

**DISCIPLINE COMMITTEE  
OF THE COLLEGE OF EARLY CHILDHOOD EDUCATORS**

Citation: College of Early Childhood Educators vs Bryan Edward Robinson,  
2017 ONCECE 1  
Date: 2017-02-16

IN THE MATTER OF the *Early Childhood Educators Act, 2007*, S.O. 2007, c. 7, Sched. 8 (the  
“ECE Act”) and the Regulation (Ontario Regulation 223/08) thereunder;

AND IN THE MATTER OF discipline proceedings against Bryan Edward Robinson, a current  
member of the College of Early Childhood Educators.

PANEL: Barbara Brown, RECE, Chair  
Karen Damley  
Sophia Tate, RECE

BETWEEN:	)	
COLLEGE OF EARLY CHILDHOOD	)	Jill Dougherty, Lara Kinkartz
EDUCATORS	)	WeirFoulds LLP,
	)	for the College of Early Childhood Educators
	)	
- and -	)	
	)	
BRYAN EDWARD ROBINSON	)	Robyn White, Aruna Dahanayake
REGISTRATION # 21135	)	Cavalluzzo Shilton McIntyre Cornish LLP,
	)	for the Member
	)	
	)	
	)	Erica Baron,
	)	McCarthy Tétrault LLP,
	)	Independent Legal Counsel
	)	
	)	Heard: November 16-20 & 30, 2015, December
	)	4, 14-15, 2015, January 18 & 30, 2016,
	)	February 23, 2016, March 4, 2016, April 11, 15
	)	& 22, 2016, May 30, 2016, June 7 & 9, 2016
	)	

## **Introduction**

1. Bryan Robinson (the “Member”) is alleged to have engaged in professional misconduct relating to an event that took place at Walter Gretzky Elementary School (the “School”) where he worked as a registered early childhood educator (RECE). It is alleged that on or around January 17, 2014, Mr. Robinson sexually abused a four-year-old student in his class. In these reasons she will be referred to as [child 1]. The alleged sexual abuse took place at the School in a room adjacent to the junior kindergarten classroom when Mr. Robinson and [child 1] were alone in the room.

## **Publication Ban**

2. A motion was made by the College for an order excluding the public from part of the hearing and for a publication ban regarding the identity of, or information that could disclose the identity of, any person who is under 18 years of age and is the subject of evidence in this hearing. The motion was heard on November 18, 2015 at the College of Early Childhood Educators.
3. On hearing the submissions of counsel for the College and counsel for the Member and the advice of Independent Legal Counsel, the Discipline Committee ordered that no person shall publish the identity of, or any information that could disclose the identity of, any person who is under 18 years old and is the subject of evidence in this hearing. The Discipline Committee also ordered that the public be excluded from any part of the hearing during which the videotaped statements of [child 1] and her mother, W.Y. are played and any part of the hearing during which the contents of those videotaped statements are discussed by any witnesses in this proceeding on or after November 18, 2015.

## **Allegations**

4. The allegations against the Member as stated in the Notice of Hearing are as follows:

- a) He abused physical, sexually, verbally, psychologically or emotionally a child under his professional supervision, contrary to Ontario Regulation 223/08 2(3);
- b) He failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, in that:
  - (i) He failed to maintain safe and healthy learning environments, contrary to Standard III.A.1;
  - (ii) He failed to recognize that he is a role model for children, families, members of his profession and other colleagues and avoid conduct which could reasonably be perceived as reflecting negatively on the profession of early childhood education, contrary to Standard IV.E.2
  - (iii) He abused physically, sexually, verbally, psychologically or emotionally a child under his professional supervision, contrary to Standard V.A.1; and,
  - (iv) He failed to establish and maintain clear and appropriate boundaries in professional relationships (including relationships with children under his professional supervision) and not violate those boundaries, contrary to Standard V.B.
- c) He acted in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 223/08 2(10); and

- d) He conducted himself in a manner that is unbecoming a member, contrary to Ontario Regulation 223/08 2(22).

### **Particulars of the Allegations**

5. The particulars of the allegations against the Member as stated in the Notice of Hearing are as follows:

1. Now and at all times relevant to the Allegations in this 'Schedule of Allegations,' Bryan Edward Robinson (the "**Member**") was registered as an early childhood educator with the College of Early Childhood Educators (the "**College**").
2. From in or about September 2012 until in or about January 21, 2014, the Member worked as a Designated Early Childhood Educator in the junior kindergarten class at Walter Gretzky Elementary School (the "**School**").
3. On or around January 17, 2014, [child 1] was a four-year-old student at the School in the junior kindergarten class in which the Member worked.
4. On or around the afternoon of January 17, 2014, while inside the school with [child 1], the Member:
  - (i) brought [child 1] into a separate room adjacent to the junior kindergarten classroom, where he was alone with the child;
  - (ii) put his hand into the front of [child 1]'s pants, rubbed her on her vaginal area, and/or put his finger(s) into her vagina.

5. On or about the evening of January 17, 2014, [child 1]:
  - (i) informed her mother, W.Y., and a family friend, L.D., that the Member touched her on her vagina/in her vaginal area; and
  - (ii) demonstrated the way in which she was touched by the Member.
6. Upon learning of what transpired, Z.Y., the father of [child 1], reported the incident to the Brantford Police Service, on or about January 17, 2014.
7. The Brantford Police Service conducted an investigation which included, among other things, a videotaped interview with [child 1] on or about January 20, 2014.
8. On or around January 21, 2014, the Member was charged with sexual assault and sexual interference involving a four-year-old child, in relation to his alleged touching of [child 1].
9. On or about January 22, 2014, the Ministry of Education notified the College that the Member had been criminally charged with sexual assault and sexual interference.
10. Subsequently, on or about February 4, 2014, the Member's employer, the Grand Erie District School Board, made an employer's report to the College, confirming that the Member had been criminally charged with sexual assault and sexual interference
11. On or about November 10, 2014, the criminal charges against the Member were withdrawn due to the unavailability of W.Y. and [child 1] to testify at the criminal trial.

## **Member's Plea**

6. Mr. Robinson denied the allegations of professional misconduct as stated in the Notice of Hearing.

## **Decision**

7. Having considered the Exhibits filed, the testimony of each of the witnesses and the submissions made by College counsel and the Member, the Discipline Committee finds that the facts support a finding of professional misconduct as alleged in the Notice of Hearing. Specifically, Bryan Edward Robinson, RECE (the "Member") is guilty of professional misconduct as defined in subsection 33(2) of the ECE Act, in that:

- a) He abused physically, sexually, verbally, psychologically or emotionally a child under his professional supervision, contrary to Ontario Regulation 223/08 2(3);
- b) He failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, in that:
  - i. He failed to maintain safe and healthy learning environments, contrary to Standard III.A.1;
  - ii. He failed to recognize that he is a role model for children, families, members of his profession and other colleagues and avoid conduct which could reasonably be perceived as reflecting negatively on the profession of early childhood education, contrary to Standard IV.E.2;
  - iii. He abused physically, sexually, verbally, psychologically or emotionally a child under his professional supervision, contrary to Standard V.A.1; and,

- iv. He failed to establish and maintain clear and appropriate boundaries in professional relationships (including relationships with children under his professional supervision) and not violate those boundaries, contrary to Standard V.B,
- c) He acted in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 223/08 2(10); and
- d) He conducted himself in a manner that is unbecoming a member, contrary to Ontario Regulation 223/08 2(22)

### **Evidence Considered**

#### ***Witness #1 – Z.Y., Father of [child 1].***

8. Z.Y. is the father of [child 1]. He and his wife, W.Y. moved to Canada in 2011. [Child 1], began Junior Kindergarten in the fall of 2013, when she was three-years-old. He describes [child 1] as a very open-minded, smart and happy child. He states that on Friday, January 17, 2014, he called his wife and [child 1]'s mother, W.Y., on her cellphone when he finished work to let her know that he was on his way home. When he arrived home approximately 20 minutes later, he found W.Y. crying in the living room. He was informed by W.Y. that [child 1] was in another room speaking with Laura Dowler, a family friend and social worker.
9. Z.Y. explains that after Ms. Dowler had spoken with [child 1], the police were contacted and informed that [child 1] had been sexually abused at school. A police officer, who Z.Y. was unable to recall the name of during his testimony, arrived at the family home that evening. The officer spoke with Z.Y. and W.Y., who explained to him what [child 1] had disclosed. Following their discussion, the officer directed W.Y. and Ms. Dowler to go to the police

station to give a statement. At the suggestion of police dispatch, while W.Y. and Ms. Dowler were at the police station, Z.Y. took [child 1] to the hospital, where she had a full-body check-up. Z.Y. indicates that [child 1]'s medical examination was completed between 8:30 and 9:00 p.m.

10. Z.Y. testifies that over the weekend of January 18-19, 2014, he and W.Y. did not discuss what [child 1] had disclosed about Mr. Robinson and that [child 1] had not disclosed any information directly to him. On Sunday, January 19, 2014, Z.Y. and W.Y. were contacted by Sergeant Tollar of the Brantford Police. Sergeant Tollar requested that [child 1] be taken to the police station on Monday, January 20, 2014, to give a statement. On Monday, January 20, 2014, Z.Y. and W.Y. took [child 1] to the police station where she gave her statement.
11. Z.Y. describes how he observed [child 1]'s interview with Sergeant Toller via closed-circuit television at the police station. He indicates that this was the first time he had heard [child 1] explain what had happened to her and that he was shocked to hear her describe the event.
12. Following the incident, neither [child 1] nor her older sister [child 2], attended school for several days. Z.Y. and W.Y. were aware that Mr. Robinson was not going to be at the School, but that they kept their daughters home for a week because they were not certain what would happen at the School.
13. In the weeks following the alleged sexual abuse, Z.Y. observed a behaviour change in [child 1], specifically, that she began masturbating. Z.Y. also notes that [child 1] began to distance herself from men, where prior to the incident, she did not have an issue interacting with male friends or family members.

14. W.Y. became disconnected from her family and friends after the event of January 17, 2014 and started taking additional anti-depressant medication, sleeping pills and drinking alcohol. Z.Y. testifies that the situation completely changed W.Y.'s personality and not even he could get through to her. He believes this led to the couple's separation in July 2014. In September 2014, W.Y., [child 1] and [child 2] went to Z.Y.'s and W.Y.'s home country of Austria for four weeks to give W.Y. a chance to clear her head. However, when they returned to Canada in October 2014, W.Y.'s situation had not improved at all. It was at this time that Z.Y. and W.Y. decided that W.Y. would move to Austria with the children.
15. Z.Y. explains that arrangements were made for W.Y. and the children to move to Austria before they knew the date of Mr. Robinson's trial. Since W.Y. and the children's travel arrangements were scheduled for November 2014, which was prior to the trial date, they did not end up testifying at the trial. However, Z.Y. indicates that, in the time leading up to the trial, he did not want [child 1] to testify because he did not want her exposed to the situation again.
16. Z.Y. stated that in early September 2015, the College provided him with a letter about the possibility of W.Y. and [child 1] testifying at the hearing and requested that he pass the letter on to W.Y. Z.Y. indicated that he e-mailed the letter to W.Y. He and W.Y. did not want [child 1] testifying at the College's disciplinary hearing against Mr. Robinson.

***Witness #2 – Laura Dowler***

17. Laura Dowler is a social worker and is registered with the Ontario College of Social Workers and Social Service Workers. She has been working in private practice since 2012, focusing on trauma and relationship issues. In 2004, she completed the Police Foundations course at Mohawk College. She also earned a Bachelor of Arts (Honour) in Criminology and General

Contemporary Studies in 2007 as well as a Master's of Social Work, Clinical Stream, in 2010, from Wilfred Laurier University. Since 2011, Ms. Dowler has taught 15 courses in the Criminology department at Wilfred Laurier University.

18. Ms. Dowler and her family had a very close relationship with Z.Y. and his family from 2012 to 2014. The two families would spend a great deal of time together, from regular movie nights to holidays. Ms. Dowler described W.Y. prior to January 17, 2014 as her best friend and the most loving, wonderful mother that she had ever met. Personality wise, W.Y. was happy, silly and liked to have fun. While W.Y. was not an extrovert, she was very open with the people who she was comfortable with. Ms. Dowler described [child 1] as happy, bubbly, loving, caring and close to her sister, [child 2]. Ms. Dowler found [child 1] to be intelligent and fairly articulate.
19. On January 17, 2014, Ms. Dowler arrived home from work at approximately 5:30 p.m., just as W.Y. was calling her home phone. Ms. Dowler could not get to the phone in time, but seeing that it was W.Y. calling, she planned on returning the call as soon as she took her shoes off. Before she had a chance to call W.Y. back, W.Y. called Ms. Dowler's cellphone.
20. Following the phone call, Ms. Dowler drove to W.Y.'s house, which is a street over in the same subdivision. When she arrived at the home, Ms. Dowler talked to [child 1] in W.Y.'s and Z.Y.'s bedroom. She asked [child 1] about what she had disclosed to W.Y. regarding the alleged incident involving Mr. Robinson that occurred earlier that day. The police were then contacted.

21. A police officer arrived at the home and spoke with Z.Y., W.Y. and Ms. Dowler about what [child 1] had disclosed. It was recommended that [child 1] be taken to the hospital and that Ms. Dowler and W.Y. go to the police station to videotape their statements, which they did.
22. The police recommended that [child 1] receive counselling, and as Ms. Dowler is a social worker, W.Y. wanted Ms. Dowler to counsel [child 1]. Ms. Dowler was reluctant to provide counselling to [child 1] in light of the fact that she is a close family friend and declined W.Y.'s request several times. Ms. Dowler was concerned that the conflict of interest would compromise the objectivity of the counselling; however, as she wanted [child 1] to have a safe place to be able to talk about the alleged incident, she agreed to do it. For a short time, Ms. Dowler provided counselling to [child 1].
23. Ms. Dowler indicates that in the weeks following January 17, 2014, she observed [child 1] become dysregulated if Mr. Robinson was mentioned. [Child 1] would go from being her regular self to ignoring Ms. Dowler, jumping up and down, throwing things and being unable to focus. Ms. Dowler testifies that this behaviour was unusual for [child 1]. At the time of the counselling, Ms. Dowler concluded that mentioning Mr. Robinson caused [child 1]'s dysregulation, because it was not until his name was mentioned that her demeanour changed and it happened on more than one occasion. With respect to [child 1]'s reported self-stimulation following January 17, 2014, at the time Ms. Dowler was counselling [child 1], she was of the view that children tend to re-enact their victimization, either with themselves or other children, depending on the degree and nature of the abuse.
24. In 2014, Ms. Dowler felt that it would be traumatizing for [child 1] to testify in Mr. Robinson's criminal trial. She explained that, due to [child 1]'s young age, she may not know how to deal with trauma or may not have the support at home to help her with that. It would not

be fair for [child 1] to re-experience the memory of the event because it could feel like she is in that situation all over again. She also noted that Mr. Robinson's name could not be mentioned in front of [child 1] so she would be unable to recount in front of a room full of strangers.

***Witness #3 – Detective Mark Whitworth, Brantford Police Service***

25. Detective Mark Whitworth has been a police officer with the Brantford Police Service since 1999. From 1999 to 2006, he was assigned with the Uniform branch, performing Uniform duties. In May 2006, he began working in the criminal investigation section as part of what was then known as the Vice Unit. The Vice Unit has since been renamed the Child Abuse Sex Assault (CASA) Unit. In September 2010, he was transferred to the Major Crime Unit where he currently works.
  
26. Detective Whitworth has investigated between 75 and 100 cases of alleged child abuse over his career with the Brantford Police Services.
  
27. On January 17, 2014, Detective Whitworth was working as part of the Major Crimes Unit. He was notified by the Uniform staff sergeant in charge of the station that there was a call in progress involving an allegation of abuse involving an employee of the school against a kindergarten-aged child and that he was going to be receiving a call from the investigating Uniform officer, which he did. Detective Whitworth spoke with Constable Cabral, the Uniform officer dispatched to take the call, regarding the immediate next steps of the investigation. Detective Whitworth directed Constable Cabral to get the information from the adults present, not to speak to the child unless it was absolutely necessary and then to take the child or arrange to have the child taken to the Brantford General Hospital for evaluation. He also requested Constable Cabral to bring W.Y. and Ms. Dowler to the station so he could conduct videotaped interviews.

28. As the allegations involved a school, Detective Whitworth's supervisor requested that he do whatever he could to assist whoever was going to be assigned to the investigation. As Detective Whitworth understood it, his job at the time was to get the initial information with respect to the specific allegation on video from W.Y. and other witnesses in order to assist the person who would ultimately be assigned to the case. At approximately 8:34 p.m. on January 17, 2014, W.Y. and Ms. Dowler arrived at the police station. Detective Whitworth interviewed W.Y. on video first, followed by Ms. Dowler, also on video.

29. Detective Whitworth described W.Y.'s emotional state as upset, but under control and able to relate the details as needed. He felt that W.Y.'s response to the situation was appropriate and had the impression that she had a sense of disbelief of what she was speaking about.

30. At the end of the interview, Detective Whitworth requested that W.Y. refrain from asking [child 1] anymore questions until after [child 1] has been interviewed by police in order to ensure that the version of events [child 1] tells police is as close to the original version she disclosed. Detective Whitworth did not have any concerns that W.Y. coached [child 1] into disclosing the alleged event because there was no apparent reason for W.Y. to fabricate the alleged event as she indicated that she liked Mr. Robinson. Following W.Y.'s interview, Detective Whitworth interviewed Ms. Dowler.

31. From an investigations standpoint, Detective Whitworth did not think it was ideal for Ms. Dowler to have asked [child 1] questions about the reported event before her police interview; however, the way in which the questions were handled did not cause him any concern, nor did he have reason to believe that Ms. Dowler coached [child 1] in any way.

***Witness #4 – Lindsay Parrott, College of Early Childhood Educators***

32. Lindsay Parrott has been the Manager, Intake and Investigations at the College of Early Childhood Educators since September 2015. Prior to this role, she was in the position of Intake and Investigations Coordinator at the College of Early Childhood Educators, which she began in 2013. As the Intake and Investigations Coordinator, Ms. Parrott oversaw the Intake and Investigations process when any information was submitted to the College, which included handling the investigation of the allegations against Mr. Robinson.
33. On January 22, 2014, Rupert Gordon with the Ministry of Education e-mailed Sue Corke, Registrar of the College, to notify her of a media article indicating that Mr. Robinson had been charged with sexual assault and sexual interference. On February 4, 2014, Ms. Parrott received the Mandatory Employer Report, as required, from the Grand Erie District School Board.
34. As a standard in any matter where there have been criminal charges, Ms. Parrott contacted Mr. Robinson on February 6, 2014 to determine whether he was open to signing an undertaking and agreement not to practise. Mr. Robinson was not home, so Ms. Parrott left a message with the individual who answered the phone. Ms. Parrott contacted Mr. Robinson again on February 10, 2014, at which time she was able to briefly speak with him. Mr. Robinson indicated that he would be amenable to reviewing the document, which Ms. Parrott sent to him by e-mail.
35. On February 13, 2014, the Executive Committee of the College agreed to put the College's investigation on hiatus until the conclusion of the criminal matter. Ms. Parrott explained that during a hiatus, the College does not conduct an investigation to avoid interfering with the criminal proceedings.

36. On November 11, 2014, Robyn White notified the Registrar that the criminal charges against Mr. Robinson had been withdrawn and on December 15, 2014, Ms. White provided a brief transcript from the court confirming withdrawal of the charge.
37. On December 10, 2014, Ms. Parrott contacted Sergeant Tollar, who verified that the charges had been withdrawn. It was also on this day that the Executive Committee approved Ms. Parrott's appointment as Investigator. This allowed Ms. Parrott broader authority for obtaining information. Along with the appointment of investigator, the Registrar signed the request to initiate investigation, which signals the filing of a formal complaint. That information was put in a member notification letter and sent to Mr. Robinson.
38. On December 11, 2014, Ms. Parrott took the information the College had about Mr. Robinson to the Complaints Committee as a request for direction to confirm whether they wished to continue the investigation given the withdrawal of the charges. The Complaints Committee indicated that they did wish to continue. It was also on this day that Ms. Parrott contacted Gary Holden, who is in records management at the Brantford Police Service, and sent him a copy of her appointment as Investigator and the relevant legislation. On December 17, 2014, Ms. Parrott received records of the Brantford Police Service relating to Mr. Robinson's investigation.
39. On January 15, 2015, Ms. Parrott spoke with Sharon Bell, Manager of Human Resources for the Grand Erie District School Board, requesting that she provide her with the contact information for Z.Y., as Ms. Parrott knew that Ms. Bell had been in touch with him. Due to the Board's confidentiality policies, she was prohibited from sharing Z.Y.'s information with Ms. Parrott, but Ms. Bell did agree to provide Z.Y. with Ms. Parrott's contact information.

40. On January 26, 2015, the College received Mr. Robinson's response to the allegations in the member notification letter.
41. On February 6, 2015, the Complaints Committee considered the information in the College's possession relating to Mr. Robinson's matter. The Complaints Committee determined that further information was required before it could reach a decision.
42. On March 2, 2015, Ms. Parrott spoke with Meaghan Redpath, who worked with Mr. Robinson in the junior/senior kindergarten class at the School.
43. It became evident to Ms. Parrott that Z.Y. did not wish to reach out to her, so on March 3, 2015 Ms. Parrott conducted internet searches in order to find any additional information on Z.Y. While she was unable to locate a home phone number for Z.Y., she was able to locate a LinkedIn profile for an individual named Z.Y. who appeared to reside in Brantford. The LinkedIn profile listed a current employer whose phone number Ms. Parrott was able to confirm. Given that Ms. Parrott was unable to determine with one-hundred percent certainty that the LinkedIn profile she found belonged to the correct Z.Y. and given that it was a very sensitive and personal matter, Ms. Parrott did not feel that it was appropriate to contact the work number.
44. On March 3, 2015, Ms. Parrott also conducted an internet search for W.Y. Using her personal Facebook account, Ms. Parrott was able to locate an individual by the name of W.Y. who appeared to reside in Austria and appeared to have visited Canada and possibly resided in Canada for a period of time. However, that profile did not have any personal contact information for the individual. Since Ms. Parrott did not know what W.Y. looked like, she did not feel comfortable verifying that the profile she found was the correct profile. Ms.

Parrott also indicates that, as she was using her personal Facebook account, she did not feel that it was appropriate to reach out, given that Ms. Parrott does not indicate her employer on her Facebook profile. As such, it was determined that Facebook would not be used as an avenue for contacting W.Y.

45. On March 9, 2015, Ms. Parrott received Z.Y.'s information through the Board.

46. On March 11, 2015, Ms. Parrott spoke very briefly with Ms. Dowler about her ability to cooperate in the College's investigation.

47. On April 11, 2015, the Complaints Committee reviewed the matter with the additional information and decided to refer it to a disciplinary hearing. At the time the Complaints Committee made the referral, the College did not have in its possession any of the videotapes from the police or from any other source.

48. In early September 2015, Ms. Parrott was notified by College counsel that they had been able to locate Z.Y. and that he had indicated a willingness to forward any College communication to W.Y. Ms. Parrott indicates that prior to this time she had no other way of contacting W.Y. On September 4, 2015, Ms. Parrott drafted a letter to W.Y. explaining to her what the College was, the on-going process and asking her whether she may be willing to cooperate or allow [child 1] to cooperate. The letter also described several ways in which the Discipline Committee might allow W.Y. to participate in the proceeding, such as by videoconference or teleconference, as well as measures that could be made available to vulnerable witnesses, such as placing a screen between the witness and Mr. Robinson or a closed circuit television.

49. On September 14, 2015, Ms. Parrott received an e-mail from W.Y., indicating that she was unwilling to participate in the disciplinary hearing. Ms. Parrott testifies that this was the first time that she received W.Y.'s e-mail address. Ms. Parrott maintains that Z.Y. mistakenly believes that he provided W.Y.'s e-mail address to the College, or that he provided the address to someone at the College other than Ms. Parrott, although she believes this to be unlikely. Ms. Parrott sent W.Y.'s e-mail to College counsel, who responded to W.Y. Ms. Parrott is of the view that upon receiving College counsel's letter, W.Y. indicated that she would be open to consider participation in the hearing, but that she was looking at participating through electronic means. As such, on October 15, 2015, Ms. Parrott sent her a letter asking her to explain her request for a video conference. Ms. Parrott indicates that a summons to witness was issued to W.Y.; however, W.Y. later determined that she no longer wished to participate in the hearing. On October 22, 2015, Ms. Parrott was copied on a letter from College counsel to W.Y., confirming that she would no longer be participating in the hearing.

***Witness #5 – Rosamund Taylor, Brant Family and Children Services***

50. Rosamund Taylor has a Bachelor of Arts in sociology and a Bachelor of Social Work, both from McMaster University. She is currently employed at Brant Family and Children Services, which is part of the Ontario Association of Children's Aid Societies (OACAS). Her job tasks at the Brant Family and Children Services included monitoring children's placements, interviewing children, counselling and managing the relationship between children and their foster home.

51. She explains that the Brant Family and Children Services investigate allegations of child abuse and child neglect, at institutions and within families. Working under the Child Family Services Act, the Brant Family and Children Services has the authority to conduct

investigations, apprehend children, administer adoptions and handle other general child welfare tasks. Under the provincial legislation, the OACAS gives the Brant Family and Children Services the parameters within which to do their work, so they have tools at their disposal through the legislation. Children's Aid Societies (CAS) are the only community organizations with the ability and authority to verify or not verify child abuse or neglect.

52. Ms. Taylor indicates that she was the Intake Worker and Case Manager in the Brant Family and Children Services' investigation into Mr. Robinson as of January 22, 2014. On January 22, 2014, Ms. Taylor conducted a home visit and interviewed [child 1] and W.Y. When Ms. Taylor began the interview, [child 1] appeared to be very lively and bubbly; however, after she asked [child 1] about what she had discussed with the police officer, [child 1] became very quiet and withdrawn and she changed the subject. At the time of the interview, Ms. Taylor believed that the change in [child 1]'s demeanour meant that she had been talking to the police officer about something that bothered her. In Ms. Taylor's experience, if a child changes their demeanour quite drastically, it means that there is something else that has happened, which is bothering them and making them anxious. [Child 1] did not make any disclosure directly to Ms. Taylor regarding the alleged incident with Mr. Robinson.

53. Ms. Taylor's assessment of the home environment at the time it was conducted was that it was very neat, clean and that there were lots of toys and room to play for the children. At no time did Ms. Taylor believe that the children may have been exposed to inappropriate sexual material or pornography. Ms. Taylor did not see electronics that could connect to the internet that were accessible to the children, there were no places that the children could get to if they were unsupervised where they would have access to such material and there were age appropriate toys for the children to play with.

54. During the Brant Family and Children Services investigation, Ms. Taylor was looking out for signs that Mr. Robinson demonstrated “grooming behaviours” towards [child 1]. Specifically, she was looking to see if Mr. Robinson had time alone with [child 1] before the alleged incident of January 17, 2014.
55. Ms. Taylor did not interview Mr. Robinson as he was unwilling to participate in the Brant Family and Children Services investigation, which is standard in matters involving educators.
56. On January 22, 2014, Ms. Taylor viewed the videotaped police interview of [child 1] during her investigation into the matter. She noted [child 1]’s timeline and description of events was consistent with what she disclosed to Ms. Dowler previously. Ms. Taylor testifies that this consistency led her to believe, at that time, that [child 1]’s disclosure is credible. Her impression of the way in which the interview was conducted was that it was done in a way that elicited a spontaneous disclosure and was in line with forensic interviewing. Ms. Taylor finds it significant when, in [child 1]’s videotaped police interview, [child 1] changed the subject and body language when Mr. Robinson’s name was mentioned, because [child 1] also did this when Ms. Taylor interviewed her. Ms. Taylor interprets [child 1]’s response to mean she did not want to talk about Mr. Robinson and that what had allegedly happened to her was uncomfortable. Ms. Taylor notes that there are instances where [child 1] changed the subject when both Ms. Redpath’s and Mr. Robinson’s names were mentioned.
57. At the time Ms. Taylor conducted her investigation, she felt that if [child 1] had to testify at a criminal proceeding against Mr. Robinson, it would re-create the traumatic events that Ms. Taylor believed [child 1] had experienced as [child 1] had not received therapeutic counselling.

58. Ms. Taylor indicates that she was initially concerned that Ms. Dowler had spoken to [child 1] before the police had; however, after learning in her investigation that Ms. Dowler is a trained social worker and knew how to properly conduct an interview, her concerns diminished.

59. The investigation conducted by the Brant Family and Children Services verified the abuse by Mr. Robinson. Ms. Taylor explains that the standard for verifying abuse at the Brant Family and Children Services is that the majority of the evidence indicates the abuse likely occurred.

***Witness #6 – Sergeant Keith Tollar, Brantford Police Service***

60. Sergeant Keith Tollar has been with the Brantford Police Service since 1998 and currently holds the position of Uniform Patrol Sergeant. He first became involved in the police investigation involving Mr. Robinson on January 18, 2014. On that day, Sergeant Tollar reviewed the notes that were submitted by Constable Cabral and Detective Whitworth regarding an alleged sexual assault investigation that occurred on Friday, January 17, 2014.

61. Sergeant Tollar first met with [child 1] and her parents on January 20, 2014 at the Brantford Police Service. At 11:30 a.m., Sergeant Tollar began a videotaped interview with [child 1], which W.Y. and Z.Y. observed from a separate room on a closed circuit television. Sergeant Tollar began the interview by assessing the personality and intelligence level of [child 1] as well as qualifying the importance of telling the truth. Based on his interview with [child 1], Sergeant Tollar found [child 1] to be very intelligent for her age and she demonstrated that she understood the difference between the truth and a lie.

62. During his interview with [child 1], she identified she was alone in a room with Mr. Robinson and at that point, jumped off the couch, pulled down her pants, opened her underwear and placed her hand on her vagina. This demonstration concerns Sergeant Tollar because not only did she pull open her pants, but she pulled open her underwear, suggesting that there was actual contact to her vaginal area underneath her clothes. Sergeant Tollar testifies that in his experience investigating these types of cases, [child 1]'s demonstration was the most concrete. At the time [child 1] made the demonstration, Sergeant Tollar formed reasonable grounds that the offence had been committed and to charge Mr. Robinson with sexual assault and sexual interference.

63. Sergeant Tollar does not believe that [child 1] had been coached into making the disclosure because there was nothing to suggest that the parents or [child 1] were in anyway displeased with Mr. Robinson. Sergeant Tollar spoke to the parents in the lobby prior to [child 1]'s interview and they spoke highly of Mr. Robinson and [child 1] appeared to really like him. Sergeant Tollar had not interviewed W.Y. or Z.Y. in the course of his investigation.

64. On January 20, 2014, Sergeant Tollar contacted Mr. Robinson by phone and arranged an interview, which Mr. Robinson did not attend as he was waiting to speak to legal counsel. Sergeant Toller then called Mr. Robinson and advised him that he was going to be charged with sexual assault and sexual interference on a four-year-old from the School. Mr. Robinson did not react to the information, nor did he ask who the child was. Sergeant Tollar advised Mr. Robinson that if he did not turn himself in at the police station, he would be issuing a warrant for his arrest. Sometime after the phone call with Mr. Robinson, Sergeant Tollar received a phone call from Robyn White, advising that she was going to get Mr. Robinson to turn himself in after he spoke to a criminal lawyer.

65. Sergeant Tollar is not concerned that the alleged sexual offence occurred in a public place or in a short period of time. He explains that it was clear that the sexual abuse did not go further than fondling, which could happen in a matter of seconds, and that fondling and sex offences do occur in public places quite frequently.

***Witness #7 – Kaitlyn Walker***

66. Kaitlyn Walker is a long term occasional teacher with the Board. In October, November and December 2013, Ms. Walker was teaching at the School in a kindergarten class with Mr. Robinson. She did not know Mr. Robinson prior to October 2013.

67. Ms. Walker testifies that [child 1] was one of the students in the class she taught with Mr. Robinson. She describes [child 1] as a late bloomer, bubbly and liked to do what she wanted to do. Although [child 1] was capable, she required some assistance.

68. Ms. Walker explains that there were four kindergarten classrooms at the School. Next to the classroom where she and Mr. Robinson taught, there was another kindergarten classroom and on the other side of their classroom was an empty room used for the Y program. The Y program occurred before and after school.

69. Ms. Walker maintains that the students really liked Mr. Robinson and described him as a “big kid.” In terms of Mr. Robinson’s relationship with [child 1], Ms. Walker indicates that it was normal and that Mr. Robinson was nice to her as he was to everyone. At the end of the day, Ms. Walker and Mr. Robinson would allow the students to get ready to go home on their own. She indicates that if a student had trouble getting dressed on their own, for instance if a zipper was stuck, the student would be directed to ask a friend for assistance first. When the students were dressed and ready to go home, they would line up in front of

the door and once the majority of students were lined up, the majority of the time, Ms. Walker would take them outside and their parents would pick them up at the side gate. Mr. Robinson would stay behind and wait with the remaining students who were still getting ready to leave and would send the students outside one by one as they were ready to leave. [Child 1] was usually the last student out of the classroom at the end of the day.

70. Ms. Walker describes a Smartie incentive system that she and Mr. Robinson used to encourage the students to get ready on their own. As the children got dressed, they got a Smartie.

***Witness #8 – Meaghan Redpath***

71. Meaghan Redpath is a kindergarten teacher at the School and has worked there since it first opened. Ms. Redpath was away from the School on maternity leave from September 2012 until January 2014. When she returned to the School on January 6, 2014, she was assigned to the kindergarten classroom with Mr. Robinson. This was Ms. Redpath's first experience working in a full-day kindergarten program with an early childhood educator and her first time working with Mr. Robinson.

72. Ms. Redpath first met Mr. Robinson at a teacher and early childhood educator learning session prior to her maternity leave and a few times during her maternity leave when she would visit her colleagues at the School. She indicates that Mr. Robinson had a good rapport with the students and parents, worked hard and that he took his job very seriously. He seemed more comfortable with the students than with his colleagues and describes him as quite flustered.

73. Ms. Redpath indicates that she only worked with Mr. Robinson for five days in the classroom with the students.
74. A few times a week, Ms. Redpath and Mr. Robinson would split the junior and senior kindergarten students to focus on the students' ability level, rather than as a large group. Ms. Redpath would usually take the senior kindergarten students into the Y room, when it was available, and Mr. Robinson would stay with the junior kindergarten students in the main classroom.
75. Ms. Redpath indicates the Y room was used for the before and after school program. The Y program staff typically arrived a little before 3:00 p.m. and would then go around the school to collect the students and bring them back to the Y room between 3:00 and 3:05 p.m.
76. Ms. Redpath taught [child 1] for her second half of junior kindergarten and senior kindergarten until her family moved. She describes [child 1] as happy, sweet, talkative and very young – the youngest in the school for a period of time. Compared to the other students in the class, [child 1] required a lot of assistance and would get easily distracted. Ms. Redpath indicates that Mr. Robinson would typically help her. Ms. Redpath described Mr. Robinson's interactions with [child 1] as caring - he knew that she needed assistance and was always happy to help her and he seemed to know when she needed help and when she did not.
77. Ms. Redpath testifies that on January 17, 2014, the students got ready to go home by their cubbies and the classroom door with the door to the classroom closed to prevent anyone from entering or leaving the room. At 3:00 p.m., once most of the students were ready, Ms. Redpath took them outside to the kindergarten pen to meet their parents who waited by the gate. Mr. Robinson remained inside with the students who were not finished getting ready

yet, including [child 1], who always required additional assistance getting ready. Ms. Redpath explained that the teacher or educator who would stay behind with the last few students getting ready would dismiss the students out the back door into the kindergarten pen as they were ready. So once a student was ready, they were able to leave. During cross examination, Ms. White informed Ms. Redpath that Mr. Robinson would testify that he took the last group of students out of the classroom to the kindergarten pen and held the doors open for them and that at no point on January 17, 2014 was he alone with [child 1] Ms. Redpath testified that she did not have any reason to dispute this.

78. Ms. Redpath indicates that you were not able to see into her kindergarten classroom or the Y room from where the parents were standing at the gate or where the teachers were standing. There is a film on the windows and that you have to go up to the window to see inside.

79. [Child 1] was the last student out of the School on January 17, 2014 and Ms. Redpath saw her crying as she approached the gate to the kindergarten pen that afternoon. After picking up [child 1] from the gate, W.Y. informed Ms. Redpath that [child 1] was crying and very upset because Mr. Robinson called her a slowpoke.

80. Ms. Redpath spoke to Mr. Robinson about how [child 1] was crying because he had called her a slowpoke. Mr. Robinson was dismissive about it, like it was not a big deal. After their conversation, Ms. Redpath received a call at the office from another parent, so she left to take the call. By the time Ms. Redpath returned to the classroom after the phone call, Mr. Robinson was gone. Ms. Redpath does not recall what time she returned to the classroom after taking the parent's call. During cross-examination, Ms. White advised Ms. Redpath that Mr. Robinson would testify that the School custodian entered the classroom while he was

there with the final group of students who were getting ready to head outside to the kindergarten pen. Ms. Redpath testified that she had no reason to dispute this.

81. On January 21, 2014, Ms. Redpath was interviewed by Sergeant Tollar from the Brantford Police at the School. During the interview, she was asked to recall her day on January 17, 2014 and how long she knew Mr. Robinson. Since Ms. Redpath had just returned to the School after her maternity leave, she was not confident that she could accurately recall the classroom routine as she did not know the time of the bells, prep time or even when the students had art or gym. She answered the questions the best she could under the circumstances, although she realized that she made a lot of mistakes. Following her interview, Ms. Redpath returned to her desk, she was able to recall the details of January 17, 2014 more accurately, so she e-mailed Sergeant Tollar a copy of a timeline she created, which she was confident was accurate as it aligned with the class schedule. The timeline she sent Sergeant Tollar is the same as her recollection of the day's events as she testified to at the hearing and described herein.

82. [Child 1] was out of school for at least two weeks after January 17, 2014, but when she returned, she seemed happy to be back at school with her friends. W.Y. requested that she be informed if a substitute teacher or educator would be in the class with [child 1] If a male was assigned as a supply, the new protocol was that [child 1] was to be sent home or sent to a different classroom for the day. Ms. Redpath states that W.Y. did not want [child 1] around any men, including the principal and the learning resource teacher, and requested that [child 1] only be around women, which the School honoured. When [child 1] would go to another classroom, she would not be told that it was because a male supply would be in her classroom; rather, she would be told that a teacher or educator in another classroom was doing a really fun

activity, and would be offered the opportunity to participate in the activity, which [child 1] happily would.

***Witness #9 – Dr. Timothy Moore, PhD***

83. Dr. Timothy Moore has a Bachelor of Arts in psychology from Carleton University and a PhD in cognitive psychology. He is a registered psychologist and has been teaching psychology at a post-secondary level since 1971. From 1971 to 1973, he was the assistant professor of educational psychology at Temple University in Philadelphia and since 1973, has been an assistant, associate and full professor of psychology at Glendon College, York University. For the past seven or eight years, the focus of his teaching has been in the areas of psychology and law. Since 1995, Dr. Moore has acted as the Chair of the Department of Psychology at Glendon College, York University.

84. Over the past 10 years, Dr. Moore's research focus has been associated with the intersection of cognitive psychology and the criminal justice system. He explains that cognitive psychology – which can be thought of as the science of higher mental processes – has a lot to offer the criminal justice system in that the justice system is so highly dependent upon witnesses' memories for evidence. Dr. Moore has published articles and makes presentations in the areas of child witnesses and children's abilities to recall and relay stories and memories, recommended techniques and professional standards for interviewing children witnesses and the reliability of disclosures.

85. Dr. Moore's work relating to child interviews focuses more on research and teaching and not on conducting forensic investigations. He does not have clinical practice as a psychologist and has not provided counselling or therapy to children who have been victims of sexual abuse.

86. Dr. Moore was qualified in this hearing to provide his expert opinion with respect to children's ability to recall and relay stories and memories; and whether there are recommended techniques or professional standards for interviewing children.

87. Dr. Moore testified that, due to the nature of children's minds, they are suggestible, compliant, cooperative and consequently susceptible to questions and to suggestions made by adults. Children will often try to figure out what it is that is expected of them and provide it. He maintains that even a well-intended but clumsy interview by an interviewer who may believe that they know what happened can produce confirmation of that belief due to leading and suggestive questions containing information. He explained "imagination inflation," which refers to a phenomenon by which an imagined but non-experienced event can, over time, take on an aura of subjective authenticities. So in the context of interviewing children, suggested events may trigger mental activity on the part of the child which could engage them in forming a mental image of the event. The more often they do that, the greater the risk that the imagined event can be mistaken for an experienced event. Consequently, when children report non-experienced events, they are not being deceptive or misleading. They are simply mistaken. However, a child's suggestive belief in the authenticity of what they are reporting makes it difficult to simply listen to their report and make a determination about its veracity because the affect, emotionality, details and demeanor may make it highly convincing. After reviewing the transcript of W.Y.'s police interview, Dr. Moore does not believe that we can rule out that W.Y. asked [child 1] a series of leading and suggestive questions.

88. Dr. Moore noted that there is a distinction between reliability and credibility and clarified that he is speaking to reliability in the context of providing his opinion but not the issue of credibility of [child 1]'s statement.

89. Dr. Moore testified that the research shows that hearsay witnesses are not very good at remembering their role in the elicitation of the information that they obtained from a respondent; they are more likely to remember what was said to them rather than what questions they asked. The research demonstrates that there is an underreporting of the extent to which leading or suggestive questions may have elicited the information that the child provides. As such, it is possible that exchanges between [child 1] and W.Y. or other adults prior to the police interview could have affected the reliability of what she reported on January 20, 2014.

90. Dr. Moore explains that the National Institute of Child Health and Development (NICHD) Protocol provides structure for how interviewers should go about interviewing children about forensic matters. One of the important features of the NICHD procedure consists of eliciting from the child a promise to tell the truth. He indicates that research has shown that such assurances, when obtained, have a truth-promoting effect. Dr. Moore notes that in [child 1]'s police interview, Sergeant Tollar coaxed out of her that the truth is the best thing, which is not the ideal way to put it because it invites assent on the part of the child. However, he does not think that because of that error of omission that there is a risk that [child 1] was not telling the truth. With respect to Sergeant Tollar mentioning Mr. Robinson's name, Dr. Moore indicates that the Protocol warns against it; however, agreed that [child 1]'s statement to Sgt. Tollar appeared spontaneous.

91. Dr. Moore testified that in the College expert, Lynn Barry's report, she states that studies have found that children enact their memories by enacting, which he considers a generalization and is not demonstrated by the study she refers to. Dr. Moore is of the view that the study, which was conducted in 1987, demonstrates that children are compliant and

the study has not been cited since. With respect to [child 1]'s demonstration of the alleged abuse, Dr. Moore does not believe that it enhances the reliability of the disclosure.

92. Dr. Moore agrees with Ms. Barry's report in that repeated interviewing can be beneficial and the studies she cites demonstrate that, with the caveat that the interviews are properly conducted. His concern is that [child 1] provided her account of the alleged offence three times to W.Y., Laura Dowler and to Sergeant Tollar. Since the first two interviews were not recorded electronically, we do not know how they were conducted. He concludes that, to treat them all as if they are all more or less equivalent is a mistake – which is not set out in Ms. Barry's report.

93. Another disagreement Dr. Moore had about Ms. Barry's report is her opinion on the efficacy of the truth/lie ground rule in that it is too abstract and not developmentally appropriate for young children. He states that more recent research concludes the opposite – that ground rule questions take little time to deliver and are associated with improved accuracy.

94. When [child 1] stated that she was in grade four during her police interview, Dr. Moore took this to mean that she was not fully concentrating and may have been distracted. He did not take it as a lie, but as misinformation. He continued to state that, if a child is not concentrating during an interview, they may not fully process the question and decline to ask for clarification, so there is plenty of room for miscommunication. He further stated that there is plenty of room for miscommunication at the best of times because children's language skills are not as well developed as an adult's, so some terminology may be unfamiliar.

95. Dr. Moore agreed that if the disclosure occurred as W.Y. indicated in her police interview, in that it was an unprompted spontaneous disclosure hours after the event, that it would

strongly weigh in favour of the reliability of the disclosure. He further agreed that, the recollection of a parent for shocking information where they know it is particularly important to recall what was done or said, it will enhance their memory; however, added that it does not mean the memory is reliable, rather, that it enhances the reliability. The fact that W.Y.'s police interview occurred only hours after [child 1] made the initial disclosure to her also enhances the reliability of her recollection of the details of her conversation with [child 1].

***Witness #10 – Lynn Barry***

96. Lynn Barry is a program consultant with and founder of the Canadian Association of Child Abuse (formerly the Canadian Society for the Investigation of Child Abuse) with 30 years of work experience in the field of child abuse. She received her Bachelor of Social Work in 1979 and her Master of Social Work in 1989, both from the University of Calgary. The thesis for her Master of Social Work degree focused on the forensic child interview training needs of police officers and child protection workers. She is currently a PhD candidate at Memorial University and is completing her doctoral thesis examining the knowledge that social workers have about women's PMS and PMDD and how it impacts their assessments of mothers in the context of child protection and risk. Throughout her 18-year career with the Alberta Children's Services (child welfare), she conducted approximately 2,000 investigative child interviews, 30-40% of which involved allegations of sexual abuse. She taught as a sessional instructor for the Faculty of Social Work at the University of Calgary for approximately nine years and conceived, developed and delivered forensic interviewing training curriculums for Alberta's Children's Services and the Canadian Child Abuse Association (CCAA). She has taught approximately 1,800 hours on forensic child interviewing over 20 years to organizations including the Royal Canadian Mounted Police (RCMP), metropolitan police forces, Child Welfare League of Canada (CWLC), provincial/territorial child welfare ministries, Aboriginal trial police and Crown prosecutors.

She has also provided training on child abuse and neglect for over 25 years to school boards, victim services, hospital and medical teams, and child care societies.

97. Ms. Barry founded and was the Executive Director of the Canadian Child Abuse Association (formerly the Canadian Society for the Investigation of Child Abuse) in 1985 until 2015. The Canadian Association of Child Abuse is designed to devote energies and time to information related to the investigation of child abuse, both in support of families going through that criminal justice process, but also for the professionals involved. For the past five years, she has strongly advocated in Canada for standards and accreditation in child forensic interviewing.

98. Ms. Barry was qualified as a witness to give opinion evidence in the areas of investigating and evaluating allegations of child abuse and in forensic interviewing and evaluation of children's memories and disclosures of abuse.

99. Ms. Barry found the interview of [child 1] conducted by Sergeant Tollar followed general protocol guidelines with respect to the questioning and there were no obvious errors with respect to contaminating questions. She is of the opinion that the spontaneity of the disclosure by [child 1], the fact that it was not prompted, [child 1]'s demonstration of resistance to suggestion and that she is consistent throughout retelling the stories, are relevant factors to assessing the reliability of [child 1]'s statements.

100. Ms. Barry found [child 1]'s description and account of the alleged abuse to be comparable, developmentally, with other children her age. It is her opinion that young children are more likely to be accurate in what they say, but provide less detail of their account.

101. Ms. Barry indicates that [child 1] used demonstrations throughout her interview with Sergeant Tollar, including rubbing her vaginal area. Ms. Barry is of the view that this adds reliability, in that she is a young child with a limited ability to express herself, her nonverbal accounts complement her verbal accounts. She further states that in her experience, children who have not experienced an event rarely make a demonstration because they lack the visual to draw from to make a re-enactment. Ms. Barry disagreed with Dr. Moore's statement that a child's demonstration of an event does not have much bearing on reliability.
102. Ms. Barry testified that it is significant that [child 1] disclosed the alleged sexual abuse spontaneously. When there is a spontaneous utterance, it is the most uncontaminated version of an event that you can have because there has been no prior questioning and it is simply a presentation by the child with no influence. She is of the opinion that you are able to see from her videotape that she is a very confident child and is clear in expressing her discomfort around the alleged event.
103. Ms. Barry indicated an absence of reason for [child 1] to fabricate the event. [Child 1] does not appear angry with Mr. Robinson – other than not getting a Smartie – and children very rarely have motives to fabricate events.
104. With respect to the repeated interviews, specifically [child 1]'s initial disclosure with W.Y., conversation with Ms. Dowler and interview with Sergeant Tollar, Ms. Barry states that research suggests repeated interviews can enhance children's reports by providing additional details with each interview, provided that the interviews are properly conducted. Moreover, the description of the core event is consistent throughout all three of [child 1]'s interviews, which adds to the reliability. Ms. Barry also noted that the alleged event is not presented with the exact same detail in such a way that you would expect that it might be

rehearsed or that she had been coached so that there are new details that do come out in the second or third interviews. Based on her experience, this is typical of disclosures made by young children. During cross examination, Ms. Barry clarified that if one interview is highly suggesting and leading and a later interview is properly conducted without any leading or suggestive questions, the later interview does not fix any damage that may have been done by virtue of the contaminated interview conducted earlier; however, you may still get accurate, free narratives in subsequent interviews.

105. Ms. Barry explained that forensic interview protocols seek to eliminate techniques that are explicitly suggestive or impair accuracy and to replace them with a child's uninterrupted response, or a free narrative. She maintains that it is well established that event-related information disclosed by a child is more likely to be accurate if it is obtained via free narrative, rather than in response to specific questions. Forensic interviews begin with some sort of engagement phase or introduction whereby some discussion of events is happening. The investigator would indicate why they are there, how the investigation is being recorded and whether notes were being taken and any conversation rules. There is considerable disagreement in the literature about the importance and necessity of the introduction of truth and a lie. The interview should be focused on discussion and not leading the questions to the event.

106. Ms. Barry explained that the truth/lie competency assessment is used to make an assessment of the child's ability to tell the truth and to demonstrate an understanding of what will happen to them if they fail to do that. She indicates that the truth/lie ground rule is not always effective because it typically involves asking a child a hypothetical question, which puts them in a position to hypothesize about something that is different from the reality in front of them, which is very difficult for children to do. It is Ms. Barry's opinion that

during [child 1]'s interview with Sergeant Tollar, she was unable to conceptualize what Sergeant Tollar was trying to say when he asked her truth/lie questions about SpongeBob and the T.V. in an abstract way. However, Ms. Barry did not believe that [child 1]'s confusion with the truth/lie questions about SpongeBob has any bearing on the reliability of [child 1]'s information in the interview.

107. Based on Ms. Barry's experience, she stated that there are kinds of post-disclosure or post-abuse behavioural changes that are common in children who have been abused. Some examples of these behavioural changes include a child becoming clingier to a parent, changes in toileting behaviour, problems in sleep behaviour and an increase of self-stimulation in cases of sexual abuse. She further states that at times, you will find offending behaviour against another child as that child acts out has happened to them. Ms. Barry believes that [child 1]'s reported self-stimulating behaviour is a change in behaviour and coincides roughly with the time of the alleged offence. Ms. Barry also commented on [child 1]'s change of behaviour when Mr. Robinson's name was mentioned, as mentioned in Ms. Dowler's clinical notes. The mentioning of Mr. Robinson's name provided a trigger that associates the child back to an event that made them uncomfortable and so we can expect that behaviours will escalate or increase.

108. During cross examination, Ms. White brought to Ms. Barry's attention that in her expert report, she made a number of factual assumptions of what reportedly took place based on information that had been provided to her and not what [child 1] had reported herself. When asked whether these assumptions could impact her opinion, Ms. Barry indicated that they could.

***Witness #11– Shannon Buckley***

109. Shannon Buckley worked with Mr. Robinson at the School from September to October 2013 as a teacher in the junior/senior kindergarten class they taught together. During her time in the class, Ms. Buckley did not observe Mr. Robinson engage in any inappropriate conduct with [child 1] or any other students. Ms. Buckley maintained that the students really liked Mr. Robinson and there was always a positive interaction between them and she had no concerns.

110. Ms. Buckley testifies that, for the most part, the students were able to put on their coats and shoes and gather their belongings by themselves. She and Mr. Robinson would use a lot of verbal prompts to assist the students and would help them do up their coats if they were really struggling. The teacher or educator closest would help the struggling student.

111. At dismissal time, both Ms. Buckley and Mr. Robinson would be in the main classroom and would have the students pack their backpacks and get their agendas. Once the students were ready, they would line up, single file, by the door leading to the kindergarten pen. There was no established routine as to who would lead them out into the kindergarten area. She maintains that there were always a few stragglers who took longer to get ready than the rest of the students, so she or Mr. Robinson would lead that group of students outside to the kindergarten pen when they were ready.

***Witness #12 – Bryan Robinson, RECE***

112. Bryan Robinson is a registered early childhood educator who began working at the School in September 2012 in a full-day kindergarten program along with the teacher. At the beginning of the 2013 school year, he worked alongside three different teachers between

September 2013 and January 2014. When the allegations were made against him in January 2014, he had been working with Ms. Redpath for approximately five days.

113. Mr. Robinson maintained that prior to January 2014, he had never had allegations made against him concerning inappropriate conduct with a child.

114. Mr. Robinson described his relationship with [child 1] as very professional and no different than his relationship with the other children in the class. He found that, due to [child 1] being younger than the other students, she required a little more assistance with regular day-to-day activities.

115. Mr. Robinson describes W.Y. as a “helicopter parent,” in that she was overly concerned with how her children were doing. W.Y. would constantly ask questions about [child 1] and would speak with him about any problems she might be having with [child 1]’s behaviour at home.

116. With respect to the film on the classroom windows, Mr. Robinson testifies that the film was used to keep the sun out, but you could still see through the windows from the sidewalk.

117. On January 17, 2014, at approximately 2:45 p.m., Mr. Robinson and Ms. Redpath began getting the children to clean up and ready to go home. He maintains that he assisted the students who required help with verbal cues and encouraged the senior kindergarten students to help the junior kindergarten students with their outerwear. Mr. Robinson handed [child 1] her jacket and put her agenda in her backpack and got another student to help [child 1] with her jacket zipper. At 3:05 p.m., most of the students were lined up by the door

and ready to go outside. As a Friday reward, Mr. Robinson handed out Smarties to the students who were ready on time, which he did every Friday. He handed out Smarties to approximately three-quarters of the class. [Child 1] did not receive a Smartie as she did not get ready quickly, which he explained to her. He could tell that [child 1] was upset about this but he did not call her a slowpoke.

118. Ms. Redpath took the children who were ready outside to the kindergarten pen at approximately 3:05 p.m. when the bell rang, while Mr. Robinson stayed behind with the five students who were still putting on their outerwear, [child 1] being one of them. At 3:10 p.m., the janitor arrived to clean up the classroom. While he was with the five children, the door to the Y room was closed because the Before and After School program was being held in that room. As the children got ready, Mr. Robinson asked them to stand in front of their cubbies. Once all the students were lined up, Mr. Robinson escorted the group outside to the dismissal gate. He was never alone with any of the students, including [child 1] Mr. Robinson testifies that he did not see [child 1] cry as she stepped into the schoolyard and he was not aware of any reason why she would be upset, aside from not receiving a Smartie. Mr. Robinson denies sexually abusing [child 1] and testified he was neither alone with [child 1] nor had any physical contact with her on January 17, 2014.

119. When Ms. Redpath returned to the classroom, she told Mr. Robinson that W.Y. had said that he called [child 1] a slowpoke. Mr. Robinson responded to Ms. Redpath that he would talk to W.Y. about it on Monday. Mr. Robinson left the School at 3:45 p.m.

120. Sergeant Tollar left Mr. Robinson a voicemail on the morning of January 19, 2014, while he was at church. When Mr. Robinson returned Sergeant Tollar's call, Sergeant Tollar informed him that he was a suspect in a sexual assault investigation and requested that he

attend at Brantford Police Services for an interview on January 20, 2014. During their conversation, Mr. Robinson did not ask who made the allegations against him, who the alleged victim was or what the allegations were. Mr. Robinson attributed his lack of question asking to the fact that he was shocked and overwhelmed

121. When Mr. Robinson did not appear at the Brantford Police station on January 20, 2014, Sergeant Tollar contacted him to ask why he did not attend the police station for his interview. During the phone call, Sergeant Tollar informed Mr. Robinson that he was going to be charged with sexual assault and sexual interference in relation to a four-year-old child from the School. Sergeant Tollar also informed Mr. Robinson that if he did not go to the station for an interview, he would have a warrant issued for his arrest. During their conversation, Mr. Robinson did not ask who made the allegations against him, who the alleged victim was or what the allegations were. After speaking to his lawyer, Mr. Robinson attended the police station for an interview.

122. Mr. Robinson maintains that he never once physically assisted [child 1] get in and out of her snow pants or coat and boots. He also denies telling [child 1] that she had crumbs in her pants and brushed them off.

**Evidence admitted by video tape**

123. For reasons given orally during the hearing, two video tapes were admitted as evidence after a contested motion on their admissibility, one of the police interview of W.Y. and one of the police interview of [child 1].

**Brantford Police Services Interview with W.Y., Mother of [child 1].**

124. On January 17, 2014, W.Y. attended at the Brantford Police Services for an interview with Detective Whitworth. W.Y. explained to Detective Whitworth that she picked [child 1] up from school and [child 1] was upset because Mr. Robinson called her a slowpoke and did not give her a Smartie. W.Y. indicated that Mr. Robinson is a helper in the junior kindergarten class and that she liked him a lot and described him as very nice.

125. W.Y. stated that while she was cooking dinner at home, she went upstairs, where her daughters were watching television and all of a sudden, [child 1] stood up on the couch, rubbed her genitals and indicated that this is what Mr. Robinson did to her that day. W.Y. told Detective Whitworth that following [child 1]'s demonstration, she took [child 1] downstairs to the kitchen because she did not want her other daughter to overhear their conversation. In the kitchen, W.Y. asked [child 1] what had happened and [child 1] responded by putting her hand inside her pants. W.Y. explained that she asked [child 1] if Mr. Robinson was in the washroom with her, as W.Y. thought he may have been cleaning her. [Child 1] reportedly responded that it took place in the classroom next door, not in the washroom. W.Y. told Detective Whitworth that she tried to talk to [child 1] about it but she shut down and would not say anything further.

126. W.Y. told Detective Whitworth that she contacted Ms. Dowler, her best friend and a social worker. When Ms. Dowler arrived at the home, she met with [child 1] in W.Y.'s bedroom. W.Y. explained that she asked [child 1] to tell Ms. Dowler what she had told her [child 1] then pulled down her pants and said, this is what Mr. Robinson did, then put her hands on her genitals. Ms. Dowler reportedly asked [child 1] why she did not pull her pants up, to which [child 1] reportedly responded that she was unable to as something was stuck in her.

### **Brantford Police Services Interview with [child 1]**

127. On January 20, 2014, [child 1] met with Sergeant Tollar of the Brantford Police Services for an interview. During the interview, [child 1] identified Mr. Robinson as one of her teachers and that he did not give her a Smartie because she was slow. She indicated that she liked Mr. Robinson but that he always calls her a slowpoke.

128. [Child 1] identified a secondary room in the classroom and told Sergeant Tollar that she goes in that room with Mr. Robinson. When Sergeant Tollar asked [child 1] what she does when she is in the room, she stood up, pulled down her pants, put her hand down her pants and indicated that this is what Mr. Robinson did to her when they were alone together. [Child 1] told Sergeant Tollar as she made a brushing motion on her pants, that Mr. Robinson said there are crumbs in her pants. [Child 1] informed Sergeant Tollar that after Mr. Robinson told her there were crumbs in her pants, it was time for her to go home.

### **Reasons for the Decision**

129. On a balance of probabilities the panel finds that on or around the afternoon of January 17, 2014, while inside the school with [child 1], the Member:

- i. Brought [child 1] into a separate room adjacent to the junior kindergarten classroom, where he was alone with the child;
- ii. Put his hand into the front of [child 1]'s pants, rubbed her on her vaginal area, and/or put his finger(s) into her vagina.

130. In determining whether the Member committed professional misconduct as alleged in the NOH, the Panel evaluated each witness' testimony for credibility and reliability.

131. The panel finds the videotaped statements of [child 1] and W.Y. to be reliable and credible and therefore worthy of being given significant weight for the following reasons. First, when an out-of-court statement is made to a public official who is under a duty to record the statements, this factor weighs in favour of the reliability of the statements. (R v. Johnson, 2005) and secondly, there are a variety of reasons for which a child witness may be unavailable or unable to testify, rendering her hearsay evidence necessary, including a child's emotional well-being may be harmed if she is required to testify. In such cases, cross-examination of the child would likely prove fruitless, and the child's hearsay statements are necessary as the best evidence of the events in question. (Khan SCC). Lastly, the need to consider the public interest in the truth-seeking function of this hearing must be given significant weight.

132. Specific to W.Y.'s videotape statement, completed hours after the initial disclosure by [child 1] to Detective Whitworth, the panel noted five significant details. First, [child 1]'s disclosure to

W.Y. was spontaneous, the disclosure occurred during the typical, after school home life; W.Y. was not prying into [child 1]'s day. Ms. Barry states she does not know of any examples of an initial disclosure being videotaped because they are usually made to the parents first. Both Ms. Barry and Dr. Moore agreed that spontaneity enhances the reliability of a child's disclosure. Second, [child 1] resisted W.Y.'s suggestions that [child 1] misinterpreted Mr. Robinson's actions in the bathroom three times. Third, W.Y. had no reason to fabricate a story as she states she liked Mr. Robinson. Of further note to the panel is that the police concluded that there was no motive for W.Y. to fabricate her statement as she had nothing to gain. Fourth, W.Y.'s memory of what [child 1] disclosed to her is very clear. As Ms. Barry states this type of shocking event can be expected to enhance a parent's memory of that statement. Dr. Moore similarly agreed that it's inconceivable that a child's shocking disclosure of sexual abuse would not be memorable to a parent. Finally, W.Y.'s description

of what [child 1] relayed to her is consistent with what [child 1] said in subsequent disclosures (police statement and what she said to Ms. Dowler).

133. The Member has argued that there is no direct evidence of what occurred during W.Y.'s conversation with [child 1] and there is a possibility of contamination of [child 1]'s alleged disclosure. While the possibility exists, the Panel noted four significant details specific to [child 1]'s videotape statement to Sgt. Tollar, completed three days after the initial disclosure: 1) [Child 1]'s disclosure to Sgt. Tollar was spontaneous and not elicited. [Child 1] spoke naturally and her statements did not appear to be rehearsed. Sgt. Tollar testified that W.Y. had nothing to gain from "coaching" [child 1]. Of particular interest to the Panel was when [child 1] jumped off the couch and demonstrated what Mr. Robinson did to her by pulling down her pants, opening her underwear and placing her hand on her vagina. [child 1]'s disclosure and demonstration was consistent with Laura Dowler's testimony and W.Y.'s videotape statement. 2) As corroborating evidence [child 1] came out of the school crying after being in the school with Mr. Robinson, which was witnessed by Meaghan Redpath and W.Y. 3) [Child 1]. discloses details of a sexual nature that you would not expect a four year old to know. "The fact that she can't be expected to have knowledge of such sexual acts imbues her statement with its own peculiar stamp of reliability" (R v. Khan, Supreme Court) 4) [Child 1] is described by Meaghan Redpath, Kaitlyn Walker and Sgt. Tollar as having strong verbal skills and is outgoing and friendly and she demonstrates these qualities on her video statement. The panel believes [child 1] clearly described and demonstrated the sexual abuse she experienced.

134. Z.Y. provided the Panel with corroborating evidence of the time between the incident occurring at school and [child 1]'s initial disclosure to her mother, W.Y.

135. Ms. Dowler with a Master of Social Work, Clinical Stream and a registered member of the Ontario College of Social Workers and Social Service Workers, corroborated the details of the abuse as reported by [child 1]. Although the Panel questioned Ms. Dowler's decision to treat [child 1] due to conflict of interest after the incident, it did not question Ms. Dowler's ability and knowledge of proper fact seeking when speaking with [child 1] within minutes of [child 1]'s initial disclosure to W.Y.

136. Detective Whitworth has been a police officer in Brantford since 1999. Since 2006, he has worked in the Child and Sexual Assault Investigation unit. He has received training at the Ontario Police College in the area of sexual assault investigation and interviewing child victims. He has investigated between 75-100 cases of sexual abuse of children each year. Detective Whitworth has no concerns that W.Y. had coached [child 1] in advance of her disclosure. W.Y. had no motivation as she liked Mr. Robinson and thought he [child 1] nicely. W.Y. was looking for alternate explanations of what had happened. Detective Whitworth had no concerns about what transpired between [child 1] and W.Y. and Ms. Dowler regarding the disclosure.

137. Ms. Parrot, as Investigator for the College of Early Childhood Educators, made sufficient attempts to get W.Y. and [child 1] to testify as witnesses at the hearing. W.Y. and [child 1] were already out of the country prior to the criminal charges against Mr. Robinson being dismissed on or about November 10, 2014. The Robinson matter was referred to the College of Early Childhood Educators Discipline Committee on April 10, 2015 at which point the College made every reasonable effort to have W.Y. and [child 1] testify at the hearing, either in person or by videoconference. The Panel takes the issue of procedural fairness, raised by the Member, very seriously. The Discipline Committee of the College of Early Childhood Educators has a public protection mandate. In this particular situation, given the

very young age of the child involved and the fact that the Panel agrees that the College made every reasonable effort to secure the testimony of [child 1] and W.Y. but W.Y. declined and could not be subpoenaed as they were both out of the jurisdiction, the Panel believes the public interest was better served by admitting the videotape testimony and giving significant weight to it. The panel finds the videotaped statements of [child 1] and W.Y. to be reliable and credible and therefore worthy of being given significant weight for the following reasons. [child 1] and W.Y.'s out-of-court statements were made to police officers, within hours and days of the incident occurring; the officers videotaped the statements which weighed in favour of the statements' reliability and [child 1] was unavailable to testify, rendering her hearsay evidence necessary.

138. Ms. Taylor, a social worker with Brant Children's Aid Society investigated this incident and concluded that Mr. Robinson should be placed on the CAS's internal Sexual Offender Registry.

139. Sgt. Tollar has worked with Brantford Police Service for over fifteen years. From May 2010 until September 2013, he worked as a Vice Section Investigator. From September 2013 to March 2014, he worked in the Child Abuse and Sexual Assault unit. During this time, he investigated 30-50 cases of child sexual abuse with complainants ranging from ages 2-18. He interviewed 10-20 four to five year old complainants during this time. Sgt. Tollar took the videotaped statement of [child 1] on January 20, 2014, 3 days after the alleged incident of sexual abuse took place. The Panel finds that [child 1] was truthful in her disclosure to Sgt. Tollar.

140. Ms. Walker, a teacher at Wayne Gretzky Elementary School, from October to December 2013, worked with Mr. Robinson in the same classroom. She testified that both she and Mr.

Robinson used Smarties as incentives for student cooperation. As a result, the Panel finds that the College has not proven that Mr. Robinson engaged in grooming behavior with [child 1].

141. Ms. Redpath, a teacher at Walter Gretzky Elementary School, returned from maternity leave on January 6, 2014 and worked with Mr. Robinson in the same classroom. She testified that [child 1] was crying when she left school at the end of the day on January 17, 2014. She also testified that W.Y. had complained to her that [child 1] was upset because Mr. Robinson called her a slowpoke at dismissal and Ms. Redpath spoke to Mr. Robinson about this before he left school for the day. Ms. Redpath testified that she could not see into the classroom from the fence around the kindergarten play area nor could you see the inside of the entire classroom or Y room from the interior school hallway. She had a good working relationship with Mr. Robinson for the five days she worked with him.

142. Dr. Moore was qualified as an expert witness for the Member. While he has strong academic credentials including a number of academic publications, he testified that he has not conducted a single forensic interview nor has he been involved in an investigation of a single allegation of child abuse or sexual abuse. Ms. Barry was qualified as an expert witness for the College. She has over three decades of experience in the field of child abuse investigation and has conducted over 2,000 forensic interviews of children. The Panel considered the testimony of both experts in determining the credibility and reliability of [child 1]'s videotaped statement and concluded that neither expert's opinion outweighed the other.

143. Ms. Buckley, a teacher at Walter Gretzky Elementary School from September to October 2014, worked with Mr. Robinson in the same kindergarten classroom. She testified that she had no concerns about Mr. Robinson's conduct in the classroom and that there was no Smarties reward system in place at that time. She also testified that she and Mr. Robinson

would verbally assist children with getting outdoor clothing on; whichever child was closest received help from the teacher.

144. Mr. Robinson has been a registered early childhood educator since September 2, 2009. He began working as a RECE in September 2007. He worked at Walter Gretzky Elementary School from September 2012 to May 2015. He has not had any prior allegations of inappropriate conduct with any child. The Member claims:

- a) He was in shock when the Police called him about the allegation.
- b) Most of the students were dismissed at 3:05pm on January 17, 2014. He gave Smarties to the children who were ready on time. He handed [child 1]. her jacket, put her agenda in her backpack and gave her verbal cues to get her outdoor clothes on. Another child helped her do up her jacket.
- c) Ms. Redpath took the children who were ready at 3:05pm out into the schoolyard for dismissal. He remained in the classroom with a group of 5 children, including [child 1]. for 5-10 minutes longer. All 5 children exited the school together. He was never alone with [child 1] . [Child 1] was not crying as she left the school at the end of the day on January 17, 2014.
- d) The doors to the classroom from outside as well as the interior school hallway were open and there was visibility into the classroom.
- e) The custodian arrived in the classroom at 3:10pm each day. He was covering for the regular custodian who had health issues.

145. The Panel finds Mr. Robinson's testimony lacking in credibility. There was a lack of corroborating evidence to support Mr. Robinson's claims.
146. The Panel found it difficult to accept that even though Mr. Robinson was in shock when the Police first contacted him about the allegation, he did not inquire about who was making the allegation against him. Mr. Robinson's lack of response during his Police interview due to legal counsel not being present is understandable to the Panel.
147. [Child 1] 's videotaped testimony contradicts Mr. Robinson's claim that he did not physically help her with her outdoor clothes. This is corroborated by the testimony of Ms. Walker, Ms. Redpath and Ms. Buckley. The Panel believes that Ms. Walker, Ms. Redpath and Ms. Buckley had no stake in these proceedings.

Ms. Redpath testified that it was typically Mr. Robinson who helped [child 1] with her winter clothes. *"We encourage them to pack their own bags best they can and to put on their snow clothes the best they can and then help with those who can't" "[child 1] needed a lot of help" (December 14, 2015, page 131).*

Ms. Walker stated *"They would get themselves dressed for the most part. If a zipper was stuck or something, we'd ask them to ask a friend and then ask us, and we would help"* (December 14, 2015 page 81).

Ms. Buckley stated *"They were able for the most part. We would use a lot of verbal prompts to help assist them. We would help them do up their coats if they really were struggling, but it was September/October so it wasn't -- usually they didn't, like, need a coat at that time of year. It was quite warm. But on the off chance they did, like a rain coat, we would assist."* (May 30, 2016, page 17)

148. Ms. Walker and Ms. Redpath testified that the slower children were sent out one at a time. They both also testified that [child 1] was frequently the last one to come out of the school. The videotape of W.Y.'s interview and Ms. Redpath's testimony confirm that [child 1] was crying at the end of the school day on January 17, 2014. Ms. Redpath testified that she spoke with Mr. Robinson prior to his leaving on January 17 and told him that [child 1] was crying because he called her a slowpoke.

149. Based on the photographic evidence presented and Ms. Redpath's testimony about the school floorplan and seeing into the classroom, the Panel accepts that it is likely there was no visibility into the classroom from either outside the school or the interior school hallway.

150. The Panel finds it difficult to understand why the Member did not bring forward the custodian alibi while criminal charges were pending. The custodian being present in the classroom at the end of the school day on January 17, 2014 was also contradicted by Ms. Redpath's evidence about the class' end-of-day routine.

## **Conclusion**

151. Having considered the Exhibits filed, the testimony of each of the witnesses and the submissions made by College counsel and the Member, the Discipline Committee finds that the facts support a finding of professional misconduct as alleged in the Notice of Hearing.

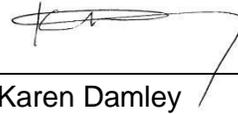
152. In view of our above finding, the Panel request a penalty hearing to be scheduled at the earliest opportunity.

Dated: February 16, 2017



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Barbara Brown, RECE  
Chair, Discipline Panel



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Karen Damley  
Panel Member



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Sophia Tate, RECE  
Panel Member