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Education 434: CIPE  
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## **Response 2: Education Law**

This response serves as an analysis of 2021 Ontario Supreme Court Case 6492: Nicholas Mills v. Her Majesty the Queen. Nicholas Mills was an Outdoor Education teacher who was charged and tried for Criminal Negligence for the drowning of 17 year old student Jeremiah Perry, who passed away during a 6 day excursion to Algonquin Provincial Park under the supervision of the defendant. Mills was found Not Guilty of Criminal Negligence.

### **Reasoning**

As we know, a charge of negligence applies if preventable harm takes place as a direct result of a party's failure to act. Mills admitted to violating safety procedures imposed by district policy. However, this is a Criminal case, with a charge of Criminal Negligence. The standard of guilt (liability in civil cases) differs between Civil and Criminal legal proceedings. To be found liable in a civil procedure, the case against Mills must be proved based on a *balance of probabilities*, in other words, it is simply based on who we believe more, plaintiff or defendant. In a manner of Criminal Law, Mills must be proved guilty beyond a reasonable doubt; we must be almost completely certain Mills acted negligently to the point that no reasonable person could doubt that fact to be true. In order to do so, the Crown must prove two aspects of Mills' actions: Actus Reus, roughly translating to guilty action, and Mens Rea, roughly translated to guilty mind. Based on the provided evidence, it is clear that Mills committed the guilty action, but it can not be proven beyond a reasonable doubt that he did so with the intention or belief that his conduct would result in serious injury or death. This legal standard is employed based on the burden of punishment: who would have to bear the burden of a false judgement? If an innocent

man is falsely convicted, he alone must bear the burden of criminal punishment. But if a guilty man is found innocent, all of us must bear the burden of this man continuing to participate in society, potentially able to cause further harm - the burden is split equally amongst all of us. This is also why a person who is found to be “not guilty” is not found to be “innocent.” As such, in the case of *R. v Mills*, a not guilty verdict would apply.

**How does this case impact the fundamental practice of teaching and learning in public schools?**

This case is not a landmark verdict, it impacts relatively little in terms of fundamental practice of teaching and learning in public schools. With that being said, it demonstrates the absolute necessity of adhering to professional policies and guidelines when undertaking an excursion in which there is a risk of unnecessary harm. While there was insufficient evidence to convict Mills on a criminal charge, there is nevertheless sufficient proof to find Mills liable at a civil level. Furthermore, Mills reckless disregard for the safety policies in place would be grounds for termination: Ontario precedent determines that “just cause” in the termination of an educator for misconduct is a question that requires an assessment of the context of the alleged misconduct (*Fernandes v. Peel*, 2016).

**How might this case influence your practice as a teacher/administrator? What did you learn from this case?**

This case demonstrates to me the importance of following all departmental policies and regulations, in service of the protection of two parties: myself, and my students. Regardless of the legal implications of the case and notwithstanding the not guilty verdict, a student lost their life, and a teacher lost their livelihood. This could have been prevented through the careful adherence to departmental policies. While Mills stated that complete compliance to these

protocols would have rendered the undertaking of such an excursion impossible, the resulting unnecessary loss of life clearly demonstrated that any alternative would've been preferably, proving that these protocols are not arbitrarily written or enforced. As a teacher, I would of course follow all of the imposed policies regarding my professional responsibilities. As an administrator, this remains my responsibility, albeit to a greater extent; I would personally ensure that any educators under my supervision are adhering to proper protocols, as it can mean the difference between life and death.

**What advice would you give fellow educators based on this case?**

Utmost care must be taken when undertaking an excursion with potential for serious injury or loss of life. Always expend your complete effort at ensuring that you are following proper procedures and adhering to the applicable departmental policies. But, once you are confident that you have fulfilled your duties to the letter, further assess the risk versus benefit. Do the potential benefits outweigh the potential consequences? If the potential consequences include serious injury or death, ask yourself, is it worth it?

**References**

Fernandes v. Peel Educational & Tutorial Services Limited (Mississauga Private School), 2016 ONCA 468 (CanLII), <<https://canlii.ca/t/g3kk>>, retrieved on 2022-02-23

R. v. Mills, 2021 ONSC 6492 (CanLII), <<https://canlii.ca/t/jjgg6>>, retrieved on 2022-02-23