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Ontario College of Teachers v Saifuddin, 2025 ONOCT 46

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DISCIPLINE COMMITTEE
OF THE ONTARIO COLLEGE OF TEACHERS

Citation: Ontario College of Teachers v Saifuddin 2025 ONOCT 46
Date: 2025-05-09

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DECISION, REASONS FOR DECISION AND ORDER

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 Taher Saifuddin, a member of the Ontario College of Teachers.

BETWEEN:

ONTARIO COLLEGE OF TEACHERS

– and –

TAHER SAIFUDDIN (REGISTRATION #657598)

PANEL: Kimberley Westfall-Connor, Chair
Anthony Jeethan, OCT
Sandra Pizzuti, OCT

HEARD: January 30, 31, and April 17, 2024

Lisa Feinberg, for the Ontario College of Teachers

Taher Saifuddin, self-represented

Erica Richler, Independent Legal Counsel

PUBLICATION BAN: Pursuant to subsection 32.1(3) of the *Ontario College of Teachers Act, 1996*, no person shall publish the identity of, or any information that could disclose the identity of any person who is under 18 years old and is a witness in a hearing or is the subject of evidence in a hearing.

By order of Justice of the Peace P. Aharan of the Ontario Court of Justice, there is also a publication ban on any information that could identify the victim or a witness in this matter, pursuant to section 486.4 of the *Criminal Code*.

[1] This proceeding was heard electronically before a panel of the Discipline Committee (the "Panel") of the Ontario College of Teachers (the "College") on January 30, January 31, and April 17, 2024, in accordance with rule 8.01 of the *Rules of Procedure of the Discipline Committee and of the Fitness to Practise Committee* ("*Rules*").

[2] Taher Saifuddin (the "Member") attended the hearing and was self-represented.

[3] The College alleged that the Member had engaged in inappropriate conduct with a student including by making inappropriate comments to him in person and over social media, sending the student videos over social media that were sexual in nature, and touching the student without his consent on his hand, inner thigh and/or penis.

[4] At the conclusion of the hearing, the Panel reserved its decision. For the reasons that follow, the Panel finds that the Member engaged in professional misconduct contrary to subsections 1(7), 1(7.2), 1(7.3), 1(18), and 1(19) of Ontario Regulation 437/97. The Panel further finds that the Member engaged in sexual abuse of a student and sexual misconduct as defined in section 1 of the *Act*.

[5] As required by subsection 30.2(1)(b) of the *Ontario College of Teachers Act, 1996*, given its finding, the Panel makes an interim order directing the Registrar to suspend the Member's certificate of qualification and registration until the Panel makes its order on penalty.

A. PUBLICATION BAN

[6] The Panel ordered a publication ban pursuant to subsection 32.1(3) of the *Ontario College of Teachers Act, 1996* (the "*Act*"), which makes such an order mandatory. Accordingly, no person shall publish the identity of, or any information that could disclose

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the identity of, any person who is under 18 years old and is a witness in a hearing or is the subject of evidence in a hearing.

[7] The Panel also received a certified copy of the transcript of the criminal proceedings regarding the Member's criminal proceeding before Justice K. Doorly dated July 15, 2021 (Exhibit 3). In these proceedings before the Ontario Court of Justice, an order restricting publication was made pursuant to section 486.4 of the *Criminal Code* of Canada. The Panel is required to uphold this publication ban. Accordingly, any information that could identify the victim or a witness involved in this matter shall not be published in any document or broadcast or transmitted in any way.

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B. THE ALLEGATIONS

[8] The allegations against the Member in the *Notice of Hearing* dated June 20, 2023 (Exhibit 1) are as follows:

> **IT IS ALLEGED** that Taher Saifuddin is guilty of professional misconduct as defined in the *Ontario College of Teachers Act, 1996* in that:
>
> (a) he abused a student or students, verbally, contrary to Ontario Regulation 437/97, subsection 1(7);
>
> (b) he abused a student or students psychologically or emotionally, contrary to Ontario Regulation 437/97, subsection 1(7.2);
>
> (c) he abused a student or students sexually, contrary to Ontario Regulation 437/97, subsection 1(7.3) and/or engaged in sexual abuse of a student or students as defined in section 1 of the *Act*;
>
> (d) he engaged in sexual misconduct as defined in section 1 of the *Act*;
>
> (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).

PARTICULARS OF THESE ALLEGATIONS ARE AS FOLLOWS

1. Taher Saifuddin is a member of the Ontario College of Teachers.

2. In or about the period of September 2018 to January 2019, the Member was employed by [XXX], a private school in [XXX], Ontario.[1]

3. In or about the period of August 2019 to May 2020, the Member was employed as a teacher at [XXX]School, a private school in Toronto, Ontario.

4. In or about the period of September 2018 to January 2019, while employed by [XXX] and teaching a Grade [XXX] [XXX] class, the Member:

   (a) provided correct exam answers to students during examination(s) and/or unit test(s); and/or

   (b) filled in blank questions for students with the correct answers on the multiple-choice portion of their exams.[2]

5. In or around the period of January 2020 to July 2020, Student 1 was a [XXX]-year-old male student at [XXX] School.

6. In or around the period of January 2020 to May 2020, Student 1 was in the Member's Grade [XXX] [XXX] class at [XXX]School.

7. In or around the period of February 2020 to July 2020, the Member sent Student 1 videos that were sexual in nature over social media, including but not limited to the following:

   (a) a video titled "lockdown is slowly opening" or words to that effect, which depicted a woman wearing a dress or skirt being blown upward;

   (b) a video of a woman walking down the street wearing a bikini; and/or

   (c) a video of a woman with large breasts.

8. In or about July 2020, the Member picked up Student 1 in his car and took him to the Member's residence, where Student 1 met the Member's family. After the visit, the Member drove Student 1 back

[1] College Counsel indicated at the outset of the hearing that they would not be calling evidence or seeking a finding regarding particular 2.
[2] College Counsel indicated at the outset of the hearing that they would not be calling evidence or seeking a finding regarding particular 4.

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home. Outside Student 1's home, the Member asked Student 1 to remain in his car, where the Member:

(a) made inappropriate comments to Student 1, including but not limited to:

(i) asking Student 1 about his sex life;

(ii) asking Student 1 to see photographs of his girlfriend; and/or

(b) touched Student 1 without consent on his hand, inner thigh and/or penis.

9. In or about July 2020, the Member telephoned Student 1 on one or more occasions.

10. In or about July 2020, the Member sent inappropriate messages to Student 1 over social media, including but not limited to messages with words to the effect of:

(a) "Sorry I made you uncomfortable by holding ur hand…I apologize";

(b) "Will wait for ur call….have a nice evening [smiley emoji]";

(c) "What time u wake up in mo […] Morning […] so ur watching sleeping beauty [winking smiley face emoji]";

(d) "Ur one of my favourite n close student...if u were girl I would have taken u on date";

(e) "Hmm..so ur working hard that's gud" in response to Student 1 saying he was doing homework;

(f) "Ok we will talk tommorw good nite n sweet wet dreams bubye";

(g) "Seems ur busy chatting with someone special [smiley face emoji]" and "or looking at ur roommate [smiley face emoji with hearts for eyes and the tongue protruding]";

(h) "I know…but u can release ur energy and feel positive" in response to Student 1 stating he had no "feelings for Asians";

(i) "What are ur plplans for tonite […] Watching anime or those movies or playing games or playing with urself [smiley face emoji]"; and/or

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(j) "thanks dude…I will try to meet u soon…ur my favourite student" in response to Student 1's message that the Member's infant daughter was cute.

C. THE MEMBER'S PLEA

[9] The Member denied the allegations set out in the *Notice of Hearing*.

D. COLLEGE'S EVIDENCE

[10] The College produced video and documentary evidence and called three witnesses – Detective Constable Ryan Braganza, Mino Chou, and Elisabeth Dahl – in support of the allegations set out in the *Notice of Hearing*. As part of Detective Constable Braganza's evidence, College Counsel also played a video statement taken from Student 1 on July 22, 2020 (Exhibit 6) and produced a transcript of the video statement (Exhibit 5).

(1) Oral Evidence

(a) Detective Constable Ryan Braganza

[11] Detective Constable Ryan Braganza ("D.C. Braganza") is a police officer with the Toronto Police Services ("TPS"). At the time of the hearing, D.C. Braganza was working within intelligence services in the cyber crimes unit.

[12] In July 2020, his role was to investigate sex crimes within the TPS' Child and Youth Advocacy Centre, and he was the officer in charge of the investigation related to Student 1. In this role, he received a referral through his supervisor from a Children's Aid Society ("CAS") worker regarding a potential sexual assault committed against Student 1. A meeting was then set up to interview Student 1 on July 22, 2020. D.C. Braganza interviewed Student 1 while the CAS worker was listening in a different room. This interview was recorded. D.C. Braganza's impression was that Student 1 was a little bit

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nervous. English was not Student 1's first language so D.C. Braganza tried to reassure Student 1 that the interview would be more like a conversation, as opposed to an interrogation. D.C. Braganza testified that he did not see Student 1 speak with any other officers prior to his interview, that he did not tell Student 1 that he had to make a statement, and that he did not direct Student 1 as to what to say during the interview.

[13] During the interview, D.C. Braganza said that he saw a picture on Student 1's phone that Student 1 had described in his video statement as a photo of Student 1 holding the Member's baby. In the photo, Student 1 was sitting on a couch holding a baby and wearing a mask. Following the interview, D.C. Braganza communicated with Mino Chou – Student 1's headmaster and received seven pictures of a [XXX] conversation between the Member and Student 1 (Exhibits 7 and 8).

[14] Having reviewed the interview and screen shots, D.C. Braganza decided to lay charges against the Member and arranged for the Member to turn himself in. The Member was arrested and charged with four *Criminal Code* charges. D.C. Braganza was contacted by a Crown attorney advising him that the trial was approaching. In May 2021, D.C. Braganza attempted to locate Student 1 for the trial by contacting Mino Chou and one of Student 1's friends that was mentioned at the interview. Both individuals advised D.C. Braganza that they had not had contact with Student 1. D.C. Braganza indicated that Mino Chou had suggested that with COVID-19 still in the country, perhaps Student 1 would have gone back to [XXX]. D.C. Braganza was also not able to reach Student 1 through the phone number that he had for him. D.C. Braganza was not able to confirm with certainty whether Student 1 had moved to [XXX]. D.C. Braganza confirmed that, to his knowledge, the *Criminal Code* charges were stayed by the Crown.

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(b) Mino Chou

[15] Mino Chou is the headmaster at [XXX] School (the "School"). He was in this position during the time of the alleged events. Mr. Chou testified that Student 1 was enrolled at the School from August 2019 to May 2021. He did not know Student 1 personally prior to this incident. Mr. Chou confirmed that, according to Student 1's identification documents, his date of birth is [XXX][XXX], 20[XXX]. Mr. Chou confirmed that the Member worked at the School from August 2019 to May 2020 and that the Member was Student 1's teacher, but could not remember what course he taught.

[16] The incident came to Mr. Chou's attention because Student 1 spoke about it to one of the School's guidance teachers, who reported it to the principal. The principal then reported the incident to Mr. Chou. On July 10, 2020, Mr. Chou reached out to Student 1 through [XXX] and ensured that Student 1 was safe and mentally well. Mr. Chou also made a report with the police, as per the School's policy. The police asked for a meeting with Student 1. Mr. Chou drove Student 1 to the police station for the purpose of that meeting. During the drive to the police station, Student 1 told Mr. Chou what had happened between him and the Member, and he showed Mr. Chou the messages between him and the Member, as well as a photo of Student 1 holding the Member's baby that was taken when he visited the Member's house. Mr. Chou testified that he did not tell Student 1 what he should say to the police. Mr. Chou did not go into the interview room with Student 1 but stayed outside until Student 1 was finished the interview. He then drove Student 1 home. Mr. Chou recalled being in touch with Student 1 briefly after the police interview to make sure that he was in a good mental state.

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[17] Mr. Chou took photos of the messages that Student 1 showed him. Mr. Chou believed these were [XXX] messages between Student 1 and the Member. He could not recall if he took the photos before or after Student 1's interview with the police but he knew he took the photos on the same day as Student 1's interview. Mr. Chou emailed copies of the photos he took of the messages between the Member and Student 1 to the police officer investigating the allegations against the Member, in response to the police officer's request (Exhibits 13 and 14)[3]. Mr. Chou testified that Student 1 advised him that the messages were a conversation between him and the Member.

[18] The photos show the messages below sent between Student 1 and an account with the name "Taher Saifuddin" and a profile picture of the Member. The messages include:

1. "Hmm…..so ur working hard that's gud" (in response to a message from Student 1 that he was doing homework);
2. "Ok we will talk tommorw good nite n sweet wet dreams bubye";
3. "Good morning";
4. "How r u";
5. "Seems ur buisy chatting with someone special [winking face tongue out emoji] … "Or looking at ur roommate [heart eyes emoji with the tongue protruding]";
6. "What time u wake up in mo"… "Morning"… "So ur watching sleeping beauty [winking face tongue out emoji]";
7. "Can u chat" … "Ur one of my favorite n close student…..if u were girl I would have taken u on date";
8. "Sorry if I made u uncomfortable by holding ur hand….I apologize";
9. "Will wait for ur call…..have a nice evening [winking face tongue out emoji]";

[3] As will be noted in the factual findings section, the Panel notes that Exhibits 7 and 13 appear to be very similar and Exhibits 8 and 14 appear to be very similar.

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10. “Hi Would you like to come today in evening I can pick u at 6 pm and then drop you back” … “What is ur address” … “Ok be ready by 6 pm When I call come outside” … “What is ur phone number” … “Coming in 10 min”;

11. “I know… But u can release ur energy n feel positive”, (in response to Student 1 sending a message that he has “no feelings for Asians”);

12. “What are ur plplans for tonite” … “Plans” … “Watching animie or those movies or playing games or playing with urself” [smile emoji]”;

13. “I will share picture of my princess soon”;

14. “Princess [XXX] ” (referring to a photo of a swaddled baby);

15. “Thanks dude….I will try to meet u soon…..ur my favourite student”.[4]

[19] The screenshots also include 2 stills of videos. One still is of a woman wearing a very tight top or dress with no bottoms or a very short outfit walking down the street. Another still is of a woman with a short skirt or dress with part of her buttocks exposed. The latter video is captioned “lockdown is slowly opening”. There are also screen shots of the user with the name “Taher Saifuddin” calling Student 1 through the [XXX] platform three times. Above the photo of the swaddled baby there is a date stamp of June 26, 2020.

[20] In cross examination, Mr. Chou testified that the School did not form a committee to investigate the allegations. He did not call the Member or give him an opportunity to explain the incident. He also did not create a formal incident report regarding these allegations. Mr. Chou reported the matter to the police and let the police investigate as they wished. Mr. Chou was also not aware when asked in cross-examination about Student 1 having fallen and experienced memory loss prior to the alleged incident.

[4] The Panel notes that the order in which the messages were sent is not always clear from the screenshots of the [XXX] messages and the screenshots of the messages also do not always clearly identify the dates on which the messages were sent.

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(c) Elisabeth Dahl

[21] Elisabeth Dahl was a teacher at the School from September 2014 until December 2020. During her time there, she taught English and Social Science and was also a guidance counselor. She taught Student 1 in a university preparation [XXX] course in the summer of 2020. Ms. Dahl confirmed that the Member taught a [XXX] course at the School.

[22] Ms. Dahl testified that on July 10, 2020, following an online class, she asked Student 1 into an online "breakout room" for a private session to discuss why he missed some assignments in her course. In that private session, Student 1 showed Ms. Dahl a picture of the Member on his phone and told her that the Member had sexually assaulted him. Student 1 said that he had been receiving messages from the Member. Student 1 told Ms. Dahl that the Member invited him to his home to see his [XXX] baby, that he visited the Member's home, that he had gotten into the Member's car, that the Member touched Student 1's leg and lap, and that when Student 1 left the car he felt disgusted and vomited when he got back to his house. Student 1 also shared with Ms. Dahl that he had reported this to his mom and a few friends, and that his mom had told him not to talk to the police because she thought that the Member might be upset if the police were involved and that would put Student 1 at risk. Ms. Dahl testified that Student 1 seemed shaken and upset when he reported this to her.

[23] In response to Student 1's report, Ms. Dahl told Student 1 that the Member no longer worked for the School and that she would speak with the principal of the School to determine how to best help Student 1. She also gave Student 1 information about Kids Help Phone to get support while she contacted the principal. After speaking with the

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principal, Ms. Dahl sent Student 1 an email advising him that the School would be reporting the incident to the CAS. She explained what the CAS is, and that he would likely be contacted by CAS. Ms. Dahl testified that, although Student 1 missed some assignments, he did "fine" in her course overall. She saw Student 1 the following semester at school but did not have any further contact with him about this incident and was not aware of what happened with either Student 1 or the investigation after her report. When Ms. Dahl was asked in cross-examination whether she had known that Student 1 had been [XXX] for a few days after a fall from the stairs and that he had experienced memory loss she responded "[n]o, he was in my class every day".

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(2) Documentary and video evidence

[24] The College produced documentary evidence including the court records and a transcript from the Member's criminal proceeding which was stayed (Exhibits 2 and 3), the Registered Member Information for the Member (Exhibit 4), emails from Mr. Chou to D.C. Braganza with attached photos of [XXX] messages (Exhibits 7, 8, 13 and 14) and a screenshot of [XXX] messages between Mr. Chou and Student 1 (Exhibit 12). The College also submitted two affidavits: (1) the *Affidavit of Joanne Corbett*, an investigator with the College (Exhibit 15); and (2) *the Affidavit of Amanda Fernandez*, a law clerk employed with College Counsel (Exhibit 16) outlining their attempts to contact Student 1. The College also produced Student 1's study permit (Exhibit 9) and passport (Exhibit 10), a screenshot of Student 1's student information (Exhibit 11), a letter from the Member's Counsel to Joanne Corbett dated January 14, 2023 (Exhibit 20), and an email to the Member from College Counsel dated November 3, 2023 containing a referral to the Law Society Referral Service and resources (Exhibit 21).

(a) Affidavit of Joanne Corbett (Exhibit 15)

[25] Ms. Corbett gave evidence that she attempted to reach Student 1 via telephone on October 20, 2023.[5] She indicated that the call rang continuously and there was no voicemail set up to facilitate leaving a message requesting a call back. In addition, she gave evidence that on October 24, 2023 she sent an email to Student 1 at his last known email address to set up a call about these disciplinary proceedings and invited him to contact her directly via email or telephone. She received a delivery notice indicating that her delivery was complete but no delivery notification was sent by the destination server. She also submitted evidence that on October 24, 2023 she emailed Student 1 using an alternative address from his former school's records to set up a call about the disciplinary proceedings.

(b) Affidavit of Amanda Fernandez (Exhibit 16)

[26] Ms. Fernandez gave evidence that on January 9, 2024 she sent a letter from Ms. Feinberg by express post to Student 1 confirming the hearing dates and seeking to schedule a virtual meeting in anticipation of the upcoming hearing dates to an address in [XXX][6]. Ms. Fernandez gave evidence that on January 11, 2024 she sent a letter from Ms. Feinberg to Student 1 at an address in [XXX][7] through UPS. She gave evidence that delivery was expected on January 18, 2024.

[5] The Panel notes that this telephone number was also identified to be the telephone number of Student 1 by D.C. Braganza and Mr. Chou.
[6] The Panel notes that this same address was contained in screenshot of Student 1's student information (Exhibit 11) and was referred to by Student 1 in the [XXX] messages (Exhibits 7, 8, 13 and 14).
[7] The Panel notes that this same address was contained in Student 1's study permit (Exhibit 9).

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(c) Video Statement of Student 1 (Exhibit 6)

[27] Student 1 was interviewed by D.C. Braganza on July 22, 2020 and his video-recorded interview (Exhibit 6) was presented to the Panel during the hearing. The Member objected to the admission of the video statement into evidence. The Panel found the statement to be admissible with reasons provided in its reasons for decision section. What follows is a summary of the contents of the video statement.

[28] At the outset of the statement, D.C. Braganza explained to Student 1 that the statement was audio and video recorded. D.C. Braganza cautioned Student 1 that he had to be truthful and honest when giving a statement to the police, and that he could be arrested and charged if he purposefully gave the police incorrect information. D.C. Braganza then explained the offences of obstructing justice and public mischief by making a false statement to police during an investigation. D.C. Braganza explained that Student 1 might be a witness at a trial concerning the events described during the statement and that, if Student 1 were to admit that the statement was incorrect at the time of trial, then he could be charged with fabricating evidence. Finally, D.C. Braganza advised Student 1 that he is not obligated to give the statement and that he should only give the statement if it is his choice. Student 1 confirmed that he understood D.C. Braganza's caution and that he was giving the statement voluntarily.

[29] In his statement, Student 1 confirmed that he was a Grade [XXX] student at the [XXX] School, a private school in [XXX], Ontario, which he had attended since January 2019. In the video statement, Student 1 tells D.C. Braganza about what happened between himself and his Grade [XXX] [XXX] teacher at the School. The Member started teaching Student 1 Grade [XXX] [XXX] in January or February of 2020. Student 1 did not

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know his [XXX] teacher's name but he knew that it was a "Muslim name".[8] Student 1 described that he often communicated with the Member through [XXX]. However, during the time of the interview, Student 1 was not able to bring up the Member's profile because Student 1 had deleted the Member on the platform on the instructions of his school headmaster.

[30] Approximately one or two weeks prior to the events at issue, the Member invited Student 1 to his house to visit his [XXX] baby. The Member told Student 1 that he was his favourite student and this was the reason he wanted Student 1 to meet his [XXX] baby. Student 1 agreed to go to the Member's house to meet his baby for two reasons; firstly, in [XXX], Student 1 was taught to be polite to teachers, do everything they say, show them the highest respect and avoid offending them; secondly, because Student 1 liked children.

[31] On either July 7 or 10, 2020, the Member picked Student 1 up in his car, a grey Honda, at approximately 6 p.m. in front of Student 1's house. During the 10-minute drive to the Member's house, Student 1 and the Member chatted about Student 1's teenage relationship. Student 1 described that the Member lived in an apartment on possibly the 10th floor, although he could not remember exactly which floor it was. When Student 1 entered the apartment, he saw the Member's wife sitting in the living room and holding the baby. Student 1 said hi to her but said that she didn't seem to speak English well. The Member then offered Student 1 some ice cream, which Student 1 accepted, and asked

[8] The Member admitted that he was Student 1's Grade [XXX] [XXX] teacher. As such, while Student 1 did not identify the Member by name in his statement to police, the Panel has accepted that Student 1 was describing events that occurred between him and the Member when he made the video statement.

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Student 1 if he wanted to take pictures. The Member then took Student 1's phone and took pictures of him with the baby. The Member and Student 1 talked a little bit about caring for [XXX] babies and then the Member asked Student 1 if he wanted to leave, to which Student 1 said yes. To Student 1's recollection, he was in the apartment for approximately 20 minutes.

[32] On the drive home, the Member continued to ask Student 1 about his ex-girlfriend. Student 1 then described his relationship with his ex-girlfriend and why they broke up. When they arrived at Student 1's house, the Member stopped the car and asked if Student 1 could stay five minutes more. He then asked if he could shake Student 1's hand. Student 1 agreed and shook his hand. However, the Member did not let go of Student 1's hand and Student 1 described that he had to pull his hand back away from the Member. The Member asked Student 1 about his relationship and asked Student 1 to show him a picture of his ex-girlfriend. When Student 1 was trying to find a picture on his Instagram account, the Member put his hand on Student 1's lap. Specifically, Student 1 described the Member putting his right hand on Student 1's left thigh, midway between Student 1's knee and hip over his shorts. In response, Student 1 tried to push the Member's hand away with his left arm and elbow. He was not too forceful because he did not want to offend the Member but wanted to signal that he wanted the Member to stop. However, the Member did not stop and instead moved his hand farther up Student 1's thigh, and grazed Student 1's penis with his fingers over his shorts. Student 1 described that the Member touched his penis over his shorts with his fingers for approximately 30 seconds. Student 1 quickly showed the Member a picture of his ex-girlfriend, told the Member that he had a stomach ache and asked to leave the car. The Member responded that he would

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let Student 1 go and asked Student 1 if he wanted to go for a walk the following week. Student 1 was scared and replied “okay” to that suggestion. Student 1 then ran home.

[33] Student 1 described the Member breathing heavily while he touched his thigh and penis. While the Member touched Student 1’s thigh and penis, Student 1 felt shocked, scared and disgusted. In the video statement, Student 1 also said that he did not want to offend the Member because he thought that the Member was still going to teach him and if he pushed him away maybe in the next course he took with the Member, the Member would give him a really low mark and he would get kicked out.

[34] After the incident, Student 1 almost threw up and told his roommate about the incident. Student 1’s roommate suggested Student 1 should go to the police. However, when Student 1 told his mother about it, she advised him not to tell anyone and just to let it go. She was afraid that if Student 1 told the police and the Member was arrested, then the Member would “punch [Student 1] or something, or like kill [him]”. Student 1 expressed in the video statement that he was afraid of going to the police for this reason. Student 1 decided not to go to the police but instead reported the incident to his [XXX] teacher, Elisabeth Dahl. He also talked about the incident to the School’s headmaster. The School’s headmaster reported the incident to the Children’s Aid Society and to the police. The headmaster took some pictures of the conversations between the Member and Student 1 and instructed Student 1 to delete the Member as a contact to make sure that the Member could no longer contact Student 1.

[35] After the incident, the Member also sent Student 1 an apology for what had happened and for touching Student 1’s hand. The Member also told Student 1 that if he would be a girl, that the Member would try and date him.

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[36] Student 1 also described that, earlier that year, starting around February or March of 2020, the Member sent Student 1 “sexual” videos over [XXX]. The videos had scantily-clad women in them and were almost like “porn”. Student 1 had heard from one of his classmates that the Member also sent videos like this to other boys in his class. Student 1 also reported that the Member asked him probing and intimate questions about his girlfriend, how he had sex with his girlfriend, and what position Student 1 preferred. Student 1 sometimes told the truth in response to these questions and sometimes he lied to the Member. Student 1 said that at the start, that it was “kind of weird like, I can’t talk about this to my teacher, right” but the Member had told him that he should see the Member “more as a brother” and not to be afraid to talk to him about sex and his personal life.

[37] During his interview with D.C. Braganza, Student 1 showed him a photo of what he said was himself and the Member’s babyand he confirmed to D.C. Braganza that he was wearing a mask in the photo. Student 1 also said that he no longer had the [XXX] conversation between himself and the Member because when he deleted the Member’s contact on [XXX], it went missing. When asked by D.C. Braganza if he could look up the Member on [XXX], Student 1 explained that on [XXX] if you delete the person you cannot look them up again. At the conclusion of his statement, Student 1 told D.C. Braganza that he was afraid for the Member’s daughter and that he just wanted to make sure that the Member could not be a teacher anymore so that he would not be able to assault or harass other students. Student 1 also confirmed to D.C. Braganza that he had been truthful and honest in his statement at all times.

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E. MEMBER'S EVIDENCE

[38] At the time of the hearing, the Member had immigrated to Canada approximately 12 years ago. At the time of the alleged events, the Member worked as a teacher during the day at the School. He also worked at Home Depot in the evenings and was studying to obtain Principal's Qualifications. The Member testified that it was a very happy time in his life as his wife was pregnant after 15 years of marriage. The Member's wife gave birth to their first child on [XXX] [XXX], 20[XXX].

[39] The Member testified that Student 1 was in his Grade [XXX] [XXX] class from January to May 2020 and agreed that he was employed with the School from August 2019 to May 2020. The Member was aware that Student 1 was from [XXX] but did not know how old Student 1 was, as he did not ever ask Student 1 his age. The Member did not dispute that Student 1's date of birth is in [XXX]of 20[XXX] as per the document submitted during Mr. Chou's evidence. When Student 1 was in the Member's class, he asked the Member how to increase his marks and the Member replied that he should follow the rubrics.[9] The Member also described confronting Student 1 in front of the class for being late two days in the middle of the semester. The Member reminded Student 1 that he should come to class on time, otherwise he would be reporting it to the School. Overall, the Member remembered Student 1 as a polite student. Prior to hearing about these allegations against him, the Member had a positive student-teacher relationship

[9] In cross-examination, the Member said that Student 1 had described his marks as very low when he asked the Member how he could improve them. The Member also said that Student 1 had passed the Member's class but not with high marks. The Member clarified later on in his evidence, that at the time that Student 1 asked him about how he could improve his marks, Student 1's mark in the Member's class was average.

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with Student 1. However, the Member now believes that Student 1 may have had a grudge against him as a result of these interactions.

[40] In April or May 2020, Student 1 approached the Member asking if he could contact the Member if he needed any help. The Member told Student 1 that he could not give Student 1 his number but he could be in touch with the Member through school email. During that time the Member was busy with doctor's appointments. The students were aware that the Member was going to be having a [XXX] and there were make up classes. The Member said that maybe he had given his number to Student 1 during this time through the school's email address. He said he was not in conversation with Student 1 on social media. Later, in cross-examination, the Member clarified that he gave Student 1 his phone number in May 2020 on one of the last few days of his contract with the School, but requested that Student 1 contact him through the school emails only. He gave Student 1 his phone number because his [XXX] was going to be [XXX] and he was busy.

[41] After the Member's baby was [XXX], Student 1 and the Member talked two times on the phone: Student 1 called the Member one time and the Member called Student 1 another time. Additionally, they texted a few times through local text messages, but not on any social media. Student 1 requested to see the Member's baby, the Member did not invite Student 1 to his home. After asking his wife's permission, the Member decided that it would be appropriate for Student 1 to visit and meet hisbaby.

[42] On July 7, 2020, the Member picked up Student 1 in his car (a Honda Civic) around 6 p.m. He drove Student 1 to his apartment where he met the Member's [XXX] baby, and then the Member drove Student 1 home without incident. In July 2020, the Member lived in an apartment that was several floors up. While Student 1 was over, Student 1 met his

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wife and his wife offered Student 1 ice cream. Additionally, the Member agreed that he took a picture of Student 1 and his [XXX] baby on Student 1's phone. Student 1 wore a mask while in the Member's home and in the picture. Additionally, while Student 1 was in the Member's home, Student 1 shared with the Member that he was homesick. Student 1 also told the Member that he had been injured a few days prior to the visit and, as a result, was in [XXX] for 2-3 days and experienced some memory loss and missed some school. The Member did not ask Student 1 how he got injured. The Member also did not notice any bandages or signs of medical treatment on Student 1 during the visit.

[43] While the Member drove Student 1 to and from his apartment, they discussed the Member's baby, as well as Student 1's future school plans, whether the Member would be teaching at the School next year and if so, what courses the Member would possibly teach. The ride was approximately seven minutes each way and the Member did not linger or take longer than those seven minutes to complete the trip. The Member denied speaking to Student 1 about his dating life on the drive home. The Member denied touching Student 1 in any way (including shaking his hand), telling Student 1 that he was his favourite student, making inappropriate comments to him, or sending him any inappropriate messages through social media. Furthermore, the Member denied sending Student 1 a picture of hisbaby. However, he admitted that the picture that appears on the images of the [XXX] exchange (Exhibit 8) is a picture of his daughter [XXX], whom he sometimes refers to as "princess [XXX]". The Member testified at length about the fact that he was so busy during this time in his life that he did not have time to send messages to Student 1 or to have conversations with him. The Member found it ridiculous that he would make such comments to a student given how busy he was at the time and given

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that he was prioritizing his family and education. The Member agreed in cross-examination that he was surprised by the allegation made by Student 1 against him. “It was shocking news for [him] and [his] wife because we just had a [XXX]”.

[44] In cross examination, College Counsel presented the Member with the Member’s response to the College’s investigation report dated January 14, 2023 which was drafted by the Member’s former Counsel (Exhibit 20). In this response, the Member acknowledged that he did converse with Student 1 “via social media apps, but believes it was after his contract with [the School] had expired”, but contested “the authenticity of the messages that suggest anything other than appropriate messaging that did not contain anything of a sexual nature”; denied that he was the author of the impugned [XXX] messages; and denied the authenticity of the impugned [XXX] messages. The response also said that a “search of Mr. Saifuddin’s social media applications did not identify any of the impugned exchanges”. In cross-examination, the Member agreed that he had conversed with Student 1 on one social media application, not more than one application, after his contract had ended. The Member did not remember specifically which social media application he had used to communicate with Student 1 but he said that it was not [XXX]. The Member stated that he had created a profile on this social media application solely for the purpose of communicating with Student 1 after being invited to communicate on this platform by Student 1. The Member said that he had deleted the social media application after receiving an email from the School principal telling him that he should not be in touch with any student (Exhibit 22). In addition, the Member said that he only used the social media application to respond to Student 1 one or two times, and that he had not sent any messages to the student. The Member also stated in cross-examination

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that the profile image of the [XXX] user that is alleged to be him in the College's evidence is his LinkedIn profile picture.

[45] In cross-examination, the Member maintained that, when he organized Student 1's visit to his apartment, he communicated with Student 1 through text messages and not through a social media application. He said that Student 1 had his phone number and messaged the Member on his number and then the Member had a call with Student 1. The Member said that he had called Student 1's phone number maybe 1 to 2 times only. In cross-examination, College Counsel asked the Member about his response to the College's request for written representations from the Member (Exhibit 20). In particular, College Counsel asked the Member about his response to question 3 of that request regarding whether between on or about February 1, 2020 and July 8, 2020, the Member had telephoned Student 1 on approximately three occasions, including one call that he did not answer but responded by text (Exhibit 20). The Member's Counsel had written "Mr. Saifuddin has no knowledge or recollection of any calls made to [Student 1] during this time period. Further, Mr. Saifuddin was not teaching at [the School] after May of 2020" (Exhibit 20). When confronted with this portion of Exhibit 20, the Member said that he never contacted the student when he was in the School. The Member also said that "Yeah, during this time period means over here the English could be that after the May, when the contract was ended. After that I was in touch with [Student 1]. Not before that". The Member agreed with College Counsel that when he answered question 3 in Exhibit 20, he meant that he had no recollection of any calls made between February, 2020 and May, 2020.

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[46] The Member also testified in cross-examination that he had approached the School administration two times to let them know that he was doing his Principal Qualifications Program and that he wanted to know if improvements could be made to the School systems, such as school record practices. The Member stated that the School administration was not happy with him as a result and the Member testified that the administration's unhappiness with his attempts to improve the school system could be a motive for the School conspiring together with Student 1 to bring the allegations against the Member.

[47] The Member testified that he had taught for 20 years and that he had experience teaching in Canada and teaching abroad. The Member submitted several experience letters, reference letters, and volunteer letters highlighting his experience in the community (Exhibits 17-19). Some of the letters are undated. Those that are dated indicate they were written between 2007 and 2021. Some of the letters provide confirmation of employment while the majority can be characterized as letters of recommendation. The Member testified that the letters were submitted as part of the Principal's Qualifications process. The Member did not inform any of the letter writers about the allegations made against the Member. The letters that speak to the Member's interaction with students provide positive comments. For example, one letter from Exhibit 17 states that "his conduct with his students and colleagues has been exemplary during his stay in the school". Another letter from Exhibit 17 indicates that the Member "enjoyed good rapport with his colleagues, students and their parents". Another from Exhibit 18 states that the Member "is well loved and respected not only by his students as well as his peers".

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F. SUBMISSIONS OF COLLEGE COUNSEL

[48] College Counsel submitted that the evidence presented to the Panel proves each of the allegations set out in the *Notice of Hearing* (except particulars two and four, about which the College has not called any evidence) on a balance of probabilities. College Counsel therefore submitted that the Panel should find that the Member engaged in professional misconduct as alleged in the *Notice of Hearing*.

[49] As will be set out in greater detail below, College Counsel submitted that the Panel should admit Student 1's videotaped statement and give the hearsay evidence significant weight as the principled exception to hearsay has been met in this case. In its submissions, College Counsel referred to cases where Discipline Committees have relied on hearsay evidence previously (*College of Early Childhood Educators v. Bryan Edward Robinson*, 2017 ONCECE 1 ("*Robinson*"); *Ontario College of Teachers v O'Shea*, 2016 ONOCT 84 ("*O'Shea*")).

[50] With respect to credibility, the College referred the Panel to *Re Pitts and Director of Family Benefits Branch of the Ministry of Community and Social Services*, 1985 CanLII 2053 (ON SC) ("*Pitts*") and submitted that both Ms. Dahl and D.C. Braganza were credible and reliable witnesses according to the markers of credibility outlined in *Pitts*. College Counsel acknowledged that Mr. Chou was not sure of the order in which things happened and was not able to provide certain details for the Panel. However, College Counsel submitted that he was a credible witness, he just did not recall every detail of what happened. College Counsel submitted that the Panel can rely on Student 1's video statement to D.C. Braganza for four reasons. First, there are measures of reliability in Student 1's videotaped statement that can give the Panel confidence in accepting his

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evidence. Second, Student 1 had no motive to lie in his statement. Third, Student 1's evidence is both internally and externally consistent and fourth, Student 1's version of the events is more plausible than the version of events put forward by the Member.

[51] College Counsel submitted that the Member's version of the events is implausible. This includes the Member's submissions suggesting that Student 1 was suffering from memory loss, may have had a vendetta against the Member because he was concerned his marks were not high enough and because the Member noted his absences in front of the class in front of his peers. This also includes the Member's suggestion that the School was biased against him because he tried to improve their school practices and that the School may have conspired with Student 1 to put together this evidence against him.

[52] The College submitted that the test for credibility analysis in the case of *R v. W.(D.)*, [1991] 1 SCR 742 ("*W.(D.)*") does not apply in this case. The College submits that the test in *W.D.* only applies in criminal cases where the burden of proof is beyond a reasonable doubt, and it does not apply in professional discipline matters where the standard is on a balance of probabilities. The College submitted that this has been repeatedly recognized in professional discipline matters and referred the Panel to *Cann v. Ontario College of Teachers*, 2022 ONSC 6988 ("*Cann*") and *F.H. v. McDougall*, 2008 SCC 53 ("*McDougall*") with respect to this point.

[53] College Counsel also made submissions that it would be inappropriate to rely on stereotypical reasoning regarding what a victim of any kind of grooming or sexual abuse should do with respect to reporting the incident to the police or School. This was in response to a suggestion from the Member that if he had been truly communicating with Student 1 from February 2020 onwards, Student 1 should have reported the impugned

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messages earlier or should have reported the Member to the police or School immediately after the July 7th incident occurred. College Counsel relied on the cases of *R. v. D.D.*, 2000 SCC 43 ("*D.D.*"); *R. v A.R.D.*, 2017 ABCA 237; and *R. v. A.R.J.D.*, 2018 SCC 6 in making these submissions.

G. SUBMISSIONS OF THE MEMBER

[54] The Member submitted that he denied all the charges. He noted that there are no witnesses and the Member submitted that the College's case is based on unfounded, unsworn and untested allegations and has not been proven. The Member reminded the panel that he could not ask Student 1 about the photos or his motives because he is simply not here and also noted that the criminal charges against him have been stayed by the Court as Student 1 has left the country.

[55] As will be set out in greater detail below, the Member made detailed submissions regarding why Student 1's videotaped statement cannot be admitted as evidence. Furthermore, the Member submitted that the Panel should apply the principles set out by the Supreme Court of Canada in *W.(D.)* in deciding whether the College has proven on clear, convincing evidence that Student 1, who is not available to testify at the hearing, should be believed. The Member, in contrast, has attended the hearing and has made himself available for cross-examination.

[56] The Member also asked the Panel to consider why he would have come to defend himself "if [he] was wrong by [his] heart or by [his] mind". The Member also questioned why the principal had deleted the videos and why the principal had taken a screenshot of the messages rather than showing them directly to the police, so the police could trace

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the IP address and determine the sender of the messages. Additionally, the Member submitted that with artificial intelligence anything can be done including doctoring photos.

[57] The Member also referred to his experience letters, reference letters and volunteer letters (Exhibits 17-19) for the Panel's consideration.

H. REPLY SUBMISSONS OF COLLEGE COUNSEL

[58] College Counsel presented case law to the Panel in response to a question the Panel had asked regarding the difference between sexual abuse and sexual misconduct: *Ontario College of Teachers v. Bujacz*, 2023 ONOCT 12 ("*Bujacz*") and *Ontario College of Teachers v. Walker*, 2022 ONOCT 29. College Counsel submitted that the Panel would first have to determine whether considering all the circumstances, the content is sexual using the test from *Bujacz*. Then, the Panel would need to determine if the conduct is sexual abuse or sexual misconduct, based on whether the content was targeted to the student specifically. The College reiterated its previous submission that the stills and videos were sexual misconduct. However, the College stated that it was open to the Panel to find that the stills and videos were sexual abuse as part of a course of grooming.

I. SUR-REPLY SUBMISSIONS OF THE MEMBER

[59] The Member did not have anything to add with respect to the two cases raised by College Counsel in reply. The Member did reiterate that he denies all of the charges, that none of the charges have been proven in the court of law and that Student 1 is not available for cross-examination.

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J. ADVICE OF INDEPENDENT LEGAL COUNSEL

[60] Independent Legal Counsel (ILC) advised that the Panel is allowed to admit hearsay evidence under the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22 ("SPPA") and referred the Panel to *Manikam v. Toronto Community Housing*, 2019 ONSC 2083 ("*Manikam*"). ILC indicated that paragraphs 29 to 31 of *Manikam* summarize the dangers of hearsay and how in the administrative law context, even though hearsay is admissible, it does not mean that hearsay should always be admitted and that there may be situations where it is unfair to rely on hearsay. ILC advised that it was up to the Panel to determine whether it would be unfair to rely on the hearsay evidence in this case.

[61] ILC advised the Panel that the definition of sexual misconduct under the *Act* specifically says that it is not sexual abuse so the Panel would not be able to make a finding that any conduct falls into both of these categories. ILC agreed with College Counsel that there is a general development or trend in the case law about sexual abuse being conduct that is directed toward a student, whereas sexual misconduct is where a student is exposed to the conduct more generally. However, ILC said that there may be a fine line between sexual abuse and sexual misconduct in some cases, and said that there have been cases where Facebook messages or other social media messages have been found to be sexual abuse. ILC advised the Panel that a significant difference between the two categories is with respect to the potential penalties that can be imposed. If there is a finding of sexual abuse, then there are certain mandatory penalties including revocation and discretionary penalties such as the availability of funding for counseling and therapy.

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K. PARTIES' RESPONSE TO ILC'S ADVICE

[62] College Counsel highlighted that the *Manikam* case involved double hearsay and argued that the *Manikam* case is completely distinguishable because it does not have the same markers of reliability as in this case. College Counsel also submitted that the case before the Panel is more similar to the *Robinson* and *O'Shea* cases referred to by the College but agreed that the general principles of the *Manikam* case apply.

[63] The Member had no comments on the advice of ILC.

L. DECISION ON FINDING

[64] The College bears the burden of proving the allegations in accordance with the standard of proof set out in *McDougall* which is proof on a balance of probabilities.

[65] Having considered the evidence, onus and standard of proof, and the submissions of the parties. The Panel finds that the Member engaged in acts of professional misconduct as alleged, contrary to Ontario Regulation 437/97, subsections 1(7), 1(7.2), 1(7.3), 1(18) and 1(19). The Member further engaged in sexual misconduct and sexual abuse as defined in section 1 of the *Act*.

M. REASONS FOR DECISION

[66] The Panel has carefully reviewed the evidence and submissions presented in this hearing. In the reasons that follow, the Panel comments only on the portions of the evidence that are most relevant to the allegations contained in the *Notice of Hearing*. The Panel first sets out its credibility findings, then its factual findings, and then explains why these facts give rise to a finding of professional misconduct, as alleged in the *Notice of Hearing*.

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[67] As stated above, the College has the burden of proving the allegations. This means that first, the College must prove that the behaviour alleged in the *Notice of Hearing* occurred on a standard of the balance of probabilities – or that it is more likely than not that the Member acted as alleged. Second, the College has the burden of proving that any such behaviour constitutes professional misconduct.

[68] In evaluating the evidence before it, the Panel recognizes that it can accept all, some, or none of any witness' evidence. When deciding how much of each witness' evidence to accept, the Panel has considered the following credibility factors: the witness' ability to observe and recall the events; whether the witness has an interest in the outcome of the hearing that may cloud their recollection; the plausibility or reasonability of the evidence; and the internal and external consistency (or inconsistency) of the evidence (see: *Pitts*). The Panel can also determine credibility based on logic, common sense, and its experience.

[69] The Member submitted that the Panel should apply the principles set out by the Supreme Court of Canada in *W.(D.)* in deciding whether the College has proven on clear convincing evidence that Student 1 who is not available to testify at the hearing should be believed. College Counsel submitted that the test for credibility analysis set out in *W.(D.)* does not apply in professional discipline matters where the burden of proof is on a balance of probabilities and referred the Panel to the cases of *Cann* and *McDougall*. The Panel will not apply the steps set out in *W.(D.)* to aid the trier of fact when it is faced

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with conflicting testimonials accounts. As set out in *McDougall* and *Cann*[10], this is not an appropriate tool for evaluating conflicting evidence on a balance of probabilities.

(1) Admissibility and Weight of Videotaped Statement

[70] The Member did not object to the admissibility of Student 1's videotaped statement when it was played through the evidence of D.C. Braganza. However, the Member's position in his opening and closing submissions was that the hearsay evidence should be inadmissible in this case.

(a) Submissions of the Member

[71] The Member submitted that while it is possible to admit hearsay under rule 13.01 of the *Rules* and section 15 of the SPPA, this does not mean that hearsay is automatically admissible. In support of his submission, the Member relied primarily on the case of *R v. Bradshaw*, 2017 SCC 35 ("*Bradshaw*").

[72] The Member submitted that *Bradshaw*, reinforces the dangers of admitting hearsay evidence because it is untested evidence and therefore, it is often difficult for the trier of fact to assess whether the evidence is trustworthy. Hearsay statements generally are not taken under oath, and the trier of fact cannot observe the declarant's demeanor as they make the statement, and the hearsay cannot be tested under cross-examination. A hearsay statement may be inaccurately recorded, and the trier of fact cannot easily investigate the declarant's perception, memory and narration or sincerity. In this instance, the College was unable to locate Student 1 and so the Member did not have an opportunity to cross-examine Student 1 to test his evidence to the police. This can

[10] *Cann* at para 31.

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compromise the fairness of the trial and the truth-seeking process as the hearsay evidence may be afforded more weight than it deserves. For example, Student 1 may have misperceived the facts, wrongly remembered the facts, made an unintentional misleading statement or made a false assertion. The Member submitted that Student 1 fled the country after giving the statement to the police, fully aware that he would be subject to cross-examination. The Member stated that if Student 1 was truthful, he should have at least left a forwarding address and attended on Zoom.

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[73] The Member further submitted that the College has failed to meet the requirements for the principled exception to the rule against hearsay set out in *Bradshaw* – i.e., that a hearsay statement, while generally inadmissible in court, can be admitted if it is necessary and reliable. With respect to necessity, the Member said that from the College's perspective it is necessary, as they simply cannot find the complainant who has chosen to flee the jurisdiction after giving his statement. With respect to reliability, the statement is unreliable as it is unsworn, untested and the Panel is not able to determine if it is consistent, truthful or reliable. As a result, the statement should not be admitted.

(b) Submissions of College Counsel

[74] College Counsel submitted that Student 1's hearsay statement is properly admissible pursuant to the principled approach to the admissibility of hearsay. There is nothing that prohibits the admission of hearsay in the *Rules* or SPPA as long as it is relevant to the subject matter and not inadmissible due to privilege or due to legislation.

[75] College Counsel submitted that the necessity criterion is clearly met in the circumstances. College Counsel pointed out that Mr. Chou gave evidence that Student 1 was likely in [XXX]. He testified that Student 1 had told a guidance counsellor that he was

moving back to [XXX]. College Counsel also referred to the unsuccessful attempts of D.C. Braganza, the College, the College Counsel and Mr. Chou to locate Student 1. College Counsel also explained that the failure of D.C. Braganza's efforts to locate Student 1 eventually led to the stay of proceedings in the related criminal matter.

[76] College Counsel submitted that the Member's concern that he has not had an opportunity to cross-examine Student 1 is valid and that the Panel should take this factor into account. However, College Counsel pointed out that even in criminal court, these types of statements are admitted when there cannot be effective cross-examination through the principled exception to hearsay or through applications under section 715.1 of the *Criminal Code*.[11] College Counsel also referred the cases of *Robinson* and *O'Shea* where Discipline Committees made findings primarily based on hearsay evidence.

[77] College Counsel also submitted that the statement had many important markers of reliability. First, the statement was audio and video recorded. Second, the statement was made within weeks of the incident, so there was not much time for Student 1's memory to degrade. Third, D.C. Braganza is an experienced officer who asked open-ended questions throughout the interview. Fourth, Student 1 was speaking to events that he experienced, as opposed to something that he heard about. Fifth, Student 1's version of events is corroborated by other evidence, and in particular, by the photos of the [XXX] messages between Student 1 and the Member, which Student 1 was not consulting

[11] According to subsection 715.1(1) of the *Criminal Code*: "[i]n any proceeding against an accused in which a victim or other witness was under the age of eighteen years at the time the offence is alleged to have been committed, a video recording made within a reasonable time after the alleged offence, in which the victim or witness describes the acts complained of, is admissible in evidence if the victim or witness, while testifying, adopts the contents of the video recording, unless the presiding judge or justice is of the opinion that admission of the video recording in evidence would interfere with the proper administration of justice".

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during his statement. Sixth, Student 1 corrected D.C. Braganza regarding his evidence several times during the interview. As well, in the video transcript, Student 1 says he is telling the truth. Seventh, the College made detailed submissions regarding whether Student 1 may have had a motive to lie in his statement and submitted that it is more plausible in this case that Student 1 did not have a motive to lie. Eighth, the College said that another factor for the Panel's consideration is the nature of the event. In this case, the nature of the event reported was on the more serious end of proceedings before the Discipline Committee but not as serious as criminal proceedings where liberty interests and jail time would be at stake.

[78] College Counsel also highlighted that in the *Robinson* case, the Discipline Committee of the Early Childhood Educators, considered the public interest in the truth-seeking function of the hearing and submitted that the truth-seeking function of the hearing should be given significant weight as a factor.

(c) Decision Regarding Admissibility

[79] The Panel considered both parties' submissions regarding the admissibility of Student 1's recorded statement to the police. The video statement is appropriately characterized as hearsay evidence, as it is an out of court statement being admitted for the truth of its contents. The Panel is permitted to admit hearsay evidence, which is generally inadmissible in court, as long as it is relevant to the subject matter of the proceeding pursuant to section 15 of the SPPA and not inadmissible due to privilege or under a statute. The Panel can also admit hearsay evidence pursuant to the common law exception to the rule against hearsay (see: *R. v. F.C.*, 2015 ONSC 6428 at paras 8-19 and *Manikam* at paras 29-31). Even if the Panel decides that the statement would be

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otherwise admissible, the Panel has the authority to decline to admit hearsay evidence if its prejudicial effect exceeds its probative value. For the reasons set out below, the Panel finds that Student 1's statement is appropriately admissible pursuant to both the common law exception to the rule against hearsay and pursuant to section 15 of the SPPA. The Panel finds that the principles of necessity and reliability have been met in the circumstances and the Panel finds that the prejudicial effect of admitting the statement does not exceed its probative value.

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[80] The Panel is cognisant of the dangers of admitting hearsay evidence. When an individual describes an event that they have observed, issues could arise with their perception, memory, communication, and sincerity. To diminish the possibility of error due to these issues, a witness is generally required to testify before the trier of fact, the testimony should be under oath or affirmation, and the witness should be subject to cross-examination (see: *Watt's Manual of Criminal Evidence*, as quoted in *Manikam* at para 29). The Panel agrees that cross-examination is the best way to expose defects in a witness' perception, memory, or any ambiguities in their account. However, it has been long accepted that hearsay evidence can still be admitted if it can satisfy the principles of necessity and reliability.

(i) Necessity

[81] The Panel finds that the College has satisfied the necessity element of the principled exception for admitting hearsay evidence. The necessity requirement requires the Panel to be satisfied that there is no other way to get the evidence before the Panel: *Manikam* at para 31. The Panel has received reliable evidence that exhaustive attempts were made by the police, the College and by College Counsel's office to contact Student 1 (Exhibits

3, 15 and 16). The Panel also heard evidence that Student 1 is believed to be out of the country. The Panel notes that in the Member's criminal proceedings, the Crown was advised that Student 1 had returned to his home country and the principal had no way of contacting the complainant and no indication when Student 1 would be returning to Canada and the criminal charges were stayed as a result (Exhibit 3). Mr. Chou also testified that he was told by a guidance counsellor that Student 1 has probably gone back to [XXX]. Since the College, College Counsel and the police have been unable to get in touch with Student 1 and he is believed to be out of the country, the Panel accepts there is no way to get Student 1's evidence before the Panel other than through his videotaped statement. As a result, the necessity requirement of the principled exception to hearsay has been met.

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(ii) Reliability

[82] The College has further satisfied the Panel that the videotaped statement is sufficiently reliable to justify its admission under the principled exception to hearsay. In reaching this conclusion, the Panel has considered a number of relevant factors. First, the statement is videotaped in its entirety. As such, the Panel has had the opportunity to observe Student 1 as he was telling his story and can make determinations regarding any potential credibility markers. Second, the conditions surrounding the taking of Student 1's statement have many indications of reliability – there is no evidence that Student 1 was told that he had to give a statement or that anyone told Student 1 what to say, and Student 1 was cautioned about the consequences of giving a false statement, including that he could be charged with a criminal offence. D.C. Braganza also made it clear to Student 1, that he was not obligated to make the statement and that Student 1 could decide whether

he wanted to do so. The statement was taken by an experienced police officer, at the Child and Youth Advocacy Center in Toronto while a CAS worker was present, listening to the interview with headphones. This gave the Panel comfort that the interview was captured in a professional setting. Additionally, D.C. Braganza asked open-ended questions, used a trauma-informed approach, and did not lead Student 1's statement in any way with his questioning. He also took care to address the language barrier after Student 1 told him that English was not his first language by offering to clarify if necessary and took time to review details with Student 1. Third, the statement was taken shortly after the alleged events, and Student 1's memory about the events is unlikely to have significantly deteriorated in the time between the events and the taking of the statement. Fourth, Student 1 was speaking to events within his own experience and not events that he had heard about.

[83] Fifth, the Panel determined that there was insufficient evidence that Student 1 had a motive to lie in his statement. The Member's position is that Student 1 fabricated many of the details in his statement such as those regarding the [XXX] messages, inappropriate comments and touching of Student 1's hand, leg and penis. The Member said that he was not sure what Student 1's motive was to fabricate these details. It may have been a way to get back at the Member for pointing out that he had been late and/or giving him a low grade. The Member also mentioned that it was possible that someone else was involved with Student 1 such as the administration of the School because they were unhappy with his suggestions to improve the School's practices. The Panel finds that none of these theories are supported by the evidence in this hearing and are not more plausible than the version of the events described by Student 1 in his videotaped

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statement. The Panel did not hear reliable evidence that Student 1 had animus towards the Member for any low marks that he received in school or because the Member had called Student 1 out for being late twice. Ms. Dahl testified that, while he missed some assignments, his overall grade in her course was “fine”. The Member said that at the time that Student 1 asked him about how he could improve his marks, Student 1’s mark in the Member’s class was average. The Member also testified that Student 1 was a polite student and prior to hearing about these allegations against him, the Member had a positive student-teacher relationship with Student 1. There was also insufficient evidence led to support a theory that Student 1 was somehow involved in a conspiracy with the administration against the Member for his having suggested making improvements to their practices.

[84] Finally, the information that Student 1 provided in his statement is significantly corroborated by other evidence in this hearing. The Panel has heard evidence from the Member that matches much of what Student 1 described in his statement – for example, that Student 1 visited the Member’s home to meet his [XXX] daughter, that the Member picked Student 1 up and dropped him off at his home, that the Member took a picture of Student 1 with his baby, that the Member drove a Honda, and that he lived in an apartment on a high floor. Additionally, the Panel received photos of [XXX] messages from Student 1’s phone that further corroborate Student 1’s statement (Exhibits 7, 8, 13 and 14). In addition, though Ms. Dahl and Mr. Chou did not witness the events between the Member and Student 1, they testified about the aftereffects of the incident on Student 1 and their testimony was consistent with the statement of Student 1. Ms. Dahl said that Student 1 was shaken, upset, having trouble with sleep and stressed and Mr. Chou said that Student

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1 was shocked and upset but not suicidal. The Panel is satisfied that the reliability element of the principled exception to hearsay has been met.

(iii) Probative Value and Prejudicial Effect

[85] Finally, the Panel is cognizant that it can also exclude Student 1's statement if the probative value of the statement exceeds its prejudicial effect, even if the evidence can satisfy the requirements of necessity and reliability: *Manikam* at para 31. The statement is significantly probative of the College's case and the probative value of the statement is quite high. Furthermore, the public interest in the truth-seeking function of the hearing weighs in favour of admitting the statement. The Panel is of the view that the probative value of the statement would be greater than any prejudicial effect of admitting the statement.

(d) Decision Regarding Weight to Attribute to the Videotaped Statement

[86] The Panel finds that it can place significant weight on the videotaped statement of Student 1. The Member questioned why Student 1 had not informed the School or authorities about the messages and pictures if the Member had been in touch with him for so many months as Student 1 alleged. The Panel finds that it is inappropriate to draw any adverse inference regarding the fact that Student 1 did not report the Member after having received the [XXX] messages and videos or for not reporting the Member immediately after the sexual touching occurred. There is no one way that Student 1 was required to behave as a victim of grooming and sexual abuse. As recognized by the Supreme Court of Canada in *D.D.* at paragraph 65:

> there is no inviolable rule on how people who are the victims of trauma like a sexual assault will behave. Some will make an immediate complaint, some will delay in disclosing the abuse, while some will never disclose the

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> abuse. Reasons for delay are many and at least include embarrassment, fear, guilt, or a lack of understanding and knowledge.

[87] Further, the Panel notes that Student 1 reported the Member's behaviour when it escalated to sexual touching within days of the incident. The Panel accepts that Student 1 was perplexed by the messages and videos that the Member sent him but there was a power imbalance between himself and the Member. He had expressed fear about reporting the Member to the police and concern about his student teacher relationship with the Member. He indicated that in [XXX], students do what their teacher says and are polite to them because if "you…offend them you [are going to] be kick[ed] out from of the school". The Panel refused to draw any adverse inference from the fact that Student 1 did not report the Member's behaviour sooner.

[88] As outlined in greater detail above, the Panel has considered the Member's position that Student 1 fabricated many of the details in his statement. The Member said that he was not sure what Student 1's motive was to fabricate these details but it may have been a way to get back at the Member for pointing out that he had been late and/or giving him a low grade or because Student 1 was involved in a conspiracy with the School administration who were unhappy with the Member's suggestions to improve the School's practices. The Panel finds that none of these theories are supported by the evidence in this hearing and are not more plausible than the version of the events described by Student 1 in his videotaped statement.

[89] The Panel finds that it can place significant weight on the videotaped statement of Student 1 because, as outlined above, there are significant indicators of reliability, the Panel has found that there is insufficient evidence that Student 1 had a motive to lie in his statement, and Student 1's version of the events is more plausible than the version of the

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events put forward by the Member. In addition, Student 1's evidence is both internally and externally consistent and Student 1's details were specific and accurate. The Panel appreciates the concerns raised by the Member and notes that the Panel is not relying solely on this videotaped statement to make its findings, but the Panel does consider this evidence to be significant in light of the fact that Student 1 could not be reached.

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(2) Credibility Assessments and Factual Findings

(a) Credibility Assessments

(i) Mino Chou

[90] The Panel has some general concerns with the credibility of Mr. Chou's evidence. He had the opportunity to observe the events that he testified to. However, he often could not recall details of the events testified to, including the timeline. This made his testimony difficult to follow and therefore reduced the reliability of his evidence. The Panel also finds that Mr. Chou has an interest in the outcome of these proceedings, as the Headmaster of the School, given his interest in the reputation of the School. As well, Mr. Chou's evidence was not always externally or internally consistent. Mr. Chou was asked in cross-examination regarding whether the School made a committee to investigate the allegations. He responded that the events did not take place during the school hours. He also stated in cross-examination that there was no school incident report because it happened outside of school. However, Mr. Chou noted to the Member in an email that an investigation is ongoing at the School (Exhibit 22). Furthermore, Mr. Chou originally stated that Student 1 graduated in 20[XXX] but then later in his testimony stated that Student 1 did not re-enroll with the School and the guidance counselor told him that he has probably gone back to [XXX].

[91] The Panel also noted that Student 1 said that Mr. Chou told him to delete the Member as a contact so that the Member could not contact Student 1 (Exhibit 6). This resulted in the [XXX] message conversation being deleted from Student 1's phone. While the [XXX] messages were preserved through the screenshots from Mr. Chou (Exhibits 7, 8, 13 and 14), the Panel does find it strange that Mr. Chou did not take steps to ensure that the [XXX] messages could be shown to the police on the phone itself. However, the Panel notes that Mr. Chou was never given an opportunity to explain why he advised Student 1 to delete the Member as a contact at the time that he did.

[92] In the end, the Panel put limited weight on the evidence of Mr. Chou. The Panel has accepted the evidence of Mr. Chou where it was consistent with the evidence of other witnesses and documentary evidence. For example, Mr. Chou testified that he took photos of Student 1's phone and provided those images to the police. This is consistent with Student 1's statement to D.C. Braganza and has been verified through the emails received into evidence by the Panel.

(ii) Elisabeth Dahl

[93] The Panel finds that Ms. Dahl was a credible and reliable witness. She tried her best to remember and accurately recount the events she testified to. Her evidence displayed most of the markers of credibility outlined in *Pitts* – she had the opportunity to experience and observe the events to which she testified, her evidence was clear, she was measured in her testimony, there was no evidence of her interest in the outcome of this matter, and she did not seem to embellish her evidence. Ms. Dahl was honest about any parts of the events that she did not remember or did not have any knowledge of and her testimony was consistent in cross-examination. The Panel notes that Ms. Dahl testified that she was

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told by Student 1 that he vomited when he got to the front door of his house after leaving the Member's car. In the videotaped statement Student 1 describes feeling like he was going to throw up but it is not clear that Student 1 was saying in the statement that he actually vomited. If there was a slight difference here between the evidence of Student 1 and Ms. Dahl, the Panel did not think that it was significant, and it may have been explained by the language barrier as English is not Student 1's first language. The Panel has relied on Ms. Dahl's evidence where appropriate.

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(iii) D.C. Braganza

[94] The Panel finds that D.C. Braganza was a credible and reliable witness. He had a good ability to recall the events that he testified to and only had to review his notes to refresh his memory regarding minor details. He is a professional police officer whose role in the case was to interview Student 1. There was no evidence that D.C. Braganza had any interest in the outcome of this hearing. His evidence regarding the steps he took in the investigation is supported by the video of Student 1's statement, pictures of Student 1's phone, and emails sent by Mr. Chou. The Panel notes that during his evidence, D.C. Braganza described gestures made by Student 1 in his videotaped statement. As the entirety of the interview was recorded and made an exhibit at this hearing, the Panel has placed no weight on D.C. Braganza's descriptions of Student 1's gestures in the videotaped statement. The Panel has used its own judgement to observe the gestures made by Student 1.

(iv) The Member

[95] The Panel has concerns about the Member's credibility and reliability. At the outset of its analysis, the Panel notes that the Member has not disputed several factual elements

of the College's case. The Member did not dispute that he taught Student 1 Grade [XXX] [XXX] from January to May 2020. The Member further does not dispute that he drove Student 1 to his apartment where Student 1 met the Member's wife and baby, that Student 1 ate ice cream, and that the Member took Student 1's picture with his baby. The Member then drove Student 1 home. This evidence is consistent with Student 1's statement and the Panel does not have concerns regarding the Member's evidence on these points.

[96] However, there are several elements of the Member's testimony that the Panel found to be implausible and unlikely to have occurred. First, the Member insisted numerous times that he was simply too busy to send the impugned messages to Student 1 or to make inappropriate comments to Student 1 in his car on the way to and from his house. The Panel is not persuaded by this assertion. Sending messages over social media is not a particularly time-consuming activity and being generally busy or having a [XXX] would not, by itself, prevent someone from sending [XXX] messages. Additionally, the allegations in this case relate to making inappropriate comments and brief touching of Student 1's hand and thigh and penis over his clothes. These are not activities that would have taken a particularly long time and could have reasonably been done in the very short time that the Member drove Student 1 to and from his home.

[97] Second, the Panel found the Member's testimony regarding his presence on social media to be confusing and implausible. The Panel notes that there is an inconsistency between the Member's initial testimony that he was not in touch with Student 1 over social media and the letter submitted on his behalf to the investigator which stated that he conversed with Student 1 via social media apps (Exhibit 20). When confronted with this inconsistency, the Member responded that he created an account on a social media

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application to communicate with Student 1 only, but that he did not remember which application it was and that he deleted it when the School's administration requested that he terminate communication with students as per Exhibit 22. The Panel does not believe the Member's testimony on this point and finds it to be absurd behaviour for a teacher to create a social media profile simply to communicate with a student when they are able to communicate through e-mail, text, or other means. The Panel finds that the Member likely fabricated this explanation because he was confronted with an inconsistency in his evidence.

[98] Third, the Panel found the Member's testimony about Student 1's injury and memory loss to be implausible. The Member testified that Student 1 told him that he had an injury which required him to be [XXX] for 2-3 days and that he experienced a period of memory loss just a few days prior to his visit to the Member's house. The Member did not observe any bandages or other physical indications of this significant injury. The Member's testimony on this point was not supported by any other evidence and it is contradicted by the credible and reliable evidence of Ms. Dahl, who testified that she did not recall Student 1 being absent from her class for a few days around that time. Furthermore, the Panel did not notice any signs of cognitive impairment in Student 1's video statement.

[99] The Panel notes that the Member had asked why he would have come to defend himself "if [he] was wrong by [his] heart or by [his] mind". Attendance at the hearing is not in and of itself an indication of credibility or truthfulness. The Panel's role is to consider the evidence and submissions presented by the parties to make its findings. Furthermore, while the Panel acknowledges the Member's credentials and professional references and

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letters of recommendations, the Panel notes that people in positions of power and authority can commit negative acts and has accordingly given them no weight.

[100] Overall, the Panel believed the Member where his testimony was consistent with other reliable evidence received in this hearing. Otherwise, the Panel finds that the Member's testimony was overly self-serving and unlikely.

(b) Factual Findings

(i) The Member was employed by [XXX] in or about the period of September 2018 to January 2019, provided correct exam answers to students and filled in correct answers on the multiple-choice portion of their exams (particulars 2 and 4)

[101] At the outset of the hearing, College Counsel indicated that the College would not be calling evidence or seeking a finding with respect to particulars 2 and 4. As a result, the Panel has not made any findings regarding particulars 2 and 4.

(ii) In or around the period of January 2020 to July 2020, Student 1 was a [XXX]-year-old male student at [XXX] School, and Student 1 was in the Member's Grade [XXX] [XXX] Class (particulars 3, 5 and 6)

[102] The Panel finds that particulars 3, 5 and 6 have been proven on a balance of probabilities.

[103] The Panel finds that in or about the period of August 2019 to May 2020, the Member was employed as a teacher at [XXX] School, a private school in Toronto, Ontario (particular 3). The Member agreed in the hearing that he was employed with the School from August 2019 to May 2020 and Ms. Dahl testified that she worked with the Member at the School as the Member's colleague and in her role as a lead teacher. The Panel also considered the videotaped statement of Student 1 (Exhibit 6) wherein Student 1 said that the School is a private school in [XXX].

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[104] The Panel also finds that Student 1 was a [XXX]-year-old male student in the Member's Grade [XXX] [XXX] class at the School (particulars 5 and 6). In addition to the Member agreeing in cross-examination that he had taught Student 1 Grade [XXX] [XXX] from January 2020 to May 2020, the Panel accepts there is ample other evidence before them to make these findings. For example, the Panel has considered the videotaped statement (Exhibit 6) where Student 1 said that the Member taught him Grade [XXX] [XXX] starting in January or February of 2020. The Panel also reviewed Student 1's study permit (Exhibit 9) which enabled him to attend the School. Mr. Chou's testimony and Ms. Dahl's testimony confirm that Student 1 was a student at the School in and around the period of January 2020 to July 2020. Student 1 also confirmed to D.C. Braganza that he was [XXX] years of age in July of 2020 (Exhibit 6) and Student 1's study permit (Exhibit 9), passport (Exhibit 10) and screenshot of student information (Exhibit 11) confirm the student's date of birth and that he is male. As well, the Member acknowledged to the College's investigator that Student 1 was his former student (Exhibit 20).

(iii) The Member's social media communications with Student 1 (particulars 7 and 10)

[105] The Panel finds that particulars 7 and 10 have been proven on a balance of probabilities.

[106] As a preliminary note, the Panel acknowledges the Member's concern that the police did not have a chance to examine the [XXX] messages on Student 1's phone directly and that the messages were deleted, and the Panel considered the Member's submission that artificial intelligence can be used to doctor photos. However, the Panel is of the view that on a balance of probabilities, taking into account all of the evidence before it, that the

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photos taken by Mr. Chou in Exhibits 7, 8, 13 and 14 are representative of a [XXX] conversation between Student 1 and the Member.

[107] The Panel notes that Exhibits 7 and 13 appear to be very similar and Exhibits 8 and 14 appear to be very similar. Each exhibit contains an email from Mr. Chou to D.C. Braganza sent on July 22, 2020 and 7 attached photos of [XXX] messages. The emails in Exhibits 7 and 13 both indicate that the email was sent at 17:03:06 and the emails in Exhibits 8 and 14 both indicate that the email was sent at 17:04:08. Each of the four exhibits contains photos of the same [XXX] messages.

[108] The Panel notes that the Member confirmed that the baby photo in one of the messages that appears to have been sent by the Member is of his daughter, and that his daughter's name is [XXX]. The Member alleged that Student 1 had taken this photo. However, the Panel does not accept this suggestion. The time stamp in the photo suggests that the photo of the baby was sent on June 26, 2020 (Exhibits 7, 8, 13, 14), which was before Student 1's visit to the Member's home. The Member admitted to picking up Student 1 on July 7, 2020 and bringing him to his apartment to visit his baby and that he was in touch with the student over a social media application and the phone during that time period. Student 1's statement was extremely detailed and compelling, and corroborated by the testimony of Ms. Dahl and Mr. Chou and the [XXX] messages which Student 1 did not have in front of him while he was giving his statement. The Panel accepts that Student 1 came forward to report the Member's conduct at great risk to himself, believing that he could even be killed for telling the police about what had happened to him. Additionally, the Member acknowledged exchanging messages with the Student 1 over text and social media, even though he denied exchanging the

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particular messages set out in Exhibits 7, 8, 13 and 14. Given this, the Panel finds the photographs of the [XXX] messages taken by Mr. Chou represent an exchange between Student 1 and the Member over[XXX].

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a. The Member sent Student 1 videos of a sexual nature (particular 7)

[109] The Panel finds that the College has proven on a balance of probabilities that in or around the period of February 2020 to July 2020, the Member sent Student 1 videos that were sexual in nature over social media as alleged in particular 7 of the *Notice of Hearing*. In making this finding, the panel has reviewed the photos of the [XXX] messages (Exhibits 7, 8, 13, and 14) as well as Student 1's statements to D.C. Braganza (Exhibit 6).

[110] In his videotaped statement (Exhibit 6), Student 1 explained that he had received six or maybe more sexual videos from the Member that were almost "porn" like but did not show "making love". He said he had received maybe one per month starting in February or March and that the Member sent them to him over [XXX]. Student 1 described one example as a video of a girl "on the street" wearing "a bikini" with a big butt who was "shaking…like walking". He also described a video of a "woman from Pakistan" with "big boobs", wearing "only a top". Student 1 remembered seeing a full butt without any underwear in one of the videos, but he could not remember if the person was covered on top because when he opened the video and saw what it was, he closed it.

[111] The photos of the [XXX] conversation support the finding that the Member sent Student 1 two videos through [XXX] (Exhibits 7, 8, 13 and 14). In particular, the Panel was presented with screenshots of 2 video stills (Exhibits 7, 8, 13 and 14). The Panel notes that one still is of a video with a woman wearing a very tight top or dress with no bottoms or a very short outfit walking down the street. According to the video length at

the bottom right-hand corner of the still, the video is 39 seconds long. The second still is seven-seconds long, according to the video length on the still and depicts a woman wearing a dress or a skirt being blown upwards to reveal the woman's buttocks. This video is labeled "Lockdown is Slowly Opening".

[112] The Panel notes that the wording of particular 7 says that it is "including but not limited to" the allegations in particulars 7(a), 7(b) and 7(c). The Panel finds that the video of the woman wearing a very tight top with no bottoms or a very short outfit proves that the College has made out particular 7 generally, as this video was sent to Student 1 by the Member and is a video of a sexual nature, even though it is not described in particulars 7(a), 7(b) or 7(c).

[113] Furthermore, the Panel finds that the College has proven on a balance of probabilities that the Member sent Student 1 a video as set out in particular 7(a). The Panel is satisfied that the second video contained in Exhibits 7, 8,13 and 14 that is labelled "Lockdown is Slowly Opening", is also a video of a sexual nature and depicts a woman wearing a dress or skirt that is being blown upward which exposes part of the woman's buttocks.

b. The Member sent Student 1 inappropriate messages over social media (particular 10)

[114] The Panel also finds that the College has proven on a balance of probabilities that in or about July 2020, the Member sent inappropriate messages to Student 1 over social media as alleged in particulars 10 (a)-(j). The Panel relies on the videotaped statement of Student 1, and on the photographs of the [XXX] exchange between Student 1 and the Member to make these findings.

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[115] The [XXX] conversation contains evidence that the Member sent inappropriate messages to Student 1 as alleged in particulars 10 (a)-(j) (see Exhibits 7, 8, 13 and 14).

[116] The [XXX] messages from the Member were inappropriate because they crossed the boundaries of what would be appropriate communication between a teacher and a student. The Member talked to the student about his dating life for example when he wrote “seems ur busy chatting with someone special [smiley face emoji]”. The Member also inappropriately talked about dating with Student 1 when he wrote “Ur one of my favourite n close student…if u were girl I would have taken u on date”.

[117] In addition, a number of the [XXX] messages contain sexual innuendo or are sexually suggestive. The Member’s message asking whether Student 1 would be “playing with urself” suggested a reference to masturbation. The message wherein the Member stated “u can release ur energy and feel positive” also had a sexual connotation. Furthermore, the Member’s messages where he referred to “sweet wet dreams” and “looking at ur roommate [smiley face emoji with hearts for eyes and tongue protruding]” are also sexual in nature. The [XXX] messages were also inappropriate because they demonstrate that the Member was communicating with Student 1 late at night. The [XXX] messages as alleged in particulars 10 (a)-(j) were inappropriate as a whole because they are part of a grooming attempt by the Member and the Member’s attempt to form an inappropriate relationship with Student 1. As a result, the Panel finds that the College has succeeded in proving particular 10.

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(iv) The Member made inappropriate comments to Student 1 and touched Student 1 inappropriately (particular 8)

[118] The Panel finds that the College has successfully proven on a balance of probabilities that the Member made inappropriate comments to Student 1 including asking Student 1 about his sex life (particular 8(a)(i)) and by asking Student 1 to see photographs of his girlfriend (particular 8(a)(ii)). The Panel also finds that the College has successfully proven on a balance of probabilities that the Member touched Student 1 without consent on his hand, inner thigh and penis as set out in particular 8(b).

[119] The Member did not dispute picking up Student 1 in his car and taking him to his apartment where Student 1 met his wife and baby. He also did not dispute driving Student 1 home in his car. The Panel finds that the Member's testimony was credible with respect to these points and was consistent with the video evidence of Student 1.

[120] However, the Member disputed that he asked Student 1 to stay in his car when they arrived outside of Student 1's home and he also disputed making inappropriate comments or touching Student 1 as alleged in particulars 8(a) and 8(b). The Panel did not find the Member's evidence to be credible with respect to these particulars as was outlined in the credibility assessment for the Member above.

[121] Rather, the Panel is persuaded by the video and documentary evidence before it. In the video evidence presented by the College (Exhibit 6), Student 1 stated that the Member asked him "how do you have sex with your ex?" and "which position do you like the best?" As noted in the credibility section, the Panel also did not accept the Member's insistence that he was too busy to have made inappropriate comments to Student 1 while they were in his car.

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[122] Examples of the Member asking Student 1 about his sex life were also contained in the [XXX] messages (Exhibits 7, 8, 13 and 14). For example, the Member asked the student “What are ur plplans for tonite […] Watching animie or those movies or playing games or playing with urself” followed by a smiley face emoji. The Member also asked Student 1 “what time u wake up in mo […] Morning […] so ur watching sleeping beauty [winking smiley face emoji]” (Exhibits 7, 8, 13, 14). Student 1 also stated in the video evidence that the Member asked him to show him a picture of his ex (Exhibit 6). Therefore, the College has proven particulars 8(a)(i) and 8(a)(ii) on a balance of probabilities.

[123] The Panel is also satisfied that video evidence and testimony of Ms. Dahl establish that the Member touched Student 1 inappropriately without his consent (particular 8(b)). In the video evidence (Exhibit 6), Student 1 described that after arriving at Student 1’s home, the Member asked him to stay for five minutes more. Student 1 explained that the Member shook his hand and then how the Member would not let his hand go. Student 1 described pulling his hand back from the Member when he would not let go. Student 1 stated that the Member asked Student 1 to show him a picture of his ex and Student 1 explained that while he was using his phone to look for the photo of his ex to show the Member, the Member put his hand on his thigh overtop of his shorts. In the video, Student 1 demonstrated how he tried to push away the Member’s hand but instead of stopping, the Member moved his hand farther up Student 1’s thigh. Student 1 explained that the Member touched his penis for about thirty seconds and he demonstrated that the Member had done this with his fingers overtop of his shorts. Student 1’s account in the videotaped statement is consistent with what he told Ms. Dahl about the allegations. Ms. Dahl testified that Student 1 told her that the Member had sexually assaulted him, and that the Member

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had touched Student 1's leg and then moved his hand into his lap. The Panel also notes that there is a [XXX] message wherein the Member apologizes if he made Student 1 uncomfortable by holding his hand. Therefore, the Panel is satisfied that the Member touched Student 1 inappropriately without his consent on his hand, thigh and penis.

(v) In or about July 2020, the Member telephoned Student 1 on one or more occasions (particular 9)

[124] The Panel finds that the College has proven on a balance of probabilities that the Member telephoned Student 1 on one or more occasions in or about July 2020 as alleged in particular 9.

[125] The Panel has considered Student 1's statement in the video evidence that the Member called him to let him know what time the Member would pick him up to visit his daughter in July, 2020 (Exhibit 6). The Panel also notes that [XXX] conversation has a message from the Member to Student 1 saying "Ok be ready by 6pm…When I call come outside…what is ur phone number" (Exhibits 7, 8, 13 and 14). There are also records of what appears to be three phone calls from the Member to Student 1 in the photographs of the [XXX] exchange (Exhibits 7, 8, 13 and 14). Finally, the Panel accepts the Member's admission in his testimony that he called Student 1 to coordinate the visit to his apartment in July 2020. As such, the College has successfully proven this particular on a balance of probabilities.

(3) Legal Conclusions

[126] The Panel finds that the Member's conduct set out above gives rise to findings of professional misconduct. In particular, he abused a student verbally contrary to Ontario Regulation 437/97, subsection 1(7); he abused a student psychologically or emotionally

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contrary to Ontario Regulation 437/97, subsection 1(7.2); he abused a student sexually contrary to Ontario Regulation 437/97, subsection 1(7.3); 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, he engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19). Additionally, the Panel finds that the Member engaged in sexual abuse and sexual misconduct as defined in section 1 of the *Act*.

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(a) The Member abused a student or students, verbally, contrary to Ontario Regulation 437/97, subsection 1(7)

[127] The Panel finds that the Member abused a student verbally contrary to subsection 1(7) of Ontario Regulation 437/97. The Member engaged in verbal abuse when he sent [XXX] messages (Exhibits 7, 8, 13 and 14) to Student 1 which contained sexual innuendo. The Panel also finds that the Member's inappropriate comments and questions to Student 1 regarding his girlfriend on the drive to and from the Member's house constitute verbal abuse. Furthermore, the Member also engaged in verbal abuse when he asked Student 1 how he liked to have sex with his girlfriend. In the video evidence (Exhibit 6), Student 1 described that he found the Member's behaviour disturbing. It is verbal abuse to talk to a student about their intimate relationships and sex life and to send messages to a student which contain sexual innuendo. This behaviour would reasonably cause a student to feel uncomfortable and did in fact make Student 1 uncomfortable in the circumstances.

(b) The Member abused a student or students psychologically or emotionally, contrary to Ontario Regulation 437/97, subsection 1(7.2)

[128] The Panel finds that the Member abused a student psychologically or emotionally contrary to subsection 1(7.2) of Ontario Regulation 437/97. The Member's actions had a

negative psychological and emotional impact on Student 1. As a result of the Member's conduct, including touching Student 1's inner thigh and penis over his clothes, Student 1 felt nauseous and sick to his stomach and was scared about being kicked out of school (Exhibit 6). He also identified that he was scared to go to the police (Exhibit 6). Ms. Dahl also testified that Student 1 had difficulty with sleep and stress, seemed shaken and was upset. Similarly, Mr. Chou said that Student 1 was shocked and upset. The Panel finds it is obviously disturbing and self-evidently psychological or emotionally abusive for a student to have an adult or teacher send them messages of a sexual nature and touch them sexually.

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(c) The Member abused a student or students sexually, contrary to Ontario Regulation 437/97, subsection 1(7.3) and/or engaged in sexual abuse of a student or students as defined in section 1 of the *Act*

[129] The Panel finds that the Member abused a student sexually contrary to subsection 1(7.3) of Ontario Regulation 437/97 and as defined in section 1 of the *Act*. In making this finding, the Panel relies on the video evidence of Student 1 (Exhibit 6) and the [XXX] conversation evidence (Exhibits 7, 8, 13 and 14).

[130] The definition of sexual abuse under subsection 1(1) of the *Act* includes "touching, of a sexual nature, of the student by the member". The Member touched Student 1's inner thigh and penis over Student 1's clothes when they were in the car while the Member was breathing heavily which was clearly "touching, of a sexual nature" under subsection 1(1) of the *Act*.

[131] The definition of sexual abuse under subsection 1(1) of the *Act* also includes "behaviour or remarks of a sexual nature by the member towards the student". The Member's questions to Student 1 about his dating life and sexually explicit comments and

comments containing sexual innuendo towards Student 1 amounted to sexual abuse under the *Act*. For example, the Member asked Student 1 how he had sex with his girlfriend and which position he preferred. The Member sent Student 1 a message stating "Ur one of my favorite n close student…..if u were girl I would have taken u on date". The Member also sent a message which said "Ok we will talk tommorw good nite n sweet wet dreams bubye". In addition, the Member asked the student, "What are ur plplans for tonite …Watching animie or those movies or playing games or playing with urself" followed by a smiley face emoji. These comments were clearly of a sexual nature and targeted towards Student 1. The comments suggested that the Member had an interest in Student 1 and was pursuing Student 1 which was wholly inappropriate from a teacher in a position of trust and authority. Furthermore, these comments were part of a grooming pattern used by the Member to test the boundaries with Student 1 which culminated in the Member touching Student 1 sexually in the car. This was demonstrated in the totality of the Member's conduct.

[132] The Panel notes, that even without the videotaped evidence of Student 1, there is sufficient evidence in the [XXX] messages to demonstrate a pattern of grooming and a finding of sexual abuse due to the explicit nature of those comments.

(d) The Member engaged in sexual misconduct as defined in section 1 of the *Act*

[133] The Panel finds that the Member engaged in sexual misconduct as defined in section 1 of the *Act*. "Sexual misconduct" is defined in the *Act* as:

> inappropriate behaviour or remarks of a sexual nature by the member that is not sexual abuse of a student, where,

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> (a) one or more students are exposed to the behaviour or remarks, or the member knows or ought to know that one or more students are likely to be exposed to the behaviour or remarks, and
>
> (b) a reasonable person would expect the behaviour or remarks to have the effect of,
>
> > (i) causing distress to a student exposed to the behaviour or remarks,
> >
> > (ii) being detrimental to the physical or mental well-being of a student, or
> >
> > (iii) creating a negative environment at a school for a student exposed to the behaviour or remarks.

[134] The Member exposed Student 1 to sexual videos. It is reasonable that sending these videos to a student would cause distress to the student or create a negative environment at school for a student. The Panel finds that the content of the sexual videos was more generalized and was not "behaviour or remarks of a sexual nature by the [M]ember towards the student" as outlined in subsection 1(1) of the *Act*. Therefore, sending the sexual videos to Student 1 constituted sexual misconduct as opposed to sexual abuse.

(e) The Member 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)

[135] The Panel finds that the Member's conduct would reasonably be regarded by members as disgraceful, dishonourable, and unprofessional. The Member formed an inappropriate relationship with Student 1, asked him questions about his relationship and sex life and sent him messages and videos of a sexual nature on [XXX]. The Member also touched Student 1's inner thigh and penis over his clothes. The Member's behaviour in this case was egregious and demonstrated a significant moral failing.

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(f) The Member engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19)

[136] The Panel finds that the Member's conduct was unbecoming a member, contrary to subsection 1(19) of Ontario Regulation 437/97. The Panel finds that the Member engaged in grooming behaviour towards Student 1 and initiated and fostered an inappropriate relationship with Student 1 which culminated in sexual touching. The Member's egregious conduct breached the trust placed in him by students, parents and the school community. When teachers engage in grooming behaviour and inappropriate relationships with students, they cause the public to lose confidence in the teaching profession.

N. PENALTY

[137] The Panel will schedule a subsequent date on which to hear submissions with respect to penalty.

[138] As required by subsection 30.2(1)(b) of the *Act*, the Panel makes an interim order directing the Registrar to suspend the Member's certificate of qualification and registration until the Panel makes its order on sanction.

Date: May 9, 2025

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Kimberley Westfall-Connor, Chair
Chair, Discipline Panel

Anthony Jeethan, OCT
Member, Discipline Panel

Sandra Pizzuti, OCT
Member, Discipline Panel

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