

**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 Lindsay Kendal Millar (otherwise known as Lindsay Kendle Millar), a member of the Ontario College of Teachers.

PANEL: Rosemary Fontaine, Chair
 Jacques Tremblay
 John Tucker

BETWEEN:)	
	)	Caroline Zayid,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Jennifer Robinson,
	)	Law Clerk
- and -)	
)	
LINDSAY KENDAL MILLAR	)	David Bloom,
CERTIFICATE #246441)	)	Cavalluzzo Hayes Shilton
	)	McIntyre & Cornish LLP,
	)	for Lindsay Kendal Millar
)	
	)	Christopher Wirth,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
)	
	)	Heard: August 13, 2007

REASONS FOR DECISION, DECISION AND ORDERS

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

A *Notice of Hearing*, dated June 22, 2004, was served on Lindsay Kendal Millar, requesting his attendance before the Discipline Committee of the Ontario College of Teachers on July 12, 2004 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for August 13, 2007.

The hearing took place on August 13, 2007 at which time the Committee rendered its decision orally and reserved its reasons for decision. These are those reasons.

Lindsay Kendal Millar was in attendance at the hearing.

THE ALLEGATIONS

The *Notice of Hearing* sets out the following allegations:

IT IS ALLEGED that Lindsay Kendal Millar (otherwise known as Lindsay Kendle Millar) is guilty of professional misconduct as defined in sections 30(2) and 40 (1.1) of the Ontario College of Teachers Act (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, and/or emotionally contrary to Ontario Regulation 437/97, subsection 1(7);
- (c) he failed to comply with the *Act* and the *Education Act*, Revised Statutes of Ontario, 1990, chapter E.2, and specifically section 264(1)(c) thereof or

the Regulations made under those Acts, contrary to Ontario Regulation 437/97, subsections 1(14) and (15);

- (d) he contravened laws and that contravention is relevant to his suitability to hold a certificate of qualification and registration, contrary to Ontario Regulation 437/97, subsection 1(16);
- (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);
- (f) he engaged in conduct unbecoming a Member, contrary to Ontario Regulation 437/97, subsection 1(19);
- (g) he engaged in sexual abuse of a student or students of a nature defined in sections 1 and 40 (1.1) of the *Act*; and
- (h) he displayed a lack of knowledge, skill or judgment and/or a disregard for the welfare of 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.

At the hearing on August 13, 2007 College counsel sought to withdraw the following particulars contained in paragraphs (b), (c), (d), (g) and (h) of the *Notice of Hearing*, being alleged breaches of Ontario Regulation 437/97, subsections 1(7), 1(14), 1(16) and breaches of sections 1 and 40 (1.1) of the Act and section 30(3) of the Act. The Committee agrees that these allegations shall be withdrawn.

AGREED STATEMENT OF FACTS

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

The *Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty* provides as follows:

1. The Member is a member of the Ontario College of Teachers and as such, is subject to the jurisdiction 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 in respect of the Member.
2. At all times material hereto, and specifically during the 1988/1989 academic year, the Member was employed by a private school (“the School”) in [REDACTED], Ontario, as a full time special education teacher of a Grade [REDACTED] class.
3. In or about the last week of June, 1989, the Member led a camping trip with students who were in his homeroom class at the School.
4. [REDACTED], whose date of birth is [REDACTED] was one of the Member’s homeroom students. [REDACTED] was one of the students who went on the camping trip with the Member.
5. [REDACTED], whose date of birth is [REDACTED], was a [REDACTED] year old male Grade [REDACTED] student at the School. [REDACTED] is [REDACTED] brother. [REDACTED] who was an experienced camper, accompanied the Member and the other students on the camping trip.

6. Upon arrival at the camp site, two tents were pitched by the Member and the students. The larger tent was occupied by all of the Member's homeroom students, including [REDACTED]. The smaller tent was occupied by the Member and [REDACTED]

7. During the night, the Member provided alcohol to [REDACTED] and the Member and [REDACTED] consumed alcohol together.

PLEA OF NO CONTEST

8. By this document, the Member admits for the purposes of this proceeding only, the truth of the facts referred to in paragraphs 1 to 7 above (the "Admitted Facts"). The Member hereby acknowledges that the conduct described in paragraphs 6 and 7 of the Admitted Facts, constitutes professional misconduct, and pleads no contest to the allegations against him, being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(15), 1(18) and 1(19).

9. The Member states that:

- (a) he understands fully the nature of the allegations that have been made against him;
- (b) he understands that by signing this document he is consenting to the evidence as set out in the Admitted Facts being presented to the Discipline Committee;
- (c) he understands that by pleading no contest to the allegations referred to in paragraphs 6 and 7 above, he is waiving the right to require the College to prove the case against him and the right to have a hearing;

- (d) he states that this plea of no contest was made voluntarily, unequivocally and with the benefit of independent legal counsel.

10. 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.

JOINT SUBMISSION ON PENALTY

11. In light of the Admitted Facts and circumstances, 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) requires the Member to appear before the Committee immediately following the completion of the hearing of this matter, to be reprimanded, with the fact of the reprimand be recorded on the Register of the Ontario College of Teachers; and
- (b) directs the Registrar to impose the following terms, conditions or limitations on the Member's Certificate of Qualification and Registration, the fact of such terms, conditions and limitations to be recorded on the register until such time as they are fulfilled:

- (i) the Member shall attend, at his own expense, a course of instruction, approved by the Registrar, on appropriate teacher/student boundaries, and shall provide to the Registrar written proof, satisfactory to the Registrar, of the successful completion of such course of study; and
- (ii) the Member shall not teach or hold any position for which a certificate of qualification and registration is a requirement until the Member has provided the Registrar with the proof of successful completion required by paragraph 11(b)(i) above;
- (c) directs that there be publication of the findings and Order of the Committee in summary form in the official publication of the College, *Professionally Speaking/Pour parler profession*. The parties have not agreed upon whether the Member's full name will be published in the official publication of the College and submissions will be made to the Committee on that issue.

DECISION

Having examined the Exhibits filed, and based on the plea of no contest, the *Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty*, and the submissions made by counsel, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that Lindsay Kendal Millar committed acts of professional misconduct, being more particularly breaches of Ontario

Regulation 437/97 subsections 1(5), 1(15), 1(18) and 1(19), as set out in the *Notice of Hearing*.

REASONS FOR DECISION

The Member pleaded no contest and acknowledged that the facts as agreed to and as described in paragraphs 6 and 7 of the *Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty* (ASF - Exhibit 2) constitute professional misconduct.

The Committee accepted the Member's plea of no contest and the evidence contained in the *Agreed Statement of Facts, Plea of No Contest, and Joint Submission on Penalty*.

The Committee determined that the Member's conduct did not comply with the standards of the profession or the Education Act. The Member acted in an unprofessional manner by sharing a tent with a student, apart from the rest of the students. Furthermore, by providing and consuming alcohol with the student, the Member engaged in disgraceful conduct, unbecoming a Member of the profession.

PENALTY

After reviewing the *Agreed Statement of Facts*, College Counsel submitted that publication should include the name of the Member to act as a general and specific deterrent. Counsel submitted that publication of the Member's name protects the public by sending a clear message to the profession and the public that this type of conduct is unacceptable. Counsel further indicated that while the misconduct might not be the most

severe, the particulars of the sleeping arrangements and the provision of alcohol to a minor were still very serious.

Counsel for the Member requested that the name of the Member not be published. He asked the Committee not to presume that publication was the norm, but to consider each case on its own merits. He also indicated that the penalty should be proportionate to the misconduct.

Member's Counsel submitted that the allegations were not the most serious. He further submitted that publication of the name was not necessary to act as a specific deterrent because the Member had already taken a boundaries course. The Member's conduct was an isolated incident which took place a long time ago and not indicative of ongoing behaviour. It was therefore not necessary to protect the public by publishing the Member's name. Counsel indicated that publication of the name would expose the Member to ridicule, embarrassment and humiliation.

Both Counsel provided the Committee with case law to support their positions with respect to publication of the Member's name.

PENALTY DECISION

The Committee makes the following order as to penalty:

- (a) The Member is required to appear before the Committee immediately following the completion of the hearing of this matter, to be reprimanded,

and the fact of the reprimand is to be recorded on the Register of the Ontario College of Teachers;

- (b) The Registrar is directed 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 until such time as they are fulfilled:
 - (i) the Member shall attend, at his own expense, a course of instruction, approved by the Registrar, on appropriate teacher/student boundaries, and shall provide to the Registrar written proof, satisfactory to the Registrar, of the successful completion of such course of study; and
 - (ii) the Member shall not teach or hold any position for which a certificate of qualification and registration is a requirement until the Member has provided the Registrar with proof of successful completion required by (b) (i) above.
- (c) The Committee directs that there be publication of the findings and Order of the Committee in summary form, with the name of the Member, in the official publication of the College, *Professionally Speaking/Pour parler profession*.

REASONS FOR PENALTY DECISION

The reprimand of the Member by his peers in respect of his inappropriate conduct serves to reinforce the necessity to maintain appropriate boundaries. It will further remind the member to uphold the standards of the profession and not to engage in conduct unbecoming a member. The fact that the reprimand will be recorded on the Register also serves as a specific deterrent.

Members of the profession should be aware of expectations regarding professional behaviour and not engage in disgraceful and unprofessional conduct. The course of instruction in appropriate teacher/student boundaries will guide the Member to comprehend the limits of student/teacher interaction.

With respect to the issue of publication of the Member's name, the Committee considered the submission by Member's counsel that the misconduct was a one-time incident and had taken place many years ago. Counsel indicated the misconduct was not the most serious boundary violation but the Committee disagreed.

Parents entrust teachers with the care of their children whether in a classroom or more particularly, while participating in an extra curricular activity. It is important that teachers conduct themselves in a professional manner at all times. Supplying alcohol to a [] year old is highly inappropriate and is an abuse of the public trust. Teachers would not supply alcohol to students in a school setting, therefore it should not be supplied under any circumstance.

In addition to supplying alcohol to a minor student, the Member consumed alcohol together with the student during the night. This is a further violation of teacher/student boundaries and abuse of public and parental trust.

Members of the profession are expected to maintain appropriate boundaries and not place themselves in situations which would jeopardize these boundaries. The Committee determined that poor judgment was used in the sleeping arrangements on the campsite. The Member should not have chosen to occupy a tent with one student. This decision was unwise and ill-considered.

Despite the fact that this incident occurred many years ago, the Committee determined that the conduct was a serious breach of the teacher/student relationship and the public trust. Publication of the Member's name is therefore warranted. The Committee determined that full publication promotes the value of openness and transparency of the discipline process and in this case, takes priority over any embarrassment which might be experienced by the Member.

The Committee concluded that publication of the findings and order of the Committee, in summary, with the name of the Member, in *Professionally Speaking/Pour parler profession:*

- serves both as a general and specific deterrent;
- enables the College to be accountable to the public; and

- sends a clear message to the profession that this type of behaviour is unacceptable and will not be tolerated.

The Committee is satisfied that the penalty is appropriate in the circumstances and serves and protects the public interest.

Date: August 14, 2007

Rosemary Fontaine
Chair, Discipline Panel

Jacques Tremblay
Member, Discipline Panel

John Tucker
Member, Discipline Panel