and Incompetence

The remaining allegations are that the Member failed to meet the standards of the profession, contrary to subsection 1(5) of Ontario Regulation 437/97; the Member failed to comply with the Act and the *Education Act* contrary to subsections 1(14) and 1(15) of Ontario Regulation 437/97; the Member committed acts that in all the circumstances would reasonably be regarded by members of the profession as unprofessional, contrary to subsection 1(18) of Ontario Regulation 437/97; and that the Member was incompetent. These allegations overlap in many respects, and the same evidence was called in support of each of them. College Counsel submitted that this case, at its heart, was an allegation of incompetence.

Although there was no expert evidence led as to the standards of the profession, the Committee is prepared to accept Wilson's evidence and the College's submission that the competencies described in the TPA process represent the standards by which this Committee can measure and assess the Member's conduct. However, after considering all the evidence before us, the Committee finds that evidence insufficient to meet the onus on the College.

*Commitment to Pupils and Pupil Learning.*

The evidence before us documented Wilson's significant and increasing concern regarding the well-being of the Member's students, the sufficiency of the Member's efforts to teach and support student learning and achievement, the failure of the Member to treat all students equitably and with respect (he apparently had favourites), the adequacy of the learning environment, and the low standards with respect to quality of work.

The Member's written responses to Wilson's evaluations indicate that he felt he was dedicated and had a strong work ethic, which he saw reflected in his students' attention to knowledge-building and personal creative self-growth (see Exhibit 4, Tab 3J, page 5). The Member believed he was instilling positive virtues by example and encouraged students to be creative and to use a variety of problem-solving approaches, decision making strategies (see Exhibit 4, Tab 4I, page 8). The Member also indicated that there were many occasions when he provided extra help to students and parents. A printed copy of an e-mail communication was provided as evidence of this (see Exhibit 4, Tab 5G, page 5). Finally,

the Member indicated that he was contributing five hours per week to the school's computer club and had been doing so for four years.

In Exhibit 4 at Tab 5G, the page numbering is confusing and page 2 is missing from the Member's written response to the third TPA regarding the Member's commitment to pupils and pupil learning. This was of concern to the Committee, since without the benefit of the Member's full response, it was difficult for the Committee to have the Member's point of view.

In any event, the Committee does not find that there was sufficient clear, convincing and cogent evidence that the Member failed to demonstrate commitment to pupils and pupil learning.

#### *Professional Knowledge*

The evidence about the Member's professional knowledge included Exhibit 5, an undated memo apparently from 2002, addressed to the Member from the Superintendent of Education detailing the observations and recommendations of the 2002 "On Review" Team of which Clarke was a member. The memo outlines three areas where the Review Team noted evidence of acceptable professional standards:

- knowledge and understanding of the curriculum,
- good displays of student work and
- positive encouragement of students.

As to the evidence of Wilson, she indicated that the Member infrequently demonstrated knowledge of a variety of effective teaching and assessment practices, did not incorporate a variety of teaching styles, had ineffective classroom management strategies and neglected to teach his students to be effective researchers. These are rather subjective criteria. The Committee did not receive much evidence on which it could assess the Member's performance on these competencies.

As indicated by his written responses to the TPAs, the Member felt that his teaching approach supported constructivist thinking and encouraged knowledge building and creative transformational learning opportunities. The Member stated that he enjoyed keeping abreast of current new teaching methods, valuing both Socratic and cooperative holistic based learning practices. Both practices were supported by personal electronic technologies and exercises which helped to further student understanding. He indicated that he provided opportunities for student reflection. The Member's response indicated that he would continue to improve in his new course, CPW4UI, by adding more tests and assigning further project-driven assignments.

The Member's response mentions that his professional knowledge is combined with a variety of teaching techniques, seeking to instill a positive learning environment that rewards students with a deeper knowledge of the world as a whole. The Member reiterates that he remains committed to student understanding of both contemporary and historical-based information.

Again, the Committee was hampered to an extent in that there is a page missing from the Member's comments on the third TPA, which may have addressed the professional knowledge competencies.

There was insufficient evidence to prove that the Member failed to demonstrate adequate professional knowledge.

### *Teaching Practice*

With respect to teaching practice, the evidence of Wilson was that the Member infrequently demonstrated use of professional knowledge and understanding of students, curriculum, legislation, teaching practices and classroom management strategies, was seldom effective in communicating with pupils, parents and colleagues, infrequently conducted ongoing assessment, and rarely used his experience in technology to enhance his lessons.

An example to support this were some typed notes identified by Wilson as documenting a conversation she had with a concerned parent regarding the Member (Exhibit 4, Tab 4F). This was in reference to one parent, one student, and was insufficient to support that a finding that the member failed in his teaching practice. It was also hearsay, and as such could be given very little weight. The Committee would have given more weight to Wilson's assertion if it had been substantiated with evidence from parents and/or students. Documentation indicating that Wilson was assisting the Member in communicating with parents and students would have been helpful.

Another example was given with respect to student evaluation. Wilson gave evidence that the Member had prepared an exam that was unacceptable and that the Member was not incorporating acceptable evaluation tools to evaluate students. One exam was given to the Committee to consider. The Committee reviewed the exam prepared by the Member and acknowledged that he had used the three categories for evaluation, knowledge and understanding, Application, Thinking & Inquiry and Communications. The Member also used an essay marking rubric. The Committee acknowledges the Member's attempt to meet the expectations. The Committee recognizes that there is some room for improvement, but the exam is definitely satisfactory. The Committee would have liked to have had the opportunity to review more than one exam to have a better view of the Member's ability to generate exams.

As to the Member's response, his written comments state that he feels comfortable with his level of communication with students, enjoying discourse with them on a number of educationally relevant subjects and he considers his oral communications skills to be fine and indicates that he has often been commended for inspiring his students with new ideas. Furthermore, the Member responds that he enjoys communicating with students, parents and staff. He states that he has had many rich and meaningful discussions, on a wide variety of knowledge-based teaching strategies/purposes etc., with both academic peers and students/parents over the years. No evidence from students, peers or parents was called to contradict this.

The Member's response also mentioned that he often engaged his students in creative projects and curricular materials which challenged their "thinking hats" and inspired both a general understanding of the world around them and an imaginative perspective on the future. He has often found PowerPoint to be an excellent means for students to present their ideas. He has used the Web with many of his students, to extend the range of the programme. The Member mentions that he has presented his ideas using a variety of ICT based mediums both locally and internationally. He shares his interests with educational peers, both online and offline across learning networks. He values global educational communities that support community building actions.

As to evaluation tools, the Member's response indicates that his mark books contain appropriate codes, pertaining to whether or not a given project activity or test item is diagnostic, summative or formative. He uses an individualized file folder system to track student progress, he provides ongoing assessment, communication and critical reflections on student accomplishments. He indicates his course handouts clearly identify assessment strategies and specific objectives. The Member acknowledges that there is room for improvement and indicates that he will continue to improve both short-term and long-term course lesson plans, consistent with ministry curricular guidelines.

The Member indicates that his courses reflect the ministry curriculum guidelines 2002 which he quotes:

"Our world is increasingly interconnected and interdependent. Communications networks exchange information about the globe, creating new forms of collaboration and transforming the nature of work and

learning. New areas of study develop to advance human knowledge and respond to the challenges of our changing world with insight and innovation”.

(see Exhibit 4, Tab 5G. page3).

When the “On Review Team” observed the Member in 2002, it noted that the Member’s assessment and evaluation procedures included evidence of the use of levels as per Ministry guidelines and the use of a variety of assessment instruments. According to the “On Review Team”, there were inconsistencies related to evaluation and assessment. (see Exhibit 5).

Having considered the evidence as a whole, the panel finds insufficient evidence to conclude that the Member failed to demonstrate adequate competency with respect to Teaching Practice.

#### *Leadership and Community*

With respect to leadership and community, Wilson testified that the Member infrequently collaborated with other teachers and school colleagues to create and sustain a learning community in the classroom and in the school. Wilson gave some evidence about the attitude and feelings of other teachers towards the Member, but none of the Member’s peers and colleagues was called to testify.

The Member’s written response to Wilson’s evaluation indicates that he has worked collaboratively in the school community with colleagues. He indicates that he has worked with a colleague on the computer club (contributing five hours of his time per week for four

years), and that this involvement has allowed his students to participate in a number of high profile computer-based learning activities, locally, at universities and nationally.

The Member's response states that he has worked on interdisciplinary-based activities and with other colleagues related to areas of the curriculum and/or on technological-based practical needs, and that he has worked over the years with many members of the community at large, on a variety of education-related activities. He writes that he has invited many guests into his classroom and they have reflected positively on their experiences. These visitors link the students to the community and generate new insights about themselves and their perceptions of the world as a whole.

Finally, the Member claimed to have designed his course summative assignment for his Canadian World Politics Class in a way to challenge his students to consider possible solutions to complex, socio cultural factors affecting Canadian and Honduran youth in the future, which is an example of global educational enrichment, which supports [online] inter-communication efforts across discrete learning networks.

Having considered the evidence as a whole, the panel finds insufficient evidence to conclude that the Member failed to demonstrate adequate competency with respect to Leadership and Community.

### *Ongoing Professional Learning*

The final general competency assessed through the TPAs was Ongoing Professional Learning. On this point, Wilson testified that the Member seldom engaged in ongoing professional learning, nor did he apply it to improve his teaching practice or effectively transfer outside learning in his teaching practice. Again, no additional oral evidence was called to support Wilson's allegations.

The Member's response indicated that he would be happy to co-operate with the principal, to plan meetings and to explore practical tips and/or directions that the principal deems appropriate for his professional growth. The Member also wrote in his response that he does engage in ongoing professional growth, particularly through an invitation to the Cuban Embassy in Ottawa, a UNESCO project, and graduate research studies at the University of Toronto.

According to the Member's written response, an article was written about the Member in the OSSTF/FEESO monthly magazine regarding his support for the design and development of global educational needs for Ontario. He also received an invitation to explore a project idea concerning Globalization and International Understanding with members of OSSTF and CIDA (Canadian International Development Agency).

Having considered the evidence as a whole, the panel finds insufficient evidence to conclude that the Member failed to demonstrate adequate competency with respect to Ongoing Professional Learning.

In sum, the College proved that the Member's performance was inconsistent but did not prove incompetence. While the Committee recognizes that the Member did not meet all of the Board's expectations regarding performance, this does not prove to the Committee that the Member was incompetent.

Wilson's evidence was given in a credible and forthright manner. We do not doubt the sincerity of her opinion that the Member was not fit to remain in the classroom at her school. However, this Committee needs to make its own judgment. On the facts of this case, in order to make a determination that the Member failed to meet the standards of the profession, acted in a manner that was unprofessional, and/or was incompetent, this Committee simply required more evidence than the largely subjective views of one principal.

Accordingly, having considered all the evidence in light of the onus and standard of proof, and in the absence of clear, convincing and cogent evidence about the Member's conduct, the Committee finds Michael James Mercer not guilty of professional misconduct, and not incompetent.

Date: April 29, 2008

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Tianna Travaglini-Babic  
Chair, Discipline Panel

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Rollande Lavictoire  
Member, Discipline Panel

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Jacques Tremblay  
Member, Discipline Panel