

**DISCIPLINE COMMITTEE
OF THE ONTARIO COLLEGE OF TEACHERS**

PENALTY DECISION 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
Paul Joseph Paterson, a member of the Ontario College of Teachers.

BETWEEN:

ONTARIO COLLEGE OF TEACHERS

– and –

PAUL JOSEPH PATERSON (REGISTRATION #426411)

PANEL: John Hamilton, OCT, Chair
 Josée Landriault, OCT

HEARD: October 17-18, 2022

Danielle Miller, for the Ontario College of Teachers

William Markle, Q.C., for Paul Joseph Paterson

Julie Maciura, Independent Legal Counsel

<u>PUBLICATION BAN:</u> Pursuant to subsections 32.1(3) and 32.1(4) of the <i>Ontario College of Teachers Act, 1996</i>, 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 the person who was allegedly sexually abused, or the subject of sexual misconduct, a prohibited act involving child pornography, or a prescribed sexual act.

[1] The penalty portion of this proceeding was heard electronically before a panel of the Discipline Committee (the “Panel”) of the Ontario College of Teachers (the “College”) on October 17 and 18, 2022, in accordance with rule 8.01 of the *Rules of Procedure of the Discipline Committee and of the Fitness to Practise Committee* (the “Rules”). In accordance with section 4.4(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, the original three-member Panel was reduced to a two-member Panel after closing submissions at the finding stage of this hearing, when Dr. Richard Filion became unable to continue on the Panel. The remaining two Panel members, Mr. Hamilton and Ms. Landriault, were able to complete the finding stage and the penalty stage of the hearing and give decisions in this matter with respect to both the Committee’s finding of professional misconduct and its ensuing penalty and costs orders.

[2] On May 3, 2022, the Panel found that Paul Joseph Paterson (the “Member”) engaged in professional misconduct: *Ontario College of Teachers v. Paterson*, 2022 ONOCT 58 (*Decision on Finding and Reasons for Decision*). In particular, the Panel found that the Member engaged in numerous acts of professional misconduct, namely in relation to his inappropriate personal relationship with Student 1. Based on this conduct, the Panel found that the Member contravened subsections 1(14), 1(15), 1(18) and 1(19) of Ontario Regulation 437/97, as alleged in the *Notice of Hearing* dated February 1, 2019. The Panel found that the College did not prove, on a balance of probabilities, that the Member contravened subsection 1(11) of Ontario Regulation 437/97. The College withdrew all other allegations of professional misconduct.

[3] The Panel reconvened on October 17, 2022, to hear submissions with respect to penalty and costs. On October 18, 2022, the hearing concluded when the Panel rendered

its decision with respect to penalty and costs orally, before the parties. The Member had legal representation throughout these proceedings, including at the penalty stage.

[4] The Panel's reasons with respect to its penalty and costs orders are set out below.

A. PUBLICATION BAN

[5] 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.

[6] Additionally, a publication ban was ordered pursuant to subsection 32.1(4) of the *Act* at the request of College Counsel on behalf 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. PENALTY SUBMISSIONS OF COLLEGE COUNSEL

[7] College Counsel sought for the Member to receive a reprimand from the Panel and for the Registrar to revoke the Member's Certificate of Qualification and Registration immediately. College Counsel submitted that the context underlying the Member's relationship with Student 1 was particularly aggravating because he had first encountered Student 1 in crisis and knew that Student 1 was at risk when he engaged in illegal behaviour with Student 1. Given that the Member was a vice-principal at the time, College Counsel argued that it was implausible that he lacked a basic understanding of a teacher's role beyond school hours and off school property. College Counsel submitted that there

is no reasonable prospect that the Member's conduct will improve if he is given a second chance at teaching. College Counsel maintained that the fact that the Member allowed Student 1 to sleep alone at his house on two occasions would have been grounds for revocation on its own. College Counsel submitted that the penalty order sought would satisfy the goals of a penalty order from the Discipline Committee; namely, public protection, maintaining high professional standards, and preserving public confidence in the teaching profession, which principles are achieved by ordering penalties that meet the objectives of specific and general deterrence, rehabilitation, and remediation, where appropriate.

[8] College Counsel briefly presented the Panel with previous cases decided by the Discipline Committee to support her argument that revocation was an appropriate order that fell within the range of penalties ordered for similar misconduct in the past: *Ontario College of Teachers v. Cameron*, 2019 ONOCT 87; *Ontario College of Teachers v. Duncker*, 2020 ONOCT 137; *Ontario College of Teachers v. DeBernardi*, 2019 ONOCT 7; *Ontario College of Teachers v. Crowther*, 2019 ONOCT 18; *Ontario College of Teachers v. Elliott*, 2021 ONOCT 23; and *Ontario College of Teachers v. Reid*, 2021 ONOCT 126.

C. PENALTY SUBMISSIONS OF MEMBER'S COUNSEL

[9] Member's Counsel started their submissions by arguing that the Panel ought not to find the Member guilty of professional misconduct and cited some mitigating circumstances, including that the Member went camping with Student 1, with the

permission of Student 1's mother.¹ With respect to the penalty, Member's Counsel submitted that there are different methods of resolving the matter that are short of revocation, including ordering that the Member attend remedial courses on professional boundaries. Should the Panel consider suspension as a penalty, Member's Counsel proposed a suspension of 12-15 months, but argued that the Panel should consider the time that has elapsed since the Thames Valley District School Board (the "Board") placed the Member on a leave of absence without pay (Exhibit 18) and that the Member's lost earnings should be considered as "time served." Member's Counsel referenced Ms. Sarna's testimony in which she confirmed that the Member was regarded as an exceptional teacher and that she had supported the Member's application for the position as principal.

[10] Member's Counsel presented the Panel with the following cases in support of his position: *Ontario College of Teachers v. Grimstead*, 2009 ONOCT 22 ("Grimstead"); *Ontario College of Teachers v. Bonofiglio*, 2020 ONOCT 163; *Ontario College of Teachers v. Champion*, 2015 ONOCT 10; *Ontario College of Teachers v. Sloan*, 2021 ONOCT 84; *Ontario College of Teachers v. Webb*, 2003 ONOCT 51; *Ontario College of Teachers v. Mahmood*, 2019 ONOCT 29; *Ontario College of Teachers v. Byers*, 2021 ONOCT 90; and *Ontario College of Teachers v. Byam*, 2022 ONOCT 20.

¹ This submission was made despite the fact that the Panel had already made its finding of professional misconduct at that point in the proceeding. The penalty stage of the hearing was not an opportunity for either party to re-open the finding stage of the proceedings and the Panel did not place any weight on such submissions by either party.

D. REPLY PENALTY SUBMISSIONS OF COLLEGE COUNSEL

[11] In reply, College Counsel submitted that little to no weight should be given to how effective and respected the Member was, as that does not excuse the misconduct in which he engaged without the School and the Board's knowledge. Student 1's mother viewed the Member as a trusted, respected authority figure and that is why she allowed him to supervise their son while they left on vacation. They did not consent to the Member's inappropriate conduct with Student 1. College Counsel submitted that although the Member did not have control over Student 1's [XXX], he never discussed it with Student 1 and did not direct him to resources, despite knowing that Student 1 was at risk. In response to the submission of Member's Counsel citing *Grimstead* and asking the Panel to consider that there was no finding of sexual abuse made against the Member, College Counsel submitted that it would be concerning for the Panel to order revocation only when it finds a member guilty of sexual abuse and that the Panel ought to carefully review the facts and find that revocation is appropriate here, even if the Member is not guilty of sexually abusing Student 1. Lastly, College Counsel submitted that the price that the Member had already paid for his behaviour only speaks to specific deterrence and that the penalty sought by the College was necessary to achieve general deterrence.

E. ADVICE OF INDEPENDENT LEGAL COUNSEL

[12] Independent Legal Counsel ("ILC") advised the Panel about its role in considering the evidence tendered and the submissions of the parties in issuing an order that adheres to the principles underlying Discipline Committee orders. ILC noted that the Panel must determine the most appropriate penalty that meets the purposes of a sanction, including the protection of the public, remediation, general and specific deterrence and that the

Panel should give due regard for principles of proportionality and consistency with past decisions from the Discipline Committee.

F. PENALTY DECISION

[13] On October 18, 2022, the Panel made the following order as to penalty:

1. The Member is directed to appear before the Committee within 90 days of the date of the Penalty Decision and Order on a date to be arranged by the Member and the Tribunals' Office, to receive a reprimand which will be delivered in person at the offices of the Ontario College of Teachers, 101 Bloor Street W., Toronto, Ontario, or via videoconference and the fact of the reprimand is to be recorded on the Register of the Ontario College of Teachers;
2. The Registrar of the Ontario College of Teachers is directed to immediately revoke the Certificate of Qualification and Registration of the Member.

G. REASONS FOR PENALTY

[14] In arriving at its decision with respect to penalty, the Panel considered the parties' submissions and ILC's advice carefully. The Panel was also mindful of the guiding principles underlying penalty orders, including specific and general deterrence, remediation (in appropriate cases) and public protection. In this case where the Member was an experienced vice-principal and the professional misconduct included the Member facilitating illegal activities and spending time alone with Student 1, who was known to have been in crisis, the objectives of deterrence and public protection are of primary concern to the Panel.

[15] The Panel considered the Member's circumstances and the findings of fact in this case that were made by the Panel. The aggravating factors that the Panel is particularly concerned about arise from the factual context in which the Member, as a senior educator and leader in the school administration, knew that Student 1 was in crisis, had a strained

relationship with his mother and had [XXX]issues. Despite this knowledge, the Member condoned and encouraged the student's drug use, took advantage of his (the Member's) trusted relationship with Student 1's mother to spend time alone with Student 1 on multiple occasions, and concealed his relationship with Student 1 from the School, which prevented Student 1 from receiving proper support. The Member knew that Student 1 was at risk, vulnerable and particularly in need of guidance. Furthermore, the Member was an experienced vice-principal at the time of the misconduct. Based on his experience and position of authority, he ought to have known that his responsibility to maintain proper boundaries with students continued beyond the school property and school hours and he should have been more vigilant in addressing Student 1's needs in a professional manner. As vice-principal, the Panel found the Member to be in a higher position of trust and authority than a classroom teacher, which made his misconduct even more egregious and inappropriate. Parents, students and the school administration place more trust in senior educators like vice-principals than classroom teachers to treat students equitably and ensure their safety. The Member violated such trust in abusing his position of power and disregarding his professional obligations and Student 1's well-being.

[16] In terms of mitigating factors, the Panel considered that this was the Member's first appearance before the Discipline Committee. However, the Panel did not place much weight on this factor given the serious nature of the professional misconduct. The Member repeatedly breached the trust that had been placed in him to ensure Student 1's well-being. Although this is the Member's first time before the Discipline Committee, it is evident that his misconduct here was not borne out of a momentary lapse of professional judgment and instead his conduct formed part of a concerning pattern of behaviour.

Although the Member may have been held in high regard by some (as was submitted by Member's Counsel), the Member's prior reputation does not negate findings that he repeatedly breached professional boundaries with Student 1.

[17] The Panel also recognizes the principle that like cases should be treated alike. The penalty ordered here falls within the range of penalties ordered in several similar cases before the Discipline Committee, in which members held senior educator positions and were held to a higher standard given their leadership roles in the school community (see e.g., *Ontario College of Teachers v. Elliott*, 2021 ONOCT 23; and *Ontario College of Teachers v. Reid*, 2021 ONOCT 126).

[18] Revocation is not a mandatory penalty in this case, but it is appropriate given the circumstances. The School, the community, Student 1 and Student 1's mother placed great trust in the Member (a vice-principal) to take care of Student 1 and to prioritize his well-being. The Member not only violated professional boundaries with Student 1 by spending time alone with him overnight, on multiple occasions, but he condoned and encouraged Student 1's drinking of alcohol and smoking of marijuana, despite knowing that Student 1 had been in crisis before. The Member repeatedly failed to disclose the nature of his relationship and activities with Student 1 to Student 1's mother and the School, which isolated Student 1 from what could have been a support system for him. The Member demonstrated a complete disregard for Student 1's safety and well-being, which calls into question his ability to understand and discharge his professional obligations.

[19] There is no place in the profession for members who condone and encourage students to engage in destructive, illegal behaviour, especially when they have a history

of being in crisis and are especially vulnerable and isolated. The public expects that members will exemplify good character and act as positive role models, guiding students to success. They must never take advantage of students' vulnerable positions, encourage unhealthy, illegal behaviour, spend time alone with students in their homes, or conceal such behaviour from the School. By doing so, the Member egregiously breached his position of trust and authority.

[20] The Panel considered other penalties, including suspension and the imposition of terms, conditions, or limitations on the Member's Certificate of Qualification and Registration, but found that revocation is the only penalty that appropriately responds to professional misconduct of this nature and gravity. The Member's conduct undermined the reputation of the teaching profession and will not be tolerated. He has forfeited the privilege of holding a teaching certificate and being a member of the teaching profession in Ontario. Removing the Member from the profession will ensure the safety of students and protect the public. Furthermore, the Panel found that a more lenient penalty as suggested by Member's Counsel was not appropriate in this case, as the Panel did not believe that the Member would change his behaviour after serving a suspension and completing remedial courses. The Member was already educated as a vice-principal and completed high levels of training and education related to the teaching profession, yet he still egregiously and repeatedly breached the standards required of him. There is no evidence that further education or a suspension would help him to understand the magnitude of his errors and change his behaviour for the future.

[21] The Panel found that a reprimand was warranted to satisfy the principles of general and specific deterrence. The reprimand will allow the Panel to directly address its

concerns with the Member and will serve as a specific deterrent. Recording the fact of the reprimand on the Register as well as revoking his Certificate of Qualification and Registration will serve as a general deterrent to other members of the profession. Further, it will achieve the goal of transparency and protection of the public by alerting the public that the Panel does not condone such misconduct.

[22] The Panel is not convinced by the submissions of Member's Counsel that the Member's lost earnings of approximately \$450,000 should mitigate the penalty. The Member's lost earnings are not a factor for the Panel in considering the appropriate penalty. The Member's lost earnings from being placed on a leave of absence without pay from the Board are the employment consequences of his misconduct and do not excuse him from a penalty from the Discipline Committee of his regulator.

[23] The Panel is satisfied that the penalty is appropriate in the circumstances and meets the principle of serving and protecting the public interest.

H. COSTS SUBMISSIONS OF COLLEGE COUNSEL

[24] College Counsel sought an order for costs payable by the Member to the College, pursuant to paragraph 4 of subsection 30(5) of the *Act*. College Counsel submitted that the Panel should be guided by Rule 16.05(3) and Tariff A of the *Rules* in making the costs order. Read together, the College is not required to provide evidence of the actual costs of a day of hearing if the amount claimed is equal to or less than \$10,000 per day of hearing.

[25] College Counsel requested a total costs order of \$20,000 for six days of hearing, which was less than half of the amount that could be sought relying on Tariff A. College

Counsel submitted that the Member had the opportunity to shorten the length of the proceedings by admitting to facts set out in the police's video evidence, but instead chose to change his story when he testified. This resulted in the parties having to prepare witnesses and make arguments regarding the Member's credibility and the police's video evidence. In support of its submissions, College Counsel referred the Panel to the following caselaw: *Ontario College of Teachers v. Hall*, 2019 ONOCT 20; *Ontario College of Teachers v. Wilson*, 2020 ONOCT 151; *Ontario College of Teachers v. Testa*, 2021 ONOCT 89; and *Ontario College of Teachers v. Spence*, 2022 ONOCT 37.

I. COSTS SUBMISSIONS OF MEMBER'S COUNSEL

[26] Member's Counsel argued that the Panel ought to use its discretion to either not order a costs award or to consider ordering significantly lower costs than the College sought against the Member, mainly because of the Member's inability to pay and his financial situation. Member's Counsel presented the Panel with the Member's biweekly statements from his current employer, LCBO, which indicated biweekly earnings ranging from \$1,055.36 to \$1,493.17 (Exhibit 16). Member's Counsel also submitted that the Member had paid an emotional and financial cost in defending himself against the allegations, facing public scrutiny (Exhibit 17), being placed on an unpaid leave of absence from the Board (Exhibit 18) and ultimately being terminated from his employment, which impacted his ability to use his benefits, income and pension. Member's Counsel posited that the Member had already paid such a great cost and that an order to pay costs would be like a penalty in addition to the possibility of losing his Certificate. In the alternative, Member's Counsel argued that the Panel should not order costs because there was no evidence of the Member not cooperating, not showing up to

the hearing or being otherwise obstructionist and acting in bad faith during these proceedings.

J. REPLY COSTS SUBMISSIONS OF COLLEGE COUNSEL

[27] In reply, College Counsel submitted that the fact that the Member did not act in bad faith is not determinative as to whether costs should be awarded. College Counsel noted that Member's Counsel did not make any submissions as to why the Member could not have shortened the proceedings by making certain admissions. College Counsel further suggested that the Member could have other sources of income besides his job at the LCBO and that the Member was young with many working years ahead of him, which would make it possible for him to pay costs over an extended period using a payment plan. College Counsel reiterated that the costs sought were only \$20,000, which is less than half of the costs that would have been permitted under Tariff A.

K. COSTS DECISION

[28] On October 18, 2022, the Panel made the following order with respect to costs:

1. The Member shall pay costs of this proceeding to the College, fixed in the amount of \$5,000 which must be paid within 180 days of the date of this order.

L. REASONS FOR COSTS

[29] The Panel has the jurisdiction and authority to order costs payable by a member to the College where it has found that member guilty of professional misconduct, according to paragraph 4 of subsection 30(5) of the *Act*. Pursuant to Rule 16.05(3) of the *Rules*, the College is not required to provide evidence of the costs of a day of hearing if the amount claimed is equal to or less than the amount set out in Tariff A. College Counsel

sought \$20,000 in costs for six days of hearing, which is less than half of the amount set out in Tariff A and as such, was not required to provide evidence of the costs sought.

[30] The Panel considered the factors outlined in the *Hall* decision carefully. *Hall* provides the panel with guidance as to the factors to be considered when making a costs order:

Apportioning costs of proceeding: Costs orders are compensatory, rather than punitive, in nature. Their purpose is to apportion the financial burden of a discipline proceeding between the parties fairly. The nature or severity of a member's misconduct is not a factor that should be considered when determining whether costs should be ordered or the quantum of any order.

Uncooperative and vexatious conduct: Uncooperative or obstructionist conduct in the course of the litigation process will be a significant factor in the costs determination. Conduct that unnecessarily lengthens the duration of the proceeding ought to be sanctioned, as should vexatious or improper conduct. Consistent with the principle of apportionment, the College and, through their licensing fees, cooperative members of the teaching profession, ought not bear fully the costs of discipline proceedings against uncooperative members.

Promotion of good conduct: Members of the profession are not required to admit all or part of their professional misconduct because the College always bears the burden of proof. However, participation in the disciplinary process, cooperation and conduct that shortens or reduces the complexity of the proceeding ought to be encouraged. Engagement in efforts to settle all or part of a proceeding should be encouraged when considering whether costs ought to be ordered. Costs orders should not be so large as to discourage members from raising reasonable defences to allegations of professional misconduct.

Success of the parties: The relative success of the parties will be relevant in determining and apportioning costs. For example, if the College is only partially successful in establishing the allegations against a member, this will be relevant in determining whether and what amount of costs should be ordered. If significant hearing time is spent receiving evidence on allegations that are ultimately not established, the member ought not be liable for those costs.

The member's ability to pay: Evidence or submissions about the member's ability to pay a costs order may be relevant to the Committee's

decision. This factor may also be relevant to the Committee's decision about how much time the Member is given to pay the costs order. The impact of other penalties imposed (for example, revocation) may be relevant to this factor: *Hall* at pp. 12-13.

[31] The Panel agrees with *Hall* in that the goal of a costs award is to allocate the costs of the proceedings fairly. A costs award is not intended to be an additional punishment to a member, but should rather be ordered to ensure that the College's membership is not held entirely financially responsible for the costs of conducting discipline proceedings (i.e., through their annual fees which allow the College to conduct its operations) where a member has been found guilty of professional misconduct.

[32] The Panel accepts College Counsel's submissions that the Member had the opportunity to streamline the proceedings by admitting to certain facts, but chose not to. This decision unnecessarily lengthened the proceeding by causing the parties to prepare witnesses and evidence, which added cost and time spent on hearing preparations and the conduct of the hearing itself. In particular, the Member decided to recant his previous statements to Detective Gilmour, which needlessly lengthened these proceedings. The College's membership should not have to bear all the financial burden of covering the cost of proceedings, borne out of this type of strategic decision, when there was an opportunity for the Member to agree to some minor facts that would not have impacted his ability and right to present a full defence, but which would have allowed the hearing to run more efficiently. The Panel is cautious to note, however, that members should not feel obliged to sacrifice a full defence for efficiency's sake but that they may face financial consequences when they take positions at a hearing that are unreasonable, such as recanting statements they previously made to a police officer. The Panel also notes that

the Member was not otherwise uncooperative during the discipline proceeding or with the College and did duly engage with the proceedings.

[33] The Panel considers the College's success in establishing the majority of the allegations as a factor that weighs in favour of ordering costs against the Member. This was not a case where the College spent considerable time during the hearing presenting a case that was largely unsuccessful.

[34] The Panel gave considerable weight to Member Counsel's submissions about the Member's ability to pay the costs that College Counsel was seeking, given that he is presently working at the LCBO with biweekly earnings ranging from \$1,055.36 to \$1,493.17 (Exhibit 16). Given the evidence supporting the Member's financial situation, the Panel found it to be reasonable to order a reduced amount of costs to be paid by the Member within 180 days from the date of the Decision and Order. The Panel recognizes that members have the right to engage with the hearing process and present a full defence and should not have to risk significant financial loss to do so, at least when they present a reasonable defence.

[35] The Panel is satisfied that an order of \$5,000 in costs payable by the Member to the College within 180 days of the Order dated October 18, 2022, is just and appropriate in the circumstances and represents a fair allocation of the costs of the hearing.

Dated: January 23, 2023

John Hamilton, OCT
Chair, Discipline Panel

Josée Landriault, OCT
Member, Discipline Panel