CITATION: Okafor v. Ontario College of Teachers, 2025 ONSC 6089
DIVISIONAL COURT FILE NOS.: 644/22 and 572/24
DATE: 20251119

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

D.L. CORBETT, FAIETA, SUTHERLAND JJ.

BETWEEN:	)	
	)	
LORETTO OKAFOR	)	*Philip Abbink*, for the Appellant
	)	
Appellant	)	
	)	
– **and** –	)	
	)	
ONTARIO COLLEGE OF TEACHERS	)	*Stephanie Sugar*, for the Respondent
	)	
	)	**HEARD: February 25, 2025**

REASONS FOR DECISION

FAIETA J.

[1] Pursuant to s. 35(1) of the *Ontario College of Teachers Act, 1996*, S.O. 1996, c. 12 (the "Act"), the Appellant, Loretto Okafor, appeals the decision of the Discipline Committee of the Ontario College of Teachers, dated October 21, 2022, which found her guilty of professional misconduct for, amongst other things, physically and emotionally abusing a student with special needs, and for unprofessional conduct towards her colleagues. The Appellant also appeals the Discipline Committee's penalty decision, dated August 25, 2024, that ordered a reprimand, coursework on anger management and classroom management, a five-month suspension, and costs in the amount of $60,000.00 to be paid over six years. In respect of the penalty decision, the Appellant is only appealing the suspension and costs orders.

BACKGROUND

[2] The Appellant is a member of the Ontario College of Teachers (the "College") and was licensed in 2003. She obtained both a Bachelor's and a Master's degree in Education in Nigeria and taught at a College of Education in Nigeria for ten years before coming to Canada in 2002. The Appellant received her Certificate of Qualification and Registration in June 2023. The Appellant taught at Drewry Secondary School from 2004 until 2018 mostly in the Developmentally Delayed stream.

[3] The College is a self-governing professional body which regulates certified teachers in Ontario pursuant to the Act.

Notices of Hearing

[4] Two notices of hearing were issued by the College. In respect of six incidents that occurred over three school years, a Notice of Hearing dated October 18, 2018, alleges that the Appellant is guilty of professional misconduct because, contrary to *Professional Misconduct*, O. Reg. 437/97 Ms. Okafor did the following:

- Failed to maintain the standards of the profession contrary to s. 1(5);
- Abused a student or students verbally contrary to s. 1(7);
- Abused a student or students psychologically or emotionally contrary to s. 1(7.2);
- Failed to comply with the Act or the regulations or the by-law contrary to s. 1(14);
- Failed to comply with s. 264(1) of the *Education Act*, R.S.O. 1990, c. E.2 or the regulations under the *Education Act* contrary to s. 1(15);
- Committed an act or acts that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional contrary to s. 1(18); and
- Engaged in conduct that was unbecoming of a member, contrary to s. 1(19).

[5] In respect of an allegation that the Appellant hit and taunted a student, a further Notice of Hearing dated December 4, 2019 alleges that the Appellant is guilty of professional misconduct for the same reasons as described above.

The Discipline Committee's Misconduct Hearing

[6] The Discipline Committee's misconduct hearing, which by agreement of the parties joined both Notices of Hearing into one hearing, was heard over 13 days between February 2020 and May 2022.

Expert Evidence

[7] The Appellant sought to qualify Dr. Paul R. Carr as an expert on racism and anti-racism in education, and racism and anti-racism in the Appellant's case. The Discipline Committee accepted Dr. Carr as an expert on racism and anti-racism in education generally but declined to accept him as an expert on racism and anti-racism regarding the investigation and discipline of the Appellant.

[8] Dr. Carr testified that race is a social construct and that racism exists in various forms: individual, institutional, systemic, and unconscious. Anti-Black racism is especially severe and pervasive. While Toronto schools have 55% diverse students, only 10-15% of teachers in North

America are non-white, with minorities underrepresented in leadership positions. Racism in education persists despite anti-racist initiatives and measuring the extent of racism in education remains challenging due to lack of formal assessment tools and ongoing systemic barriers.

[9] The Discipline Committee heard evidence from the Appellant, numerous members of her School's staff, and a student, Student 1, regarding seven incidents involving the Appellant.

Incident #1 – March 2024

[10] On March 5, 2014, the Appellant had a confrontation with Person A, a male Educational Assistant, in front of staff and students. An Educational Assistant, Jennifer Morgan, testified that she witnessed the Appellant pointing her finger and yelling at Person A, who was standing in the doorway, in the presence of other staff and students and making the following statements: "don't even talk to me" and "who are these people who are telling you to go?". Ms. Morgan further testified that she witnessed the Appellant stating "I don't care who's telling you to go. You need to be here in my class" or words to that effect. This exchange between the Appellant and Person A lasted about five minutes and left the students who observed this exchange upset. The student whom Ms. Morgan was helping became extremely emotional, terrified, upset, and frozen. Ms. Morgan felt upset and disheartened by the Appellant's actions. She tried to comfort Person A who was distressed for the remainder of the afternoon.

[11] The Principal, Saverio Zupa, testified that, on the same day, Person A came to his office "shaken up" by the Appellant's actions. The Principal spoke with the Appellant who told him that she was upset that Person A had left her class to assist another class on a field trip and said that she spoke loudly as a result of her cultural background. At the hearing, the Member stated that she was upset because she wanted Person A to assist her with a student rather than have him assist another class with a field trip. The Appellant denied that she made the statements alleged by Ms. Morgan and denied pointing her finger at Person A.

[12] The Discipline Committee found that:

(a) There was no reason to believe that Ms. Morgan had fabricated evidence or that she was motivated or influenced by anti-Black racism in her account of these events.

(b) There was no reason to believe that the Principal was racially motivated or treated the Appellant unfairly in his investigation and subsequent discipline of the Appellant.

(c) The Appellant testified that it was a recurring issue and a big stress for her when Person A was not in attendance in her class. She acknowledged that she may not have been using an "indoor voice" to address Person A as it was loud in the crowded hallway and music was playing. The Appellant acknowledged that Ms. Morgan might have thought that she was yelling but attributed this to the Appellant's generally loud voice.

(d) The College had established on a balance of probabilities that the Appellant pointed her finger at Person A; yelled at Person A, told Person A "Don't even talk to me"; told Person A, "You have to be in my class"; and told Person A, "Who are these people telling you to

go; I don't care who's telling you to go. You need to be here in my class". However the Discipline Committee found that there was no evidence that the Appellant told Person A "You think you can do whatever you want but you can't".

Incident #2 – June 2024

[13] On June 23, 2024, the Appellant had a confrontation with Person B, a female teacher at the school. Person B states that she approached the Appellant to discuss a request by a parent regarding the programming needs of a particular student and became visibly upset when she learned that the student would be placed in her class the next academic year. The Appellant told Person B that this would be irresponsible, in part, because of safety concerns and she expressed feeling punished by the School's administration because of her race. Person B testified that the Appellant started yelling for several minutes in the presence of the students and made several disparaging remarks about the students. Person B states that she felt uncomfortable when the Appellant screamed at her and that some of the students also appeared uncomfortable.

[14] Person B submitted a written report to the Principal, Mr. Zupo. The Principal met with the Appellant who denied yelling, screaming and making the statements alleged by Person B. The Principal also stated that he was upset to hear that the Appellant felt racially targeted by him as he had thought that they had a good working relationship and he had attended her wedding. The Appellant testified that she was not unhappy that a particular student would be in her class the next year and she was not unhappy with that decision and did not say that it would be irresponsible to put the student in her class.

[15] The Discipline Committee preferred the evidence of Person B and the Principal over that of the Appellant. It found that their evidence was credible, clear and they were consistent in their evidence. It also found that their evidence was not motivated by anti-Black racism nor did they have reason to fabricate their evidence. The Appellant did not deny saying something to the effect of "look [at] what I have to deal with". The Discipline Committee found that the Appellant's frustration and comment were not about wanting a larger classroom, as suggested by the Appellant, but rather were about her students' challenges. As well, the Appellant admitted that she apologized to Person B for having made Person B feel like she was being yelled at. The Panel found that the College had proven that the Appellant yelled at Person B; used an aggressive tone during the interaction with Person B; made negative and/or disparaging statements to Person B about students in her class; told Person B "Look what I have to deal with. This is not a developmentally delayed classroom. Look at who I am teaching"; and told Person B "Look at this girl, I don't know her name, she does not even know how to identify numbers. What am I supposed to do with her".

Incident #3 – December 2015

[16] On December 11, 2015, the school conducted a fire drill. The Appellant asked Elizabeth Walker, a Special Needs Assistant, to find a student that had separated from the rest of the class. Ms. Walker found the student and, at the request of the Vice-Principal, brought the student inside the school as the student was becoming aggressive. Ms. Walker sat with the student on a bench inside the school and tried to calm her while waiting for the student's father to pick up her from school. The Appellant approached Ms. Walker, annoyed, and asked why she was not back in the

Appellant's classroom. Ms. Walker directed the Appellant to Person C, a female teacher, who was also in the hallway, helping students to get ready to leave for an off-site program. Ms. Walker heard the Appellant yell at Person C for one to two minutes. She stated that the Appellant's voice was excessively loud, and beyond the Appellant's normal voice. Ms. Walker apologized to Person C for the Appellant yelling at her. Ms. Walker also sent an email to the Principal stating that the Appellant had yelled at Person C. Person C testified that the Appellant's voice was raised and that she was angry and frustrated during this exchange. The Appellant told her that she could not function with just one educational assistant. Person C was confused because she did not know, at the time, why Ms. Walker had been in the hallway. Person C was embarrassed by the Appellant yelling at her and she recalled that she felt embarrassed when one or two students asked why the Appellant was angry.

[17] The Discipline Committee found that the College's witnesses were credible, reliable, clear in their testimony, and consistent in their accounts of the Appellant's interaction with Person C and with their contemporaneously made notes. There was no evidence that they had a negative relationship with the Appellant or that they were biased in their accounts. In particular, the Discipline Committee addressed concerns regarding anti-Black racism. The Principal, Mr. Zupo, testified that his decision to discipline the Appellant was made after he spoke with a Black colleague from Africa to gain insight about cultural factors that might be influencing the Appellant's conduct.[1] While the Discipline Committee acknowledged that the Appellant may generally speak loudly as a result of her cultural background, it was persuaded by Ms. Walker, who worked in the Appellant's classroom, that the Appellant had used her voice at a volume that was louder than her normal voice. Given that Person C was visibly upset by their interaction, that Ms. Walker was upset and stressed by what she had observed, and that Person B felt uncomfortable, the Discipline Committee found that it was more likely than not that the Appellant's conduct (i.e. tone, volume and gestures) was aggressive, angry and accusatory and not merely due to cultural differences in communication styles.

[18] The Discipline Committee found that the College had established that the Appellant used a disrespectful and/or unprofessional tone in her interaction with Person C, exhibited an aggressive demeanour towards her, spoke at a volume which was excessively loud to her, and raised her arm with fingers extended and/or pointed in Person C's direction.

Incident #4 – Between September 2016 and October 2016

[19] Ms. Walker testified that she heard the Appellant make the comment "If you don't stop biting your arm, I'm gonna cut it off and make soup with it" when that female developmentally delayed student engaged in self-harming behaviour. The Principal stated that he met with the Appellant in December 2016 and that she told him that she would tell the student "if you bite your arm, I will make soup" or words to that effect. The Appellant testified that she told this student "if you keep biting and your hands fall off, we'll make soup". The College found that although the evidence showed that the Appellant made comments about making soup with the student's arm with some regularity, there was no evidence that such comments were made in September 2016

[1] It is not clear in the record from which country in Africa this Black colleague originates.

and October 2016 as alleged by the College. Accordingly, the Discipline Committee found that this specific allegation had not been established.

Incident #5 – September 30, 2016

[20] On September 30, 2016, the School went on a trip to the Markham Fair. The Appellant had assigned Ms. Walker to assist a student. Ms. Walker had been working with this female developmentally delayed student for about one year and was aware that the student would scream and engage in self-harm by biting her forearm when she was anxious or agitated or when she did not want to do something. At the fair, the class watched a dog show. The student started to scream, which led Ms. Walker, who was standing behind the student, to believe that that Student would soon start to harm herself. Ms. Walker fell as she approached the student. However, Ms. Walker heard the Appellant yelling at the student, telling her in a very loud voice to stop biting her arm. The student did not stop biting her arm until Ms. Walker calmed her down. The Appellant told Mr. Zupo that she had used a normal tone of voice to talk to the student, that she was far away from the student, and that others may have perceived her as yelling at the student. At the hearing, the Appellant denied yelling at the student.

[21] The Discipline Committee found that there was nothing to suggest that the evidence of Ms. Walker or Mr. Zupo was motivated by anti-Black racism or that they had any reason to fabricate their evidence. The Discipline Committee found that the Appellant's evidence was inconsistent. She had first testified that she sat with Ms. Walker and the Student at the dog show, but during cross-examination stated that Ms. Walker had been far away from the student. The Discipline Committee found that it was more likely than not that Ms. Walker had been close to the student at the time of the incident. Although the Appellant testified that she used her normal voice to speak to the student, she acknowledged that others could have perceived her to be yelling at the student. The Discipline Committee found that the Appellant had yelled at and/or used an excessively loud voice with the Student in the presence of others.

Incident #6 – October 2016

[22] Person D was an Educational Assistant in the Appellant's classroom. She stated that the children in the classroom were non-verbal. Person D testified about two incidents.

[23] In the first incident, Person D brought a student to the cafeteria to quickly eat his breakfast as his school bus arrived late. Person D was responsible for getting this student who lived in a group home on and off his school bus and to the breakfast program at the school. From her classroom, which is across from the cafeteria, the Appellant saw the student and Person D. According to Person D, the Appellant yelled at them to come to class and told Person D "I know what you are doing with [the student] with the food and you know that is not right". The Appellant testified that she allows students to eat snacks in the classroom and denied yelling at Person D.

[24] The second incident involved Person D and a student who wore braces on his legs and required the assistance of a walker. Person D states that staff would generally push the student in his walker to wherever they were going and would support him as he walked with his walker because he was unable to walk by himself On this occasion, the Appellant saw Person D pushing

this student to the gym in his walker and yelled at Person D in a loud and condescending voice, "What are you doing? Why are you pushing him? He needs to walk". Person D responded "OK" and left. Person B observed this exchange and asked Person D if she was ok. Person D states that the Appellant's behaviour in both incidents made her feel like a child.

[25] The Discipline Committee found that the Appellant yelled at and/or used an excessively loud voice to express her displeasure with Person D's performance in the presence of other staff and/or students and commented on the care provided by Person D to a student and/or students in an inappropriate manner.

Incident #7 – May 3, 2018

[26] On May 3, 2018, the Appellant became involved in a confrontation with Student 1, an 18-year-old male developmentally delayed student.

[27] The Panel found:

> [177] The Panel finds that the College's witnesses were generally clear, credible, and reliable in their testimonies. All the College witnesses were upfront about details they could not recall and did not embellish their accounts. The Panel did not find any evidence to suggest that the College's witnesses were motivated by or influenced by anti-Black sentiments. Mr. Stephenson was upfront that that he did not receive training apart from professional development courses offered by the board in anti-racism, or Equity, Diversity, and Inclusion and testified that there were several Black staff members at the school at the time, including another teacher. Mr. Wilson further acknowledged that he does not have any credentials with respect to Equity, Diversity and Inclusion. However, the Panel accepts Mr. Wilson's testimony that he is himself Métis and his background informs the way he approaches investigations, namely with an open mind, taking into account possibilities of bias that may be at play.
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> [178] The Panel did, however, have several concerns about both the Member's testimony and that of Student 1. First, the Panel notes the Member's testimony was unclear and at times inconsistent. For example, the Member was asked during crossexamination whether Student 1 had kicked her. She testified that Student 1 did not kick her. The Panel notes this is inconsistent with the notes taken by Police Constable Wolfe in the Toronto Police Service General Occurrence Report dated May 3, 2018, which records the Member as saying Student 1 punched and kicked her in the leg. The Member denied making this statement to the police. The Member also testified that Student 1 stomped on her feet twice, but the notes from Mr. Wilson's Investigation Report record the Member reporting Student 1 stomping on her foot once, and the Member moving her foot to avoid the second stomp.
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> [179] With respect to Student 1, the Panel recognizes that it may have been challenging for Student 1 to testify at the hearing and has given careful consideration to Student 1's testimony. The Panel, however, did not find Student

1's testimony to be reliable or credible. First, there were several instances during the hearing where the integrity of Student 1's testimony was compromised by the presence of Student 1's parents, who were present to provide support to Student 1 but appeared to be prompting him, as they could be heard speaking to Student 1 during his testimony and telling him what to say at times. In addition, the Panel noted several inconsistencies in Student 1's testimony. For example, Student 1 testified that he spoke with the police over the phone, and then recanted that statement. He also said he had spoken with Member's Counsel prior to the hearing about lying to the police and that Member's Counsel had told him that he was lying to the police about hitting the Member, but later recanted that statement as well and said he had never spoken with Member's Counsel. Student 1 also testified that the Member was his teacher in [XXX], [XXX] and [XXX]. The Panel notes Student 1 did not mention the 2017-2018 year but was presented with his safety plan for the 2017-2018 which indicates the Member was his teacher year that year. Finally, the Panel finds it probable that Student 1 was motivated to present a favourable account of events because it was clear that he is fond of the Member and feels badly about what happened as a result of the events on May 3, 2018.

[180] Having considered all of the evidence, the Panel prefers the evidence of the College's witnesses, who were consistent with each other that the Member made various statements to Student 1 about hitting her and calling the police, to the effect of "don't hit me. If you hit me, I'll hit you. I'll call the cops on you and I'll call your mom"; "hit me, hit me – I'll call the police" and "just try it"; "hit me, I dare you". All three witnesses also testified that they heard the Member tell Student 1 not to touch her.

[181] The Panel notes that Ms. Gaffar did not witness the Member hitting Student 1 when he attempted to take his [XXX] folder from the Member's desk, but she did hear Student 1 say, "ouch-you hit me" and she noted that Student 1 does not usually say things like that. The Panel finds it more likely than not that Student 1 said this because he was, in fact, hit by the Member after attempting to take a [XXX] folder from the Member's desk. The Member did not offer any reasonable explanation for why else Student 1 would have said that. In addition, Ms. Gaffar observed the Member hitting Student 1 after he attempted to pull at the Member's earbuds. She had sufficient opportunity to observe the Member hitting Student 1. She noted the Member had hit Student 1 in her report to Mr. Stephenson, maintained throughout the investigation that she saw the Member hit Student 1 when he grabbed the headphones, and was unshaken in her account under crossexamination.

[182] The Panel finds that the College has proven on a balance of probabilities that on or about May 3, 2018, the Member: hit Student 1, when he attempted to take a [XXX] folder from the Member's desk; hit Student 1, after Student 1 pulled or attempted to pull at the Member's earbuds; taunted Student 1 and/or said words to the effect of: "Just try it, I'm going to call the police"; "Hit me, I dare you"; and "Don't touch me. If you hit me, I'll hit you". [References to the record before the Discipline Committee omitted.]

The Discipline Committee's Penalty Hearing

[28] On April 25, 2023 and June 8, 2023, the Discipline Committee heard the parties' submissions on penalty and costs. On August 25, 2024, the Discipline Committee found that the appropriate penalty order in this case was:

(a) A reprimand to be delivered in writing and recorded on the Register of the College.

(b) A five-month suspension of the Appellant's Certificate of Qualification and Registration.

(c) As a condition of the Certificate of Qualification and Registration, the Member shall, within 90 days, successfully complete course(s), pre-approved by the College Registrar and at her own expense, regarding anger management and classroom management with a focus on effective workplace relationships and special needs students.

(d) The Member is directed to pay costs of this matter in the amount of $60,000.00 to the College within six years.

ISSUES

[29] The Appellant's position at the Discipline Committee, which underlies her position on most of the issues raised on this appeal, was described by the Discipline Committee as follows at para. 59:

> Generally, Member's Counsel submitted that the College's case relies upon an application of the standards of the profession in a way that does not take into consideration the effects of systemic racism in education. The Member is a Black woman from Nigeria, with an accent that is difficult to understand. She is passionate and loud, confident and assertive. According to Member's Counsel, she fits a particular stereotype about Black individuals, which led to a narrative about the Member at the School as a disrespectful individual. She was held to a different standard as a racialized woman and would not have come before the Discipline Committee but for anti-Black racism.

[30] In respect of the finding of misconduct, the Appellant submits:

(a) Dr. Carr's evidence on racism and anti-racism in the Appellant's case was improperly excluded as his evidence about anti-Black racism and unconscious bias could have played a role with respect to how the Appellant was perceived and treated as a Black woman.

(b) The Discipline Committee incorrectly assessed credibility by placing undue weight on the Appellant's interest in the outcome, failing to consider Student 1's exceptionalities when assessing his evidence, and reversing the burden of proof.

(c) The Discipline Committee failed to address the defence of unconscious bias and, in particular, they provided no meaningful explanation about why they concluded that none of the witnesses were unconsciously biased by the Appellant's race.

[31] In respect of the penalty imposed, the Appellant submits:

(a) The Discipline Committee committed an error of principle, and an error of law, by failing to consider systemic racism and unconscious bias when evaluating the severity of the Appellant's conduct.

(b) When assessing costs, the Discipline Committee failed to consider the College used an entire day of hearing time objecting to the admissibility of Dr. Carr's evidence, and that the College was not successful in resisting the admission of all of his evidence.

[32] In addition, the panel asked the parties to deliver submissions in respect of the following issues:

(a) Did the Discipline Committee err in admitting an investigation report prepared as a "business record" under s. 35 of Ontario's *Evidence Act*, R.S.O 1990, c. E.23 ("*Evidence Act*")?

(b) Did the Discipline Committee err in relying on prior consistent statements to bolster credibility?

STANDARD OF REVIEW

[33] Subsection 35(4) of the Act provides:

> An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the committee appealed from and may exercise all powers of the committee and may direct the committee to take any action which the committee may take and that the court considers appropriate and, for the purpose, the court may substitute its opinion for that of the committee or the court may refer the matter back to the committee for rehearing, in whole or in part, in accordance with such directions as the court considers appropriate.

[34] On an appeal from a decision of an administrative tribunal, appellate standards of review apply. Thus, on a question of law, the standard of correctness applies and on a question of fact, the standard of review is palpable and overriding error (as it is for questions of mixed fact and law where the legal principle is not readily extricable): *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at para. 37; *Caine v. Ontario College of Teachers*, 2022 ONSC 2592, at para. 24.

[35] In *Caine*, Backhouse J. stated:

> [25] An error is palpable if it is obvious and plainly seen, and if all the evidence need not be reconsidered to identify it. It is not a needle in a haystack but a beam

> in the eye. An overriding error is one that is likely to have affected the result and goes to the very core of the outcome of the case -- "[w]hen arguing palpable and overriding error, it is not enough to pull at leaves and branches and leave the tree standing. The entire tree must fall".
>
> [26] Palpable and overriding error is a highly deferential standard that recognizes the expertise and competence of the trier. It is not the role of appellate courts to second-guess the weight assigned to items of evidence by the trier. In particular, the fact that an alternative factual finding could be reached based on a different ascription of weight by an appellate court does not mean that a palpable and overriding error has been made. [Footnotes omitted.]

ANALYSIS

Did the Discipline Committee Err in Excluding the Expert Evidence of Dr. Carr related to whether anti-Black racism played a role with respect to how the Appellant was perceived and treated?

[36] The Appellant sought to qualify Dr. Paul R. Carr as an expert on racism and anti-racism in education, and racism and anti-racism in the Appellant's case. The appellant asked Dr. Carr to address four questions:

(1) What is systemic racism and how does it operate in the TDSB?;

(2) How might systemic racism or white privilege impact the interactions between a woman of colour and her professional colleagues and supervisors, such as Ms. Okafor?;

(3) In his view, do any of the alleged interactions between Ms. Okafor and her professional colleagues, supervisors and/or students show evidence of systemic racism, white privilege, or bias?; and

(4) In his view, was the assessment of Ms. Okafor's behaviours and/or performance by her professional colleagues and supervisors tainted by systemic racism, white privilege or bias?

The voir dire was framed by a report Dr. Carr had prepared that addresses these four issues.

[37] Regarding Question #1, Dr. Carr's report discusses individual racism, everyday racism, institutional racism, systemic racism, anti-Black racism, anti-racism and Whiteness in the abstract. Dr. Carr notes that racism may be unconscious:

> In sum, for this section, it is important to note that <u>there may be conscious and unconscious as well as explicit and implicit actions, attitudes and behaviours in relation to racism</u>, and that the effect may be undocumented/under-documented, under-evaluated and perceived as negligible by institutional authorities and leaders. Policies that are meant to deter, dissuade and diminish racism, for example, may be poorly implemented and enforced, which underpins the systemic and institutional nature of racism. The Toronto District School Board has a long history of

> developing and implementing equity policies but this does not guarantee the actual full and complete transformation of the institutional culture, nor the eradication of racism in all of its dimensions. [Emphasis added.]

[38] Regarding Question #2, Dr. Carr's report discusses how systemic racism and Whiteness might impact the interactions between a woman of colour and her professional colleagues and supervisors. Dr. Carr's report states, at page 9:

> For Questions 2, 3 and 4, I am limited by the documents to which I have had access as well as the solitary conversation that I had with Ms. Okafor (for one hour on January 8, 2020). I did not have access to the other parties involved in this case. Therefore, my opinion is shaped within that context as well [as by] my experiences and the academic literature. My focus is on the questions addressed to me and not on other aspects of the investigation.
>
> With regards to this question, systemic racism and White privilege might impact the interactions between a woman of colour and her professional colleagues and supervisors in a number of ways. There are formal levels of interaction, such as performance evaluations and the assignment of teaching load and classrooms (the latter of which was apparently the case for Ms Okafor), and also the informal ones, such as how the "woman of colour" might be included in meetings, activities and shaping the institutional culture.
>
> There is also the issue of understanding and appreciating the role and level of engagement that the "woman of colour" colleague may have with parents and members of the community, especially from racialized communities. The "woman of colour" colleague may be providing support, insight, mediation and pedagogical, curricular and educational upliftment that is not recognized or is event under-valued. …
>
> A significant factor for a "woman of colour" in relation to interactions with professional colleagues and supervisors could be the manner in which racism is addressed, if at all. Discussion of racism and racial incidents and, equally importantly, having access to the resources and support to address such concerns may be limited, discouraged, disparaged and side-lined through conscious or unconscious Whiteness and systemic racism within an institutional context. This can affect the ecology of the entire education system, and lead to racial problems, conflicts and gaps in relation to student academic achievement, student engagement, teacher motivation and engagement, equity at all levels, and parental involvement, among other things. [Emphasis added]

[39] Regarding Question #3 and whether the alleged interactions between Ms. Okafor and her professional colleagues, supervisors and/or students show evidence of systemic racism, white privilege, or bias, Dr, Carr addresses Incident #1 and, states at pp. 11 and 13-14:

… Of particular note in this investigation is the April 17, 2014, Grievance Meeting notes, which detail a "culture of silence," and fear of the Principal, who was considered to be the "board's golden boy," according to one colleague. These same Grievance Meeting notes refer to poor morale at Drewry S.S. Specifically, in relation to Ms Okafor, there is reference to the fact that the "member's" classroom is an isolated area (and one colleague noted that there is "back story" to this), supposedly as a form of punishment. In the September 24, 2014, Grievance Meeting notes, there is also the comment by a colleague that "I think that the problem here is that e.a. is a personal friend of the principal."

Were these claims/accusations/insights verified, validated and pursued during the investigation? Was the Principal afforded latitude that should have been questioned more thoroughly in relation to potential and/or perceived bias? Were other options available to the Principal to diffuse this matter in other ways that may have avoided full-blown escalation? Are all cases handled in this way or is Ms Okafor's case the norm? Would the case have been handled in exactly the same way if it had been a White teacher? In sum, was Ms Okafor given the full benefit of doubt during this process? The comments in the preceding paragraphs note that there is reason to believe that there may have been bias and discrimination against Ms Okafor. …

In talking with Ms Okafor, it was made clear to me that her relationship to [Student 1] involved looking out for his best interests, including advocating on his behalf, because he was considered to be a difficult student, and did have a history of hitting people. Although Ms Okafor, according to her explanation, worked with the student for several years, and had assisted him in many ways to advance significantly in his education, she was not fully supported. In the case of [Student 1], given the mitigating factors and circumstances, and what Ms. Okafor claims to be an institutional culture that was not favourable to her or racialized teachers, especially in relation to the leadership of the Principal, I believe that there is reason to question the way that systemic racism may have played a role in this matter. …

My mandate for this Expert Opinion does not involve retrying the case against Ms. Okafor but, rather, to focus on systemic racism and White privilege so I will not critique all of the evidence provided by investigators that focused on the culpability of Ms. Okafor. However, I have sought above to elucidate some point and issues that may reasonably raise questions in relation to systemic racism and White privilege.

In my opinion, these are not insignificant arguments, and they do underpin a narrative of a teacher who has demonstrated professionalism in many regards over a number of years (but also who has been involved in some complaints). … The academic literature refers to systemic and institutional racism often being intertwined in unwritten codes, akin to the "Old Boys Club", which serve to centralize power and decision-making, and to marginalize, in general, racialized peoples. The intersectionality of race and gender is equally germane here. However,

> trying to prove a negative intent is not easy, nor without complication. [Emphasis added]

[40] Regarding Question #4, and whether the assessment of Ms. Okafor's behaviours and/or performance by her professional colleagues and supervisors was tainted by systemic racism, white privilege or bias, Dr. Carr, at pages 15-16 of his report, states:

> As noted in Question [1], identifying and elucidating systemic racism, by its very nature, is fraught with problems and challenges. ... It would be important to know if Ms Okafor's superiors were White (Ms Okafor confirmed that they were)? This is not to infer that they are ineffectual, unmeritorious, predisposed to being racially biased or, in some way, involved in collusion to not engage in anti-racism. … In this case, Ms Okafor is a Black woman, and I believe that that is relevant for the Expert Opinion that I have been asked to formulate. Further, it would be important to ascertain how, if at all, race was considered throughout all of the interactions, processes, consultations, investigations and deliberations for this case.
>
> …
>
> Could White privilege have played a role in this matter? I believe that it cannot be discounted, especially since there are arguments that indicate that Ms Okafor has had a long and productive career in education, including upgrading and engagement with educators as well as in the community, and she had the full support of the OSSTF. The letter from Student A raises questions about how the investigation may have over-looked or underplayed the role played by Ms Okafor in relation to understanding and supporting the needs of her students from racial minority backgrounds. The issue of the tone, disposition and communicative style of Ms Okafor should also be examined and problematized within the lens of the potential for systemic and institutional racism playing a role. Here, it would be difficult to affirm that there was definitively systemic racism and White privilege tainting the investigation but, at the same time, it cannot be entirely discounted. …
>
> In my view, there may have been systemic racism in this case. White privilege also could have played a role. This is not meant to discount infractions that may have taken place but to, rather, sufficiently frame the context in which the investigation took place. In trying to understand many of the issues raised in this report, it is important to consider the prospect that the educational leadership in this case may have been less supportive to the "member" than for other colleagues. [Emphasis added.]

[41] On the voir dire, counsel for the Appellant stated:

> … [Dr. Carr is] not making any conclusions in terms of what occurred. He's simply offering tools for the Panel to consider and for the committee to reach their own assessment of what occurred in this case.

> … So we submit that Dr. Carr's report fundamentally gives the committee the intellectual tools to assess the impact of racism in this case. It's important for the committee to have the direct expertise on anti-Black racism and how it manifests in the education sector. Dr. Carr's report, as we've very briefly touched upon today, simply provides a technical background for the committee to assess and evaluate the testimony that it's heard, the evidence that's been before it, and whether there was an aspect of anti-Black racism. Again, it is simply context, definitions, studies, that would assist you all, the triers of fact, to determine the question in issue.
>
> Again, as stated by Justice Dickson, this the – the necessity standard is not a very strict standard, and it's our position that Dr. Carr and his report would meet this subfactor of part one.

[42] On the voir dire, counsel for the College stated:

> It's, of course, the defence's right to say, as part of their defence, that racism was an issue here. We don't question that, but if you look at Dr. Carr's report, which I invite you to do in making your determination, the first section outlines some definitions, but the scope of his report -- it doesn't provide some kind of a -- it doesn't provide a structure. It doesn't provide a roadmap. It doesn't provide an analysis of how it is that racism can or should be dealt with in the course of an investigation.
>
> If the defence's suggestion is that there was racial bias in the course of the investigation in this place, an expert report should say, "The policy or procedure for undertaking an investigation is to do A, B, C, things. There is or is not evidence of A, B, C in this case, and therefore, I can conclude or this panel could conclude that certain things were not accounted for." You don't see any of that in Dr. Carr's report. He provides definitions about what racism is, but you heard from him today in his voir dire that, when it comes to these things that the defence is proffering this for, to say that there was racial bias in the investigation, he admitted that he is not an expert in that piece of race in the cross-section between that and investigations within the TDSB.
>
> We've heard evidence in this case from a number of witnesses about what the policies of the investigation were, the course and the steps that were taken. There have been questions of witnesses as to what or wasn't considered and all of that. None of that is in Dr. Carr's report, and in my submission, there's nothing in what it is that he offers that gives you any kind of guidance or structure as to how it is that you can take the evidence that you've heard, put it in some kind of a framework to determine whether there was or was not racism in this case. That's supposed to be the point of an expert opinion. The whole purpose of an expert opinion is to give the Panel expertise and conclusions and a framework about the content of a standard for how you go about doing something, that's something that's … outside of this panel's expertise, and Dr. Carr's report doesn't do that, and in my submission, it's not relevant to the matters in issue for that reason.

[43] The Discipline Committee accepted Dr. Carr as an expert on racism in education generally but declined to accept him as an expert on whether racism played a role in respect of the investigation and discipline of the Appellant. In coming to this conclusion, the Discipline Committee stated:

> [46] At the time of the hearing, Dr. Carr was a professor at the Université du Québec en Outaouais, teaching, among other things, the sociology of education. Over the past 30 years, he has taught, spoken about, and written on the subject of race, institutional culture, systemic racism, and education. He has taught many courses on race and ethnicity, diversity in education, and the sociology of education. Among other qualifications, Dr. Carr has a Master's degree and a Doctorate of Education. His doctorate is about the institutional culture and anti-racism in the Toronto District School Board ("TDSB"). He studied the differential perspectives of white and racialized teachers and the impact of race on teachers' experiences.
>
> [47] However, Dr. Carr has not worked as a teacher or administrator in Ontario, has not worked in the TDSB, and has not been involved in any TDSB investigations or discipline of teachers. The Panel was not satisfied that Dr. Carr had knowledge of how TDSB's policies are applied in the course of a TDSB discipline investigation.
>
> [48] Moreover, the Panel found that Dr. Carr's analysis of the Member's case was of a general and limited nature, and to a certain extent one-sided. Dr. Carr had access to and analyzed the correspondence with the Board and the Union about the Member's grievances but did not look at the Board's equity policies or human resources policies from the material time in preparing his opinion. He was asked to opine about the extent to which racism and systemic racism would impact a woman like the Member, and he spoke with the Member for one hour in order to form his opinion; but he did not speak with any other staff at the School. He testified that he does not know the racial backgrounds of the individuals involved in this case and that he did not review performance evaluations or comparative information for the Member in order determine how she was treated compared to other teachers.
>
> [49] Therefore, the Panel was not satisfied that Dr. Carr would be able to speak to whether racism had played a role in investigations and discipline of the Member. Dr. Carr was allowed to testify about racism and anti-racism in the education setting generally, but not with respect to the investigation and discipline of the Member. [Emphasis added]

[44] The Discipline Committee identified the correct legal test for the admissibility of expert evidence. It stated, at para. 44:

> As established by the Supreme Court of Canada in [*R. v.*] *Mohan* [[1994] 2 S.C.R. 9], whether an expert's evidence will be admitted depends first on a consideration of four threshold factors: (1) relevance; (2) necessity in assisting the trier of fact; (3) the absence of any exclusionary rule; and (4) a properly qualified expert. *White Burgess* [*Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23, [2015] 2

> S.C.R. 182] added to the analysis that to be properly qualified, an expert should be fair, objective and non-partisan; that is, an expert's opinion should not change regardless of which party retained them. After considering whether a tendered expert meets the threshold requirements, the adjudicator is required to conduct a second analysis as to probative value and risk of prejudice by admitting the expert evidence: [*R. v.*] *Abbey* [2009 ONCA 624, 97 O.R. (3d) 330].

[45] The Appellant submits that the Discipline Committee erred in finding that Dr. Carr's opinion on whether racism had played a role in the investigation and discipline of the Appellant in respect of the seven incidents of alleged misconduct.

[46] The Appellant submits that this decision not to admit all of Dr. Carr's evidence inconsistent because it qualified him to provide evidence about anti-Black racism in education. The Appellant further submits that such decision was based on irrelevant considerations, particularly Dr. Carr's lack of knowledge pertaining to how TDSB investigates of allegations of misconduct. Dr. Carr's report, as noted by the College, offered some questions for speculation, raised questions, and indicated that additional information, which he did not have, would be important to consider. His report failed to address the main issue for the Discipline Committee of whether the Appellant's conduct amounted to professional misconduct nor did it provide a framework for the Discipline Committee to apply in determining whether racism played a role in this investigation of these incidents.

[47] His opinion was incomplete on the main issue of whether the conduct amounted to professional misconduct, which he was in any event not qualified to give. His written opinion did not purport to provide any useful framework or analysis for the Panel in determining the issues that the defence proposed to advance

[48] I find that it was open to the Discipline Committee to largely adopt the position taken by the College on the voir dire, namely, that Dr. Carr's analysis of the case was of a general and limited nature which did not assist them in determining whether racial bias had been at play in the investigation and discipline of the Appellant. That decision was consistent with the Discipline Committee's decision to admit Dr. Carr's evidence about the types of racism, and racism in education, generally. Further, Dr. Carr's lack of knowledge regarding TDSB policies and other matters outlined by the Discipline Committee were not irrelevant considerations but rather went to the necessity of his opinions regarding whether racism played a role in this matter.

[49] I find that the Discipline Committee did not make an error of law in declining to admit Dr. Carr's evidence regarding whether racism played a role in this case.

[50] In any event, in light of the findings of fact made by the tribunal, the alleged misconduct was not misunderstood as a result of unconscious racism. The tribunal found that the appellant did raise her voice - not just objectively (in the sense that witnesses considered the conduct to be departure from ordinary social norms), but subjectively (in the sense that the appellant was "yelling" in comparison to her own tone and volume). Further, some but not all culturally influenced behaviour can be accommodated in a workplace such as a school, and conduct such as hitting, threatening, belittling and humiliating students are departures from standards of

professionalism. Where cultural background informs the explanation for the misconduct, this may impact on appropriate penalties: helping a Member address issues arising from their cultural background in light of professional standards could well be a component of a properly crafted remedy in such a situation. It is not the case here, however, that the standards of professionalism must give way because a Member has been acculturated in a manner inconsistent with those standards.

[51] I conclude that even if the disallowed evidence had been admitted, the factual foundations of Dr Carr's opinion were not made out in the tribunal's factual findings, and thus the result would have been the same.

Did the Discipline Committee fail to adequately address Unconscious Bias?

[52] Unconscious racism, rather than "unconscious bias", was addressed by Dr. Carr. There are two references to unconscious racism in Dr. Carr's report which are described above. At page 6, Dr. Carr states that "… there may be conscious and unconscious as well as explicit and implicit actions, attitudes and behaviours in relation to racism". At page 10, Dr. Carr states that "[d]iscussion of racism and racial incidents and, equally importantly, having access to the resources and support to address such concerns may be limited, discouraged, disparaged and side-lined through conscious or unconscious Whiteness and systemic racism within an institutional context.".

[53] In his evidence at the hearing, on February 16, 2022, Dr. Carr was asked how unconscious racism could be identified and he answered as follows:

> Answer: … Racism, it flows through these systems and structures and cultures, and so I would just like to emphasize that it could be conscious or unconscious, explicit and implicit. It involves actions, attitudes, behaviours, in relation to racism, and it could be documented, undocumented, under-evaluated, and so on.
>
> Question: Just on the point that you raised and reiterated about the unwitting or witting or conscious or unconscious, could you unpack that a bit for the Panel? How is it possible for a person to be unwittingly racist or unconsciously racist, and what does that look like, in your view?
>
> Answer: Well, it could look like consistently, persistently, for example, in a school context, not celebrating, not appreciating, not giving awards to the plurality of identities in the school, perhaps not having cultural compatibility with certain groups in the school and not having certain activities to ingratiate, mentoring, tutoring. All of the other extracurricular activities, all of those things, if we multiply that, it can have a very nefarious effect on some people, some communities, parents, students, teachers, and they may start to feel that they're not part of the mainstream of the decision-making, of the actions, the programs, policies, and this would not be articulated where people would go around and say, "Well, just don't include South Asian group or Black group or other groups or socially marginal -

> economically marginalized kids," but people just know and function, and they move to this type of cadence within a system. [Emphasis added]

[54] The Appellant submits that the Discipline Committee provided no meaningful explanation about why they concluded that none of the witnesses were unconsciously biased by Ms. Okafor's race. No evidence was provided on "unconscious bias" and little evidence was provided on "unconscious racism". The Discipline Committee was not provided with a framework for determining whether "unconscious bias" played a role in the school staff's perception of the Appellant. Given that the Appellant was advancing the position that unconscious racism had been a factor in this case, the onus was on her to adduce that evidence.

[55] The Appellant cannot now complain that the Discipline Committee failed to address unconscious bias when it was not specifically raised as an issue by the evidence.

[56] The Discipline Committee considered the larger issue of whether racism played any role in this case at the hearing, the Appellant argued that the instances of alleged professional misconduct arose from cultural differences or misinterpretations that were motivated by racial bias or racial differences. Based on the evidence before it, the Discipline Committee found that racism had not played a role. The Discipline Committee's reasons, although they did expressly discuss unconscious bias, repeatedly found that testimony was not "tainted" or "influenced" by anti-Black racism, which demonstrates their understanding that anti-Black racism need not be intentional or conscious. I find that the Discipline Committee did not make a palpable and overriding error in coming to the conclusion that racism had not played a role in this case.

Did the Discipline Committee err in law in its Assessment of Credibility?

[57] At paragraph 69, the Discipline Committee stated:

> The Panel also notes that it had concerns about both the Member's and Student 1's testimonies. … In short, the Panel found that the Member clearly has an interest in the outcome of this hearing, and her testimony was unclear at times and contained significant inconsistencies. The Panel was also concerned about inconsistencies in Student 1's testimony, and the possibility that he may have been influenced by the presence of his parents while he testified, as well as by his fondness for the Member. [Emphasis added.]

[58] The Appellant submits that the Discipline Committee erred in its assessment of credibility of the Appellant and Student 1.

Assessment of the Appellant's Credibility

[59] The Appellant submits that the Discipline Committee erred in law in placing undue weight on her interest in the outcome when assessing her credibility.

[60] In *R. v. Laboucan*, 2010 SCC 12, [2010] 1 S.C.R. 397, Charron J. stated at paras. 11-18:

> [11] The fact that a witness has an interest in the outcome of the proceedings is, as a matter of common sense, a relevant factor, among others, to take into account when assessing the credibility of the witness's testimony. A trier of fact, however, should not place undue weight on the status of a person in the proceedings as a factor going to credibility. For example, it would be improper to base a finding of credibility regarding a parent's or a spouse's testimony solely on the basis of the witness's relationship to the complainant or to the accused. Regard should be given to all relevant factors in assessing credibility.
>
> [12] The common sense proposition that a witness's interest in the proceedings may have an impact on credibility also applies to an accused person who testifies in his or her defence. The fact that the witness is the accused, however, raises a specific concern. The concern arises from the fact that both innocent and guilty accused have an interest in not being convicted. Indeed, the innocent accused has a greater interest in securing an acquittal. Therefore, any assumption that an accused will lie to secure his or her acquittal flies in the face of the presumption of innocence, as an innocent person, presumably, need only tell the truth to achieve this outcome.
>
> …
>
> [14] In most cases, I would agree with counsel that this factor is simply unhelpful and, as a general rule, triers of fact would be well advised to avoid that path altogether, lest they unwittingly err by making the impermissible assumption that the accused will lie to secure an acquittal. However, I would not adopt an absolute rule as proposed, for the following reasons.
>
> [15] An absolute rule prohibiting the trier of fact from considering that an accused may have a motive to lie in order to secure an acquittal, *regardless of the circumstances*, would artificially immunize the accused in a manner inconsistent with other rules of evidence that provide special protection to the accused. …
>
> [16] An absolute rule as proposed would also be contrary to established principles of appellate review. It should now be regarded as trite law that a trial judge's reasons should be read as a whole, in the context of the evidence, the issues and the arguments at trial, together with "an appreciation of the purposes or functions for which they are delivered"
>
> …
>
> [18] … At the end of the day, the determining question is whether the trial judge's comments undermined the presumption of innocence. [Citations omitted.] [Emphasis in original.]

[61] Although *Laboucan* is a criminal case, the same logic applies to someone accused of professional misconduct. Accordingly, whether the Discipline Committee erred in law by noting

that the Appellant had an interest in the outcome of the hearing in the context of assessing her credibility requires that this comment be considered in light of the entire decision.

[62] In its decision, the Discipline Committee correctly understood that the College bears the burden of proving that the conduct alleged in the two Notices of Hearing occurred on a balance of probabilities and that such conduct constitutes professional misconduct. In addition, the Discipline Committee grappled with the evidence and explained why it did not prefer the Appellant's evidence on numerous specific points. For instance, see paragraphs 92, 108, 114, 123, 124, 139, 178 and 180. While the Discipline Committee should not have placed undue weight on the Appellant's interest in the outcome of the proceeding when assessing her credibility, I find that its approach to this issue did not undermine the burden of proof on the College or the Discipline Committee's overall assessment of the evidence when the decision is read as a whole.

Assessment of Student 1's Credibility

[63] As noted, the Discipline Committee stated that

> The Panel was also concerned about inconsistencies in Student 1's testimony, and the possibility that he may have been influenced by the presence of his parents while he testified, as well as by his fondness for the Member.

[64] It further stated at paras. 179-180 that it did not find Student 1's testimony reliable or credible because of inconsistencies in the testimony and that Student 1 was motivated to provide testimony favourable to Ms. Okafor.

[65] The Appellant submits that the Discipline Committee failed to consider Student 1's exceptionalities. The Appellant also submits that it is an error of law to conclude that a witness is not credible solely based on their relationship with a person whose conduct is at issue. The premise of their assertion is inaccurate. As can be seen from the above excerpt, the Discipline Committee gave three reasons as to why it did not find Student 1's testimony to be reliable or credible. The two other reasons are based on his inconsistent evidence at the hearing and the fact his parents appeared to tell him what to say at the hearing. I find that the Discipline Committee did not commit an error in law in assessing the credibility of Student 1's evidence.

Did the Discipline Committee Reverse the Burden of Proof?

[66] The Appellant submits that Discipline Committee erred in finding that she hit Student 1 given that it preferred Ms. Gaffer's evidence that she heard Student say "ouch, you hit me" while seated near the Appellant even though she did not see the Appellant hit Student 1. It submits that this finding was based on weak evidence rather than clear, cogent and convincing evidence.

[67] The decision states:

> [143] Ms. Gaffar testified that on the morning of May 3, 2018, she was assisting students in their classroom and heard the Member and Student 1 talking loudly with each other by the Member's desk. She looked at the Member, and the Member said that Student 1 wanted to fix the mistakes he had made on his [XXX] sheets, but the

> Member did not want to give them to him because she was not able to assist him at that time. Ms. Gaffar saw Student 1's [XXX] folder on the Member's desk and noticed that Student 1 was trying to get his folder. Ms. Gaffar returned to working with the other students but then heard Student 1 say a little later, "ouch-you hit me". Ms. Gaffar testified that Student 1 does not usually say statements like this and said she knew it was Student 1 who made that comment because it was a male voice, Student 1 and the Member were the only individuals in the area where the sound came from, and the other male students in the class were quiet and not as verbal as Student 1. Ms. Gaffar did not see the Member hit Student 1. She did not ask Student 1 or the Member if the Member had actually hit Student 1, but asked Student 1 if he was okay. Student 1 said he was okay, so Ms. Gaffar continued working with the other students.
>
> …
>
> [172] The Member acknowledged that Student 1's physical outbursts are a result of being triggered in some way but denied hitting Student 1. The Member confirmed that Student 1 did try to grab his [XXX] folder from her desk in the morning before the concert, but he never said "ouch" or anything like that.
>
> [173] Student 1 testified that the Member had wanted him to go to choir, but he did not want to. He snuck out and went to the library to use the computer. When he came out of the library, he got in trouble with the Member for not going to choir. Student 1 testified that he became angry at the Member and slapped her in the arm. Student 1 testified that the Member got hurt and the police were called to the school. He testified that he spoke with the police who took notes of what he told them. Student 1 testified that he blamed the incident on the Member and told the police that she had hit him. However, it was actually he who hit her. Student 1 testified that he is very frustrated that he had his favourite teacher fired. She was the only teacher he cared about in school. He got along well with the Member and she helped him with [XXX].
>
> …
>
> [181] The Panel notes that Ms. Gaffar did not witness the Member hitting Student 1 when he attempted to take his [XXX] folder from the Member's desk, but she did hear Student 1 say, "ouch-you hit me" and she noted that Student 1 does not usually say things like that. The Panel finds it more likely than not that Student 1 said this because he was, in fact, hit by the Member after attempting to take a [XXX] folder from the Member's desk. The Member did not offer any reasonable explanation for why else Student 1 would have said that.

[68] The Discipline Committee heard the evidence of the three witnesses. It found the evidence of the Appellant and Student 1 related to this incident to be inconsistent and unreliable. The Discipline Committee was entitled to prefer the evidence of Ms. Gaffar over the evidence of the Appellant and Student 1 and to make the inferences and findings that it did.

[69] As noted in *Caine*, the role of this Court is not to second-guess the weight assigned to items of evidence by the trier. The Discipline Committee's finding that the Appellant hit Student 1 does not amount to a palpable and overriding error.

Did the Discipline Committee err in admitting an investigation report as a "business record" under s. 35 of the *Evidence Act*?

[70] Brian Wilson is an investigator with the TDSB. He was assigned to investigate the May 3, 2018 incident involving the Appellant and Student 1 and prepared an Investigation Report. Mr. Wilson testified about the steps he took in investigating the incident including his decision not to interview Student 1.

[71] The College states:

> How the board investigation had been conducted, whether that investigation was motivated by discrimination or unfair bias against Ms. Okafor, and the steps that the TDSB took in that investigation, were relevant issues. As such, Mr. Willson gave direct testimony (without reference to the Investigation Report) about his involvement in the matter, including how he undertook the investigation. Mr. Wilson testified about which witnesses he interviewed, when those interviews took place, and how the information about what had happened was recorded in the report. It was at the end of that testimony that the College sought to introduce and mark the Investigative report as an exhibit, which included appendices of the notes and interviews Mr. Wilson had conducted in the investigation. The defence objected to the admission of the report as an exhibit on the basis that the report and the appendices contained hearsay.

[72] Subsections 35(2) and (4) of the *Evidence Act* state:

> Where business records admissible
>
> (2) Any writing or record made of any act, transaction, occurrence or event is admissible as evidence of such act, transaction, occurrence or event if made in the usual and ordinary course of any business and if it was in the usual and ordinary course of such business to make such writing or record at the time of such act, transaction, occurrence or event or within a reasonable time thereafter.
>
> Surrounding circumstances
>
> (4) The circumstances of the making of such a writing or record, including lack of personal knowledge by the maker, may be shown to affect its weight, but such circumstances do not affect its admissibility.

[73] In *R. v. Felderhof*, 2005 ONCJ 406, 201 C.C.C. (3d) 384, Bryn J. described eight requirements for the admission of a document as a "business record" at paras. 41-84:

> 1.Record made on some regular basis, routinely, systematically

2.of an act, transaction, occurrence or event,

3.and not of opinion, diagnosis, impression, history, summary or recommendation

4.made in the usual and ordinary course of business

5.if it was in the usual and ordinary course of such business to make such record,

6.pursuant to a business duty

7.at the time of such act or within a reasonable time

8.and where the record contains hearsay, both the maker and informant must be acting in the usual and ordinary course of business.

[74] In admitting the Investigation Report other than its opinions and conclusions, the Discipline Committee stated, at paras. 34-37:

> [34] Member's Counsel objected to the admission of the Investigation Report into evidence. Member's Counsel acknowledged that the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 (the "*SPPA*") allows the Panel to consider hearsay evidence but submitted that it would be unfair to the Member to admit the Investigation Report because Mr. Wilson had not observed the events he described in his report, which contained hearsay evidence from other individuals. Member's Counsel reminded the Panel that the Member is owed a high degree of procedural fairness in accordance with the Supreme Court of Canada's decision in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817. In addition, Member's Counsel submitted that the investigation report did not meet requirements for the business records exception to admitting hearsay evidence, as set out in the [*Evidence Act*] and [*Felderhof*].
>
> [35] College Counsel disagreed that admitting the investigation report would be unfair to the Member. College Counsel noted that Mr. Wilson's opinion of what occurred was not being admitted for the truth of its contents. Further, College Counsel submitted that the Investigation Report met the criteria for admissibility set out in *Felderhof*, as it was created in the course of Mr. Wilson's business duties and the staff's duty to participate in and cooperate with Board investigations. College Counsel submitted that the fact that a record contains hearsay does not affect the characterization of a record as a business record or its admissibility (but goes to the question of weight to be given to the evidence).
>
> [36] The Panel determined that the Investigation Report prepared by Mr. Wilson should be admitted into evidence under the business records exception to the hearsay rule. In particular, the Panel considered subsection 35(2) of the Evidence Act, and the factors for admissibility set out in *Felderhof*, and was satisfied that the Investigation Report (including its appendices) was indeed a business record admissible under this exception. The Investigation Report was a record of the

> events occurring on May 3, 2018, made in the usual and ordinary course of the business of independent Board investigations, within a reasonable time after the incident in question. While it contains hearsay, the drafter of the report (Mr. Wilson) and the individuals he interviewed were acting in the usual and ordinary business of Board investigations. Mr. Wilson testified that teachers are obligated to cooperate with Board investigations and may face discipline if they fail to cooperate. The Panel was satisfied that the concern that the Investigation Report contains hearsay could appropriately be dealt with by determining the appropriate weight to give to the report at the end of the hearing.
>
> [37] However, the Panel recognizes College Counsel's submissions that the Investigation Report was not being submitted as opinion evidence and determined that it would therefore be unduly prejudicial to the Member to admit the conclusions of Mr. Wilson within the report. As such, the Panel ordered that the section entitled "Conclusions", found at pages 11-15 of the report, be excised from the Investigation Report. The "Conclusions" section was not considered by the Panel. [Citations and footnotes omitted.]

[75] The Appellant submits that the school staff who provided information to Mr. Wilson were not acting in the usual and ordinary course of their teaching duties which she submits is teaching rather than providing information about colleagues. On the other hand, the College relies on Mr. Wilson's evidence that each of the people he interviewed were obliged to respond and co-operate with the investigation given their position and duties and could be disciplined for refusing to co-operate with the investigation. I find that the Discipline Committee did not make a palpable and overriding error in finding that the requirement for the record to have been made in the usual and ordinary course of business by both Mr. Wilson and the school staff had been met.

[76] The Appellant further submits that the Discipline Committee ruled that the hearsay statements of witnesses contained in the Investigation Report were admissible for the truth of their contents as business records. However, the fact that a business record contains hearsay impacts its weight not its admissibility. In *Bruno v. Dacosta*, 2020 ONCA 602, 69 C.C.L.T. (4th) 171, leave to appeal refused [2020] S.C.C.A. No. 412, Lauwers J.A. stated at para. 61:

> A party properly invoking s. 35 of the *Evidence Act* is entitled to introduce certain limited forms of double hearsay contained in business records, such as statements made and recorded by two people who are each acting in the ordinary course of business, even if those statements are ultimately accorded little weight. In dealing with police reports and occurrence reports, however, trial judges have generally refused to admit business records in which a person, acting in the course of their duty, records unreliable third-party statements or other forms of hearsay. [Citations omitted.]

[77] Given that Ms. Wilson and the school staff were in the usual and ordinary course of business and obliged to cooperate with the investigation, the hearsay evidence in the Investigation Report falls within the scope of the business records exception in s. 35 of the *Evidence Act*: *The*

Children's Aid Society of Ottawa-Carleton v. V.M., 2020 ONSC 221, at para. 30. The Discipline Committee was correct in law to hold as much.

[78] Additionally, even if the Investigation Report did not fall within the scope of s. 35 of the *Evidence Act*, s. 15 of the *SPPA* allows a tribunal to consider hearsay evidence, whether or not it would be admissible in court: *Gajewski v. Wilkie*, 2014 ONCA 897, 123 O.R. (3d) 481, at para. 40; *Veerasingam v. Licence Appeal Tribunal*, 2025 ONSC 290 (Div. Ct.), at para. 29. the Discipline Committee correctly identified that any concerns with the reliability of the hearsay in the Investigation Report can be addressed in determining how much weight to be given to it: *Starson v. Swayze*, 2003 SCC 32, [2003] 1 S.C.R. 722, at para. 115. Here, there was no reason to doubt the reliability of the evidence given by the people who were obligated to cooperate with the investigation, so the Discipline Committee would be entitled to consider the hearsay evidence under s. 15 of the *SPPA*: *Gajewski*, at para. 40; *Windrift Adventures Inc. v. Chief Animal Welfare Inspector*, 2024 ONSC 272, at para. 43.

Did the Discipline Committee err in relying on prior consistent statements to bolster credibility?

[79] The Appellant submits that the Discipline Committee appears to have relied on the fact that the evidence provided by some witnesses at the hearing was consistent with prior statements in assessing the credibility of those witnesses. The Appellant references three examples where a credibility assessment referred to their prior consistent statements (none of which involve a prior statement referenced in the Investigation Report).

[80] In relation to Incident #1, the Discipline Committee stated at para. 77:

> "On the whole, the Panel preferred the evidence of Ms. Morgan and Mr. Zupo over that of the Member. The College witnesses were credible, clear, and consistent in the material details of their evidence. The Panel has no reason to believe that Ms. Morgan fabricated evidence. Her testimony during the hearing was consistent with her contemporaneous report to Mr. Zupo about these events on all material details and Ms. Morgan was upfront about details that she could not recall. The Panel did not find evidence suggesting that Ms. Morgan would have been motivated or influenced by anti-Black racism in her account of these events. She testified that the School community was diverse, that she had no difficulty understanding the Member's accent, that she does not focus on her colleagues' race, and that the Member is not the only Nigerian individual with whom she has worked.". [Emphasis added]

[81] In relation to Incident #3, the Discipline Committee stated at para. 99:

> Person C then met with Mr. Zupo to discuss the incident. Mr. Zupo took notes at that meeting. During the hearing, Person C was presented with and confirmed that Mr. Zupo's notes were consistent with what she told him during the meeting.

[82] The above statement was not made by the Discipline Committee in the context of assessing Person C's credibility.

[83] In relation to Incident #6, the Discipline Committee stated at para. 139:

> … the Panel notes that Mr. Zupo's notes of the OTR indicate that the Member denied the incident, saying "Nothing like this occurred" (Exhibit 29). However, the Member acknowledged at the hearing that there was an incident when she told Person D to stop pushing the student in his [XXX]. The Member denied using an angry or condescending tone with Person D. The Panel did not hear evidence to doubt the accuracy of Mr. Zupo's notes and finds the inconsistency between the Member's denial at OTR and her testimony at the hearing reduces the Member's credibility. On the other hand, Person D was consistent in her report of events to Ms. Koehn and during the hearing that the Member had yelled at her, and addressed her in a stern voice, asking, in the presence of other staff and the student, "What are you doing? Why are you pushing him? He needs to walk". Having considered Person D's clear and concise testimony that she was made to feel 'not good', small, and demeaned on this occasion, the Panel finds that the College has proven on a balance of probabilities that the Member yelled at or used an excessively loud voice to express her displeasure Person D's performance with the student in the [XXX] and commented about the care Person D provided to this student in an inappropriate manner." [Emphasis added]

[84] The credibility findings related to Incident #1 and Incident #6 appear to be, in part, based on prior consistent statements.

[85] Prior consistent statements are generally inadmissible: *R. v. Stirling,* 2008 SCC 10, [2008] 1 S.C.R. 272, at para. 5. It is not probative as the mere fact that a statement has been repeated does not mean that it is more likely to be true: *R. v. Bagherzadeh*, 2023 ONCA 706, 186 O.R. (3d) 780, at para. 52, leave to appeal refused [2023] S.C.C.A. No. 536; *Carrasco v. College of Massage Therapists***,** 2025 ONSC 5896, at para. 28. None of the exceptions to this rule are applicable. In the circumstances, I do find that the Discipline Committee made an error in law in relying on prior consistent statements.

[86] However, an error of law must be material to the result to warrant the court's intervention. Errors that are inconsequential or do not result in a substantial wrong or miscarriage of justice are insufficient to justify appellant intervention: *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 134(6): *Maple Leaf Acres Members' Association v. Ellig*, 2023 ONSC 3940, at para. 23. As the findings regarding credibility relied on other considerations as well, the reference to the use of prior consistent statements in two instances did not result in a substantial wrong or miscarriage of justice sufficient to justify a new hearing.

In the penalty phase of this hearing, did the Discipline Committee commit an error of principle, and an error of law, by failing to consider systemic racism and unconscious bias when evaluating the severity of the Appellant's conduct?

[87] Having found the Appellant guilty of professional misconduct for verbally, physically and emotionally abusing students with special needs, and for unprofessional conduct towards her colleagues, the Discipline Committee ordered a reprimand, coursework on anger management and classroom management, a five-month suspension and costs in the amount of $60,000.00 to be paid over six years. The Appellant only appeals the suspension and costs.

[88] At the penalty hearing, the Appellant submitted that a five-month suspension should be imposed rather than the seven-month suspension sought by the College. She also submitted that the College should receive $35,000 in costs rather than $80,000 in costs, as the College requested.

[89] The Appellant submits that Discipline Committee erred in law by failing to consider systemic racism and unconscious bias when evaluating the severity of the Appellant's conduct. The Appellant was self-represented during the penalty phase and repeated her concern that the evaluation of her conduct had been influenced by her race. The Appellant submits that unconscious bias or systemic racism remained logically relevant to assessing the severity of her conduct even after the Discipline Committee had determined that it had "crossed the line".

[90] A fit penalty is guided by an assessment of the facts of the particular case and the penalties imposed in other cases involving similar infractions and circumstances. To overturn a penalty imposed by a regulatory tribunal, it must be shown that the decision-maker made an error in principle or that the penalty was "clearly unfit" meaning that the penalty is disproportionate or falls outside the range of penalties for similar offences in similar circumstances: *Dr. John Mitelman v. College of Veterinarians of Ontario*, 2020 ONSC 3039, at paras. 18, 34, and 41.

[91] The Appellant submits that in the criminal law context it has been recognized that systemic racism is a factor that should be considered on sentencing. The Appellant relies on *R. v. Morris*, 2021 ONCA 680, 159 O.R. (3d) 641, at para. 123, for the principle that a court should take notice of anti-Black racism in Canada when fashioning an appropriate sentence in a criminal proceeding. However, the Ontario Court of Appeal was less absolute than suggested by the Appellant as it stated at para. 123 that the "… discrimination suffered by Black offenders … may, in a given case, play a role in fixing the offender's moral responsibility for the crime …to arrive at an appropriate sanction in the circumstances".

[92] There is a principle of law that systemic racism and unconscious bias must be considered by the Discipline Committee, or other professional regulatory body, when determining a fit sentence for professional misconduct: *Barnwell v. Law Society of Ontario*, 2025 ONSC 1825 (Div. Ct.), at paras. 73-79. The Discipline Committee had already addressed at length the submissions that systemic racism played a role in the complaints against the Appellant and did not have to revisit these submissions at the penalty hearing. The Discipline Committee found that anti-Black racism did not play a role in this case, meaning it was not required to apply *Morris* to the penalty decision: *Barnwell*, at para. 79. The Discipline Committee did not err in law in imposing a five-month suspension.

When assessing costs, the Discipline Committee failed to consider the College used an entire day of hearing time objecting to the admissibility of Dr. Carr's evidence, and that the College was not successful in resisting the admission of all of his evidence?

[93] The Appellant submits that success at the hearing was divided given that: (a) the Appellant successfully challenged the expertise of a College witness; and (b) the College was not successful in resisting the admission of all of Dr. Carr's evidence arising from a one day voir dire.

[94] Under the College's Rules, the College's costs are a flat rate of $10,000 per day. The College sought $80,000 in costs representing two-thirds of the tariff rate per hearing day and did not seek cost for the penalty phase of the hearing which were additional two days. The Discipline Committee was awarded $60,000 which is 50% of the tariff per day for the misconduct hearing, where typically two-thirds of the tariff rate are awarded. The Discipline Committee considered the relevant principles in awarding costs. Its award is less than what an entirely successful College would have likely been awarded. I find that the Discipline Committee made no reversible error in its award of costs.

Conclusion

[95] The appeal is dismissed. As agreed by the parties, the College, being the successful party, is entitled to their costs fixed in the amount of $7,000.00 in respect of the liability appeal and $3,000.00 in costs in respect of the penalty appeal

Faieta J.

I agree:

D.L. Corbett J.

I agree:

Sutherland J.

Released: November 19, 2025

Okafor v. Ontario College of Teachers, 2025 ONSC 6089
DIVISIONAL COURT FILE NO.: 572/24
DATE: 20251119

ONTARIO

SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

D.L. CORBETT, FAIETA, SUTHERLAND JJ.

BETWEEN:

LORETTO OKAFOR

Appellant

– **and** –

ONTARIO COLLEGE OF TEACHERS

Respondent

REASONS FOR DECISION

FAIETA J.

Released: November 19, 2025