



Ontario College of
Social Workers and
Social Service Workers

Ordre des travailleurs
sociaux et des techniciens
en travail social de l'Ontario

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**DISCIPLINE COMMITTEE OF THE
ONTARIO COLLEGE OF SOCIAL WORKERS AND SOCIAL SERVICE WORKERS**

Indexed as: Ontario College of Social Workers and Social Service Workers v Yu, 2020
ONCSWSSW 3

Decision date: 20200616

BETWEEN:

THE ONTARIO COLLEGE OF SOCIAL WORKERS
AND SOCIAL SERVICE WORKERS

- and -

HO CHEUNG YU

PANEL: Charlene Crews, RSSW Chair, Professional Member
Sanjay Govindaraj, RSW Professional Member
Lisa Kostakis Public Member

Appearances: Debra McKenna, counsel for the College
Camille Dunbar, counsel for the Member
Aaron Dantowitz, Independent Legal Counsel to the Panel

Heard: November 4, 2019, January 20,
21, February 6, 2020

DECISION AND REASONS FOR DECISION

[1] This matter came for hearing before a panel of the Discipline Committee (the “**Panel**”) on November 4, 2019, January 20, 21 and February 6, 2020 at the Ontario College of Social Workers and Social Service Workers (the “**College**”). After the hearing, the Panel reserved its decision on whether to make findings of professional misconduct against Ho Cheung Yu (the “**Member**”). The following is the decision of the Panel and the reasons of the Panel for its decision.

Publication Ban

[2] In the course of the hearing, the College sought an order prohibiting the publication of the identity or information that could disclose the identity of the Member's student who was the subject of the allegations (the "**Student**") as the case involved matters of a sensitive nature. The Member consented to the order.

[3] The Panel considered that it was appropriate to make such an order in the circumstances of this case and ordered a publication ban to protect the Student's identity and / or any identifying information.

The Allegations

[4] In the Notice of Hearing dated October 5, 2017 (Exhibit 1), the Member is alleged to be guilty of professional misconduct within the meaning of Section 26(2) of the *Social Work and Social Service Work Act*, 1998, S.O. 1998, c 31 (the "**Act**") in that he is alleged to have engaged in conduct that contravenes the Act, Ontario Regulation 384/00 (the "**Professional Misconduct Regulation**"), Schedule "A" to By-law No. 66 of the Ontario College of Social Workers and Social Service Workers, being the Ontario College of Social Workers and Social Service Workers Code of Ethics (the "**Code of Ethics**"), and Schedule "B" to By-law No. 66 of the Ontario College of Social Workers and Social Service Workers, being the Ontario College of Social Workers and Social Service Workers Standards of Practice Handbook (the "**Handbook**").

[5] The factual particulars of the allegations set out in the Notice of Hearing are as follows:

1. You are, and were at all times relevant to the allegations, a registered social worker with the Ontario College of Social Workers and Social Service Workers (the "**College**").
2. In or around September 2010, you commenced employment as a social worker with the Peel Children's Aid Society (the "**Agency**"). You resigned from your employment with the Agency on or around January 13, 2017.
3. From on or around January 4, 2016 to on or around April 21, 2016, you were a student Field Instructor. You supervised [Student], an M.S.W. student (the "**Student**"), during her field placement with the Agency.
4. In or around February or March 2016, you asked the Student to see her bracelet and rubbed the palm of her hand while looking at her bracelet.
5. In or around February or March 2016, you commented that the Student's chest was red and/or had a rash on it and then proceeded to touch her upper chest close to her collarbone to show her where the redness and/or rash was located.
6. In or around April 2016, you asked the Student to go out to a restaurant and/or drinking establishment with you after work.
7. On or around April 21, 2016, while you and the Student attended at a restaurant and/or drinking establishment together:

- (a) You and the Student consumed alcohol and food.
 - (b) You asked the Student personal questions, including what “type” of men she was interested in.
 - (c) You asked the Student whether she was “rich.”
 - (d) You advised the Student that you had Googled her home address before she commenced her field placement with the Agency.
8. After leaving the restaurant:
- (a) The Student attended at your car.
 - (b) While inside or adjacent to your car, you: touched the Student’s thigh; hugged her; kissed her on the cheek; kissed her on the lips; and/or touched her breast.
9. On or around April 21, 2016, you and the Student exchanged gifts.
10. On or around April 21, 2016, you sent one or more text messages to the Student.
11. On or around September 8, 2016, the Student reported to a professor at her university that she had experienced unwanted touching by you.
12. The university reported the Student’s complaint to the Agency on or around October 7, 2016.
13. Between October 2016 and January 2017, the Agency investigated the complaint.
14. The Agency concluded that the allegations of workplace sexual harassment and/or professional misconduct were substantiated. The Agency communicated its conclusion to you on or around January 13, 2017.
- [6] The allegations of professional misconduct set out in the Notice of Hearing are as follows:

II. It is alleged that by reason of engaging in some or all of the conduct outlined above, you are guilty of professional misconduct as set out in section 26(2)(a) and (c) of the Act:

- a) In that you violated **Section 2.2 of the Professional Misconduct Regulation and Principle I of the Handbook (commented on in Interpretations 1.5, 1.6, and 1.7)** by failing to be aware of your values, attitudes and needs and how these impact on your professional relationships; by failing to distinguish your needs and interests from those of your client to ensure that, within your professional relationship, your client’s needs and interests remain paramount; and failing to maintain an awareness and consideration of the purpose, mandate and function of your organization and how these impact on and limit your professional relationship with your client;

- b) In that you violated **Sections 2.2, 2.6, and 2.10 of the Professional Misconduct Regulation and Principle II of the Handbook (commented on in Interpretations 2.2, 2.2.1, 2.2.2, 2.2.3, and 2.2.8)** by failing to establish and maintain clear and appropriate boundaries in your professional relationships for the protection of your client; by engaging in professional relationships that constitute a conflict of interest or in situations in which you ought reasonably to have known that your client would be at risk; by engaging in sexual relations with your client; by using information obtained in the course of a professional relationship and/or your professional position of authority to coerce, improperly influence, harass, abuse and/or exploit a client, student, and/or trainee; and by engaging in conduct which could reasonably be perceived as reflecting negatively on the profession of social work;
- c) In that you violated **Sections 2.2 of the Professional Misconduct Regulation and Principle III of the Handbook (commented on in Interpretations 3.7)** by failing to assume full responsibility for demonstrating that your client or former client has not been exploited, coerced or manipulated, intentionally or unintentionally, where a personal relationship occurs with your client;
- d) In that you violated **Section 2.2, 2.5, of the Professional Misconduct Regulation and Principle VIII of the Handbook (commented on in Interpretations 8.1, 8.2, 8.2.1, 8.2.2, 8.2.3, 8.3, and 8.6)** by failing to ensure that sexual misconduct did not occur; by engaging in physical sexual relations, touching of a sexual nature, and inappropriate behaviour or remarks of a sexual nature; by developing sexual feelings towards your client and failing to seek consultation/supervision and develop an appropriate plan; and by engaging in sexual relations with your client; and
- e) In that you violated **Section 2.36 of the Professional Misconduct Regulation** by engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all circumstances, would reasonably be regarded by members as disgraceful, dishonourable and/or unprofessional.

Member's Position

[7] The Member was present and represented at the hearing. Although the Member was prepared to agree to certain facts, as set out in an Agreed Statement of Facts (below), the Member specifically denied some of the factual allegations.

[8] In particular, the Member denied rubbing the palm of the Student's hand when he asked to see her bracelet. The Member also denied touching the Student's collarbone when pointing out a rash on her upper chest. Lastly, when they attended a local restaurant, The Bier Markt, the Member denied asking the Student "what type of men" she was interested in. The Member confirmed that they returned back to his car in the Bier Markt parking lot when he gave the Student a gift, however, he denied touching the Student's thigh, kissing her on the cheek, kissing her on the lips and touching her breast.

[9] The Member denied that he engaged in professional misconduct.

The Evidence

[10] The parties entered into an Agreed Statement of Facts (Exhibit 3), as follows:

1. At all relevant times, the Member was registered as a social worker with the Ontario College of Social Workers and Social Service Workers (the “**College**”).
2. In or around September 2010, the Member commenced employment as a social worker with the Peel Children’s Aid Society (the “**Agency**”). He resigned from his employment with the Agency on or around January 13, 2017.
3. Prior to his resignation, from on or about January 4, 2016 to on or about April 21, 2016, the Member was a Student Field Instructor. He supervised [Student], an M.S.W. student (the “**Student**”), during her field placement with the Agency.
4. In or around February or March 2016, the Member asked the Student to see her bracelet.
5. In or around February or March 2016, the Member made a comment to the Student that her chest was red and/or had a rash on it.
6. In or around April 2016, the Member asked the Student to go out to a restaurant and/or drinking establishment after work to celebrate the end of her field placement.
7. On or around April 21, 2016, while the Member and the Student attended at a restaurant and/or drinking establishment together:
 - (a) The Member and the Student consumed alcohol and food.
 - (b) The Member asked the Student whether she was “rich.”
 - (c) The Member advised the Student that he had “googled” her home address before she commenced her field placement with the Agency.
 - (d) The Member accepted a gift from the Student.
8. After leaving the restaurant, the Member and the Student attended the Member’s car. While inside the Member’s car, the Member provided the Student with a gift of socks.
9. In addition, while inside the Member’s car, the Member touched the Student, as follows:
 - (a) The Member hugged the Student.
10. On or around April 21, 2016 and/or April 24, 2016, the Member sent one or more text messages to the Student, as follows:

- (a) On April 21, 2016, the Member sent two text messages to the Student.
 - (b) On April 24, 2016, the Member sent one text message to the Student.
11. The Member agrees that the following are standards of the profession, as set out in the College's Code of Ethics and Standards of Practice Handbook (the "**Handbook**"):
- (a) Principle I addresses a member's relationships with clients;
 - (b) Principle II addresses a member's competence and integrity;
 - (c) Principle III addresses a member's responsibility to clients; and
 - (d) Principle VIII addresses sexual misconduct by a member.

Overview of Witnesses:

[11] The College called two witnesses: A. H., former Peel CAS Human Resources Consultant; and the Student, whom Mr. Yu is alleged to have sexually abused.

[12] The Member called one witness: the Member, Mr. Yu.

Testimony of Witnesses:

Witness #1 – A. H.

[13] Ms. A.H. testified that she had worked for 6 years as a Human Resource Consultant at Peel Children's Aid Society. Ms. A.H. supported various departments, which included supporting the frontline "Parent and Child Capacity Building department" department.

[14] Ms. A.H. testified that she submitted a mandatory reporting document to the College on or about January 24th, 2017 which was marked as Exhibit 2. Ms. A.H. confirmed that Ho Cheung (Leslie) Yu worked as a Child Protection Worker at Peel CAS. Ms. A. H. also confirmed that Peel CAS had completed an investigation against Mr. Yu's alleged conduct.

[15] Ms. A.H. testified that on January 11, 2017 Mr. Yu had submitted his resignation to Peel CAS.

[16] Ms. A.H. testified that the College, after receiving the mandatory reporting document from Peel CAS, had requested additional documentation. Ms. A. H. confirmed that she provided a copy of the following additional documents to the College:

- Job posting for the student placement;
- Email correspondence confirming Mr. Yu as the placement supervisor and identifying the student who would be assigned to him;
- Copy of Mr. Yu's resignation;

- Student's initial statement; and
- Peel CAS's final report.

[17] Ms. A.H. testified that in October 2016 she was appointed by Director of HR, S. C. to lead the investigation into the allegations of sexual misconduct against Mr. Yu.

[18] Ms. A.H. testified that on October 26, 2016 she called and interviewed the Student by telephone. As part of the investigation the Student shared the text messages sent to her by Mr. Yu on October 27, 2016. Ms. A.H. transcribed her hand written notes from the October 26, 2016 telephone meeting and shared this summary with the Student on November 14, 2016 to confirm for accuracy and asked the Student if she could recollect the exact dates of the first two incidents. Ms. A. H. also emailed the Student on November 21, 2016 to share that the investigation had been delayed due to a labor strike. Ms. A. H. emailed the Student again on December 19, 2016 to advise that the investigation was proceeding following the strike and advised that she would follow up if any additional details were required after speaking with Mr. Yu.

[19] Ms. A. H. testified that on December 19, 2016 she wrote a letter notifying Mr. Yu of the complaint and Peel CAS's intention to conduct a formal investigation. The letter also confirmed that Mr. Yu would immediately be placed on leave with pay pending the outcome of the investigation. Mr. Yu was also provided with a copy of the Peel CAS Policy 304: Prevention and Resolution of Harassment and Discrimination in the Workplace. Mr. Yu was informed that he would be provided an opportunity to meet for an interview.

[20] Ms. A. H. testified that an interview with Mr. Yu was scheduled and took place on December 22, 2016. The interview was attended by Mr. Yu, Ms. S. Y. (CUPE Union Representative), Ms. L. G. (note-taker) and Ms. A. H. During the interview Ms. A. H. shared with Mr. Yu that on October 7, 2016 Peel CAS had received a complaint following an investigation conducted by the University of [X] of unwanted touching during the Student's practicum placement. Based on the complaint received, Ms. A. H. shared with Mr. Yu four incidents that were part of the investigation:

- Incident # 1 (March 2016): Mr. Yu is alleged to have commented on the Student's bracelet, and while the Student held out her hand, Mr. Yu held and rubbed his thumb on the palm of her hand.
- Incident # 2 (March 2016): following a home visit Mr. Yu and the Student had stopped at McDonalds for coffee where Mr. Yu is alleged to have pointed to redness near the Student's chest area and had touched her upper chest near her collarbone.
- Incident # 3 (April 21, 2016): following the final home visit of the Student's practicum placement, the Member invited the Student to meet for a drink to celebrate the completion of her practicum placement. At 5pm they met at the Bier Markt where both the Student and Mr. Yu ordered alcoholic drinks and shared an appetizer. The Student reported that the following questions had made her uncomfortable: what type of men she was interested in, and if she was rich. The Student also reported that Mr. Yu advised her that he had googled her home address when reviewing her placement application.

- Incident # 4 (April 21, 2016): During the same interaction, the Student provided Mr. Yu with a gift (a book for the baby that Mr. Yu and his wife were expecting). Mr. Yu is alleged to have asked the Student to attend his car as he also had a gift for her. The time was close to 8:30pm. The Student thanked him for the gift (socks), and Mr. Yu initiated a hug to say goodbye. While hugging, the Student complained that Mr. Yu allegedly kissed her on her left cheek and kissed her on her lips. The Student turned her head, at which time Mr. Yu allegedly grabbed her left breast. The meeting ended without any further exchange of words except Mr. Yu allegedly insisting on driving the Student to her car, after which they both drove away.

[21] Ms. A. H. testified that during the interview,

- Regarding Incident #1, Mr. Yu did not recall pressing his thumb on the Student's palm.
- Regarding Incident #2, Mr. Yu did not recall reaching out and touching the Student's chest however did remember commenting on the redness.
- Regarding Incident #3, Mr. Yu did confirm that the Student showed him a picture of her boyfriend but he did not recall asking "the type of men" she was interested in. Mr Yu did recall asking "if her family was rich".
- Regarding Incident #4, Mr. Yu confirmed that the Student attended his car after they ended their dinner and engaged in another half hour of casual conversation. Mr. Yu gave the Student a gift of socks and hugged her before driving her to her car and leaving the parking lot.

Witness #2 – The Student

[22] The Student testified that she graduated from the University of [X] in [year] with a Masters in Social Work. She completed her field placement at Peel Children's Aid Society from January to April 2016. The Student confirmed that she had completed "The Graduate Student Profile Form" that listed her name and address along with her prior field placements in her application as a part of her application for this field placement position.

[23] The Student testified that Mr. Yu conducted her student placement interview via a Skype video chat and that he was her supervisor during the field placement. During the placement the Student worked along with Mr. Yu in the intake department. The tasks involved investigating referrals, completing home visits, interviewing families about alleged allegations, along with additional investigation and documentation tasks.

[24] The Student testified to the four incidents as follows:

- Regarding Incident #1, around February or March 2016, during a one-on-one supervision meeting in the staff lounge at the Peel CAS building, Mr. Yu asked to look at her bracelets. The Student recalled Mr. Yu holding her hand and rubbing with his thumb.

- Regarding Incident #2, the Student testified that around February or March 2016, between client visits, they stopped at a McDonalds and had coffee where Mr. Yu mentioned that “my chest area was red, and touched the upper area of my chest to show where it was red” and pulled down the passenger’s mirror to show her the red area.
- Regarding Incidents #3 and #4, the Student testified that on the last night of her placement on April 21, 2016, Mr. Yu suggested that they have drinks to celebrate the end of her placement at the Bier Markt at Shops at Don Mills. After ending their last family visit they drove in separate cars to the Bier Markt where they remained between 5:30 to 9:00 pm that evening.
- Both Mr. Yu and the Student ordered beer and shared an appetizer and Mr. Yu later ordered a second beer. The Student gave Mr. Yu a gift bag that included a Robert Munch book and a baby toy, as Mr. Yu and his wife were expecting a baby. During the two-hour conversation Mr. Yu asked her two questions which made the Student uncomfortable: what type of men she was interested in and if her family was rich. Mr. Yu invited the Student to accompany him to his car as he had a gift for her. It was around 8:30pm when they left the restaurant. The Student testified that it was not unusual for them to sit in Mr. Yu's car to talk. The Student received her gift which was a pair of socks. While the student was opening the gift Mr. Yu's hand was on her thigh. Mr. Yu, initiated a hug and kissed the Student’s left cheek, and as he attempted to kiss her, their lips touched. As the Student turned her head towards the window, Mr. Yu grabbed her breast. Mr. Yu composed himself and drove her to her car, which was parked nearby.

[25] The Student testified that later that night she received a text at 9:46pm, “Hope u got home safely”. She also received another text on April 24, 2016 at 12:03pm wishing her the very best and to feel free to use Mr. Yu as a reference. The Student did not reply to either text message. These text messages were entered as Exhibit 2.

[26] The Student testified that on May 30, 2016 she called the [Community Agency], as they had a sexual assault support counselling program for women, and reported the sexual assault incident which occurred on her last day of her MSW placement. She disclosed that her CAS placement supervisor had inappropriately touched her and kissed her in his car, and had made several boundary violations during her placement. The Student attended three in person counselling sessions on June 20, September 10 and January 7, 2017.

[27] The Student testified that on September 8, 2016 she emailed her professor at the University of [X], to report the incident. After speaking with the professor, she submitted a written letter to him, his manager and their lawyer. Upon receipt of the letter, the professor advised her that he would be contacting Peel CAS to report the incident.

[28] The Student testified that on October 26, 2016 she first spoke with Ms. A.H. from Peel CAS and the investigation was started. There were a number of emails and follow up conversations for additional details.

[29] The Student testified that on January 24, 2017 she received an email with the final report from Peel CAS advising that they had completed the investigation and would be submitting the report to the College.

[30] The Student testified that on February 22, 2017 she was contacted by an investigator from the College and was subsequently provided a summary of that conversation, which she reviewed for accuracy.

Witness #3 – Ho Cheung (Leslie) Yu, The Member

[31] Ho Cheung (Leslie) Yu testified that he was born in Hong Kong and immigrated to Canada in 1995. His father was employed as a Social Worker and his mother as a Registered Nurse. He was raised, along with one sibling, in a traditional Chinese family with values of respect, hard work, higher education for elevated earning potential and taking responsibility for aging parents. He testified that Cantonese is his first language and that upon immigrating to Canada in grade 4 he took English as a Second Language, becoming fluent by grade 8 or 9. Mr. Yu testified that when dealing with detailed statements or questions he first processes in Cantonese before translating the information to English.

[32] Mr. Yu testified that he has been married for almost five years and is now the father of two young children. He testified that while expecting his first child in 2015/2016 he was very happy and excited to become a new father, yet nervous about the impending financial responsibilities of a growing family.

[33] Mr. Yu testified that he earned a Bachelor of Social Work degree in 2007 and a Master of Social Work degree in 2014 from the University of Windsor. He became a registered member of the College in 2010, the same year he began working at Peel CAS as a Child Protection Worker in the Intake Department. This position involved responding to, assessing and intervening in issues relating to child abuse, neglect, drug and alcohol influence, custody and access and parental capacity.

[34] He testified that in 2014 he applied for, and was successful in earning, a Student Field Instructor position within Peel CAS where he mentored and supervised social work practicum students as part of their academic requirements for graduation. In this role he would assist students to develop the clinical skills relevant to the child welfare sector through experiential learning achieved during case work which involved meeting with and interviewing families in their homes, contacting collateral sources, developing intervention plans, drafting reports and debriefing.

[35] Mr. Yu testified that during his tenure at Peel CAS he had supervised five placement students, all female, before resigning from the agency in January 2017. Mr. Yu testified that the Student was the fourth, out of five, placement students he had supervised, all of whom were female.

[36] Mr. Yu testified that he approached his job at Peel CAS with professionalism, integrity, a strong work ethic and testified that he was highly respected professionally and personally in the workplace. This was underpinned by four character reference letters authored by two of Mr. Yu's former practicum students, a former colleague and the CUPE Union President. Mr. Yu testified that he had not been the subject of any prior harassment or misconduct allegations, that he had always received positive annual reviews and that he had a five-year plan to advance to a supervisory role within the agency, which was supported by his superiors.

[37] Mr. Yu testified that in October 2015 he followed the standard process when interviewing the Student for her practicum placement, which involved reviewing the student's profile form and conducting an interview using a standardized ten question format. The only irregularity was that Mr. Yu, along with his former practicum student, interviewed the Student via Skype, as she was residing outside of the region at the time. Mr. Yu testified that as a matter of course he entered the Student's local address into Google Maps to determine if she resided within a reasonable distance from the agency's catchment area as daily client home visits were a requirement of the position and staff were under direction from the agency to minimize travel and costs in the course of their work. Mr. Yu testified that the home area of his students was also important for planning client visits as he conducted morning visits with families who resided west of Peel CAS and afternoon visits with families who resided east of the agency office, as this was on his way home. In his review of the Student's application he found that the Student's address was east of Peel CAS which coordinated with his schedule and was therefore determined to be logistically efficient. During his testimony, the Member's counsel shared articles from the Huffpost, "What 80% of Employers do before inviting you for an interview" and Glassdoor "4 Things Employers look for when they Google You" to highlight that this was a standard action during a hiring process. Mr. Yu testified that during the Skype interview he found the Student to be sincere, soft spoken and eager to learn, however he questioned her ability to manage the demands of the job as she appeared to process information slowly.

[38] Mr. Yu testified that the Student did well throughout her practicum placement, was friendly and demonstrated a genuine caring for the families she worked with, which he described as good social work qualities. He noted that she was slower than other students to take on a lead role with families, specifically in relation to interviewing parents and that she required reminders relating to prioritizing workload and timelines. Mr. Yu testified to supervision notes relating to discussions of personal bias and objectivity, where he encouraged the Student to focus on providing support versus taking a stance in the situation. Mr. Yu testified that at the beginning of supervision sessions they would often engage in light conversation about family and personal life to break the ice however noted that this was hard for him as he did not tend to talk about his personal life at work but did so to adhere to the mainstream culture of non-racialized people.

[39] Referring to the Agreed Statement of Facts, Mr. Yu testified that on March 15, 2016, at the beginning of a supervision meeting, he complimented the Student on her bracelets and asked about the brand, indicating he may get something similar for his wife for Valentine's Day. He denied touching the bracelets or the Student's hand during this interaction. He testified that the Student's demeanor was casual and she did not appear or state any discomfort regarding his comment.

[40] Mr. Yu further testified that in February or March 2016, while in the vehicle at a McDonalds parking lot, he commented on a red rash across the Student's collarbone, stating he was concerned she may be having an allergic reaction. He denied touching her person or using or directing the Student to the mirror in the vehicle. He testified that the Student did not appear to be uncomfortable nor did she advise him that his comment was unwelcomed.

[41] Mr. Yu testified that prior to the end of the Student's practicum placement they discussed her performance in supervision and that there was a mutual understanding that she was successful in her placement. Mr. Yu testified that he completed the Peel CAS placement form and the University's student evaluation form, which the Student reviewed prior to submission. Her last

day of placement was on April 21, 2016. Mr. Yu could not recall the exact date the evaluation form was emailed to the University.

[42] Mr. Yu testified that, as he did with all of his prior and subsequent students, he invited the Student to a restaurant to celebrate a successful placement. This invitation was extended approximately one week prior to the completion of her placement. On April 21, 2016 the Member and the Student attended a local Bier Markt after completing their final client visit. They engaged in non-work related conversation, had a drink and shared an appetizer. Mr. Yu testified that both he and the Student spoke about their families and he asked the Student if her family was rich, after advising her that he had Googled her address in the process of reviewing her student application, and noting that her address was in a wealthy area. Mr. Yu testified that he did not consider financial status to be an inappropriate topic and that he often talks about money with family and friends, as wealth is important in Chinese families. Mr. Yu testified that the Student did not seem or state that she was uncomfortable at any time during or following this discussion.

[43] Mr. Yu denied asking the Student about what type of men she was interested in. He acknowledged that, during a pre-hearing conference for this matter, that he had admitted to having asked the Student this question. However, Mr. Yu testified that when he was notified of the investigation by the College he reviewed prior discipline decisions on the College's website and noted that there were often significant costs imposed in the order, and he also received advice about the cost of a hearing. From this he thought if he admitted to some of the allegations he could avoid a hearing and save money. Therefore, he admitted at the pre-hearing conference to asking about what type of men the Student was interested in, although he testified that this was not true and he did not ask this question.

[44] Mr. Yu testified that during a conversation about preparing the nursery for his expectant child, the Student presented him with a gift of a baby book and rattle. Mr. Yu felt the gift was courteous, noting he had received lots of baby gifts and considered this to be normal and that he was appreciative. He advised her that he had also gotten her a gift which he had forgotten in his car and indicated that he would retrieve it when they left the restaurant.

[45] Mr. Yu testified that after leaving the restaurant they went to his car to retrieve the gift he had gotten for the Student, a pair of socks which he related to the Student often not wearing socks during client home visits throughout her placement, and that they sat and chatted for approximately 20-30 minutes longer. Mr. Yu offered to drive the Student to her car, which was parked close by, as it was lightly raining. They thanked one another for the placement experience and gifts and he joked that if she made it big to not forget about him. Mr. Yu testified that they hugged goodbye, she exited his vehicle and he drove away.

[46] On cross-examination, Mr. Yu was questioned about having left the Student's gift in his car, when the purpose of coming to the restaurant was to conclude their professional relationship. Mr. Yu testified that he had simply forgotten the gift in his car. When questioned as to why he did not go out to the car and bring it into the restaurant when he realized that he had left it there, he testified that there was no urgency.

[47] College counsel pointed out to Mr. Yu that he had not specified in his response to the College investigation that he had given the Student the gift in his car. College counsel suggested that he had omitted this detail intentionally, with a view to mislead the College, because he did not

want the College to know that he was in the car with his student at 8:30pm, because he realized that this was not appropriate. Mr. Yu denied that he had any intention to mislead the College.

[48] Mr. Yu testified that following the completion of the final client visit on April 21, 2016, he no longer saw the Student as a student, but rather as a colleague and considered the formal student-supervisor relationship to have ended, and therefore felt that having an afterhours drink was appropriate.

Decision of the Panel

[49] Having considered the evidence of the Member, Ms. A.H. and the Student, the evidence contained in the Agreed Statement of Facts, and the submissions of College counsel and Member's counsel, the Panel found that the Member committed acts of professional misconduct as alleged in the Notice of Hearing. With respect to allegation (e), the Panel found that the Member's conduct would reasonably be regarded by members as dishonourable and unprofessional.

Reasons for Decision

Is a student a "client" or a "colleague" ?

[50] The Panel specifically requested submissions from the parties as to how the Student, who was a BSW practicum student being supervised by Mr. Yu, met the definition of "client" as that term is used in the allegations. The College submitted that the Code of Ethics and Standards of Practice Handbook defines the meaning of "Client" to include "students". According to the Handbook's Explanatory Note, the term 'client' refers to an individual, a family, group, community, organisation or government. In research, the client may be a participant, and in education, the client may include "students". The Explanatory Note also states that the term 'client' refers to any person or body that is a recipient of social work or social service work services. The Handbook sets out that the scope of practice for social work includes "the provision of supervision and/or consultation to a social worker, social work student or other supervisee" as well as "the provision of educational services to social work and social service work students". As such, the Student is a client.

[51] Mr. Yu agreed that the term "client" in the Standards had a very broad meaning and that the Student was in fact his client, although he testified that he viewed the Student as a colleague and friend at the time of the Bier Markt meeting.

[52] Based on the above definition, the Panel accepted that the Standards define and include students as "clients". As such, Mr. Yu had a professional obligation to regard the Student as a client, and therefore the Member engaged in Professional Misconduct when he attended a restaurant with the Student after hours, consumed alcoholic beverages and exchanged personal gifts. Even though this was the Student's last day of placement and her placement evaluation had been completed, she was still his client and not a colleague.

Analysis of the evidence

[53] The Panel carefully reviewed the evidence and was satisfied that the evidence proves on a balance of probabilities that the Member committed professional misconduct as set out in the Notice of Hearing.

[54] The Panel noted that the Member agreed to a number of facts, including that he had taken the student out for drinks after work, asked her if her family was rich, and Googled her address.

[55] On contested facts, the Panel carefully completed a credibility assessment of all the witnesses to evaluate their honesty and reliability.

[56] The Panel found Ms. A.H. to be honest. She had no reason to gain anything personally by testifying; she no longer worked for Peel CAS, her employer at that time of the allegations. She was accurate in her recollection of her details and made use of her written notes and reports during her testimony. Her testimony was professional and consistent on all the key details of this case. She appeared calm, confident and composed.

[57] The Panel felt that the Peel CAS investigation fell short on procedural fairness, in that Mr. Yu was not given an adequate opportunity to respond to the allegations. As a result the Panel gave less weight to the evidence regarding Mr. Yu's responses to the investigation.

[58] The Panel did not find that the Peel CAS investigation was motivated by retribution related to the Member's union activities during the labour strike, as submitted by the Member's Counsel.

[59] The Panel found the Student to be honest, accurate and consistent. She was accurate in her recall of the incidents and did not show any inconsistency in her reporting of the events. She shared the same information when she sought counselling at the Community Agency, and while reporting to the University of [X], Peel CAS investigation, the College investigation and finally during her testimony at the hearing. She testified that she highly respected the Member as a professional and did not have anything to gain personally by coming forward. She testified that she was motivated to prevent this from occurring to other student placements in the future.

[60] She was very clear and concise. Given the seriousness of what she had brought forward she was emotional at times however was able to answer all questions clearly and was a credible witness.

[61] The Member's Counsel had argued that there was an inconsistency between the Student's testimony and what she had reported in her counselling session on who sexually assaulted her. The Member suggested that the Student had reported sexual abuse by her "university faculty teacher" during her first counselling session based on the clinical notes dated June 20, 2016. The Panel found this argument by the Member and his Counsel as an effort to mislead and confuse the facts. According to the same notes, the Student had clearly identified in her telephone assessment call to the Community Agency on May 30, 2016 that the reason for seeking counselling was that she was feeling "sad, discouraged and angry following a sexual incident during the last day of her MSW placement". The Student had also clearly identified that her "CAS placement supervisor had inappropriately touched her".

[62] The Panel found that the Member's suggestion that the Student was biased against men was unfounded as it was based on a single conversation during a supervision meeting in which there was no evidence of follow up in future supervision meetings or in the Student's final report to the University.

[63] The Panel found that the Member's testimony lacked clarity and honesty at times. The Panel found that the Member's assertion that his cultural background supported asking personal

questions regarding family wealth or his testimony that he did not properly understand the term “recall” during his Peel CAS meeting, was inconsistent with other testimony given by the Member. The Member testified that upon immigrating to Canada in grade 4 he took English as a Second Language, becoming fluent by grade 8 or 9. Having spent the large portion of his life in Canada where he was educated and employed for many years, the Panel finds it unlikely that cultural practices still influenced the Member's judgement regarding appropriate topics of social conversation and/or his linguistic competence. The Member's position that he had agreed to untrue facts during a pre-hearing conference in this matter as a means to reduce the potential costs of a contested hearing also led the Panel to find that the Member's transparency regarding the allegations was not reliable. The Panel found the Member to be defensive during cross examination and at times not clear in his responses.

Conclusions regarding the disputed facts

[64] Where the facts were contested, the Panel weighed two competing versions in order to come to our conclusion. Regarding Incident #1, the Panel concluded that it was more probable than not that when the student held out her arm, and while looking at her bracelets, the Member rubbed her hand with his thumb.

[65] Regarding Incident #2, the Panel concluded that it was more probable than not the Member touched the Student's chest close to her collarbone to show where the redness was.

[66] Regarding Incident #3, the Panel concluded that it was more probable than not that the Member asked the student “What kind of men she is interested in” during their discussion at the restaurant on her last day of placement.

[67] Regarding Incident #4, the Panel concluded that it was more probable than not that the Member touched the Student's thigh as she was opening the gift that he had given her in the Member's car following their dinner at the restaurant, and that the Member hugged her, kissed her on the cheek, kissed her on the lips and touched her breast.

[68] The Panel did not find it unusual that the Member left the gift that he had purchased for the student in his car, or that after he received the gift from the student in the restaurant, he suggested that she accompany him to his vehicle to retrieve the gift he had gotten for her. The Panel did not perceive this was pre-planned to get the Student back into the Member's car as alleged by the College. The Panel also considered the evidence that the Member, in his written response to the College investigation dated April 28th, 2017, knowingly left out the detail about inviting the student back to his car where he gave her the gift. The Panel did not find that the Member deliberately tried to mislead the investigation by omitting this detail. The Member's car had become a space for both the Member and the Student to talk and spend long periods of time during their many visits to families over the placement period, the Panel did not find it unusual for the Member to ask the Student to attend his car to retrieve the gift after dinner at 8:30pm.

[69] However, the Panel accepted the Student's version of these events, based on its overall assessment of the credibility of the witnesses. As noted above, the Panel found the Student had no reason to be vindictive against the Member. The Panel did not feel she had anything to gain in coming forward with her version of events. The Student's version of the evidence was also consistent with what was documented in case notes when she sought counselling, and was consistent with details during her reporting to the University of [X], Peel CAS investigation, and

the College investigation. She was clear and also consistent with all the specific details during her testimony at the hearing.

Conclusions regarding professional misconduct

[70] The evidence was clear that the Member had failed to maintain professional boundaries with the Student.

[71] For convenience, the Panel's reasons for its findings of professional misconduct against the Member can be grouped into three broad categories: allegations relating to Members lack of professional boundaries/conflict of interest, allegations relating to his sexual misconduct by engaging in behavior or making remarks of a sexual nature, and allegations relating to sexual touching of the students thigh and/or breast and attempt to kissing her.

Allegations relating to Members lack of professional boundaries/conflict of interest

[72] Several of the allegations in the Notice of Hearing relate to the Member's professional relationship with the Student (Client). In respect of those allegations, the Panel found that the Member failed to follow the requirements as a supervisor of a student on field placement and crossed the professional boundaries with the student as identified in allegation (a) and (b). The Member violated Sections 2.2, 2.6 and 2.10 of the Professional Misconduct Regulation.

[73] The Member admitted that he invited the Student to the restaurant. He assumed that since her placement ended that day she was no longer was his student. The Member also consumed alcohol with the Student, asked if she was "rich" and "Googled" her address before she commenced her field placement. The Member failed to recognize that as a supervisor of a student on field placement she was still his Client and he was in a position of power. Regarding the Googling of the Student's address specifically, the Panel agreed that Googling an address is usually done during the employment process, however, the Student was a student and by definition a "client". The Panel therefore found the Member's intention misdirected.

[74] Further, the Panel finds that the Member was providing a professional service while the Member was in a conflict of interest, contrary to s. 2.10 of the Professional Misconduct Regulation, and Principle II, Commentary 2.2.1. "Conflict of interest" is defined in footnote 6 under Principle II as "a situation in which a member has a personal, financial or other professional interest or obligation which gives rise to a reasonable apprehension that the interest or obligation may influence the member in the exercise of his or her professional responsibilities. Actual influence is not required in order for a conflict of interest situation to exist. It is sufficient if there is a reasonable apprehension that there may be such influence." The Member was looking to establish a personal relationship with the Student, which the Panel clearly identified as a conflict of interest. As noted above, the College submitted that the Code of Ethics and Standards of Practice Handbook defines the meaning of "Client" to include "students" and the Panel accepts this definition.

[75] The Panel recognises that because of the nature of the mentoring relationship with practicum students, members, during the course of a student's placement, spend significant time travelling together for client appointments, weekly supervision meetings discussing clinical files, etc. The Panel accepts that members and their students can establish a friendly and respectful rapport and will often get to know each other personally. Not every personal interaction between a Member and their student will constitute misconduct. Here, there could have been the tendency

that the Member did not always see that she was his client and not a colleague. However, it was the Member's responsibility to understand his obligation under the Code of Ethics and Standards of Practice to avoid mixing personal and professional relationships. As such, the conduct outlined above crossed this line and met the definition of professional misconduct.

Allegations relating to his sexual misconduct by engaging in behaviour or making remarks of a sexual nature

[76] The Member failed to establish and maintain clear and appropriate boundaries in his professional relationship with the student when he established a personal and sexual relationship with the Client. The Member engaged in a series of boundary violations with the Client as per allegation (c). The Member engaged in sexual misconduct by engaging in behaviour or making remarks of a sexual nature, which amounts to sexually abusing a client within the meaning of subsection 43(4) of the Act, and therefore a violation of s. 2.5 of the Professional Misconduct Regulation, as per allegation (d). The Member, allegedly during a supervision meeting, asked the student to see the bracelets she was wearing. When the student held out her arm and while looking at her bracelets, the Member rubbed her hand with his thumb. The Member in between appointments commented on the student's chest that it was red, the Member then proceeded to touch the student's chest close to her collarbone to show where the redness was. The Member also asked the student "what kind of men she is interested in" during their discussion at the restaurant on her last day of placement. While these events on an individual basis may not have led the Panel to find the Member guilty of sexual misconduct, the facts presented as a whole, demonstrate a pattern of boundary violations which the Panel determined equated to sexual misconduct.

Allegations relating to touching the student

[77] Based on the evidence shared by the student during her testimony, the facts recorded in the counselling records following the April 21, 2016 incident, and the consistent reporting of all details of the incident by the student to the University of [X], and later to Ms. A. H. during the Peel CAS investigation, does show the student as a highly credible and reliable witness. The Member engaged in touching of a sexual nature, which also amounts to sexually abusing a client as per allegation (d). The student has nothing to gain by attending and testifying against the Member. The Member engaged in sexual misconduct by touching her thigh as she was opening the gift that he had given her in the Member's car following their dinner at the restaurant. The Member hugged her, kissed her on the cheek, kissed her on the lips and touched her breast. The Member then drove the student to her car.

Allegation of "disgraceful, dishonourable or unprofessional"

[78] The Panel found that the Member's conduct would reasonably be regarded by members as dishonourable and unprofessional but not disgraceful. The Member's conduct was unprofessional. The Member should have known that his questions about "if she was rich" and the "kind of men she was interested in" were a persistent violation of her personal space. The Member's conduct is dishonourable as it shows moral failing and an element of deceit. The Member was in a clear conflict of interest and knew or ought to have known that inviting the Student on her last day of placement to have drinks was unacceptable. The Member's conduct related to the student was an abuse of authority and power. The Member's behaviour clearly displayed that he lacked moral fitness to discharge his role as a Social Worker. However, the Panel did not see this rise to the

level of other cases where a member's conduct was characterized as disgraceful, such as *OCSWSSW v. Renee Parsons* (2018) or *OCSWSSW v. Heywood* (2016).

I, Charlene Crews, sign this decision as chairperson of the Panel and on behalf of the Panel members listed below.

Date: June 16, 2020

Signed: _____

Charlene Crews
Sanjay Govindaraj
Lisa Kostakis