

IN THE MATTER OF AN ARBITRATION

BETWEEN

**GEORGE BROWN COLLEGE**  
("the College")

and

**ONTARIO PUBLIC SERVICE EMPLOYEES UNION**  
("the Union")

**REGARDING THE INVOLUTARY TRANSFER OF**  
**Ms. LOIS ATHANASIU**  
**(Grievances 01-10 and 01-24)**

**BOARD OF ARBITRATION:**

|                      |   |                 |
|----------------------|---|-----------------|
| Pamela Cooper Picher | - | Chair           |
| Mike Sullivan        | - | Union Nominee   |
| Robert Gallivan      | - | College Nominee |

**APPEARANCES FOR THE UNION:**

|                |   |                   |
|----------------|---|-------------------|
| Tim Hannigan   | - | Counsel           |
| Tom Tomassi    | - | Local President   |
| Delynne Struyk | - | Sec./Tres., Local |

**APPEARANCES FOR THE COLLEGE**

|                     |   |   |
|---------------------|---|---|
| Fred Hamilton, Q.C. | - | Counsel   |
| Sally Roy           | - | Vice President  |
| Judith Linton       | - | Chair of Counseling, Advising,<br>Career & Empl. Ser. |
| Susan Stylianos     | - | Exec. Dir. Student Affairs                            |

Hearings in this matter were held in Toronto on November 7, 2001, May 1 and 21, June 11, Oct. 1, 2 and 9 and December 10, 2002.

## **AWARD**

Two grievances were filed on behalf of Ms. Lois Athanasiu, who at the time relevant to these grievances was employed in the position of counselor in the Counseling, Advising and Career and Employment Services Department of Student Affairs. The primary grievance (grievance 01-24) alleges that the College acted in breach of the collective agreement when, on or about March 22, 2001, it advised Ms. Athanasiu that she was being transferred from the position of counselor in Student Affairs to that of professor in the Division of Community Services and Health Sciences. The College transferred Ms. Athanasiu, without her consent, because of concerns arising from a counseling session she had with a student, hereinafter referred to as Student "X", on January 23, 2001. The second grievance (grievance 01-10) involves a dispute over the action taken by the College on or about February 1, 2001 to suspend Ms. Athanasiu from exercising her counseling duties while the College was carrying out its investigation of the complaint lodged by Student "X". Ms. Athanasiu suffered no loss of pay with either action taken by the College, i.e. with either the suspension pending investigation or the involuntary transfer.

The Union claims that the involuntary transfer of Ms. Athanasiu was both disciplinary in nature and motivated by bad faith. The Union had initially sought the reinstatement of the grievor to her position of counselor in Student Affairs. However, during the final stage of the arbitration hearing, the Union stated that it was no longer requesting reinstatement. The Union revised its requested remedy

to that of a declaration of breach only because Ms. Athanasiu had determined that it was no longer in her best interest to return to her position of counselor.

The College maintains that the grievor's transfer was non disciplinary in nature and was effected because the College had concluded that Ms. Athanasiu did not possess the personal characteristics and skills necessary to be qualified to continue in the position of counselor. The College asserts that it did not assess blame against Ms. Athanasiu. The College concluded from the incident with Student "X" that Ms. Athanasiu did not possess sufficient judgment, empathy or common sense to responsibly carry on the duties and obligations of a counselor. It was the belief of the College that the grievor's character deficiencies were not by their nature ones that could be improved through either discipline or more training. The College came to the conclusion that to permit Ms. Athanasiu to continue counseling students would raise a serious and unacceptable risk for the students, Ms. Athanasiu and the College.

Ms. Athanasiu has been employed at the College since 1984 and has occupied the position of counselor in Student Affairs since 1986. She has a clear disciplinary record. On January 23, 2001, Ms. Athanasiu had a counseling session with "Student X". During the course of the counseling session, the student informed Ms. Athanasiu of multiple acute problems and indicated that she had been thinking about committing suicide. It is the College's concern over the manner in which Ms. Athanasiu handled the counseling session and the

problems confronting Student "X" that caused it to transfer Ms. Athanasiu out of her counseling position.

On January 24<sup>th</sup>, Student "X" complained to one of her professors about the manner in which she had been dealt with by Ms. Athanasiu in her counseling session. The professor, in turn, contacted Ms. Judi Linton, the Chair of the Counseling, Advising and Career and Employment Services, about the complaint. Ms. Linton then met with Student "X" on January 29<sup>th</sup>, 30<sup>th</sup> and 31<sup>st</sup> and February 1<sup>st</sup> and 2<sup>nd</sup> to discuss, and seek to resolve, issues significant to the student.

Student "X" told Ms. Linton that by the end of the meeting with Ms. Athanasiu she felt enormous anger. She felt that Ms. Athanasiu had not listened to her and did not care about her. She felt that Ms. Athanasiu had belittled her, particularly in the manner in which she dealt with her scholastic inability to meet the stipulated 1.7 g.p.a. (grade point average) requirement for a bursary. Student "X" reported that Ms. Athanasiu made her feel "stupid and not worth bothering with." She was struck that Ms. Athanasiu did not ask her if she was going to be alright before she left the meeting. Student "X" advised that it disturbed her that Ms. Athanasiu did not ask her if she wanted to make another appointment. She said that she felt no compassion from Ms. Athanasiu respecting the problems she was facing. She found Ms. Athanasiu to be cold. By the time Student "X" left the meeting, she was angry. On her drive home to

Oshawa following the meeting, Student "X" felt more suicidal than she had at the meeting. She felt the walls of the 401 pulling her in to them. She found it hard not to drive into the wall. She was driving her car so fast that it was shaking.

On February 1, 2001, Ms. Athanasiu was advised by Ms. Linton that Student "X" had lodged a complaint against her handling of the counseling session on January 23<sup>rd</sup>. Ms. Athanasiu was further advised that she was being immediately suspended from exercising her counseling duties, with pay, while the College carried out its investigation.

Through grievance 01-10, the Union contends that the College did not have just cause to suspend the grievor from her counseling duties pending the investigation. Having carefully assessed the evidence and the submissions of the parties, however, the Board is fully satisfied that the College acted reasonably, responsibly and with just cause in suspending Ms. Athanasiu from continuing to exercise her counseling duties pending investigation. The complaint against Ms. Athanasiu involved allegations that, if proven, would raise a serious risk to the well-being and safety of the students. The circumstances, if proven, would also place the College at serious risk. This is precisely the kind of situation that justifies the College taking the immediate, preventative steps it did during the investigation. Accordingly, the Board dismisses the Union's grievance against the College's removal, with pay, of Ms. Athanasiu from her counseling duties, pending the outcome of the investigation.

Between February 1 and 12, 2001, the College investigated the complaint of Student "X". As part of the investigation, Ms. Linton and Ms. Athanasiu had a series of conversations about the counseling session with Student "X". On February 12<sup>th</sup>, a joint meeting between the College and the Union was held. At this meeting Ms. Athanasiu was offered an early leaving package. The Union contends that the College did not act properly at this meeting. Following the joint meeting of February 12, 2001, the grievor was given one week off with pay to consider her options. Following that, the College gave her an additional three weeks off with pay while the College worked closely with the Human Resources Department in an effort to come to a resolution of the matter. On March 22, 2001, the College advised Ms. Athanasiu that she was being transferred to the position of professor in the Faculty of Community and Health Services at her same rate of pay.

At the outset of the arbitration hearing, the College proposed that the Board adopt a mode of procedure whereby the parties would be bound by a determination of a third party assessor, expert in the field of counseling, respecting the qualification of Ms. Athanasiu's to carry out the responsibilities of the position of counselor, in circumstances where, at times, students at risk of suicide would be among those who would meet with the counselors behind closed doors. The Union declined to support this mode of procedure.

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**THE COUNSELING MEETING BETWEEN STUDENT "X" AND MS. ATHANASIU ON JANUARY 23, 2001:**

There is little significant difference between the parties respecting what occurred during the counseling session between Student "X" and Ms. Athanasiu on January 23, 2001. What separates the parties is the interpretation and implication of what transpired. On the basis of a review of the evidence and submissions of the parties, the Board has determined that the counseling session and some of Ms. Athanasiu's explanations may be summarized as follows:

1. When Student "X" arrived at the counseling session, Ms. Athanasiu had no advanced knowledge of the problems confronting Student "X".
2. Student "X" commenced the interview by talking about her academic problems. She said she had been described as a "slow learner", that she had been fighting the label of "stupid" all her life, that high school had been a negative experience for her, that it was hard coming back to school in such circumstances and that she was having difficulty understanding what was in the textbooks.
3. In response, Ms. Athanasiu expressed empathy and agreed that it would be hard to come back to school after having had such a negative

experience with school. Ms. Athanasiu may also have made some reference to getting Student "X" a tutor.

4. Ms. Athanasiu found Student "X" to be talkative and coherent. She let the student take the lead in guiding the interview and did not ask her leading or probing questions.
5. Student "X" then raised her medical problems. She had a shoulder injury in respect of which she was involved with the WSIB (Workplace Safety and Insurance Board). She also had injured her knee, outside of work, and had required surgery. The operation did not go well and Student "X" was in a great deal of pain. Student "X" expressed annoyance with the surgeon who had "botched" her operation.
6. In response, Ms. Athanasiu acknowledged the pain of the ordeal and suggested that the student see a doctor for pain medication. The student advised that she was reluctant to take painkillers because she had a history of addiction.
7. In response, Ms. Athanasiu suggested that there was a lawyer available through the College with whom she could consult if she wanted to pursue a malpractice issue.

8. Student "X", who lived with her son, then raised her dire financial difficulties. She said she had been given an eviction notice because she had "chosen Christmas over paying the rent". The student told Ms. Athanasiu that she had enough money to keep the heat going but did not have enough to use the stove. While Student "X" apparently did not tell Ms. Athanasiu that she did not have enough money to eat, when Student "X" met with Ms. Linton about this matter a few days later, she told Ms. Linton that she had not eaten in two days because she didn't have the money. Ms. Linton immediately got her some food. In any event, Ms. Athanasiu recognized that the financial problems facing Student "X" were serious.
9. Ms. Athanasiu told the student that a pamphlet with guidelines for tenants facing eviction was available in the Housing Office.
10. Ms. Athanasiu then asked her if she could get any more funds from WSIB, to which the student replied that she could not. They further agreed that in the circumstances, O.S.A.P. would not be a source of funds.
11. Ms. Athanasiu gave Student "X" a bursary form to apply for funds from the Financial Aid office. The student saw that the form indicated that a g.p.a. of 1.7 was required for eligibility and indicated that she did not have a 1.7 g.p.a. Ms. Athanasiu replied that, therefore, it looked like she would not

be able to obtain a bursary. Ms. Athanasiu told the student to keep the form so she could apply when she improved her grades.

12. By way of explanation for cutting off the pursuit of financial assistance through a bursary application, Ms. Athanasiu testified that she took the form at face value and assumed that the 1.7 g.p.a. was a rule of the Financial Aid office. Ms. Athanasiu maintains that in dealing with the bursary form, she was not belittling the intelligence of Student "X" but rather was making a statement of fact respecting the effect of the student's lack of attaining the 1.7 g.p.a. As Ms. Athanasiu would subsequently learn, the Financial Aid office does not apply the stipulated 1.7 g.p.a. as a rigid cut off.

13. Ms. Athanasiu did not raise the possibility of accessing the Financial Aid Emergency Fund because she believed that that fund was for students who faced natural disaster emergencies and was not for students who simply could not meet their expenses. She did not, however, seek clarification from the Financial Aid office or seek assistance in determining whether Financial Aid could think of any other source of funds for Student "X".

14. Ms. Athanasiu told Student "X" that banks would give student loans.

15. Ms. Athanasiu also suggested credit card counseling. Student "X" responded that she had already done that.
16. Ms. Athanasiu asked Student "X" if she had friends or family from whom she could borrow money. The student replied that she did not.
17. Ms. Athanasiu mentioned food banks.
18. Ms. Athanasiu finally said, "I'm sorry, but I cannot think of another source of financial assistance right now". Subsequently, Ms. Linton was able to secure a bursary for Student "X" within a day of meeting with her.
19. When Student "X" subsequently met with Ms. Linton, she advised that she had been subjected to abuse from her father as a child and that she had been abandoned by her mother. These facts, however, were not disclosed to Ms. Athanasiu.
20. Ms. Athanasiu stated that Student "X" then mentioned thoughts of suicide. Student "X" told Ms. Athanasiu that sometimes she had thoughts of ending it all.
21. Ms. Athanasiu responded to the suicidal thoughts by saying that people usually don't want to die but just feel overwhelmed by pain and problems.

She asked the student if she had thought of a way to do it, to which the student replied that she had not. Student "X" volunteered that when she thought of writing a good-bye letter to her son, she couldn't carry through with it.

22. Ms. Athanasiu told Student "X" that she needed to get professional help from a psychiatrist. She said that this issue was the most important.

23. Ms. Athanasiu concluded from the student's comments respecting her son that she had an anchor and a reason to live. Ms. Athanasiu determined, thereby, that Student "X" was not at imminent risk of committing suicide.

24. Beyond asking if she had thought of how she would do it, Ms. Athanasiu did not perform a risk assessment of the student in respect of her suicidal thoughts.

25. By way of subsequent explanation, Ms. Athanasiu stated that she did not believe that a full risk assessment was necessary. At the same time, she stated that she did not have sufficient training to do a risk assessment in suicide situations. Ms. Athanasiu stated that through this incident, she realized her deficiency in this area and asked to be given suicide risk assessment training.

26. Ms. Athanasiu asked Student "X" if she was aware of the resources in Oshawa, where she lived. The student replied that she was not interested in those facilities because she believed that if she mentioned anything there relating to suicide, she would be committed.
27. Ms. Athanasiu then said she would refer her to resources in Toronto. She recommended the Toronto East General Hospital because it has a crisis team that could be accessed by just walking in and without going through the Emergency Department. Ms. Athanasiu also recommended the Gerstein Centre as another choice because it offered a mobile crisis team close to the College with 24-hour service.
28. In response to these suggestions, Student "X" did not express resistance or negativity.
29. Ms. Athanasiu got the directory and gave Student "X" a paper with the phone numbers of the recommended facilities. Ms. Athanasiu did not take any steps to connect the student to one of those facilities.
30. By way of subsequent explanation for not making the connection with a counselor at one of the outside, specialized facilities, Ms. Athanasiu said that Student "X" needed to take the initiative to go to a mental health

facility herself. She noted that she believed that such facilities prefer to have students do the contacting themselves because it is considered the first step in establishing a trusting relationship.

31. Ms. Athanasiu did not consider taking Student "X" to the hospital directly from her counseling session.

32. By way of subsequent explanation for not considering taking Student "X" to the hospital, Ms. Athanasiu said that she did not believe the student was in imminent danger of committing suicide. Moreover, she believed that at least five years previously, Ms. Linton had told the counselors that they shouldn't take students at risk of suicide to the hospital.

33. When Student "X" left her counseling session, Ms. Athanasiu did not ask her if she felt safe or if she felt that she was going to be alright.

34. By way of subsequent explanation for not verifying that Student "X" felt safe when she left, Ms. Athanasiu said that she had conveyed her concern to Student "X" through her actions.

35. Ms. Athanasiu did not book a follow-up counseling session with Student "X" or ask her to report back in some manner after connecting with one of the recommended facilities. Instead, Ms. Athanasiu told Student "X" on

the way out of her office that she could come back anytime and could make an appointment at the reception desk if she wanted to have another meeting.

36. By way of subsequent explanation for not booking a follow-up appointment, Ms. Athanasiu said that she didn't routinely make follow-up appointments for students, like Student "X", for whom she had given a referral for suicide counseling. She explained that counselors don't have their own appointment books, that the appointment book is at the reception desk and, accordingly, that she did not know her appointment availability. Ms. Athanasiu further said that she was influenced by the fact that other students she has dealt with who were facing eviction tended not to keep their follow-up appointments. She further determined that it was better for the student to take the initiative and for the student to make the follow-up appointment herself.

37. Ms. Athanasiu testified that when she left the appointment, Student "X" did not demonstrate anger or frustration and, instead, was emotionally contained. Ms. Athanasiu noted, however, that there were times during the interview when Student "X" had a funny look on her face. In retrospect, Ms. Athanasiu acknowledged that the look may have been an expression of displeasure. She further acknowledged, in retrospect, that she could have "checked that out".

38. Following the appointment, Ms. Athanasiu did not consult with her colleagues or supervisors to determine whether she had taken the appropriate steps with Student "X".
39. By way of explanation for not consulting with her colleagues, Ms. Athanasiu stated that she was not in any doubt about the appropriateness of how she had handled her meeting with Student "X". She further questioned why she would consult with her supervisor, since, in her view, Ms. Linton was not the one with the expertise in mental health.
40. Ms. Athanasiu testified that several days after her meeting with Student "X" a comment by another student triggered in Ms. Athanasiu the thought that the Financial Aid office might be flexible respecting the 1.7 g.p.a. eligibility requirement for a bursary. Ms. Athanasiu called the Financial Aid office and learned that the 1.7 g.p.a. cut-off that was printed on the bursary form was not a rigid requirement. On February 1<sup>st</sup>, the same day she was advised by Ms. Linton that a student had filed a complaint against her, Ms. Athanasiu called Student "X" to inform her that the 1.7 g.p.a. was not a prerequisite to entitlement to a bursary. No one answered the phone. Ms. Athanasiu hung up without leaving a message. Ms. Athanasiu never called back to tell Student "X" that she could apply for a bursary, notwithstanding her g.p.a. of less than 1.7.

41. By way of explanation for failing to leave a message with Student "X" that a 1.7 g.p.a. was not a rigid requirement for a bursary, Ms. Athanasiu said that she did not want to leave a message because she knew Student "X" had a son and she wanted to keep the information confidential. Ms. Athanasiu's rationale for keeping such positive information "confidential" was not clear.
42. By way of additional explanation and justification respecting her handling of the meeting with Student "X", Ms. Athanasiu stated that she looked upon Student "X" as a coherent person with a number of difficulties. She emphasized that in the meeting the student was emotionally contained, articulate, talkative and able to present a number of different problems in a rational manner.
43. Ms. Athanasiu determined that in the circumstances presented by Student "X", her problem solving approach was appropriate. She explained that she was trying to give the student practical solutions to show her a way out of her problems, to give her hope and to counteract her feelings of despair. Ms. Athanasiu considered that taking a problem solving approach was showing that she cared. Ms. Athanasiu said that she chose not to dwell on the student's despair but rather to show her a way out.

44. Ms. Athanasiu did not consider that Student "X" was in immediate danger of committing suicide. She commented that the fact that Student "X" did not in fact commit suicide shows that she was correct in her assessment.

45. Ms. Athanasiu stated that she believed that Student "X" would not have told her of her thoughts of suicide if she had not felt that Ms. Athanasiu was listening to her.

46. Ms. Athanasiu stated that Student "X" presented a psychiatric issue for which she needed to get psychiatric support. According to Ms. Athanasiu, it was a situation in which she deemed she should not get involved.

47. Ms. Athanasiu explained that if Student "X" had come in crying and showing lots of emotion, she would have taken a different approach. She stated that in such circumstances she would have given her lots of emotional support; she would have been more empathetic in dealing with the student's emotions and she would not have gone into a problem solving mode. Ms. Athanasiu maintains that she followed the lead given by Student "X" in the manner in which she conducted the interview.

48. Ms. Athanasiu commented, more broadly, that she cannot take everyone else's problems on herself because such is not sustainable and because it would result in her burning out.

49. Ms. Athanasiu concluded that Student "X" recognized that she needed help, that she could take care of herself and that she knew what to do to seek out help. Ms. Athanasiu based this determination on the fact that Student "X" was enrolled in the counseling program at George Brown and because she had expressed some knowledge about the Oshawa institutions.

50. Ms. Athanasiu denies that she missed anything of significance in the counseling session. She denies that she missed picking up any of the student's emotions. She believes she heard and understood everything Student "X" was telling her. She believes her judgment was not flawed.

51. Ms. Athanasiu believes that Student "X" perceived her inaccurately and that her negative perception of Ms. Athanasiu was the result of the student's own serious emotional problems.

52. Ms. Athanasiu indicated to Ms. Linton that she was willing to meet with and apologize to Student "X" if it would make her feel better, but she did not think she had done anything wrong. Ms. Athanasiu thought that Student "X" might learn something from such a meeting since she was studying to be a counselor. Ms. Linton advised that the student did not want to see Ms. Athanasiu.

53. Ms. Athanasiu believes that she was scape-goated for the College's lack of written policies and procedures.

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**THE COLLEGE'S CONCERNS RESPECTING MS. ATHANASIU'S  
HANDLING OF THE COUNSELING OF STUDENT "X":**

Both Ms. Judi Linton, Chair of Counseling, Advising and Career and Employment Services and Ms. Susan Stylianos, Executive Director of Student Affairs, testified to the following concerns about the manner in which Ms. Athanasiu handled the counseling session with Student "X":

1. In general, Ms. Linton and Ms. Stylianos concluded that Ms. Athanasiu demonstrated a grave lack of judgment and an inability to properly assess the critical elements of the situation presented by Student "X". Ms. Linton and Ms. Stylianos determined that Ms. Athanasiu demonstrated a fundamental lack of empathy, common sense, skill, judgment and concern for the well-being of Student "X". They further determined that these deficiencies created a situation that put the College, Ms. Athanasiu and the students who sought counseling at serious risk.
2. Ms. Linton and Ms. Stylianos were concerned that the impact of the counseling session created a particularly dangerous situation for Student

“X” because on her way home from the meeting, she had to fight a suicidal force that was pulling her car into the walls of the 401. In the end, Ms. Linton and Ms. Stylianos concluded that the serious risk arising from Ms. Athanasiu's mishandling of a student with suicidal thoughts was a risk that the College, acting reasonably and responsibly, could not run.

3. More particularly, Ms. Stylianos stated that Ms. Athanasiu demonstrated that she does not possess a “third ear”. She commented that Ms. Athanasiu revealed that she was unable to read the unspoken emotional language of Student “X” and thus was unable to truly understand what Student “X” was trying to tell her. According to Ms. Stylianos, counselors need to listen for “flags” to see if something needs to be probed beneath the surface in order to help a student reveal significant underlying issues. According to Ms. Stylianos, Ms. Athanasiu did not listen for or find such “flags”.
4. According to Ms. Stylianos, Ms. Athanasiu did not ask the questions that would help to clarify the student's emotional condition. Ms. Stylianos stated that a student with suicidal thoughts may well come to a counseling meeting and speak about superficial problems, when the most significant problems lie underneath and need to be uncovered with the help of the counselor. Ms. Stylianos stated that because Ms. Athanasiu rushed into

attempting to solve the surface problems presented by the student, she missed the incredible pain Student "X" was suffering.

5. Ms. Linton was concerned that Ms. Athanasiu conducted the meeting with Student "X" with a superficial problem-solving approach and, therefore, failed to deal effectively with the most important problem of all, that being that Student "X" was in a deeply distressed state with suicidal thoughts.
  
6. Ms. Stylianos stated that if a counselor is listening with his or her "third" ear, and a student talks of suicidal thoughts in a clam manner, the calm demeanor would ring a loud warning bell rather than cause a counselor to conclude that there was no imminent risk of suicide.
  
7. Because Student "X" did not show much outward emotion, Ms. Athanasiu concluded that Student "X" was self-contained, rational and not at imminent risk of suicide. In fact, undetected by Ms. Athanasiu, Student "X" was getting increasingly angry as the interview progressed. Ms. Linton noted that it is not uncommon for people to show little emotion when they are desperate. According to Ms. Linton, Ms. Athanasiu demonstrated that she was unable to assess the student's state of mind and to comprehend the desperation she was feeling.

8. Even respecting the individual problems facing Student "X", Ms. Linton found that Ms. Athanasiu failed to properly deal with them. Ms. Athanasiu did not effectively address the dire financial situation facing Student "X". With respect to the bursary application for financial aid, Ms. Athanasiu simply assumed, inaccurately, and without seeking verification, that the 1.7 g.p.a. was an immovable cut off. She did not call the Financial Aid office to find out if the 1.7 g.p.a. was flexible or to see if she could tap some other source of money. Ms. Athanasiu was not proactive in helping Student "X" with her very serious financial circumstances. According to Ms. Linton, Ms. Athanasiu just ticked off a list of options and finally said that it seemed that nothing could be done. She left Student "X" with no hope of a remedy for her serious financial circumstances and simply advised that she should apply for a bursary when her marks improved. In contrast, as noted, Ms. Linton was able to obtain a bursary for Student "X" within a day or so of their meeting.
  
9. Ms. Linton was greatly disturbed that once Ms. Athanasiu called Financial Aid and learned that the 1.7 g.p.a. was not a rigid prerequisite, Ms. Athanasiu did not even leave a message for Student "X" to correct the misinformation she had given on a matter of such vital significance to the student's well-being.

10. Ms. Linton found that Ms. Athanasiu did not comprehend the significance or impact of what Student "X" telling her. When the student said that she was thinking of ending it all, Ms. Athanasiu did not engage in a risk assessment or a sufficient inquiry respecting her suicidal thoughts to enable her to assess the risk.
  
11. Ms. Linton was astounded that Ms. Athanasiu did not take steps to ensure that Student "X" was going to be safe when she left the office. Ms. Linton stated that what Ms. Athanasiu did instead was completely inappropriate. To simply hand Student "X" a piece of paper with the names and phone numbers of facilities to which she could go for help was "utterly inappropriate", according to Ms. Linton. To assume that Student "X" knew what to do and that she would take the initiative and necessary steps to care for herself because she was in the George Brown counseling program and because she had identified her concern about being locked up in an Oshawa facility was, in Ms. Linton's view, "ludicrous". Leaving it to Student "X" to make the appointment on her own was irresponsible, according to Ms. Linton.
  
12. Ms. Linton testified that Ms. Athanasiu should have physically connected Student "X" to a counselor at one of the recommended institutions while the student was still in her office. She should have called the institution, gotten the counselor on the phone, explained the situation briefly to the

counselor, put Student "X" on the phone with the counselor to, thereby, enable the counselor and the student to arrange an appointment while the student was still in the office with Ms. Athanasiu. Then, Ms. Athanasiu should have booked a follow-up appointment between herself and Student "X" for a time subsequent to the arranged appointment with the specialist counselor to make sure that Student "X" was alright. Ms. Linton was astounded that Ms. Athanasiu took none of these basic steps to ensure the safety of Student "X". Ms. Linton stated that in the circumstances as they were, it was dangerous to let the student leave and drive home alone.

13. Ms. Linton stated that Ms. Athanasiu was "shockingly wrong" in her belief that Ms. Linton had indicated that counselors should not take students to the hospital in such circumstances. Ms. Linton pointed out that the same week that Ms. Athanasiu met with Student "X", various other counselors had taken four other students to the hospital because they had threatened suicide. The evidence readily establishes that no other counselor was under the misapprehension that they were not encouraged to take students to the hospital in such circumstances. What they were not supposed to do, was take the students to the hospital alone. Ms. Linton's concern was not so much that Ms. Athanasiu did not actually take Student "X" to the hospital but rather that she thought she wasn't supposed to.

14. Ms. Linton was deeply concerned that after her session with Student "X", Ms. Athanasiu failed to consult either with her fellow counselors, with Ms. Linton or with Ms. Stylianos. Ms. Linton stated that the normal practice among the counselors in situations where a student expresses thoughts of suicide is to consult with one another to make sure they are taking the right steps.
  
15. As noted, Ms. Athanasiu made no follow-up appointment with Student "X" before she left her office. Of further concern to Ms. Linton was the fact that she further failed to contact the student in the days following the meeting to make sure that the student had connected with a suicide professional and that she was generally alright. According to Ms. Linton, for Ms. Athanasiu to put the onus on the student to be responsible for the follow-up was a grave error in judgment.
  
16. Ms. Linton was concerned that Ms. Athanasiu had not ensured that she was adequately trained in doing a risk assessment in a suicide situation. The problem of students presenting suicidal thoughts is one that counselors face with some regularity. Ms. Linton noted that counselors are responsible for keeping up to date in their training and that the College provides both the time and the money for such training. In fact, in the year or two prior to this incident, Ms. Athanasiu had taken a year off with pay for professional development. Ms. Linton emphasized that The Ontario

College Counselors' Statement of Ethics and Standards of Practice for Counseling Services within the Colleges of Applied Arts and Technology stipulates in section II, Professional Development, that counsellors are continuously responsible for pursuing their own professional growth and development:

Individuals engaged in counseling shall be continuously and actively involved in their own professional growth and development. This may include membership in professional organizations, keeping up-to-date on present research and practice in counseling, attending related conferences and workshops, and furthering formal education.

17. Ms. Linton further concluded, for reasons that are set out above, that Ms. Athanasiu did not possess a significant number of the personal characteristics and skills that the O.C.C. Statement of Ethics and Standards of Practice states in Section A constitute "Core Competencies" for counselors. Among the listed characteristics and skills in the Core Competencies that Ms. Linton concluded through this incident that Ms. Athanasiu did not possess are the following:

- a. Effective communication in interpersonal relationships;
- b. The ability to assess accurately and articulate clearly, client needs;
- c. The ability to assist clients to effectively mobilize their own resources;

- d. A knowledge of appropriate resources within and outside the college community, and the use of appropriate methods and procedures when making referrals;
- e. The ability to assess critically and to acquire those values, attitudes, and skills necessary for the effective delivery of counseling and counseling-related programs;
- f. The ability to provide crisis intervention and emergency response and to access appropriate community resources;

18. Ms. Linton was highly concerned that throughout this matter, including throughout the arbitration hearing, Ms. Athanasiu maintained that she had properly handled her interaction with Student "X".

Having carefully assessed the evidence and explanations of Ms. Athanasiu, on the one hand, and Ms. Linton and Ms. Stylianos, on the other hand, the Board accepts the evaluation of Ms. Linton and Ms. Stylianos that Ms. Athanasiu carried out her counseling session with Student "X" in a manner that was highly inappropriate and that placed Student "X", Ms. Athanasiu and the College at considerable risk.

-C-

#### **THE INVESTIGATION:**

The Union submitted that the College's investigation of Ms. Athanasiu's handling of the situation with Student "X" was carried out in an unfair and bad faith manner. Ms. Athanasiu maintains that Ms. Linton and Ms. Stylianos were

biased against her from the outset, that they “stabbed her in the back”, that they used the incident as an excuse to get rid of her and that they were motivated by “ageism” in deciding to transfer her out of the counselor position.

It is apparent from the evidence that “ageism” played no part in the College’s decision to transfer Ms. Athanasiu. The person who was hired to replace Ms. Athanasiu was approximately the same age as Ms. Athanasiu and had more than 25 years of counseling experience in the education field. Moreover, all but one of the other full-time counselors were in their 40s or 50s. Counselors who have been hired in their 20s have been given sessional, one year contracts; they have not been hired as full-time counselors. The accusation of Ms. Athanasiu that the College wanted to get rid of her because she was “too old to learn” is unsupported by the evidence. In fact, over the years, the College, at its own expense, had provided Ms. Athanasiu with substantial training.

The evidence reveals to the satisfaction of the Board that the investigation that was carried out by the College provided Ms. Athanasiu with a full opportunity to speak to the complaint of Student “X”. In fact, on cross-examination, Ms. Athanasiu acknowledged that she had had a full opportunity, between February 1<sup>st</sup> and 4<sup>th</sup>, to respond to what Student “X” had asserted. On February 1, 2001, Ms. Linton spoke briefly with Ms. Athanasiu. She advised her that a student complaint had been lodged against her and that she was not permitted to see any clients until Ms. Linton had had an opportunity to talk to her. The Board

rejects the assertion of Ms. Athanasiu that Ms. Linton “ambushed” her by declining to identify the student until she met with her the next day.

On February 2, 2001, Ms. Linton met with Ms. Athanasiu and advised her of the details of the complaint of Student “X”. She then asked Ms. Athanasiu for her perspective on what had transpired. Ms. Linton took detailed notes of both Ms. Athanasiu’s version of the meeting and her explanation for why she had dealt with the situation as she had. Later that day, when Ms. Athanasiu thought of some additional explanations, she contacted Ms. Linton to further discuss the situation. Ms. Linton again took notes of what Ms. Athanasiu had said. On February 4<sup>th</sup>, Ms. Linton and Ms. Athanasiu had a further exchange about the student’s complaint and Ms. Athanasiu’s handling of the meeting. Once again, Ms. Linton took notes and followed up on some of the assertions Ms. Athanasiu had made respecting the other counselors.

Ms. Athanasiu complained that she should have been given an opportunity to sort out the discrepancies between her version of the counseling session and that of Student “X”. The series of exchanges that Ms. Athanasiu and Ms. Linton had about the student’s complaint revealed, however, that there were few significant differences between Ms. Athanasiu and Student “X” respecting what had transpired at the meeting. The essential difference was the perspective each had on what had happened. The evidence satisfies that Board

that Ms. Athanasiu had a full and ongoing opportunity to provide Ms. Linton with her version of and her explanation for how she had handled the situation.

On February 12, 2001, Ms Linton and Ms. Stylianos met with Ms. Athanasiu and her Union representative. During the course of this meeting, the College detailed its concerns about Ms. Athanasiu's conduct and Ms. Athanasiu was given a full opportunity to respond. Moreover, and of particular concern to Ms. Athanasiu, Ms. Athanasiu was offered the opportunity to resign with an early exit package. She was further offered a week off with pay to think about it. Ms. Athanasiu's primary complaint about this meeting is that she felt that Ms. Linton and Ms. Stylianos had already made up their minds and that, therefore, she had no chance to defend herself. She said she felt like she was "trash to be thrown out." She stated that she was so devastated and shocked by the offer to resign, that she has no independent recall of the meeting.

Having carefully reviewed the evidence, the Board is satisfied that the College had not made up its mind to transfer Ms. Athanasiu prior to going into the meeting on February 12<sup>th</sup>. That decision was made the day following the February 12<sup>th</sup> meeting. The Board is further satisfied that at the meeting the College gave Ms. Athanasiu every opportunity to speak to the College's concerns and to further explain any aspect of the matter that she wanted. In addition, the Board concludes that far from treating Ms. Athanasiu "like trash to be thrown out", the College's offer of resignation and early retirement was motivated by a

respect for Ms. Athanasiu and a desire to meet the College's need to remove her from the counselor position, while, at the same time, enabling Ms. Athanasiu to maintain full dignity, save face and avoid the kind of personal pain that has resulted from this arbitration.

For over a month following the February 12<sup>th</sup> meeting, Ms. Athanasiu was given time off with pay while the College worked diligently to find a position for her. Ultimately, the College located a teaching position in which Ms. Athanasiu would suffer no loss of pay, that being, the position of professor in the Division of Community Services and Health Services. Moreover, the College extended her period of time off with pay until her new assignment commenced. Ms. Athanasiu complained that she had to learn new skills to perform this new job and that she had to engage in long hours of preparation.

The Board rejects the assertion that the College acted in bad faith in any aspect of the manner in which it dealt with Ms. Athanasiu. The reason that Ms. Linton encouraged Student "X" to put her complaint in writing is not a reflection of bad faith. It is a reflection of the reality that counselors work behind closed doors and unless a student complains in writing, it is difficult to confront a counselor. Student "X" was adamant that she did not want her experience with Ms. Athanasiu to happen to another student and Ms. Linton advised her that the effective way to take steps respecting Ms. Athanasiu would be for her to put her complaint in writing. The motivation of the College was not bad faith; it was

concern for the safety of its students. It is readily apparent that the College, through Ms. Linton and Ms. Stylianos, made concerted efforts to be fair to Ms. Athanasiu and thorough in its investigation. There is no evidence to substantiate Ms. Athanasiu's assertion that Ms. Linton and Ms. Stylianos were already biased against her at the point of this incident.

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### **THE POLICY AND PROCEDURES HANDBOOK:**

In the summer of 2001, following the incident with Student "X", Ms. Linton put together a Policy and Procedures Handbook respecting the multiple services provided by the Counseling, Advising and Career and Employment Services Department. This action was taken in response to a request for such by the Union. One of the 25 headings in the Handbook is "Suicide Risk". The section lists a series of questions for a counselor to ask a student to help the counselor assess the level of suicide risk being presented by the student. An appendix provides further information respecting suicide, a suicide risk assessment model and supplementary notes. Ms. Linton stated that she responded to the request to create a Policies and Procedures Handbook with a section and appendix on suicide risk in order to be extra careful, notwithstanding that following this incident, through personal interviews with each counselor, Ms. Linton had satisfied herself that every other counselor knew exactly how to properly carry out a suicide risk assessment and to properly deal with a situation of suicide risk.

Ms. Linton commented that the counselors are professionals, most of whom have masters degrees in counseling, psychology or social work and have training in how to handle situations of suicide risk.

The Board is satisfied that the fact that Ms. Linton created a Policies and Procedures Handbook which includes a section and appendix on suicide does not excuse, explain or justify Ms. Athanasiu's mishandling of her counseling session with Student "X". The evidence establishes that if Ms. Athanasiu lacked training in suicide risk assessment, she had every reason and professional responsibility to rectify that problem through her own initiative. She had a professional responsibility to keep current and to regularly upgrade her skills, as set out in the Ontario College Counselor Statement of Ethics and Standards of Practice. There is no evidence to suggest that if this Handbook had been in existence at the time of the incident it would have minimized, in any way, the fundamental defects in the manner in which Ms. Athanasiu handled her counseling session with Student "X". Ms. Athanasiu did not consider Student "X" to be at imminent risk of suicide and did not feel that she needed to do a full suicide risk assessment. It was in doing a suicide risk assessment that the Handbook might have provided some guidance. Moreover, the Handbook would not have provided Ms. Athanasiu with the personal characteristics and skills within the "Core Competencies" that the Statement of Ethics and Standards of Practice, set out above, stipulates College counselors are to possess. There is no basis in the evidence to conclude that putting such policies and procedures in

place would have given Ms. AthanasIU the empathy, judgment, common sense and "third" ear that she needed to be suitable and qualified for performing the job of counselor.

Accordingly, the Board concludes that the creation of the Policies and Procedures Handbook by Ms. Linton in the summer of 2001, following the incident in question, does not alter the evaluation of Ms. AthanasIU's actions respecting Student "X".

-E-

**WHETHER THE INVOLUNTARY TRANSFER WAS DISCIPLINARY:**

The Board concludes that the involuntary transfer imposed on Ms. AthanasIU was not disciplinary. The Board accepts as reasonable the professional opinion of Ms. Linton and Ms. StylianOS that Ms. AthanasIU did not possess the personal characteristics and skills required to properly, adequately, responsibly, and safely carry out the duties of counselor. The Board accepts the assessment of the College that it was this lack of personal characteristics and skills, particularly a lack of empathy, judgment and common sense, which formed the root of Ms. AthanasIU's failure to properly and responsibly handle the situation with Student "X".

The Board is satisfied that the College reasonably determined that Ms. AthanasIU's behaviour was not culpable. The College did not assess blame. The

Board accepts as reasonable the determination by the College that the lack of personal characteristics and skills displayed by Ms. Athanasiu in her dealing with Student "X" was not something that could be corrected through discipline. The Board accepts as reasonable the assessment of the College that no amount of skills or knowledge-based training would have enabled Ms. Athanasiu to gain the personal characteristics and skills she was lacking to effectively and responsibly carry out the position of counselor. The Board further accepts that if the College had felt that Ms. Athanasiu would have been able to acquire the necessary personal characteristics and skills with additional training, it would have given her that training. Accordingly, the Board accepts as reasonable the assessment of the College that Ms. Athanasiu was not at fault and was not blameworthy. More simply, she had clearly and convincingly demonstrated to the College that she just did not possess the basic personal characteristics and skills to be deemed suitable for the position of counselor.

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**WHETHER THE TRANSFER WAS IN BREACH OF THE COLLECTIVE AGREEMENT:**

Because the transfer imposed by the College was not disciplinary, the standard of review is not whether the College had just cause for imposing the involuntary transfer but rather whether the transfer was reasonable, was not imposed in arbitrary or discriminatory manner and was not motivated by bad faith.

We note that the Union asserted that Ms. Athanasiu had performed the job of counselor for over 10 years without any problems. The evidence, however, does not bear out this assertion. The College did not rely on any situations in the past to support the action it took in this matter. The College presented evidence respecting past difficulties only to counter the assertion of Ms. Athanasiu that she had had no previous complaints or difficulties in her years as counselor.

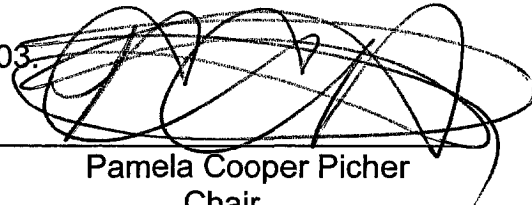
If it were necessary, the Board would conclude that the College had just cause to transfer Ms. Athanasiu. Given that the transfer was not disciplinary, however, the Board finds that the College's decision to transfer Ms. Athanasiu was reasonable, was not arbitrary, was not discriminatory and was not taken in bad faith. The Board accepts as reasonable the concerns itemized by Ms. Linton and Ms. Stylianos, as set out above, respecting the manner in which Ms. Athanasiu handled the situation with Student "X". The Board accepts as reasonable the College's concern that a continuation of Ms. Athanasiu in the position of counselor would have put at risk the safety of the students and would have run counter to the due exercise of responsibility on the part of the College. The Board further accepts as reasonable the College's assessment that Ms. Athanasiu did not possess the personal characteristics and skills to be suitable or qualified for the position of counselor and that no amount of training would have changed her lack of suitability. The College acted reasonably, without bad faith, and without arbitrariness or discrimination. Accordingly, the Board finds that in

transferring Ms. Athanasiu out of the position of counselor to the position of professor, with no loss of pay, the College acted within its rights under the collective agreement.

In the result, respecting grievance 01-24, for the reasons set out above, the Board finds that the College did not act in breach of the collective agreement in transferring Ms. Athanasiu out of the position of counselor. Moreover, for the further reasons set out above, respecting grievance 01-10, the Board is satisfied that the College acted in accordance with its rights under the collective agreement when it initially suspended Ms. Athanasiu from exercising her counseling duties pending the investigation.

Accordingly, the grievances of Ms. Athanasiu are, hereby, dismissed.

Dated at Toronto this 16<sup>th</sup> day of May, 2003.



Pamela Cooper Picher  
Chair  
s.c.

I dissent.

"Michael Sullivan"

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Union Nominee

I concur.

"Robert Gallivan"

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College Nominee