

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

Citation: College of Early Childhood Educators vs Melissa Mary Louise Smits,  
2015 ONCECE 4  
Date: 2015-03-18

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 Melissa Mary Louise Smits, a  
member of the College of Early Childhood Educators.

PANEL: Eugema Ings, RECE, Chair  
Jacqueline Hooper-Boyd, RECE  
Karen Damley

BETWEEN:	)	
COLLEGE OF EARLY CHILDHOOD	)	Jordan Glick,
EDUCATORS	)	WeirFoulds LLP,
	)	for the College of Early Childhood Educators
	)	
- and -	)	
	)	
MELISSA MARY LOUISE SMITS	)	Melissa Mary Louise Smits was not present,
REGISTRATION # 00948	)	nor was she represented
	)	
	)	
	)	
	)	Caroline Zayid,
	)	McCarthy Tétrault LLP,
	)	Independent Legal Counsel
	)	
	)	Heard: March 18, 2015

**REASONS FOR DECISION, DECISION AND ORDER(S)**

1. This matter came on for a hearing before a panel of the Discipline Committee (the “Committee”) on March 18, 2015 at the College of Early Childhood Educators (the “College”) at Toronto.

2. A Notice of Hearing, dated January 12, 2015 (Exhibit 1), was served on Melissa Smits (the “Member”), specifying the charges and requesting her attendance before the Discipline Committee of the College of Early Childhood Educators on February 6, 2015 at 12:15 p.m. to set a date for a hearing. Counsel for the College submitted an Affidavit of Service sworn by Lisa Searles, Hearings Coordinator (Exhibit 1), and sworn February 2, 2015, confirming the Notice of Hearing was served on the Member.
3. College counsel tendered a document signed by Nici Cole RECE, Chair of the Discipline Committee, on February 6, 2015, ordering that the hearing for the Member be scheduled for March 18, 2015 (Exhibit 1). College counsel stated that the order was made at the scheduled set-date hearing on February 6, 2015, which the Member did not attend.
4. A second Notice of Hearing, dated February 10, 2015 (Exhibit 1), was served on the Member, specifying the charges and requesting the Member’s attendance before the Committee on March 18, 2015 for a hearing. Counsel for the College submitted an Affidavit of Service sworn by Lisa Searles, Hearings Coordinator (Exhibit 1), and sworn March 10, 2015, confirming that the second Notice of Hearing was served on the Member.
5. The hearing was scheduled to commence at 9:00 a.m. on March 18, 2015. The Member did not appear, nor was she represented by legal counsel. The Committee was satisfied that the Member had been served with the Notice of Hearing, informing her of the time and date of the Hearing. The Committee therefore commenced the proceedings at approximately 9:30 a.m.

## **THE ALLEGATIONS**

6. Counsel for the College advised the Committee that the College would be proceeding with the Notice of Hearing dated February 10, 2015 (Exhibit 1). The allegations against the Member, as stated in the Notice of Hearing dated February 10, 2015, are as follows:

IT IS ALLEGED that Melissa Mary Louise Smits, RECE (the “Member”), is guilty of professional misconduct as defined in subsection 33(2) of the ECE Act, in that:

- (a) She physically, psychologically or emotionally abused a child under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(8) in that:
  - i. She failed to maintain a safe and healthy learning environment, contrary to Standard III.A.1 of the College’s Standards of Practice;
  - ii. She failed to provide caring, stimulating and respectful opportunities for learning and care that are welcoming to children and their families, contrary to Standard III.C.1; and,
  - iii. She failed to resolve challenges and provide behaviour guidance in the best interest of a child under her professional supervision, contrary to Standard IV.B.4.
- (b) She acted in a manner that, having regard to the circumstances, would reasonable be regarded by members as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 223/08, subsection 2(10).
- (c) She contravened a law, the contravention of which is relevant to her suitability to hold a certificate of registration, contrary to Ontario Regulation 223/08, subsection 2(20).

## **PARTICULARS OF THESE ALLEGATIONS ARE AS FOLLOWS:**

7. Now and at all times relevant to the Allegations in this ‘Schedule of Allegations’ the Member was registered as an early childhood educator with the College of Early Childhood Educators (the “College”).

8. From on or around April 15, 2013 to on or around August 21, 2013, the Member was employed as a Registered Early Childhood Educator at Building Blocks Academy Inc. (the "Centre").
9. On or about August 15, 2013, while under the Member's professional supervision, [Child 1], cut her hand on a Little Tikes play structure. The cut on the [Child 1]'s hand bled substantially, so the Member cleaned the afflicted area and applied a bandage. When N.S., [Child 1]'s mother, arrived at the Centre that evening, the Member informed her of the incident and the injury [Child 1] had sustained. The Member did not complete an injury report following the incident.
10. On or about August 16, 2013, the Member was supervising a group of children outside on the Centre's playground. During this time, a number of children, including [Child 1], were running and playing in the alleyway along the side of the Centre, despite being instructed not to do so. As a result of their behaviour, the children were placed in a time-out against the Centre's outside brick wall. As the Member organized the children along the wall, she forcefully shoved [Child 1] into the bricks, which scraped and bruised [Child 1]'s back.
11. On or about August 16, 2013, when N.S. and [Child 1] arrived home, N.S. prepared [Child 1] for a bath. When N.S. removed [Child 1]'s shirt, she noticed four bleeding wounds on [Child 1]'s back.
12. On or about August 16, 2013, at or around 5:50 p.m., N.S. called the Centre and spoke to Esmin Campbell, the Centre Director, and reported [Child 1]'s injuries. Ms. Campbell requested that N.S. and [Child 1] return to the Centre.
13. On or about August 16, 2013 at or around 6:00 p.m., N.S. and [Child 1] arrived at the Centre and met with Ms. Campbell and the Member in the office. After Ms. Campbell examined

[Child 1]'s injuries, she took [Child 1] to the staff room to discuss her injuries. When Ms. Campbell asked [Child 1] what happened, she indicated that it was the wall. When Ms. Campbell asked who caused the injuries, [Child 1] reported that it was the Member.

14. On or about August 21, 2013, the Member resigned her employment with the Centre.
15. On or about September 4, 2013, the Member was arrested and charged with assault.
16. On or about September 4, 2013, the Member entered into an "Undertaking Given to a Peace Officer or an Officer in Charge" with the following conditions:
  - i. Attend at the Durham Regional Police Service Station at 77 Centre Street North, in Oshawa, in person and fill out the change of address form within 24 hours of any change in your address, employment or occupation;
  - ii. Abstain from communicating directly or indirectly with [Child 1] or N.S.;
  - iii. Not to seek employment or be employed with any school, agency or company which provides daycare to children under the age of 12 years;
  - iv. Not to volunteer at any place or organization where children under the age of 12 years are associated with;
  - v. Not to apply for any licence or permission to supervise children under the age of 12 years;
  - vi. Remain 100 meters away from any place of residence, employment, education, worship or any place [Child 1] and N.S. are known to be.
17. On or about May 30, 2014, the Member entered into a "Recognizance to Keep the Peace," where she must abide by the following conditions for a period of 12 months:
  - i. She must have no contact directly or indirectly with [Child 1] or N.S.;
  - ii. She must remain 100 meters away from any known place of residence, employment, education, place of worship or daycare centre of [Child 1] or N.S.;
  - iii. She must remain 100 meters away from Building Blocks Academy located at 1525 Dundas Street, East, Whitby, ON.

## **MEMBER'S PLEA**

18. As the Member was not present, nor represented by legal counsel, the Committee proceeded on the basis that the member denied the allegations set out in the Notice of Hearing dated February 10, 2015.

## **THE EVIDENCE**

19. Counsel for the College called three witnesses: Esmine Campbell, RECE and Centre Director; N.S., the Mother of the [Child 1] involved in the incidents; and [Child 1], the child involved in the incidents. N.S. and [Child 1] were not physically present at the hearing to give evidence, but instead testified from their home in Calgary by video link.

### **Evidence of Esmine Campbell, RECE**

20. Esmine Campbell, RECE, is the Supervisor of Building Blocks Academy (the "Centre") and has been in that role for approximately four years. The Centre provides care to 42 children between the ages of zero and six years and employs 10 staff members.
21. Ms. Campbell stated that the Member worked at the Centre as an early childhood educator from April 2013 to August 2013. During her time at the Centre, the Member provided care to children ages three to six years and was responsible for supervising approximately eight children at a time.
22. College counsel asked Ms. Campbell if she knew who [Child 1] was. Ms. Campbell responded that [Child 1] was a student of the Centre between December 2012 and November 2014 and was one of the children in the Member's classroom.

23. College counsel asked Ms. Campbell if she was aware of the incident on August 15, 2013 where [Child 1] cut her finger at the Centre. Ms. Campbell indicated that she could not remember the incident and that an accident report was not filed. Ms. Campbell stated that if a child sustained injuries at the Centre requiring medical attention, like the incident in question, an accident report would have to be filed by the child's early childhood educator. In the case it question, it would have been the Member's responsibility to file the accident report.

24. Counsel for the College asked Ms. Campbell to describe the situation involving [Child 1] that occurred on August 16, 2013. Ms. Campbell stated that at approximately 5:30 p.m., she received a call from N.S., the mother of [Child 1], who indicated that she found scratches on [Child 1]'s back. Ms. Campbell was not aware that [Child 1] was injured at the Centre, so she asked the Member, who was [Child 1]'s educator at the time, if she knew what caused the scratches on [Child 1]'s back. The Member explained to Ms. Campbell that [Child 1] was not listening during outdoor play time, so she put [Child 1] in timeout against the wall, but that she was unaware of any injuries caused to [Child 1] Ms. Campbell stated that following her conversation with the Member, she completed an accident report.

25. Ms. Campbell stated that on August 19, 2013, she contacted Children's Aid Services (CAS) and informed them of the incident. When CAS arrived at the Centre, they informed Ms. Campbell that the Member cannot work with [Child 1] until the completion of their investigation. Ms. Campbell stated that she spoke with the Member about the CAS investigation and the Member indicated that she would rather resign than participate in the investigation. On August 19, 2013, following their conversation, the Member resigned from the Centre.

26. Ms. Campbell testified that on Monday, August 19, 2013, she met with N.S. to discuss [Child 1]'s injuries. During their discussion, N.S. indicated that [Child 1] informed her that the Member had shoved her against the wall. N.S. also informed Ms. Campbell that she does not want the Member to work at any other centre after what happened to [Child 1]. Ms. Campbell also spoke with [Child 1] privately about the incident, who told her that the Member shoved her into a wall.
27. Ms. Campbell indicated that in addition to reporting the incident to CAS, she reported it to the Ministry of Education and the College of Early Childhood Educators (the "College"). College counsel tendered a document, which Ms. Campbell identified as the report she sent to the College (Exhibit 3). Ms. Campbell also identified a letter she sent to the College, containing the Member's employment history with the Centre and the outcome of the CAS investigation (Exhibit 4).
28. College counsel asked Ms. Campbell to describe the wall [Child 1] alleged she was shoved against. Ms. Campbell stated that the wall in question was brick and the individual bricks were rough with jagged edges. Ms. Campbell maintained that the wall itself did not pose a threat to the children, provided they were being safe around it.

#### **Evidence of N.S.**

29. N.S. is the mother of [Child 1]. She testified that she is currently living in Calgary, Alberta with her daughter, [Child 1], but at the time of the incident, she was residing in Oshawa, Ontario.  
  
N.S. stated that the Member was an early childhood educator at Building Blocks Academy Inc. and that [Child 1] was one of her students.
30. College counsel tendered a document that N.S. identified as the original complaint she sent to the College regarding the incidents of August 15 and 16, 2013 (Exhibit 5). N.S. further



identified two documents that were included in her complaint to the College – the Undertaking Given for a Peace Officer or an Officer in Charge against Melissa Mary Smits and the Recognizance to Keep the Peace for Melissa Mary Smits.

31. N.S. testified that on August 15, 2013, [Child 1] was three years and two months old. She stated that on that date, when arrived at the Centre to pick up [Child 1], she was informed by the Member that [Child 1] had pinched her finger while playing, and the resulting cut bled quite a bit. The Member then told N.S. that she cleaned and bandaged the wound, but that she did not have time to complete the required injury report. N.S. stated that when she and [Child 1] returned home, she inspected, cleaned and bandaged the wound. When N.S. asked [Child 1] how she got cut, [Child 1] indicated that she cut herself in the kitchen with a knife. N.S. then inquired if any staff members were in the kitchen with her, to which [Child 1] responded that the Member was in the kitchen with her at the time.
32. N.S. stated that on August 16, 2013, she arrived at the Centre at 5:30 p.m. to pick up [Child 1] and immediately recognized her daughter's unhappiness. The Member approached N.S. and informed her that [Child 1] received a timeout because she was not listening and getting into trouble all day. On the drive home, N.S. noticed that [Child 1] was very quiet, which was unusual for her. When they arrived home, [Child 1] began to cry. N.S. attempted to comfort [Child 1] by giving her a bath. When she undressed [Child 1] for her bath, N.S. discovered four gouges on her daughter's back. She asked [Child 1] what had happened, and [Child 1] responded that the Member threw her into the wall.
33. N.S. testified that she immediately called Esmin Campbell upon discovering the injuries and explained to Ms. Campbell that [Child 1] said they were caused by the Member. Ms. Campbell recommended that N.S. return to the Centre with [Child 1] to discuss the situation further. Following the phone call, N.S. and [Child 1] returned to the Centre and met with Ms. Campbell

and the Member in the office. In the office, Ms. Campbell inspected [Child 1]'s back. When she asked what had happened, [Child 1] would not answer with the Member in the same room. Ms. Campbell then took [Child 1] into the staff room across the hall, which was still in earshot of the office, to ask what had happened. In the staff room, [Child 1] told Ms. Campbell that the Member had pushed her into the wall. When Ms. Campbell and [Child 1] returned to the office, Ms. Campbell asked the Member to explain what had happened. The Member replied that several children, including [Child 1], were not behaving during outdoor playtime, so she gently placed the children up against the wall for a timeout.

34. College counsel tendered a series of photos that N.S. identified as the pictures she took of [Child 1]'s injuries on the evening of August 16, 2013 (Exhibit 7). N.S. described the injuries in the photos, stating that there were three deep gouges and two smaller scrapes in the middle of her back.
35. Counsel for the College asked N.S. to describe the brick wall at the Centre. N.S. stated that she considered the bricks to be more like stones because they were very rough and jagged, unlike the traditional bricks used in homes. N.S. indicated that she did not believe that anything else at the Centre could have caused her daughter's injuries.
36. N.S. stated that on Monday August 19, 2013, she returned to the Centre to discuss the incident with Ms. Campbell. During their meeting, N.S. indicated that Ms. Campbell was hesitant to file a serious occurrence report with the Ministry of Education because the police and CAS would also have to get involved. N.S. stated that she forced Ms. Campbell to submit a serious occurrence report.
37. N.S. indicated that she was contacted by both the CAS and the police in response to the serious occurrence report. She stated that Ian Kavanagh from CAS visited her home to

interview her and [Child 1] about the incident and examined and photographed [Child 1]'s injuries. N.S. testified that following the Member's assault charge, she is registered with CAS in the child abuse registry. N.S. stated that both she and [Child 1] were also interviewed by Detective Shaun Arnott of the Durham Regional Police about the incident and [Child 1]'s injuries were documented.

38. College counsel tendered a document that N.S. identified as records she requested under the *Freedom of Information and Protection of Privacy Act* (Exhibit 6). The records contained information about the assault charges against the Member. Counsel for the College asked N.S. if her interview with Durham Regional Police included in the records was accurate to her knowledge, to which N.S. stated it was.

39. Counsel for the College asked N.S. if the incident caused [Child 1] to suffer any lasting damages, to which N.S. indicated that the incident left scars on [Child 1]'s back. College counsel asked N.S. if at any time [Child 1] told her that the injury was caused by anything besides the Member, to which N.S. responded that she had not.

### **Evidence of [Child 1]**

40. Due to the age and developmental stage of [Child 1], she did not take a formal oath before testifying at the hearing.

41. [Child 1] is a four year old child, former student of the Member and student involved in the incidents in question. She testified that she currently lives in Calgary, Alberta but previously lived in Toronto, Ontario.

42. Counsel for the College asked [Child 1] if she remembers attending childcare in Toronto, Ontario prior to moving to Calgary, to which [Child 1] testified that she did. College counsel then asked [Child 1] if she remembered the Member from her childcare Centre, to which [Child 1]

indicated that she had. Counsel for the College requested that [Child 1] explain what happened with the Member, and [Child 1] responded that she hit her in the wall, which hurt her back.

### **Documentary Evidence**

43. Counsel for the College also entered the following documents into evidence:

#### **Certified Court Documents Related to the Member's Criminal Charges: (Exhibit 8)**

44. These documents include a copy of the Member's Recognizance to Keep the Peace and information regarding the Member's criminal assault charge. The Recognizance to Keep the Peace, dated May 30, 2014, and in effect for a period of 12 months, states that [Child 1] fears on reasonable grounds that the Member will cause personal injury to her. It further states that the Member must have no contact directly or indirectly with [Child 1] or N.S.; remain 100 meters away from any known place of residence, employment, education, place of worship or daycare centre of [Child 1] or N.S.; and, remain 100 meters away from Building Blocks Academy located at 1525 Dundas Street East Whitby, ON. The information regarding the Member's criminal assault charge indicates that on August 16, 2013, the Member committed an assault on [Child 1], contrary to Section 266 of the Criminal Code of Canada.

#### **Court Transcript of the proceedings of R v. Smits, dated May 30, 2014: (Exhibit 9)**

45. This document is the court transcript for the proceedings of R v. Smits, dated May 30, 2014, in which the Member entered into a Recognizance to Keep the Peace with N.S. and [Child 1]. The transcript indicates that the Member was agreeable to the terms of the recognizance. The transcript further indicates that the Crown withdrew the assault charges against the Member once the Peace Bond had been entered into.

## **SUBMISSIONS OF COLLEGE COUNSEL AS TO FINDING**

46. Counsel for the College submitted that the Member should be found guilty of professional misconduct as alleged, citing violations of the College's professional misconduct regulation (Ontario Regulation 223/08).

### **Violations of the Professional Misconduct Regulation (Ontario Regulation 223/08)**

47. Counsel for the College submitted that the Member violated Ontario Regulation 223/08, section 2, subsection 3 by abusing physically, psychologically or emotionally a child who is under the member's professional supervision. College counsel submitted that there is sufficient direct and circumstantial evidence to support that the Member physically abused [Child 1] while she was under her professional supervision.

48. College counsel submitted that the Member violated Ontario Regulation 223/08, section 2, subsection 8 by failing to maintain the standards of the profession as outlined in the College's *Code of Ethics and Standards of Practice* (College bylaw 21). Contrary to Standard III.A.1, the Member failed to maintain safe and healthy learning environments. Counsel for the College stated that the children were not being treated in a developmentally sensitive way, as demonstrated by the Member forcefully shoving [Child 1] into a brick wall. College counsel argued that such an environment is neither safe nor healthy for young children, and as such, failed to uphold the standard.

49. Counsel for the College further submitted that the Member's conduct contravened Standard III.C.1, which states that early childhood educators support children in culturally, linguistically and developmentally sensitive ways and provide caring, stimulating and respectful opportunities for learning and care that are welcoming to children and their families, within an inclusive well-planned and structured environment. College counsel stated that by responding to the children's challenging behaviour that eventually led to the injury of [Child 1], it is evident that the Member failed to interact with the children in a

developmentally sensitive way. Furthermore, College argued that the Member failed to provide a well-planned or structured environment by virtue of allowing such a situation to occur in the first place.

50. It was submitted by College counsel that the Member's very aggressive response to [Child 1]'s behaviour contravened Standard IV.B.4. As stipulated in Standard IV.B.4, early childhood educators are to resolve challenges and provide behavioural guidance in the best interest of the children under their professional supervision. College counsel argued that it is wholly inappropriate for members of the College to resolve challenges by assaulting children in their care, as demonstrated by the Member. It was further submitted that the Member's actions were not reflective of appropriate behaviour guidance strategies nor were they in the best interest of [Child 1].
  
51. College counsel stated that it is disgraceful, dishonourable and unprofessional for an REECE to harm a child under their professional supervision. As documented in the photographs of [Child 1]'s back following the incident, the Member's actions caused significant injuries to [Child 1], leaving both physical and emotional scars. As such, the Member's conduct was a direct violation of Ontario Regulation 223/08, section 2, subsection 10.
  
52. College counsel stated that the Member's actions directly violated Ontario Regulation 223/08, section 2, subsection 20, by contravening a law, if the contravention has caused or may cause a child who is under the member's professional supervision to be put at or remain at risk. Citing the Criminal Code of Canada, counsel for the College stated that assault is defined as when a person, without the consent of another person, applies force intentionally to that person, directly or indirectly. College counsel argued that by the Criminal Code's definition, the Member's conduct would be considered assault, and that

absence of a criminal conviction is not relevant to the Committee to make a finding under Ontario Regulation 223/08 section 2, subsection 20.

53. Counsel for the College submitted that the Ontario Court of Justice employs the criminal standard of proof beyond a reasonable doubt, meaning that a judge cannot convict the accused if there is even a slight doubt in his or her mind that the defendant is guilty. By contrast, matters being heard in a professional discipline context are held to the civil standard of proof based on a balance of probabilities. As the College applies a different standard of proof than Ontario courts, College counsel stated that it is wholly permissible to consider the evidence presented during the hearing and decide whether the Member committed an assault based on the definition under the Criminal Code of Canada, notwithstanding what happened in the criminal case. For this reason, the Member does not need to be found to guilty of a criminal offence in a court of law for the Committee to make a finding under Ontario Regulation 223/08 section 2, subsection 20 – the Member only needs to be found to have contravened the law. College counsel submitted that the totality of evidence in the matter at hand strongly supports the factual conclusions that the Member, acting as an early childhood educator, violently pushed [Child 1] against a brick wall, causing significant injuries to [Child 1]. Such conduct would therefore be considered assault under the Criminal Code of Canada.

## **DECISION**

### **i. Onus and Standard of Proof**

54. The College bears the onus of proving the allegations contained in the Notice of Hearing dated February 10, 2015 on a balance of probability (more likely than not), based on clear,

convincing and cogent evidence, in accordance with the Supreme Court of Canada's decision in *F.H. v. McDougall*, [2008] 3 S.C.R. 41.

**ii. Findings of Fact**

55. The Committee finds the following as facts:

- a) The Member was issued a Certificate of Registration (Registration number 00948) on April 22, 2013.
- b) From on or around April 15, 2013 to on or around August 21, 2013, the Member was employed as a Registered Early Childhood Educator at Building Blocks Academy Inc. (the "Centre").
- c) On or about August 15, 2013, while under the Member's professional supervision, [Child 1] cut her hand on a Little Tikes play structure. The cut on [Child 1]'s hand bled substantially, so the Member cleaned the afflicted area and applied a bandage. When N.S., [Child 1]'s mother, arrived at the Centre that evening, the Member informed her of the incident and the injury [Child 1] had sustained. The Member did not complete an accident report following the incident.
- d) On or about August 16, 2013, the Member was supervising a group of children outside on the Centre's playground. During this time, a number of children, including [Child 1], were running and playing in the alleyway along the side of the Centre, despite being instructed not to do so. As a result of their behaviour, the children were placed in a time-out against the Centre's outside brick wall. As the Member organized the children along the wall, she forcefully shoved [Child 1] into the bricks, which scraped and bruised [Child 1]'s back.
- e) On or about August 16, 2013, at or around 5:30 p.m., N.S. arrived at the Centre to pick up [Child 1], where she observed [Child 1] waiting at the front window. When N.S. entered the Centre, the Member informed N.S. that [Child 1] had not been listening and received a time-out against the wall where she cried and apologized for her misbehaviour.
- f) On or about August 16, 2013, when N.S. and [Child 1] arrived home, N.S. prepared [Child 1] for a bath. When N.S. removed [Child 1]'s shirt, she noticed four bleeding wounds on [Child 1]'s back.
- g) On or about August 16, 2013, at or around 5:50 p.m., N.S. called the Centre and spoke to Esmine Campbell, the Centre Director and reported [Child 1]'s injuries. Ms. Campbell requested that N.S. and [Child 1] return to the Centre.



- h) On or about August 16, 2013, at or around 6:00 p.m., N.S. and [Child 1] arrived at the Centre and met with Ms. Campbell and the Member in the office. After Ms. Campbell examined [Child 1]'s injuries, she took [Child 1] to the staff room to discuss her injuries. When Ms. Campbell asked [Child 1] what happened, she indicated that it was the wall. When Ms. Campbell asked who had caused the injuries, [Child 1] reported that it was the Member.
- i) On or about August 21, 2013, the Member resigned her employment with the Centre.
- j) On or about September 4, 2013, the Member was arrested and charged with assault.
- k) On or about September 4, 2013, the Member entered into an "undertaking Given to a Peace Officer or an Officer in Charge" with the following conditions:
  - i. Attend at the Durham Regional Police Service Station at 77 Centre Street North, in Oshawa, in person and fill out the change of address form within 24 hours of any change in your address, employment or occupation;
  - ii. Abstain from communicating directly or indirectly with [Child 1] or N.S.;
  - iii. Not to seek employment or be employed with any school, agency or company which provides daycare to children under the age of 12 years;
  - iv. Not to volunteer at any place or organization where children under the age of 12 years are associated with;
  - v. Not to apply for any licence or permission to supervise children under the age of 12 years;
  - vi. Remain 100 meters away from any place of residence, employment, education, worship or any place [Child 1] and N.S. are known to be.
- l) On or about May 30, 2014, the Member entered into a "Recognizance to Keep the Peace," where she must abide by the following conditions for a period of 12 months:
  - i. She must have no contact directly or indirectly with [Child 1] or N.S.;
  - ii. She must remain 100 meters away from any known place of residence, employment, education, place of worship or daycare centre of [Child 1] or N.S.;

- iii. She must remain 100 meters away from Building Blocks Academy located at 1525 Dundas Street, East, Whitby, ON.

### iii. Decision

56. Having considered the evidence and onus and standard of proof, and the submissions made by counsel for the College, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that Melissa Smits, the Member, committed acts of professional misconduct as alleged, more particularly, breaches of Ontario Regulation 223/08, section 2, subsections 3, 8, 10, 20 and Standards III.A.1, III.C.1 and IV.B.4 of the College's *Code of Ethics and Standards of Practice*.

### REASONS FOR DECISION

57. The Committee found the witness testimonies to be, on the whole, credible and consistent. The evidence given by Esmine Campbell and N.S. contained a number of relevant similarities, including the fact that wounds were found on [Child 1]'s back on the evening of August 16, 2013 and that [Child 1] attributed her injuries to the Member shoving her into a wall. Both witnesses also testified that the Member was [Child 1]'s educator at the time the incident took place. The testimony provided by [Child 1] further supported the evidence of Ms. Campbell and N.S. as [Child 1] stated that her injuries were caused by the Member shoving her into a wall.
58. It is the view of the Committee that the evidence provided by Ms. Campbell, N.S., [Child 1] and College counsel sufficiently demonstrates that the Member is guilty of all the allegations brought against her by the College. The evidence suggests that the Member, while supervising her class outside, became frustrated with the behaviour of several children, one of which was [Child 1], and sought to discipline them by placing them in a

time-out. Without considering the effect of her actions on the physical, psychological or emotional well-being of [Child 1] and her peers, the Member intentionally and forcefully shoved [Child 1] up against a brick wall. As a result of her actions, [Child 1] sustained significant injuries to her back and her peers were made to witness the violent and demeaning act. The Member's hostile and insensitive conduct towards the children was not conducive to a safe and healthy learning environment and a direct violation of Standard III.A.1.

59. Far from inspiring confidence in the profession, the Member subjected a child in her care to significant and avoidable harm when she resorted to dangerous and ineffective behaviour guidance techniques. By forcefully shoving [Child 1] into a brick wall for a time-out, the Member failed to provide appropriate behaviour guidance in the best interest of [Child 1], contrary to Standard IV.B.4. Moreover, the Member's attitude towards [Child 1] was neither welcoming nor sensitive to [Child 1]'s developmental stage, contrary to Standard III.C.1.
60. The conduct exhibited by the Member is unacceptable for an early childhood educator. Her display of aggression and complete disregard for the rights and dignity of the children in her care is disgraceful, dishonourable, unprofessional, and a direct violation of subsection 2(10) of Ontario Regulation 223/08.
61. In considering the type of conduct that would qualify as assault under the Criminal Code of Canada, it is the opinion of the Committee that the Member's conduct fits the definition of assault. For this reason, the Committee finds the Member guilty of violating Ontario Regulation 223/08 subsection 2(20).
62. It is regrettable that the Member was not in attendance at the hearing as the Committee would have appreciated the opportunity to take the Member's perspective into

consideration. As a result, the Committee had to rely entirely on the College's submissions and the unchallenged testimony of the witnesses in arriving at a decision. Furthermore, the Committee was unable to determine whether the Member felt remorse for her actions or whether she still felt she acted appropriately in that situation. The fact that she failed to participate in the hearing, or even provide the College with a reason for not doing so, demonstrates her unwillingness to accept responsibility for her conduct. Her lack of cooperation and flouting of College processes reflects poorly on her professionalism and the Committee will not tolerate such inconsiderate behaviour from an RECE.

### **SUBMISSIONS OF COLLEGE COUNSEL AS TO PENALTY**

63. Counsel for the College submitted that the Committee direct the Registrar to place a three month suspension as well as terms, conditions and limitations requiring the Member to complete a course in Professional Supervision and Early Learning and Care. As the Member is currently suspended for non-payment of fees, College counsel requested that the Committee direct the Registrar not to carry out the suspension and the terms, conditions and limitations until the Member pays her fees and dues to the College, and is thus eligible to practise the profession. College counsel further submitted that the Member be reprimanded by the Committee in writing and the fact of the reprimand be recorded on the public register. In addition, College counsel submitted that the Committee's decision be published on the College's website and in the College newsletter, *Connexions*, with the Member's name in full.
64. College counsel submitted that all aspects of the proposed penalty are lawful as they are consistent with the Committee's legislative authority. Counsel for the College stated that there are three overarching principles of discipline hearings – specific deterrence, general deterrence and rehabilitation. Specific deterrence is devised to ensure that the Member will

not commit the same offence again. General deterrence is intended to instruct other members of the College of the type of penalty that awaits them should they commit professional misconduct in a similar manner to that of the Member. Finally, rehabilitation seeks to align Member's professional practise with the standards of the College by addressing any underlying concerns the Committee has with the Member.

65. College counsel submitted that each part of the proposed penalty has due regard to the overarching principles of discipline hearings and is appropriate, given the professional misconduct at hand. The written reprimand serves as a specific deterrent by allowing the Committee any opportunity to dialogue with the Member and convey to her the disapproval of her conduct. A written reprimand is particularly important given the fact that the Member was not present at the hearing. The reprimand serves as both a specific and general deterrent.

66. College counsel stated that a suspension is appropriate given the severity of the misconduct which has been exacerbated by the fact that the Member flaunted College processes and chose not to participate in the proceedings. The suspension not only acts as a specific deterrent, but also as a significant general deterrent by informing other members of the profession that the College will not tolerate any form of abuse against children.

67. Counsel for the College argued that the penalty imposed on the Member should not make it impossible for her to return to the profession. For this reason, it is recommended that the three month suspension and terms, conditions and limitations take effect at the time she recommits herself to the profession by paying her dues and penalties to the College. College counsel stated that structuring the Member's suspension in this way is sufficient to address the concerns of public protection.

68. Counsel for the College submitted that publication of the Member's conduct is important and serves as both a specific and general deterrence. As there is an element of public shaming associated with publication, not only will the Member be discouraged from committing future acts of misconduct, but so will other members of the profession. Publication also reflects the important principles of access and transparency in administrative proceedings which fosters confidence in the College's ability and willingness to police itself. Moreover, publication is important to the general public and as a public protection measure as it will allow future potential employers to be aware of the Member's conduct and to weigh the Committee's decision in its hiring decisions.
69. Counsel for the College cited aggravating factors beyond the severity of the conduct itself, including the fact that it took place in front of other students, the situation was completely avoidable and there was significant injury suffered by [Child 1] College counsel also stated that there is no indication of remorse felt by the Member as she was unwilling to participate in the College's disciplinary process.
70. Counsel for the College also cited mitigating factors, including an otherwise clear discipline record, she is a very new member of the College, the situation appears to be a single isolated incident and not a pattern of behaviour, and she has already gone through multiple investigations and a criminal proceeding.
71. College counsel stated that the College's submissions were in line with previous penalties imposed by the Committee and by other professional regulatory bodies, referencing *College of Early Childhood Educators v. Maria Walters, 2015*, *College of Early Childhood Educators v. Cynthia Skinner, 2013*, *College of Early Childhood Educators v. Donna Desson, 2013*, *Ontario College of Teachers v. George Arnold Hoytema, 2006*, and *Ontario College of Teachers v. Thomas Adrian Foster, 2013*.

## **PENALTY DECISION**

72. After considering the submissions made by College counsel, the Committee makes the following order as to penalty:

- a) The Member shall be reprimanded by the Discipline Committee in writing and the fact of the reprimand shall be recorded on the College's register.
- b) The Registrar shall be directed to suspend the Member's certificate of registration for a period of six months which shall be served commencing on the date at which the Member pays her fees and penalties and is thereby eligible for a certificate of registration in good standing.
- c) The Registrar shall be directed to impose a term, condition and limitation on the Member's certificate of Registration, requiring the Member, at her own expense and to the satisfaction of the Registrar, to complete a course of study in "Professional Supervision in Early Learning and Care," as prescribed by and acceptable to the College within six months of paying her fees and penalties and thereby becoming eligible for a certificate of registration in good standing.
- d) The results of the hearing shall be recorded on the Register.
- e) The Discipline Committee's finding and Order shall be published in full on the College's website and in summary in the College's newsletter, *Connexions*.

## **REASONS FOR PENALTY DECISION**

73. The Committee has ordered a penalty consistent with the submissions made by College counsel, but has extended the suspension and time allotted to complete the course to six months from the date the Member pays her dues and penalties to the College. It has determined that the penalty is reasonable and serves to protect the public. With the slight modifications to the proposed penalty, the Committee is confident that it is reasonable and serves to protect the public interest.

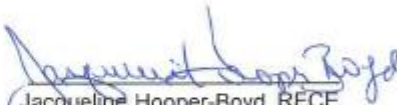
74. As the Member was not in attendance at the hearing, a written reprimand provides the Committee with the opportunity to express its disapproval of the Member's conduct. The reprimand also serves a rehabilitative function as it identifies the shortcomings in the Member's professional practice, specifically her lack of positive regard for children's rights, which she can then work on improving.
75. Suspension of the Member's certificate of registration is appropriate in this matter, given that the Member failed to appreciate her commitment to the profession and the children in her care. A suspension provides the Member with an opportunity to learn from her mistakes, refocus on her professional responsibilities and reflect on her conduct. The fact that the Member's conduct resulted in a suspension also serves to deter other RECEs from engaging in similar behaviour for fear of the same penalty. It further serves to protect the public interest by preventing her from practising and provides restitution for the pain and suffering endured by [Child 1] and her family.
76. By completing a course in "Professional Supervision in Early Learning and Care," the Member will be required to address the weaknesses in her professional skill set when she is ready to recommit herself to the College. This educational component is intended to rehabilitate the Member and instill in her the best practices for effective behaviour guidance techniques. In addition to imparting a strong understanding of how an RECE's behaviour can adversely affect children, the course will demonstrate the correlation between professional supervision of early learning and care techniques and strong program design and delivery. Since the course must be completed no more than six months after paying her dues and penalties to the College, the education she receives will be current to the time she rejoins the profession.



77. Ordering the Member to complete the course at her own expense holds the Member financially responsible for her rehabilitation and serves as incentive to take her professional development seriously. It also demonstrates the weighty consequences associated with committing professional misconduct, which will discourage her from engaging in similar conduct in the future.
78. Finally, publication on the public register, College website and in the newsletter, *Connexions*, promotes awareness of the high standards to which the College holds its members and assures both the public and other members of the profession that the College will not tolerate this kind of conduct. As the Member did not wish to participate in the proceedings and take responsibility for her conduct, publication allows the Committee to assign to the Member the accountability she was unwilling to accept. The Committee recognizes the social condemnation and public shaming associated with publishing the Member's name along with her misconduct, and believes this to serve as a significant deterrent for both the Member and other RECEs.
79. In conclusion, the Committee is confident that the penalty serves the interests of the public and the profession.

Date: March 18, 2015

  
Eugema Ings, RECE  
Chair, Discipline Panel

  
Jacqueline Hooper-Boyd, RECE  
Member, Discipline Panel

  
Karen Damley  
Member, Discipline Panel