

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

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

**AND IN THE MATTER OF** a discipline proceeding against Mark Edward De Sousa, a member of the Ontario College of Teachers.

PANEL: Mel Greif, Chair  
Tammy Bush  
Jacques Tremblay

BETWEEN:	)	
	)	
	)	Cedric Lamarche,
	)	McCarthy Tétrault LLP,
	)	for Ontario College of Teachers,
ONTARIO COLLEGE OF TEACHERS	)	assisted by Trevor Evans
	)	Senior Law Clerk
- and -	)	
	)	
MARK EDWARD DE SOUSA	)	Gary Hopkinson,
(CERTIFICATE #186661)	)	Green & Cherver, cover,
	)	for Mark Edward De Sousa
	)	
	)	
	)	Phillip Tunley,
	)	Stockwoods LLP,
	)	Independent Legal Counsel
	)	
	)	Heard: April 3, 2009

**REASONS FOR DECISION, DECISION AND ORDERS**

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on April 3, 2009 at the Ontario College of Teachers (“the College”) at Toronto.

A *Notice of Hearing*, dated October 16, 2008 was served on Mark Edward De Sousa, requesting attendance before the Discipline Committee of the Ontario College of Teachers on November 3, 2008 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for April 3, 2009.

Mark Edward De Sousa was not in attendance at the hearing.

### **THE ALLEGATIONS**

The allegations against Mark Edward De Sousa in the *Notice of Hearing* (Exhibit 1) dated October 16, 2008, are as follows:

**IT IS ALLEGED** that Mark Edward De Sousa is guilty of professional misconduct as defined in sections 30(2) and 40(1.1) of the *Ontario College of Teachers Act, 1996* (the “Act”), in that:

- (a) he failed to maintain the standards of the profession, contrary to Ontario Regulation 437/97, subsection 1(5);
- (b) he abused a student or students physically, sexually, verbally, psychologically or emotionally, contrary to Ontario Regulation 437/97, subsection 1(7);
- (c) he failed to comply with the *Act* or the *Education Act*, Revised Statutes of Ontario, 1990, chapter E.2, and specifically section 264(1)(c) thereof or the Regulations made under those Acts, contrary to Ontario Regulation 437/97, subsections 1(14) and (15);
- (d) he 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);
- (e) he engaged in conduct unbecoming a Member, contrary to Ontario Regulation 437/97, subsection 1(19); and
- (f) he engaged in sexual abuse of a student or students of a nature defined in sections 1 and 40 (1.1) of the *Act*.

At the hearing on April 3, 2009, College counsel sought to withdraw the allegation that the Member engaged in sexual abuse of a student or students of a nature defined in sections 1 and 40(1.1) of the *Act*. The Committee agrees that this allegation be withdrawn.

## **AGREED STATEMENT OF FACTS**

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

### **STATEMENT OF FACTS**

1. Mark Edward De Sousa (the “Member”) is a member of the Ontario College of Teachers. Attached hereto and marked as **Exhibit “A”** is a copy of the Ontario College of Teachers Registered Member Information respecting the Member.
2. At all material times the Member was employed by the Near North District School Board (the “Board”) as a [XXX] teacher at [XXX] (the “School”), in North Bay.
3. During the 2004-2005 academic year, Student No. 1, Student No. 2, Student No. 3 and Student No. 4 were female students of the Member at the School.
4. During the 2004-2005 academic year, the Member acted unprofessionally and inappropriately towards Student No. 1 in that he:
  - (a) gave her handwritten notes, cards, books and other gifts;
  - (b) spent time alone with her in the School on more than one occasion, sometimes after school or between classes and on one occasion, they hugged;

- (c) drove her home on two occasions after [XXX] practice or [XXX] related events;
- (d) made inappropriate physical contact with her including placing his hand on her shoulder;
- (e) requested her to share “difficult challenges” which she was experiencing at home and questioned her persistently about personal and family issues including her relationship with her father;
- (f) offered to give her money as well as a cell phone for emergency purposes;
- (g) talked on the phone with her in the evenings and on one occasion engaged in a lengthy conversation with her;
- (h) invited her to go out of town with his family at Thanksgiving 2004; and
- (i) on or about 16 November 2004, contacted her by telephone, after he had been directed by the Board not to do so, and while speaking to her expressed endearments to her.

5. Copies of undated handwritten notes referred to at paragraph 4(a), which the Member gave to Student No. 1. are attached as **Exhibit “B”**.

6. One of the books referred to at paragraph 4(a), which the Member gave to Student No. 1 was entitled, “Fully Human, Fully Alive” by John Powell S.J. The Member made several notations in that book in which he expressed his love and feelings towards Student No. 1. He starting by addressing her as, “My dear sweet ...” He also wrote, “I promise to always be with you in body, in spirit and in mind...” Further he called her “sweetheart”, drew several hearts, and made references to her relationship with her father. He suggested that she, “read this when you have a quiet private moment.” A set of copies of various pages from that book on which the Member made notations is attached as **Exhibit “C”**.

7. Student No. 1's notes of the telephone conversation between the Member and Student No. 1 are referred to at paragraph 4 (i) and are attached as **Exhibit "D"**.

8. During the 2004-2005 academic year, the Member requested a guidance counsellor of the School to delay contacting the Children's Aid Society regarding family issues involving Student No. 1. The Member wanted to persuade Student No. 1 to contact CAS herself.

9. During the 2004-2005 academic year, the Member acted unprofessionally and inappropriately towards Student No. 2 in that he:

- (a) offered to have her come to his house temporarily with his family when she was having trouble at her home;
- (b) had dinner with her at his home with his family;
- (c) sent her a birthday card;
- (d) hugged her at the School;
- (e) told her that he loved her;
- (f) at the time when a Board investigation into his conduct was in progress, picked her up in his car while she was walking to a coffee shop, drove her there and told her that something was going on with Student No. 1;
- (g) on another occasion, met with Student No. 2's mother at a coffee shop and told her that a female student at the School said that she had been assaulted and that he had given that student a book with some quotes. He then told Student No. 2's mother that Student No. 1 indicated to him that he was the only one that she has confided in to help her;
- (h) on a third occasion, ran into Student No. 2 and her mother at another coffee shop in a nearby town, gave them both a hug and said that he loved Student No. 2.

10. During the 2004-2005 academic year, the Member acted unprofessionally and inappropriately towards Student No. 3 in that he:

- (a) engaged in inappropriate physical contact with her by holding her hand and hugging her at least once when she was crying; and
- (b) was alone with Student No. 3 on one occasion when he drove her home to another town.

11. During the 2004-2005 academic year, the Member acted inappropriately towards Student No. 4 in that he gave her a ride to school on one occasion.

12. By letter dated October 22, 2004 a copy of which is attached as **Exhibit “E”**, the Member was placed on suspension by the Board. At that time he was directed not to enter the premises of the School and to refrain from discussing the suspension or any circumstances related to it with students.

13. The Member was further advised by the Board by letter dated November 18, 2004, a copy of which is attached as **Exhibit “F”**, that he had not met that requirement and was warned that, if he contacted any students after receiving that letter, he would be suspended without pay.

14. After having been placed under suspension by the Board with respect to his conduct with various students, the Member:

- (a) telephoned Student No. 1 on one occasion;
- (b) indicated to Student No. 2 that he would like her to slip a tape recorder, which he would provide to her, into her purse so that she could record an interview which she was to have with the Board;
- (c) told Student No. 2 that she was the subject of a rumour involving the Member and herself;
- (d) called Student No. 2’s home and spoke with her or other members of her family. On at least one occasion, the Member asked Student No. 2 for information about investigations being conducted by the Board and the Children’s Aid Society. He also told Student No. 2 that the principal, “was out to get him”.

15. On or about 10 February 2005, the Member was suspended for a period of five days without pay after he had discussed his suspension with students.

16. The Member was dismissed by the Board on 30 August 2005.

### **PLEA OF NO CONTEST**

17. By this document, the Member admits, for the purposes of this proceeding only, the truth of the facts and exhibits referred to in paragraphs 1 to 16 above.

18. The Member hereby acknowledges that the facts referred to in paragraphs 4, 6, 8, 9, 10, 11 and 14 above constitute professional misconduct and pleads no contest to these allegations of professional misconduct against him, being more particularly breaches of Ontario Regulation 437/97 1(5), (7), (14), (15), (18) and (19).

19. By this document the Member states that:

- (a) he understands fully the nature of the allegations against him;
- (b) he understands that by signing this document he is consenting to the evidence as set out in paragraphs 1 to 16 above, including the referenced exhibits, being presented to the Discipline Committee at the hearing of this matter;
- (c) he understands that by pleading no contest to the allegations, he is waiving the right to require the College to prove the case against him, and the right to have a full hearing on these issues; and
- (d) he understands and acknowledges that he is executing this Agreement voluntarily, unequivocally and with the advice of legal counsel.

20. The Member provides this plea of no contest pursuant to Rule 3.02 of the Rules of Procedure of the Discipline Committee under protection of the Evidence Act, R.S.O. 1990, chapter E. 23, for the purpose of this proceeding under the College of Teachers Act

1996, chapter 12, and for no other purpose. The Member's plea of no contest does not constitute an admission by the Member as to the facts or findings in any other civil, criminal or administrative proceeding.

21. In light of the uncontested facts and circumstances, the Ontario College of Teachers and the Member submit that the Discipline Committee find the Member guilty of professional misconduct.

### **JOINT SUBMISSION ON PENALTY**

22. The Ontario College of Teachers and the Member jointly submit that the appropriate penalty to be imposed by the Discipline Committee in this matter would be that the Committee:

- (a) directs the Registrar of the Ontario College of Teachers to revoke the Certificate of Qualification and Registration of the Member, which Certificate the Member is to immediately surrender to the Registrar of the Ontario College of Teachers; and
- (b) directs that there be publication of the findings and Order of the Committee, including the full name of the Member, in summary form in the official publication of the College, Professionally Speaking/Pour parler profession.

23. By this document, the Member acknowledges his understanding that any agreement between the College and the Member with respect to the penalty proposed in this document does not bind the Discipline Committee.

### **DECISION**

Having examined the Exhibits filed, and based on the plea of no contest, the *Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty*, and the submissions made by counsel for the College and Counsel for the Member, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that Mark Edward De Sousa is guilty of professional misconduct, being more particularly breaches of Ontario Regulation 437/97, subsections 1(5), 1(7), 1(14), 1(15), 1(18) and 1(19).

### **REASONS FOR DECISION**

The Member admits to the truth of the facts and exhibits referred to in paragraphs 1 to 16 of the *Agreed Statement of Facts, Plea of No Contest and Joint Submission on Penalty*, (Exhibit 2). He acknowledges that the facts referred to in paragraphs 4, 6, 8, 9, 10, 11 and 14 above constitute professional misconduct and pleaded no contest to these allegations of professional misconduct against him.

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

During the 2004-2005 academic year, the Member acted unprofessionally and inappropriately with four different female students. The Member drove unaccompanied students home on several occasions. He gave one student several handwritten notes, cards, books and other gifts. The Member made inappropriate physical contact with one student. In both oral and written form, on several occasions, the Member expressed his devotion ("love") for a student. There were several phone calls to one student in which

there were repeated professions of love. There is also a transcript of one such phone call in which these professions of love are detailed. The Member persistently and intrusively questioned a student about personal and family issues, including her relationship with her father. The Member offered the student money and the use of a cell phone. The Member also invited the student to gatherings with his family.

These boundary violations of the Member constitute disgraceful, dishonourable and unprofessional conduct unbecoming a member. He physically, emotionally and psychologically abused students and failed to maintain the standards of the profession.

The Member was first suspended with pay and instructed not to contact any students. Subsequently, the Member did contact a student by telephone and expressed endearments to her.

The Member interfered with the Board investigation of his behaviour by contacting two of the students. He asked one student to tape record an interview she was to have with the Board and sought information from her about the Board and the Children's Aid Society investigations. By doing so, the Member failed to comply with the Education Act.

### **PENALTY DECISION**

The Committee makes the following order as to penalty:

1. The Registrar of the Ontario College of Teachers is directed to revoke the Certificate of Qualification and Registration of the Member; and

2. Pursuant to Section 30 (5) (3) of the *Ontario College of Teachers Act*, the findings and order of the Committee shall be published in summary, with the name of the Member, in the official publication of the College, *Professionally Speaking/Pour parler profession*.

## **REASONS FOR PENALTY DECISION**

The Committee finds the Member's actions constitute a serious breach of trust. The Member's abuse of students reveals a clear and determined pattern of inappropriate and reprehensible behaviour. This requires a revocation of his certificate. This will ensure that the Member will not have access to students in the publicly funded system in Ontario.

The Committee orders publication of the finding and order with the name of the Member. Publication, with name, will provide a general deterrent to the membership and informs the profession that this serious misconduct will result in the most severe penalty, revocation. Publication informs the public that the College denounces this type of conduct.

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

Dated: April 3, 2009

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Mel Greif  
Chair, Discipline Panel

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Tammy Bush  
Member, Discipline Panel

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Jacques Tremblay  
Member, Discipline Panel