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DISCIPLINE COMMITTEE
OF THE ONTARIO COLLEGE OF TEACHERS

Citation: Ontario College of Teachers v Wahbi 2025 ONOCT 64
Date: 2025-10-07

DECISION ON FINDING AND REASONS FOR DECISION

IN THE MATTER OF the *Ontario College of Teachers Act, 1996* and the Regulation (Ontario Regulation 437/97) thereunder;

AND IN THE MATTER OF a discipline proceeding against Michael James Wahbi, a member of the Ontario College of Teachers.

BETWEEN:

ONTARIO COLLEGE OF TEACHERS

– and –

MICHAEL JAMES WAHBI (REGISTRATION #484512)

PANEL: Emile Ramlochan, Chair (Dissent)
Andrew Glenny
Linda Staudt, OCT

HEARD: November 6, 7, 8, 20 and 21, 2023; March 25, 27, and 28, 2024; April 8, 2024, and May 15, 2024

Jordan Stone and Lisa Feinberg, for the Ontario College of Teachers

Howard C. Cohen, Sabrina Waraich and Avin Persad-Ford, for Michael James Wahbi

Rebecca Durcan, Independent Legal Counsel

PUBLICATION BAN: Pursuant to subsections 32.1(3) and 32.1(4) 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, or[XXX], identified as "Student 1" in the Notice of Hearing dated June 3, 2022, being a person who was allegedly sexually abused.

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[1] This proceeding was heard electronically before a panel of the Discipline Committee (the "Panel") of the Ontario College of Teachers (the "College") on November 6, 7, 8, 20 and 21, 2023; March 25, 27, and 28, 2024; April 8, 2024; and May 15, 2024, in accordance with rule 8.01 of the *Rules of Procedure of the Discipline Committee and of the Fitness to Practise Committee* (the "*Rules*").

[2] Michael James Wahbi (the "Member") attended the hearing and had legal representation.

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A. PUBLICATION BAN

[3] 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 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.

[4] Additionally, a publication ban was ordered pursuant to subsection 32.1(4) of the *Act* at the request of Student 1 who was allegedly sexually abused. Accordingly, no person shall publish the identity of, or any information that could disclose the identity of Student 1.

B. DECISION

[5] The College alleged that the Member engaged in professional misconduct in the 2008-2009 academic year. Among other things, the College alleged that the Member befriended and engaged in electronic communications of a personal nature with Student 1, and made inappropriate and/or sexualized comments towards her. The College also

alleged that the Member met the student outside of school and engaged in physical contact and/or touching of an inappropriate and/or sexual nature with Student 1.

[6] The Panel's task is to determine whether the facts alleged by the College have been proven on a balance of probabilities and if so, whether the Member's conduct gives rise to a finding of professional misconduct. For the reasons that follow, although not all of the particulars were proven, a majority of the Panel ("the Majority") finds the Member engaged in professional misconduct contrary to Ontario Regulation 437/97, subsections 1(7.2), 1(7.3), 1(18) and 1(19) and engaged in sexual abuse of a student as defined in section 1 of the *Act.*

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C. THE ALLEGATIONS

[7] The allegations against the Member in the *Notice of Hearing* dated June 3, 2022 (Exhibit 1) are as follows:

> **IT IS ALLEGED** that Michael James Wahbi is guilty of professional misconduct as defined in the *Act* in that:
>
> (a) he abused a student or students psychologically or emotionally, contrary to Ontario Regulation 437/97, subsection 1(7.2);
>
> (b) 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;
>
> (c) 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);
>
> (d) he engaged in conduct unbecoming a member, contrary to Ontario Regulation 437/97, subsection 1(19).
>
> **PARTICULARS OF THESE ALLEGATIONS ARE AS FOLLOWS**
>
> 1. Michael James Wahbi is a member of the Ontario College of Teachers.

2. At all material times, the Member was employed at the Toronto Catholic School Board (the "Board") as a teacher at [XXX] (the "School") in Etobicoke, Ontario.

3. In or around the academic year 2008/2009, Student 1 was a female Grade [XXX] Student at the School.

4. In or around March or April 2009, the Member befriended Student 1. He subsequently provided his Blackberry BBM pin to Student 1 and asked her to send him a message.

5. Between in or about March 2009 and in or about August 2009, the Member engaged in communications of a personal nature with Student 1 through electronic message and over the phone, including outside of school hours.

6. Between in or about March 2009 and in or about August 2009, the Member made inappropriate and/or sexualized comments towards Student 1, including but not limited to:

   (a) that she looked great, pretty, and/or beautiful, or words to that effect;

   (b) that he had feelings for her, or words to that effect;

   (c) that if they did not sleep together, their relationship would be over, or words to that effect;

7. Between in or about March 2009 and in or about August 2009, the Member met with Student 1 outside of the School, including but not limited to:

   (a) going to a park together after dark; and/or

   (b) picking up Student 1 in his car.

8. In or around June 2009, the Member engaged in physical contact and/or touching of an inappropriate and/or sexual nature with Student 1, including but not limited to:

   (a) kissing Student 1 on her neck, lips, and/or face;

   (b) holding Student 1's hand; and/or

   (c) placing his arms around Student 1.

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D. PRELIMINARY ISSUE

Adjournment Request to Schedule a Motion for Production of Third-Party Records

[8] At the outset of the hearing on November 6, 2023, the Member sought to adjourn the hearing to schedule a motion for production of third-party records of the Board Investigator's notes and Student 1's notebook(s). The Panel denied the Member's request for an adjournment and provided oral reasons during the hearing. Additional reasons are set out below.

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(a) Member's Submissions

[9] Member's Counsel submitted that the Member is unable to make a full answer and defence to the allegations against him without knowing the contents of these records. Member's Counsel submitted that the records have significant probative value to the issues of this case and submitted that there is no legitimate expectation of privacy on Student 1's notebook(s) as she referred to them in the Board's 2021 investigation and apparently used them to refresh her memory in preparation for this professional discipline hearing.

[10] Member's Counsel confirmed that the College, Student 1 and the Board's Investigator were served motion materials three days prior (on November 3, 2023). The Member submitted that his fundamental right to make a full answer and defence outweighs any concerns about the timeliness of service.

(b) College's Submissions

[11] College Counsel opposed the motion and submitted that the Panel should deny the Member's request for an adjournment. The College submitted that the Member failed

to properly bring the motion before the Panel (rule 7.03 of the *Rules*) and to serve motion materials in accordance with the notice requirements set out in rule 5 of the *Rules.*

[12] College Counsel submitted that the Member knew of the existence of the Investigator's interview notes since January 2023 and had the opportunity to request the production of the Investigator's notes in the original motion for third-party records that had been scheduled for June 1-2, 2023. However, the Member abandoned that motion and the motion dates.

[13] With respect to Student 1's notebook(s), College Counsel submitted that the Member's motion was an attempt to intrude on Student 1's privacy and submitted that there is no evidence that Student 1 relied on her notebook(s) to refresh her memory. College Counsel further submitted that the Member does not require Student 1's notebook(s) for his defence as he was already aware of the dates of the incident at issue in this case from the Board's investigation of the Member in 2009.

(c) Member's Reply Submissions

[14] In reply, Member's Counsel submitted that the motion has merit because the requested records meet the test for production as set out in rule 7.03. Student 1 was summoned according to rule 7.03(2). Member's Counsel submitted that rule 5.01(2) is not engaged as the motion date was not scheduled. Member's Counsel confirmed the motion scheduled for June 2023 was abandoned in contemplation of rule 7.03(1) which requires third-party record requests be made after a hearing has commenced.

(d) Advice of Independent Legal Counsel

[15] Independent Legal Counsel ("ILC") advised the Panel to consider whether the Member's request to adjourn the hearing to schedule motions for production of third-party

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records should be granted. Rule 14 of the *Rules* sets out the factors that ought to be considered. ILC reminded the Panel that rule 7.03 of the *Rules* govern motions for production of third-party records. Such a motion by a party cannot be brought before the start of a hearing (rule 7.03(1)) and requires notice of the motion and materials be given (rule 5.01(2)). When considering the request, the Panel should balance both the rights of the Member and the obligation of the College to move the discipline matter forward (rule 14.01). ILC also reminded the Panel that they have the authority to order terms, conditions, and limitations on the parties.

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(e) Decision on Adjournment Request to Schedule a Third-Party Motion

[16] In deciding whether to grant an adjournment, the Panel may consider provisions under the *Statutory Powers of Procedure Act*, R.S.O. 1990, c. S. 22 ("*SPPA*"), and rule 14 of the *Rules*.

[17] The Panel denied the adjournment request as granting the adjournment request would be contrary to the Panel's obligation to conduct discipline proceedings in a just, expeditious and cost-effective manner pursuant to subsection 2 of the *SPPA*. As clarified in further detail below, there were insufficient reasons advanced by the Member to justify the adjournment request which, if granted, would run contrary to the Panel's obligation to conduct proceedings in a just, expeditious and cost-effective manner.

[18] The Panel denied the adjournment after considering factors outlined in rule 14.01(2). For clarity, these factors are written as follows:

> (a) the sufficiency of the reasons advanced for the request to adjourn;
> (b) the timeliness of the request;
> (c) the resources of the Committee;
> (d) any prejudice to the parties;

(e) whether any adjournments have been granted previously;
(f) the consent of the parties; or
(g) any other relevant factor.

[19] Pursuant to rule 14.01(2)(a), the Panel finds that the Member did not advance sufficient reasons as to why he did not make a request for the records of the Investigator's notes and Student 1's notebook(s) before the hearing commenced given that he had approximately 10 months to do so.

[20] Furthermore, the Panel found that, pursuant to rule 14.01(2)(b) the request for an adjournment was untimely as it was made at the onset of the hearing. There was no dispute between the parties that the Member was aware of these notes since January 2023, which afforded him sufficient time to request those records without the need for this hearing to be delayed by an adjournment.

[21] The Panel acknowledges an absence of consent between the parties and considers this as an additional factor for denying the adjournment request, as per rule 14. 01(2)(f). Finally, the Panel also considered the prejudice that would be experienced by the parties (see rule 14.01(2)(d)) that an adjournment would have and found that the College would experience greater prejudice than would the Member.

[22] The College is obligated to resolve discipline matters in a timely matter, an obligation that would be undermined if an adjournment was granted on these grounds. In the absence of a clear reason as to the role the sought after records would have held in the proceedings, the Panel found that there was limited prejudice to the Member by denying the adjournment.

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E. MOTION FOR STAY OF PROCEEDINGS

[23] On March 25, 2024, following the College's completion of its case, the Member brought a motion for a stay of proceedings on the basis that the College's prosecution of the Member was abusive. College Counsel opposed this motion and requested that the Panel deny granting the motion. After hearing submissions from the parties, the Panel denied the motion and provided oral reasons during the hearing. Additional reasons are set out below.

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(a) Member's Submissions

[24] The Member referred the Panel to a three-part test set out in *R v. Strybosch*, 2021 ONSC 6109 ("*Strybosch*") to apply for a stay of proceedings on the grounds of an abuse of process and submitted that all three requirements of the test have been met.

[25] At the first step of the test, the Panel must consider whether there has been an abuse of process that offends the notions of fair play and decency, which makes the continuation of the hearing harmful to the integrity of the justice system. Member's Counsel submitted that this first step has been met for three reasons: (1) the College is continuing its prosecution knowing that Student 1, in the Member's view, manipulated the Board's previous investigations by refusing to provide a formal statement to the police or to the Board, and by withholding material evidence from the investigations; (2) Student 1 engaged in, what the Member considers to be, criminal harassment of him and his family, and disregarded the Member's right to due process; and (3) there has been an inordinate delay in starting these discipline proceedings creating undue prejudice against the Member by frustrating his legitimate expectation that the Board had disposed of Student 1's allegations by completely exonerating him in 2009.

[26] If the Panel finds an abuse of process, the second stage of the test requires the Panel to determine whether the prejudice caused by the abuse in question will be manifested, perpetuated or aggravated through the conduct of a hearing or by its outcome, and that no other remedy is reasonably capable of removing that prejudice. Member's Counsel submitted that there is no alternate remedy in this case and that the hearing has no merit.

[27] At the final stage of the test, Member's Counsel submitted that continuing with the hearing would be detrimental to the integrity of the justice system because it would signal to the teaching profession, and to complainants, that investigations are never truly closed. The refusal of the motion will also signal to members of the teaching profession that their rights to due process will not be protected by the Discipline Committee.

(b) College's Submissions

[28] College Counsel submitted that the motion was meritless because the Member failed to meet the test to prove abuse of process on the issues of delay or prosecutorial misconduct and that the actions of a witness are not relevant to the motion.

[29] College Counsel submitted that there is a three-part test to establish an abuse of process based on delay, with the onus of proof resting on the Member to establish, on a balance of probabilities, before a stay of proceedings may be ordered by the Panel (*Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29 ("*Abrametz*")). To establish an abuse of process, the Member must establish that there are actions of the College, and not a witness, that are manifestly unfair to the Member or would otherwise bring the administration of justice into disrepute (*Sliwin v. College of Physicians and Surgeons*, 2017 ONSC 1947 ("*Sliwin*"); and *Abrametz*). Without evidence that the College engaged

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in abusive conduct of the College's prosecution of the Member, the Panel has no grounds to conclude there has been an abuse of process (*Law Society of Ontario v. Stanislawski*, 2021 ONLSTH 102). The impugned conduct attaches to the prosecuting body, not a witness.

[30] College Counsel also argued that the Member failed to demonstrate an abuse of process due to inordinate delay. To be successful, the Member must establish that there has been an inordinate delay that caused him significant prejudice and is manifestly unfair or brings the administration of justice into disrepute (*Abrametz*). In this instance, there is no evidence that the College has delayed bringing its allegations against the Member. College Counsel advised that this proceeding was originally set to begin in June 2023, and submitted that any delay in the proceedings is attributable to the Member: the Member adjourned his prehearing conference from January to March 2023; he brought an application for judicial review to the Divisional Court; he scheduled motion dates for June 2023 (and later abandoned them); and he brought an adjournment application on November 6, 2023. The College further submitted that the Member has not established that he has been significantly prejudiced by any delay.

[31] College Counsel maintained that the Member's assertion that the College proceedings have frustrated a legitimate expectation that the matter was complete after the Board ended its investigation in 2009 lacks merit. Investigations by a school board are separate and distinct processes from discipline proceedings before the Discipline Committee, and the College was not involved in the Board's investigation.

[32] College Counsel submitted that, if the Panel finds that counsel for the College has engaged in an abuse of process, the proceedings should not be stayed because the

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Member has failed to demonstrate that a stay is the only remedy available. A stay of proceedings for prosecutorial misconduct is only available in the clearest of cases for exceptionally egregious conduct on the part of the prosecutor (*Sliwin*). College Counsel submitted that a stay of proceedings is inappropriate because the public expects that allegations of sexual misconduct against children, are to be heard on the merits, despite the length of delay (*Abrametz*). To grant a stay would cause the public to lose confidence in the ability of the College to regulate the profession and to protect the public.

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(c) Advice of Independent Legal Counsel

[33] ILC advised the Panel that they must first determine if the College engaged in an abuse of process and if the answer is yes, then determine the appropriate remedy. To establish an abuse of process, the Member must establish impugned conduct on the College that is manifestly unfair to the Member or would otherwise bring the disciplinary process into disrepute (*Abrametz*). ILC confirmed that the courts have stated that a stay is only available in the clearest of cases, and where the conduct is so offensive to the notions of fair play and decency that it will either render the trial proceedings unfair or be harmful to the integrity of the justice system.

[34] ILC reminded the Panel to ensure that if they determine there has been unfairness, to query if it rises to the level of abuse of process (*Sliwin*). Even if the conduct amounts to an abuse of process, a stay may not be warranted if it does not cause unfairness in the discipline hearing and it is not necessary to prevent future misconduct and not offend society's sense of justice (*Sliwin)*. ILC advised that the Panel should only order a stay of proceedings if this high threshold has been met.

[35] ILC reminded the Panel that members of regulated professions understand and accept that complaints can be filed against them. To be investigated and prosecuted, in and of itself, would not amount to an abuse of process. The level of procedural fairness owed to a member at the discipline stage is higher than what the Member is afforded at the investigation stage. A member is entitled to full disclosure at the outset of a referral to the Discipline Committee, and the College is obligated to a continuing duty of disclosure.

[36] ILC also advised that the timelines of prosecutions, as set out in the College's evidence, if correct, do not appear to be objectively oppressive. ILC reminded the Panel that they are entitled to take the timelines and issues of investigation and prosecutions in totality when considering the motion.

[37] ILC reminded the Panel that credibility submissions tend to occur at the conclusion of a hearing. ILC advised the Panel that a credibility assessment of a witness would not be too relevant at this stage because an abuse of process allegation is against a regulator and not a witness.

(d) Decision on Motion for Stay of Proceedings

[38] Having considered the parties' submissions, ILC's advice and case law, the Panel dismissed the Member's motion for a stay of proceedings on the grounds of abuse of process.

[39] The Panel acknowledges that the onus is on the Member to establish that there has been an abuse of process and that a stay of proceedings is warranted. The Panel also acknowledges that an abuse of process is focused on the conduct of the prosecution (the College), and not on the conduct of a witness or the complainant involved.

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[40] The Panel considered the test set out in *Abrametz*. In determining whether the delay is inordinate, the Panel should consider: (a) the nature and purpose of the proceedings; (b) the lengths and causes of the delay; and (c) the complexity of the facts and issues in the case (*Abrametz*, paras. 50-51). The Panel considered Member's Counsel's argument regarding inordinate delay in the proceedings is attributable to Student 1's conduct who contributed to a significant delay (ranging over a decade) from the point that the Member was exonerated from the Board in 2009 and when she made a complaint to the College in 2021. The Panel finds that the Member's evidence does not demonstrate an abuse of process based on inordinate delay. The Panel acknowledges that a contested disciplinary hearing involving allegations of sexual abuse is a complex proceeding that has the purpose of being fair to the parties and protecting the public interest. In making this finding, the Panel also relies on the evidence submitted by College Counsel that any delay in these proceedings is attributable to the Member. Moreover, the Panel agrees with the timeline submitted by College Counsel which demonstrates that the time incurred was not unreasonable. In particular, the College received an email from the Board regarding the pending investigation into potential misconduct of the Member in January 2021, a complaint was filed by Student 1 in August 2021, the Investigations Committee of the College considered the matter and referred it to the Discipline Committee in April 2022, and the *Notice of Hearing* was filed in June 2022. The Panel did not believe that this demonstrated evidence of inordinate delay that would warrant any finding of abuse.

[41] Further, the Panel considered whether the alleged delay caused significant prejudice to the Member. Member's Counsel argued that the Member's assertion of

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prejudice is that the College seeks to overturn his legitimate expectation that the matter (Student 1's allegations) was complete after the Board ended its investigation in 2009 and made no findings against him. The Panel considered the submission made by the Member regarding any prejudice the purported inordinate delay has had on him. The alleged impact on the Member is consistent with what is expected for members facing allegations of sexual abuse at the College. Such matters involve significant procedural steps which ensure fairness to the parties involved, while balancing the needs of the Panel to have a full understanding of the case each party presents. Such a process and the length of time may take, is not always predictable.

[42] Finally, the Panel finds that the Member has not demonstrated that the delay in this case is manifestly unfair or brings the administration of justice into disrepute. Any unfairness caused by the delay is outweighed by the public interest in this Committee hearing very serious allegations of professional conduct, like sexual abuse of a student. Allegations of sexual abuse are very serious and need to be heard on their merits.

[43] A stay of proceedings for abuse of process is only available in the clearest of cases where the conduct is so offensive to render the proceedings unfair or harmful to the integrity of the justice system. The Panel finds that the Member has not met the high threshold of establishing an abuse of process and therefore, there is no merit to discussing the requested stay remedy. The Panel dismissed the Member's motion.

F. THE MEMBER'S PLEA

[44] The hearing commenced on November 6, 2023. The Member denied the allegations set out in the *Notice of Hearing*.

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G. COLLEGE'S EVIDENCE

[45] The College presented oral, documentary, and audio evidence to prove the allegations set out in the *Notice of Hearing*. Relevant portions of this evidence will be set out in greater detail, as needed, in the Majority's reasons for decision below. The following is a brief summary of the College's evidence.

Oral Evidence

[46] The College called four witnesses: (1) Student 1; (2) [XXX], Student 1's friend from [XXX] school; (3) [XXX], another friend of Student 1 from [XXX] school; and (4)Adrian Della Mora, the School's principal at the material time.

[47] Pursuant to a joint request of the parties, the Panel ordered the witnesses to be excluded from the hearing until called to give evidence, in accordance with rule 13.12.

(a) Student 1's Testimony

[48] At the time of the alleged events, Student 1 was a Grade [XXX] student at the School. Student 1 gave evidence about her interactions with the Member, during the material time, and its lasting impact on her.

[49] Student 1 never had the Member as a teacher. She volunteered in his Grade [XXX] [XXX] class ("[XXX] Class") during her fourth period spare of her second semester of the 2008-2009 academic year at the School.

[50] According to Student 1, her interactions with the Member were casual at first—they had "normal" conversations as between a teacher and a student. However, as they communicated more frequently, the conversations progressed to a more inappropriate nature, including asking Student 1 about her dating life.

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[51] Student 1 testified that in mid-April 2009 during [XXX] Class, the Member gave Student 1 his phone number and asked her to text him her BlackBerry Messenger pin ("BBM pin"). According to Student 1, she also spoke with the Member on the telephone, possibly up to 10 times, both before and after graduating from the School. Student 1 testified that she and the Member communicated outside of school hours, which included a phone call when the Member was teaching summer school.

[52] Among the messages exchanged, Student 1 testified that the Member sent her a BBM message on the night of the School's [XXX] banquet—June 10, 2009—that said, "you look beautiful". Student 1 showed this message to her friends, [XXX] and [XXX].

[53] Student 1 testified that she met the Member alone at night on two occasions. The first time was on June 12, 2009. Student 1 testified that the Member picked her up from her home in his Jeep and went to the community center at [XXX] park. Student 1 recalled that they met some time after 9 p.m. Student 1 testified that on this occasion they talked about intimate details of Student 1's personal life, including whether she was a virgin and if she was dating anyone. The Member also asked if he could kiss her, but Student 1 told him "no". He then asked if they could hug or hold hands and they did. Student 1 testified that they were at the park together for approximately an hour or two.

[54] Student 1 testified that she met the Member a second time at [XXX] park on June 23, 2009—the night before [XXX]. On this occasion, Student 1 walked to the community center at [XXX] park to meet the Member. She recalled that it was probably 11:30 p.m. when they met. On this occasion, she testified that the Member laid down on their backs on the sprinkler pad at the park. According to Student 1, the Member then put his arms over the front of her body and around her arm, kissed her neck and cheek and tried to

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kiss her lips. Student 1 testified that they went back to the park bench after approximately 20 minutes and the Member then told her that she had to sleep with him or else they could no longer be friends. They then left the park and Student 1 walked home. Student 1 testified that they were at the park together for approximately an hour or two.

[55] Student 1 testified about the impact that these incidents had on her. The Member made her feel special and eventually came to love the Member. However, things changed after the Member gave her an ultimatum—telling her she had to sleep with him or else they could not be friends. Student 1 testified that she was traumatized, and the Member's conduct created a lot of trust issues for her. She felt betrayed, hurt and confused by the Member's ultimatum and his behaviour towards her.

[56] Student 1 spoke with the Member on a few occasions after the ultimatum because she wanted to confront him about rumours that he was having similar interactions with other female students at the School. Student 1 testified that between July and August 2009, numerous students at the School engaged in acts of vandalism of the Member's property in retaliation to the rumours they heard about him. Student 1 admitted to sneaking on the Member's property and using his pool, confronting the Member outside of his house, and following the Member's vehicle, with her sister, on one occasion in August 2009.

[57] According to Student 1, the Member's conduct towards her and her retaliatory actions made her feel ashamed. For this reason, she had a difficult time at university. Further, Student 1 testified that she no longer feels at home in Toronto.

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(b) [XXX]Testimony

[58] In 2009, [XXX] was in Grade [XXX] at the School and Student 1's friend. She continues to be friends with Student 1. Ms. [XXX] testified about what she knew of the Member's interactions with Student 1 and its impact on Student 1.

[59] She learned of the Member's alleged relationship with Student 1 in Grade [XXX] through Student 1. Student 1 told Ms. [XXX] that her relationship with the Member started platonically in Grade [XXX]. At some point, however, Student 1 told her that the relationship became more inappropriate—Student 1 and the Member sent messages to each other, spoke on the phone and met up outside of school hours. Ms. [XXX] testified that Student 1 had also told her that the Member tried to kiss her and that their alleged relationship ended in May or June 2009.

[60] Ms. [XXX] testified that Student 1 showed her a text message that she received from the Member on the night of the School's [XXX] Banquet that said something along the lines of "you look beautiful tonight". Ms. [XXX] did not know the Member's phone number but believed Student 1 when she told her that the message was from the Member.

[61] Ms. [XXX] testified that Student 1 felt guilty about the situation between herself and the Member for a long time afterward and found it "difficult to get past".

(c) [XXX]Testimony

[62] In 2009, [XXX] was a Grade [XXX] student at the School and Student 1's friend. She continues to be friends with Student 1. Ms. [XXX] testified about what she knew of the Member's interactions and alleged relationship with Student 1 and its impact on Student 1.

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[63] According to Ms.[XXX], the Member and Student 1 had a normal teacher-student relationship for the first three years of [XXX] school and then developed a friendly and romantic relationship while Student 1 was in Grade [XXX]. Ms. [XXX] learned about this relationship from Student 1 and testified that Student 1 continued to tell her details about her alleged relationship with the Member as it developed.

[64] Ms. [XXX] testified that Student 1 showed her messages that Student 1 said were from the Member. In particular, she recalled seeing a BBM message, in May or June 2009 at either their [XXX] or at the School's [XXX] Banquet, that read "you look beautiful" or words to that effect. Ms. [XXX] understood this to be a message from the Member. She provided testimony that the message she saw stated it was from the Member. She also testified that she had listened, possibly in the summer or fall of 2009, to a recording of a conversation that Student 1 had with the Member (Exhibit 3).

[65] Ms. [XXX] testified that Student 1 told her that she met with the Member 10–20 times. Student 1 told Ms. [XXX] that she and the Member made their arrangements to meet over text, and that they always met at night between 8 p.m. and 10 p.m., often sitting in either his or Student 1's car. Student 1 told her that she and the Member would flirt with each other, kissed each other, and told each other that they had feelings for one another.

[66] According to Ms.[XXX], Student 1's alleged relationship with the Member ended when the Member gave Student 1 an ultimatum. Student 1 told Ms. [XXX] about this ultimatum at around the time of [XXX] from School.

[67] Ms. [XXX] learned that Student 1 drove by the Member's house with a group of friends and stopped to take a picture when they saw someone outside (Ms. [XXX] could not remember if this was the Member or the Member's wife). Ms. [XXX] also testified that

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she and Student 1 occasionally drove by the Member's house, looking to see if a light was on and if anyone was home. Ms. [XXX] recalled that she and Student 1 would giggle nervously as they drove by because she knew what they were doing was wrong, and it felt like they were "stalking" him.

[68] Ms. [XXX] testified that she and Student 1 spoke about Student 1's relationship with the Member for 10 years following graduation from the School. They initially talked about Student 1's interactions with the Member, and later would wonder what the Member was doing, where he was working and if he was married. Ms. [XXX] believes that Student 1 had been in love with the Member and this has impacted Student 1's relationships to date. Ms. [XXX] testified that Student 1 wanted the Member's wife to know about the relationship. From her conversations with Student 1, Ms. [XXX] understood that Student 1 felt that she and the Member had a real relationship, that the Member would possibly not stay together with his wife, and that Student 1 and the Member would work out as a relationship.

(d) Adrian Della Mora's Testimony

[69] At the material time, Mr. Della Mora was the principal at the School. Mr. Della Mora testified that he first learned of the allegations that the Member had inappropriate communications with Student 1 on September 3, 2009. Mr. Della Mora informed his superintendent of his concerns, who instructed him to gather more information. Mr. Della Mora met with Student 1 and Student 1's mother on September 4, 2009. Mr. Della Mora confirmed he did not have any further discussions with Student 1 following this date.

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[70] Mr. Della Mora confirmed that the normal process in these situations is to immediately advise his superintendent of pertinent concerns and allow the superintendent to take over the matter.

[71] Mr. Della Mora also spoke with the police about the status of their investigation of the Member's conduct towards Student 1. He understood from this conversation that Student 1 was not pursuing criminal charges and that the Member admitted to providing his BBM number and pin to Student 1, as well as other students.

[72] Mr. Della Mora did not speak with the Member, apart from advising him of the Board's investigation processes.

H. MEMBER'S EVIDENCE

(1) Oral Evidence

[73] The Member testified on his own behalf and called one witness, his wife Jessica Wahbi.

(a) Member's Testimony

[74] The Member taught at the School at the material time. The Member testified about his communications with Student 1, her volunteerism in his [XXX] Class, and her participation in the [XXX].

[75] The Member never taught Student 1 but stated that she volunteered in his [XXX] Class. His relationship with Student 1 was a teacher-student relationship that was consistent with all other relationships he had with his students.

[76] The Member participated extensively in extracurricular activities as a teacher at the School (volleyball coach, teacher moderator for athletic student council and the prom

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committee) and outside of school (referee for USA ball hockey and coach for volleyball teams at the University of Toronto and the Ontario Volleyball Association).

[77] The Member testified that he distributed his cell phone number and email address to students at the School who participated in extracurricular activities that he was involved in, such as international experiences or sports teams. He provided this information to those students in case they needed to contact him, as it was important to him in his role of *loco parentis*. He confirmed that he communicated with students on BBM messenger and had several group chats on BBM messenger with students who were involved in these activities.

[78] The Member testified that Student 1 obtained his BBM pin, without his knowledge, by taking a scan of his QR code on his cellphone while it was being used by another student during [XXX] Class. The Member testified that Student 1 messaged him the following day. The Member stated that the frequency of their communications on BBM and text messages were not often and ranged from one to three times per week—occurring at any point of the day. The Member testified that his interactions with Student 1 were no different than his interactions with other students.

[79] The Member denied meeting Student 1 at [XXX] park on June 12, 2009, and ever picking her up. The Member testified that he was officiating an Ontario provincial qualifier ball hockey tournament in Oshawa, Ontario on that evening. The Member testified that he left his home around 5-5:15 p.m., drove to the ball hockey rink and arrived on or around 6:15 p.m. The game ended at around 9 p.m. On his way home, he stopped at a Wendy's/Tim Hortons for his wife and arrived at his home around 10 p.m.

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[80] The Member also denied meeting Student 1 at [XXX] park on June 23, 2009, and denied putting his arm over her, kissing her and touching her. He further denied that he gave her an ultimatum to sleep with him or else their relationship would be over. The Member testified that on June 23, 2009, he was at his parents' residence for dinner with his wife and spent the rest of the evening at his home with his wife.

(b) Jessica Wahbi's Testimony

[81] Mrs. Wahbi is the Member's wife. Mrs. Wahbi testified on the Member's whereabouts on the nights of June 12, 2009, and June 23, 2009.

[82] Mrs. Wahbi testified that she was due to give birth to their child in June 2009 and recalled the Member was highly involved in activities outside of the School during that time. She testified that on June 12, 2009, the Member was involved in a tournament in Oshawa, Ontario and came home at around 10:30 p.m.–11 p.m. The Member called her on his drive home inquiring whether she wanted something from Wendy's or Tim Hortons.

[83] Mrs. Wahbi testified that on the night of June 23, 2009, she and the Member had dinner at the Member's parents' house and returned to their residence at around 10 p.m.

[84] Mrs. Wahbi testified that on both nights, June 12, 2009, and June 23, 2009, the Member did not leave their residence at any point during the night. She testified that she knew this because she was a light sleeper and because the Member would not leave her as she was very close to her due date of the birth of their first child.

I. SUBMISSIONS OF COLLEGE COUNSEL

[85] College Counsel submitted that all of their witnesses were credible and reliable. College Counsel also submitted that the evidence presented proves each of the

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allegations set out in the *Notice of Hearing*, on a balance of probabilities, and the Panel should therefore find that the Member engaged in professional misconduct, as alleged.

[86] College Counsel noted that the courts have held that a Notice of Hearing, in a disciplinary case, should not be construed in the same way as criminal indictments and that what is required is reasonable notice of the allegations (*Rudinskas v. College of Physicians and Surgeons of Ontario*, 2011 ONSC 4819 at paras. 49-54; and *SPPA*, section 8).

[87] College Counsel referred the Panel to *Ontario College of Teachers v. Sperling*, 2019 ONOCT 40, and submitted that the Panel should consider a broad interpretation of the term "student" within the meaning of the *Act*. In particular, the term "student" does not require a direct teacher-student relationship. Given the Committee's primary duty to protect the public interest, College Counsel maintained that Student 1 should be considered a "student" even though she was not a student in the Member's class.

[88] It was the College's position that the Member sexually abused Student 1, as evidenced by the Member touching Student 1 in a manner that was sexual in nature and by some of the comments made by the Member to Student 1. These comments include telling Student 1 she looked beautiful that he had feelings for her, and that if they did not sleep together, their relationship would be over. Further, College Counsel argued that the Member blurred professional boundaries and groomed Student 1 into a relationship. The Member fostered an emotional connection for the purpose of pursuing a sexual relationship with Student 1. College Counsel submitted that determining whether behaviour, remarks, or conduct is of a sexual nature as stated in section 1(1) of the *Act,* is an objective question that must be determined in light of the surrounding

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circumstances, including the nature of the conduct, behaviour or remark, the situation in which it occurred, and the words and gestures accompanying the act (*R. v. Chase,* [1987] 2 SCR 293, referenced in *Ontario College of Teachers v. Bujacz*, 2023 ONOCT 12, at para. 74).

[89] College Counsel submitted that the evidence of Student 1, Ms. [XXX] and Ms. [XXX] regarding the impacts of the Member's conduct towards Student 1 demonstrate that the Member psychologically and emotionally abused Student 1. College Counsel also submitted that the Member's conduct was disgraceful, dishonourable and unprofessional, as well as conduct unbecoming a member of the College.

J. MEMBER'S SUBMISSIONS

[90] The Member denied the allegations against him and argued that the College did not prove the allegations as alleged in the *Notice of Hearing*, on a balance of probabilities.

[91] Member's Counsel submitted that the College's witnesses were not credible. In particular, Student 1 had an obsessive crush on the Member, that she manipulated and interfered with the Board and the College's investigations. Member's Counsel submitted that Student 1's story is internally inconsistent with her previous statements with regards to dates and times of meeting the Member at [XXX] park on June 12 and 23, 2009. In particular, Student 1's evidence raised a material inconsistency that she called her sister on June 24, 2009, at 12:08 a.m. (Exhibit 6) during the time in which Student 1 alleges the Member sexually abused her at [XXX] park. Student 1 was also externally inconsistent with respect to the evidence provided by Mr. Della Mora and Ms.[XXX]. For example, Member's Counsel submitted that Mr. Della Mora's testimony about the seriousness with which he and the Board took the Student's allegations in 2009 contradicts Student 1's

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assertion that she was “not taken seriously”. Moreover, Student 1’s evidence was externally inconsistent with Ms.[XXX]’s evidence with respect to the number of times she allegedly met with the Member.

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[92] The Member advanced an alibi defence to the allegations that he had met with Student 1 at [XXX] park on June 12, 2009, and June 23, 2009. Member’s Counsel reviewed the law on alibis and argued that the Panel is required to determine the admissibility and weight of the Member’s alibi. Member’s Counsel noted that the Member is not required to prove his alibi. Rather, the test is whether the alibi is sufficient to dislodge College Counsel’s case on a balance of probabilities (*R v. Tomlinson*, [2014] OJ No 930). Accordingly, if the Panel believes the Member’s alibi, then they cannot make a finding for each of the allegations relating to June 12, 2009, and June 23, 2009. Member’s Counsel submitted that this standard had been met as the Member’s testimony as to his whereabouts on the evenings of June 12, 2009, and June 23, 2009, were consistent with Mrs. Wahbi. Further, Member’s Counsel submitted that the College failed to show sufficient evidence through copies of messages—as none were provided—between the Member and Student 1 to corroborate Student 1’s account of meeting the Member at [XXX] park on June 12, 2023. The Member maintained that this was because there was no judicial notice on how those phone records could have been obtained or who obtained them.

K. ADVICE OF INDEPENDENT LEGAL COUNSEL

[93] In assessing the credibility of the witnesses, the Panel may determine if they prefer one witness over another, identify any inconsistencies and assess the credibility of each witness based on the factors outlined in *Pitts and Director of Family Benefits Branch of*

the Ministry of Community & Social Services, [1985] OJ No 2578 (Div Ct), 1985 CanLII 2053 ("*Pitts*"). ILC reminded the Panel that the demeanour of a witness is lessened in importance as it has become known that stereotypical expectations and biases have improperly influenced credibility assessments.

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Per: Andrew Glenny and Linda Staudt ("The Majority")

L. DECISION ON FINDING

[94] Having considered the evidence, onus and standard of proof, and the submissions of the parties, the Majority finds that the Member engaged in acts of professional misconduct as alleged, contrary to Ontario Regulation 437/97, subsections 1(7.2), 1(7.3), 1(18) and 1(19). The Majority also found that the Member engaged in sexual abuse of a student as defined in section 1 of the *Act*. The Majority determined that the particulars at paragraphs 4, 5 and 6(a) were proven but that the College did not prove the particulars set out in paragraphs 6(b) and 6(c), 7 and 8 of the *Notice of Hearing*.

[95] As required by subsection 30.2(1)(b) of the *Act,* as a result of the finding, the Majority 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.

M. REASONS FOR DECISION

[96] The Majority has carefully reviewed the evidence and submissions presented in this matter. The Majority notes that the College bears the burden of proving the allegations on a balance of probabilities (*F.H. v McDougall*, 2008 SCC 53).

[97] In the reasons that follow, the Majority first sets out its factual findings and then explains why these facts give rise to a finding of professional misconduct, as alleged in the *Notice of Hearing*. The Majority comments only on the portions of the evidence that are most relevant to the allegations contained in the *Notice of Hearing*.

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(1) Credibility Assessments

[98] In evaluating the evidence before it, the Majority recognizes that it can accept all, some, or none of any witness' evidence. When deciding whether to accept a witness' testimony, they can consider 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 (*Pitts*). The Majority can also determine credibility based on logic, common sense, and its experience.

(a) Student 1

[99] The Majority found that Student 1 was generally credible and reliable, and displayed some of the markers of credibility outlined in *Pitts.* She was a party to the events in question, her evidence was internally consistent, and externally consistent with the evidence provided by Ms. [XXX] and Ms.[XXX]. More specifically, Ms. [XXX] and Ms. [XXX] both testified that they saw a message sent by the Member to Student 1 that said words to the effect of "you look beautiful". Student 1 was also forthright in admitting unfavourable facts related to her behaviour of engaging in vandalism and pranks directed towards the Member and his family. The Majority acknowledges that this conduct was inappropriate behaviour; however, the Majority does not place any weight on this evidence when assessing Student 1's credibility.

[100] With respect to Student 1's emails to the Member's employers (Exhibit 8, 9, 13), and TSN (Exhibit 12) of her allegations against the Member, the Majority places no weight on this evidence when assessing Student 1's credibility. Rather, the Majority considers these emails to be actions by Student 1 to protect the safety of children and the public.

[101] Although Student 1's evidence was inconsistent with Ms.[XXX]'s evidence that Student 1 met the Member 10 to 20 times outside of School, the Majority considers this as a minor inconsistency, and acknowledges that Student 1 testified only to the questions posed to her by the parties and testified only to meeting the Member on June 12, 2009, and June 23, 2009. The Majority finds Student 1 otherwise generally credible and reliable.

(b) Member

[102] The Majority found the Member's evidence with respect to his whereabouts on June 12, 2009 (refereeing a ball hockey tournament in Oshawa, Ontario) to be credible as his evidence was externally consistent with documentary evidence—Ontario Ball Hockey Association game sheets (Exhibit 18) and with Mrs. Wahbi's testimony. The Majority notes that the Member was a party to the events in question and was able to recount the events. Notwithstanding this finding, the Majority finds that the Member was not a credible witness on all other points. The Majority finds that the Member had a direct interest in the outcome of his case, his livelihood, which could cloud his recollection. The Majority also found the Member's testimony internally inconsistent as he contradicted his previous statements. For example, the Member's evidence that Student 1 stole his BBM pin from his phone during [XXX] Class was externally inconsistent and contradicted by Mr. Della's Mora's hearsay testimony (which was not challenged by the Member) that the Member admitted, to the police, that he gave her his BBM pin to Student 1—and to other

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students as well. The Member's statement was also contradicted by his admission to Student 1, during their phone conversation in July 2009—"I shouldn't have messaged you, I shouldn't have been talking to you, outside of the class I should've kept it professional" (Exhibit 2, at page 6).

[103] The Majority finds that the transcript of the phone call between Student 1 and the Member (Exhibit 2), and the recording of this call (Exhibit 3) is credible. The Majority accepts Student 1's evidence that the call between her and the Member took place in July 2009. Student 1's evidence is corroborated by Ms. [XXX] who testified that Student 1 showed her this recording, which she listened to possibly in the summer or fall of 2009. The Majority accepts that Student 1 recorded the call (Exhibit 3) and transferred the file recording on a Photobooth application to her desktop computer on August 4, 2009. The Majority heard the speaker in the recording to have identified himself as the Member stating: "I don't want you to think oh Mr. Wahbi he's such a jerk …" (Exhibit 2, at page 6). The Majority does not find it probable that the recording of the call was fabricated by Student 1 or that an individual would have been asked to impersonate the Member. Further, it is not probable that this individual could impersonate the Member with the level of authenticity and emotion that came through in the recording. Additionally, if indeed the recording and transcript was fabricated by Student 1, the evidence that was presented could have been far more damaging to the Member, specifically in relation to their alleged encounters outlined in the Notice of Hearing. Rather, the contents of the conversation were limited in terms of what was acknowledged by the Member.

[104] The Majority notes that the Member presented a series of documents that he had collected during the material time, such as screenshots of surveillance video footage and

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photographs of the Member's residence (Exhibits 19, 21 and 22), the Member and Mrs. Wahbi's wedding photograph (Exhibit 17), Facebook posts between Student 1 and her sister (Exhibit 23) and an email sent by Student 1 to the Member (Exhibit 4). However, the Majority acknowledges that, contrary to the evidence provided by Student 1's phone records (Exhibit 6), the Member did not provide any evidence of phone records, or otherwise, to prove that he had no contact with Student 1 during the material time.

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[105] The Majority also found that the Member's evidence was not externally consistent on several points. The Member testified that he reported various incidents and concerns to Mr. Della Mora regarding Student 1, prior to any police involvement. In particular, the Member testified that he informed Mr. Della Mora that Student 1 told him, on the night of [XXX] banquet, that "you are so fucking hot". These statements were contradicted by Mr. Della Mora's evidence (which was unchallenged by the Member) who testified that he was not aware of any incidents or concerns involving Student 1 prior to the police involvement in September 2009. The Member also testified that it was "normal" practice for teachers to exchange BBM messages with students. This was contradicted by Mr. Della Mora who testified that electronic communications between a teacher and a student would have been inappropriate conduct. The Majority will deal with the differences in the Member and Student 1's versions of events in its factual findings below.

(c) Ms. [XXX] and Ms. [XXX]

[106] The Majority found Ms. [XXX] and Ms. [XXX] to be generally credible and reliable witnesses. The Majority notes that Ms. [XXX] and Ms. [XXX] did not observe the events at issue but testified to the information that Student 1 told them in relation to the allegations detailed in the *Notice of Hearing*. The evidence of Ms. [XXX] and Ms. [XXX]

were externally consistent with each other and, in particular, with Student 1's evidence with respect to the message she received from the Member (i.e., "you look beautiful") as both Ms. [XXX] and Ms. [XXX] directly observed this message. The Majority also finds their evidence was clear. They did not seem to embellish their evidence. The Majority relied on their evidence where appropriate. The Majority also notes that both witnesses had no direct interest in the outcome of this case. Both witnesses—a lawyer and a teacher—are members of regulated professional bodies, reinforcing their duty to provide honest testimony, and an obligation to tell the truth, under oath.

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(d) Mr. Della Mora

[107] The Majority found Mr. Della Mora to be a credible and reliable witness. Mr. Della Mora did not observe the events at issue in this hearing; however, he provided factual evidence regarding gathering information from the Member and Student 1 in relation to the Board's investigation of the Member in September 2009. During his testimony, Mr. Della Mora referred to contemporaneous notes to refresh his memory. Mr. Della Mora's answers were clear, and informed and therefore the Majority found his testimony to be reliable in this regard.

(e) Mrs. Wahbi

[108] The Majority did not find Mrs. Wahbi to be a credible or a reliable witness. Mrs. Wahbi was not a party to the events in question but testified as to the whereabouts of the Member on the evenings of June 12, 2009, and June 23, 2009. Mrs. Wahbi has a direct interest in the outcome of these proceedings, which can impact her husband's ability to earn a livelihood for her family. Mrs. Wahbi testified that she experienced a lot of stress during the time of the alleged events. The Majority found this evidence to not be relevant

to determining whether the Member engaged in the specific behaviour alleged in the *Notice of Hearing.* For these reasons, the Majority has put very limited weight on Mrs. Wahbi's evidence in determining the issues in this hearing.

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(2) Factual Findings

(i) In or around March or April 2009, the Member befriended Student 1. He subsequently provided his Blackberry BBM pin to Student 1 and asked her to send him a message – particular 4

[109] The Majority finds, on a balance of probabilities, that in or around March or April 2009, the Member befriended Student 1, provided his BBM pin to Student 1, and asked her to send him a message, as alleged in paragraph 4 of the *Notice of Hearing.*

[110] Regarding befriending Student 1, there is no dispute that Student 1 did not have the Member as her teacher but volunteered in the Member's [XXX] Class in or around March or April 2009. The parties disagreed about the nature of the Member's relationship with Student 1 during this material time. The Majority accepts Student 1's testimony that the nature of their conversations were casual at first and later progressed to the Member sending a message to Student 1 commenting on her physical appearance, that said "you look beautiful" or words to that effect. The Majority does not accept the Member's testimony that he did not communicate with Student 1 any differently than with other students or that their conversations were limited to Student 1 asking about volleyball games and specific events coming up, or saying hello to each other in the hallways at the School. As will be further outlined under particulars 5 and 6(a), the Majority finds that the Member sent Student 1 a text message stating "you look beautiful" or words to that effect. The Majority heard evidence from Student 1, and corroborating evidence from Ms. [XXX] and Ms. [XXX] with respect to this message. Sending a message to Student 1,

commenting on her physical appearance, stating that she looked beautiful, is not usual communication between a teacher and a student. Based on this conduct, the Majority rejects the Member's submission that his relationship with Student 1 was no different than any other teacher-student relationship. The Majority therefore finds, on a balance of probabilities, that the Member befriended Student 1.

[111] The Majority heard evidence from Student 1, the Member and Mr. Della Mora regarding the Member providing Student 1 his BBM pin. Student 1 testified that in mid-April 2009, she and the Member were sitting on the field in [XXX] Class and the Member gave her his phone number and told her to text him her BBM pin. Student 1 testified that she put his number in her phone and later texted the Member. Student 1 testified that the Member also gave her his BBM pin that evening. Student 1 subsequently added him on BBM messenger.

[112] The Member testified that Student 1 obtained his phone number when he distributed his contact information to students who participated in extracurricular activities with the School that he was involved with, such as international trips, student committees or sports teams. The Member also testified that he communicated on BBM messenger, over group chat, with various groups of students involved in these extracurricular activities. He stated that it was a normal and widely used practice for teachers to message students over BBM/text group chats at the School in 2009 and that this was known and approved by the School's administration. The Majority notes that this evidence was contradicted and specifically denied by Mr. Della Mora.

[113] The Member also testified that in early June 2009, Student 1 obtained his BBM pin during [XXX] Class. The Member had given his phone to a student to play the game "brick

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breaker". The Member stated that Student 1 took his phone from this student. The Member stated that a BBM pin can be obtained by taking a screenshot of a QR code. He received a message from Student 1 three days later saying "hello".

[114] The Majority does not find the Member's evidence credible or reliable as it was contradicted by the evidence provided by Mr. Della Mora. In particular, the Member testified that he informed Mr. Della Mora that Student 1 had his BBM pin and sent him a message. However, Mr. Della Mora's testified that through conversation with the police, the Member admitted to the police constable to providing his BBM pin and phone number to Student 1 and other students as well. The Majority also considers and accepts Mr. Della Mora's evidence that it was not general practice for a teacher to text a student, and it would be inappropriate to do so. If found, this conduct would have been documented by the principal and communicated to the superintendent. Furthermore, Mr. Della Mora confirmed that he had no record that the Member brought up any issues regarding Student 1. The Majority also notes that Mr. Della Mora's evidence is unchallenged.

[115] Based on Student 1's and Mr. Della Mora's evidence, the Majority finds it more likely than not that the Member provided his BBM pin to Student 1 and asked her to send him a message. The Majority does not find the Member's testimony credible with respect to this factual allegation as it is unlikely that he would have provided his personal phone number to a student during [XXX] Class as he was supervising other students outdoors during class time. For these reasons, the Majority finds, on a balance of probabilities, that in or around March or April 2009, the Member befriended Student 1, he subsequently provided his BBM pin to Student 1 and asked her to send him a message, as alleged in particular 4 of the *Notice of Hearing.*

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(ii) Between in or about March 2009 and in or about August 2009, the Member engaged in communications of a personal nature with Student 1 through electronic message and over the phone, including outside of school hours – particular 5

[116] The Majority finds on a balance of probabilities, that between in or about March 2009 and in or about August 2009, the Member engaged in communications of a personal nature with Student 1 through electronic message and over the phone, including outside of school hours.

[117] The Majority finds that the Member sent Student 1 a message on the night of the [XXX] banquet on June 10, 2009. The Majority accepts Student 1's testimony that on the night of the [XXX] banquet the Member sent her a message with words to the effect of "you look beautiful". Student 1's testimony is supported by the evidence given by Ms. [XXX] and Ms.[XXX], who both testified that they directly observed this message on the night of the [XXX] banquet. More specifically, Ms. [XXX] provided testimony that she observed that the Member's name appeared on the text message sent. The Majority finds that the College's witnesses were credible and reliable in their testimonies with respect to this allegation. The Majority also acknowledges that although Ms. [XXX]and Ms. [XXX] were close friends with Student 1 at the material time, the Majority found there was no evidence to suggest that they were motivated to fabricate or embellish their evidence.

[118] Further, the Majority finds that the Member spoke with Student 1 over the phone in early July 2009 (Exhibits 2 and 3). The College led evidence of a recording and a transcript of the call between Student 1 and the Member that took place in July 2009 (Exhibits 2 and 3), which includes the Member stating, "I'm not blaming you for anything, it is 150% my fault, I shouldn't have messaged you, I shouldn't have been talking to you, outside of the class I should've kept it professional…I apologize by my actions and I'm

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sorry for that [inaudible] I don't want you think oh Mr. Wahbi he's such a jerk, he does this all the time…". For the reasons previously outlined, the Majority finds that the transcript of the phone call (Exhibit 2), and the recording of the call between the Member and Student 1 (Exhibit 3) is credible. In this call, the Majority finds that the Member identifies himself and admits to talking to Student 1 and messaging her outside of class. The Majority also accepts Ms. [XXX]'s testimony that she listened to a recording of a conversation between Student 1 and the Member (Exhibit 3) (possibly in the summer or fall of 2009), which is corroborating evidence of Exhibits 2 and 3. The Majority therefore finds, on a balance of probabilities, that the Member and Student 1 engaged in communications of a personal nature over the phone.

[119] The Member denied ever engaging in personal communications with Student 1 through messages and on the phone, including in July 2009. However, the Member acknowledged that he received a text message from Student 1 that stated "hello Sir". The Member's evidence that he advised Mr. Della Mora of this message was contradicted by Mr. Della Mora's evidence who denied being notified by the Member of this message. The Majority also acknowledges the evidence of the Rogers phone bill (Exhibit 6), which does not list the Member's phone number or any records of calls between Student 1 and the Member. The Majority accepts the Member and Student 1's evidence that BBM messages were encrypted and did not appear on phone records. Both said that the phone records appeared to be incomplete.

[120] For these reasons, the Majority finds, on a balance of probabilities, that the Member engaged in communications of a personal nature with Student 1. The Majority

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finds that the Member sent Student 1 a message on the night of the [XXX] banquet on June 10, 2009, and spoke to Student 1 over the phone in July 2009.

(iii) Between in or about March 2009 and in or about August 2009, the Member made inappropriate and/or sexualized comments towards Student 1, including but not limited to:
(a) that she looked great, pretty, and/or beautiful, or words to that effect – particular 6(a)

[121] The Majority finds on a balance of probabilities, that between in or about March 2009 and in or about August 2009, the Member made inappropriate and/or sexualized comments towards Student 1 and told her that she looked great, pretty, and/or beautiful, or words to that effect, as alleged in particular 6(a) of the *Notice of Hearing.*

[122] The Majority finds that the College's witnesses were generally credible on this aspect. The Majority heard evidence from Student 1 that in June 2009, on the night of the [XXX] banquet, the Member sent a message to Student 1 saying, "you look beautiful". Student 1 testified that she showed this message to Ms.[XXX]. This evidence was corroborated by Ms. [XXX] who testified that, on the night of the [XXX] banquet, she saw a message on Student 1's phone that said, "something along the lines of you look beautiful tonight". Ms. [XXX] testified that she could not verify who sent the message but was informed by Student 1 that it was sent by the Member. The Majority also heard corroborating evidence from Ms. [XXX] who testified that she saw a message exchange between Student 1 and the Member, at a formal event, which said: "you look beautiful or something like that" and testified that the text message she saw stated it was from the Member.

[123] The Majority believes Student 1 and accepts her evidence that the message "you look beautiful" was sent by the Member, and that she told Ms. [XXX] and Ms. [XXX] that

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the message was sent by the Member. The Majority also accepts Ms. [XXX] and Ms. [XXX] evidence that Student 1 showed them this message. The Majority also notes that Ms. [XXX] and Ms. [XXX] evidence, with respect to observing that the sender of this text message was the Member, was clear and consistent. For these reasons, the Majority finds that the College has proven on a balance of probabilities that on the night of the [XXX] banquet, the Member made an inappropriate and sexualized comment towards Student 1 and sent her a text that said words to the effect of “you look beautiful”.

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(b) that he had feelings for her, or words to that effect – particular 6(b)

[124] The College has not proven, on a balance of probabilities, between in or about March 2009 and in or about August 2009, the Member made inappropriate and/or sexualized comments towards Student 1, including that he had feelings for her, or words to that effect, as alleged in paragraph 6(b) of the *Notice of Hearing*.

[125] The College did not adduce any persuasive evidence to substantiate this allegation. Student 1 testified that, when she met the Member at [XXX] park on the night of June 12, 2009, the Member told her that he “never felt this way with anyone” and that he was “confused”. Student 1 also testified that the Member messaged her “I’ve never had feelings like this before”. Ms. [XXX] also testified that Student 1 had told her that she and the Member had feelings for each other. The Majority notes that Ms. [XXX] evidence is limited to what Student 1 informed her. The Majority finds that the College did not present any convincing and documentary corroborating evidence, such as a text message, to support Student 1’s claim.

[126] During his testimony, the Member denied ever telling Student 1 that he was “falling for her” and denied ever having a conversation with Student 1 about her falling in love

with him. The Majority also notes that the parties did not adduce any evidence of a text message or a phone call between the Member and Student 1 arranging a time to meet at [XXX] park—the location where the Member allegedly told Student 1 that he had feelings for her.

[127] The Majority finds that the evidence provided was not sufficiently clear, cogent or convincing to make a finding, on a balance of probabilities, that the Member told Student 1 that he had feelings for her, or words to that effect. Accordingly, the Majority does not find that the College discharged its onus of proving this allegation on a balance of probabilities and makes no finding with respect to this allegation.

(c) that if they did not sleep together, their relationship would be over, or words to that effect – particular 6(c)

[128] The Majority does not find, on a balance of probabilities, that between in or about March 2009 and in or about August 2009, the Member made inappropriate and/or sexualized comments towards Student 1, including that if they did not sleep together, their relationship would be over, or words to that effect, as alleged in paragraph 6(c) of the *Notice of Hearing.*

[129] The Majority heard evidence from Student 1 that, when she met the Member at [XXX] park on the night of June 23, 2009, the Member told her that if they do not sleep together, their relationship would be over. Ms. [XXX] testified that around the time of [XXX], Student 1 told her that the Member had given her an “ultimatum” which “spurred the end of their hanging out and relationship”. The Majority places minimal weight to Ms. [XXX] evidence as her evidence is limited to what Student 1 told her. During the hearing, the Member denied making these comments to Student 1.

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[130] The Majority finds that the College did not present sufficient evidence to prove this allegation on a balance of probabilities. Specifically, the evidence related to this allegation was not clear, cogent or convincing. The Majority places minimal weight on Ms. [XXX] evidence as it was hearsay evidence. The Majority also notes that the parties did not adduce any documentary evidence of a text message or a phone call between the Member and Student 1 arranging a time to meet at [XXX] park—the location where the Member allegedly told Student 1 that if they did not sleep together their relationship would be over, or of the text message sent to Student 1 from the Member. Accordingly, the Majority does not find that the College discharged its onus of proving this allegation on a balance of probabilities and makes no finding with respect to this allegation.

(iv) Between in or about March 2009 and in or about August 2009, the Member met with Student 1 outside of the School, including but not limited to:

(a) going to a park together after dark; and/or (b) picking up Student 1 in his car – particular 7

[131] The Majority finds that the College has not proven, on a balance of probabilities, between in or about March 2009 and in or about August 2009, the Member met with Student 1 outside of the School, including going to the park together after dark (particular 7(a)) or picking up Student 1 in his car (particular 7(b)), as alleged in the *Notice of Hearing.*

[132] The Majority heard evidence from Student 1 that she met the Member at [XXX] park on two occasions, June 12, 2009, and June 23, 2009. Student 1 testified that the Member suggested that they meet at [XXX] park. On June 12, 2009, the Member picked her up from the driveway of her home in his Jeep and went to the community center at [XXX] park. Student 1 recalled that it was dark when they met and it was some time after

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9 p.m. She met the Member a second time at [XXX] park on June 23, 2009—the night before [XXX]. On this occasion, Student 1 walked to the community center at [XXX] park to meet the Member and recalled it was probably 11:30 p.m. when they met.

[133] Ms. [XXX] testified that Student 1 told her that she and the Member “hung out outside of school”, which included “by the field by ‘us’”. When asked, Ms. [XXX] testified that she believes they met after school hours. Ms. [XXX] also testified that Student 1 told her that she and the Member would meet after his recreational hockey games or practices. Student 1 testified that she and the Member met twice (June 12, 2009, and June 23, 2009), which contradicts Ms. [XXX] evidence that they met about 10-20 times and would arrange to meet up over a text message.

[134] The Member denied meeting Student 1 at the [XXX] park on June 12, 2009, and June 23, 2009. The Member denied ever picking up Student 1, denied asking her on BBM for her availability outside of school hours, and denied ever meeting with Student 1 outside of school hours. The Member testified that he worked on June 12, 2009, and was officiating an Ontario provincial qualifier ball hockey tournament in Oshawa, Ontario and provided a copy of his Ontario Ball Hockey Association game sheets for June 12-13, 2009 (Exhibit 18). The Member testified that he left his home on or around 5-5:15 p.m., drove to the ball hockey rink and arrived on or around 6:15 p.m. He testified that the game ended on or around 9 p.m. The Member testified that on his way home, he stopped at a Wendy’s/Tim Hortons to purchase something for his wife, as she was pregnant at the time, and arrived at his home at around 10 p.m. The Member testified that him and his wife ate at home, watched tv and then went to bed.

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[135] The Member also denied meeting Student 1 at [XXX] park on June 23, 2009. He testified that on June 23, 2009, he was at his parents for dinner with Mrs. Wahbi and spent the rest of the evening at his home with her. The Member's evidence was corroborated by Mrs. Wahbi—whom the Majority found to be a less credible witness due to her interest in the outcome of this case.

[136] The Majority finds that the College did not meet its burden of proving the allegations, on a balance of probabilities, of the events on June 12, 2009, and June 23, 2009. The Majority finds that the College did not provide sufficient evidence to prove, on a balance of probabilities, that the Member picked Student 1 up in his car and they went to [XXX] park on June 12, 2009. The Majority preferred the Member's viva voce evidence with respect to his alibi on June 12, 2009, which was corroborated by Mrs. Wahbi's evidence and documentary evidence—ball hockey game sheets (Exhibit 18). With respect to meeting Student 1 at [XXX] park on June 23, 2009, the Majority finds the College did not provide sufficient convincing evidence and corroborating evidence of Student 1's claims in order to make a finding that the Member and Student 1 met at [XXX] park on this date. For these reasons, the Majority finds that the College has not proven, on a balance of probabilities, that the Member and Student 1 went to a park together after dark or that the Member picked Student 1 up in his car.

(v) In or around June 2009, the Member engaged in physical contact and/or touching of an inappropriate and/or sexual nature with Student 1, including but not limited to (a) kissing Student 1 on her neck, lips and/or face; (b) holding Student 1's hand; and/or placing his arms around Student 1 — particular 8

[137] The Majority does not find, on a balance of probabilities, that in or around June 2009, the Member engaged in physical contact and touching of an inappropriate and

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sexual nature with Student 1, including that the Member kissed Student 1 on her neck, lips, and/or face (particular 8(a)); held Student 1's hand (particular 8(b)); and placed his arms around Student 1 (particular 8(c)), as alleged.

[138] The Majority heard evidence from Student 1 that on June 12, 2009, she and the Member hugged and held hands. Student 1 also testified that when she met the Member at [XXX] park on June 23, 2009, the Member kissed her neck, cheek and tried to kiss her lips. Student 1 also stated that the Member put his arm around her body while lying down on the sprinkler pad at the park. Ms. [XXX] testified that she recalled Student 1 told her that Student 1 and the Member were "hanging out" in the field by "us" and he tried to kiss her, after school. Ms. [XXX] also testified that Student 1 told her that she and the Member kissed in the car before [XXX] but could not confirm the date or where this happened.

[139] The Majority also heard evidence from the Member with respect to this allegation. The Member denied meeting Student 1 at [XXX] park on June 12, 2009, and June 23, 2009, and also denied putting his arm over her, kissing her and touching her.

[140] As outlined in *F.H. v McDougall*, the evidence must always be clear, convincing and cogent to satisfy the balance of probabilities test. In serious cases, evidence must be scrutinized with greater care, but that does not change the standard of proof, being the balance of probabilities. The Majority notes that Student 1's evidence is that these events, as alleged in particular 8 of the *Notice of Hearing,* occurred when they met at [XXX] park, after dark and outside of school hours. However, as noted above, the Majority did not find that the College proved on a balance of probabilities that the Member met with Student 1 at [XXX] park on June 12, 2009, and on June 23, 2009. The Majority finds that the College has not provided sufficient evidence, including evidence corroborating Student 1's

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testimony, to substantiate that the Member kissed Student 1 on her neck lips and/or face, that he held Student 1's hand and/or placed his arms around Student 1, which allegedly occurred at [XXX] park on June 12, 2009, and June 23, 2009.

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(3) Legal Conclusions

[141] The Majority finds that the Member's conduct set out above gives rise to a finding of professional misconduct. In particular, the Member abused a student psychologically or emotionally 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). The Majority also finds that the Member engaged in sexual abuse of a student as defined in section 1 of the *Act*.

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

[142] The Majority finds that the Member psychologically or emotionally abused Student 1, contrary to subsection 1(7.2) of Ontario Regulation 437/97. The Majority finds that the Member's actions caused Student 1 significant emotional harm. Among other things, the Member engaged in inappropriate conduct by commenting on Student 1's physical appearance by telling her "you look beautiful" or words to that effect. As evidenced by the transcript of the conversation between the Member and Student 1 (Exhibits 2 and 3), the Member violated professional boundaries with Student 1 by communicating with her outside of school hours, which resulted in Student 1 believing

they were “friends”. By engaging in communications of a personal nature with Student 1, the Member blurred professional boundaries with Student 1, whom later experienced significant emotional and psychological distress once their communication outside of school ceased e.g., driving by the Member’s home. In particular, Student 1 testified that she experienced feelings of shame, guilt and confusion. She also stated that she no longer feels that she belongs in her community in Toronto, she moved to a different province for university, and it is due to her interactions with the Member that she now lives outside of the province. Ms. [XXX] and Ms. [XXX] also testified that the Member’s conduct had a negative impact on Student 1, being that she felt guilty for a long time and it was hard for her to move on.

[143] The Majority finds that the Member took advantage of his unique position of trust over Student 1 by making an inappropriate and sexualized comment on her appearance, namely telling her, “you look beautiful”. As a teacher, the Member was in a position of trust and authority and was expected to ensure a safe space for Student 1 by maintaining professional boundaries. This is always the responsibility of the educator, and not the student. Blurring this boundary is emotionally difficult for a young person to understand, it is confusing and it also has the potential to seriously interfere with their social and emotional development. For these reasons, the Majority finds that the Member engaged in emotional and psychological abuse of Student 1.

(g) The Member abused a student sexually, contrary to Ontario Regulation 437/97, subsection 1(7.3)

[144] The Majority finds that the Member sexually abused Student 1, contrary to subsection 1(7.3) of Ontario Regulation 437/97 and engaged in sexual abuse of a student as defined in section 1 of the *Act*. The definition of sexual abuse at section 1 of the *Act*

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includes, “behaviour or remarks of a sexual nature by the member towards the student”, including remarks made by electronic communications. The *Act* does not define what may be considered a “sexual nature”, though section 1(8) of the *Act* notes some exceptions. The determination of what is “sexual in nature” is an objective test, considering the Member’s conduct in its circumstances.

[145] In the Majority’s view, the Member sexually abused Student 1 by engaging in behaviour or remarks of a sexual nature, namely commenting on Student 1’s appearance and telling her that she looked beautiful. There is no professional reason for a teacher to make such a comment to a student. As such, the Majority finds that the Member engaged in sexual abuse of Student 1, as defined in section 1 of the *Act.*

(h) 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)

[146] The Majority finds that the Member’s conduct would reasonably be regarded by members as disgraceful, dishonourable and unprofessional. While these terms are not legislatively defined, and are considered to be disjunctive, the Majority finds that the Member’s conduct can be properly characterized by all three terms.

[147] “Disgraceful conduct” has been used by this Committee to refer to the misconduct of a reprehensible and most egregious nature that casts serious doubt upon the Member’s moral fitness to uphold their duties and responsibilities as a member of the profession. This Committee has used the term “dishonourable” to refer to misconduct that infers an element of a moral failing but is less serious than disgraceful conduct. The more knowledge that a member has or ought to have had about the wrongfulness of the conduct at the time it occurs, the more likely the Committee will find the conduct to be “disgraceful”

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rather than merely “dishonourable”. “Unprofessional conduct” has been considered by this Committee to refer to acts that display a lack of professional judgment by a member but not necessarily a moral failing.

[148] Teachers hold a unique position of trust and authority and are required to maintain professional boundaries with students at all times. In this case, the Member failed to maintain appropriate boundaries with Student 1 by engaging in communications of a personal and sexual nature, which included telling Student 1 she looked beautiful. Such conduct would be viewed by the profession as unacceptable and would be considered disgraceful, dishonourable and unprofessional.

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

[149] Parents and the public expect teachers to ensure their children’s safety and well-being, and to maintain professional boundaries at all times. By engaging in inappropriate conduct towards Student 1, which included a remark of a sexual nature towards a student, the Member undermined the public’s trust in the teaching profession and tarnished the reputation of the profession as a whole. This conduct is completely unbecoming and unacceptable.

N. INTERIM ORDER

[150] As the Majority has found the Member to have engaged in the sexual abuse of a student, the Majority is required by subsection 30.2(1)(b) of the *Act* to make an interim order directing the Registrar to suspend the Member’s certificate of qualification and registration until the Majority makes its penalty order. The Majority therefore makes this interim order.

[151] The Tribunals' Office will schedule a subsequent hearing date for the penalty portion of this hearing.

Date: October 7, 2025

Andrew Glenny
Member, Discipline Panel

Linda Staudt, OCT
Member, Discipline Panel

Panel Member Emile Ramlochan dissents.

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