

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

Citation: College of Early Childhood Educators vs Debbi Kelly,
2013 ONCECE 4
Date: 2013-04-24

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

AND IN THE MATTER OF discipline proceedings against Debbi Kelly, a member of the
College of Early Childhood Educators.

PANEL: Nici Cole, RECE, Chair
 Ann Hutchings,
 RECE Rosemary
 Sadlier

BETWEEN:)	
COLLEGE OF EARLY CHILDHOOD)	M. Jill Dougherty,
EDUCATORS)	WeirFoulds LLP,
)	for the College of Early Childhood Educators
)	
- and -)	
)	
DEBBI KELLY REGISTRATION #)	Debbi Kelly was not present,
08402)	nor was she represented
)	
)	
)	Caroline Zayid,
)	McCarthy Tétrault LLP,
)	Independent Legal Counsel
)	
)	Heard: April 24, 2013

REASONS FOR DECISION, DECISION AND ORDER(S)

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on April 24, 2013 at the College of Early Childhood Educators (the “College”) at Toronto.

A Notice of Hearing dated December 17, 2012 (Exhibit 1) was served on Aliko Yorgiadis, counsel at the time for Debbi Kelly (the “Member”). The Notice of Hearing specified the

charges and requested the Member's attendance before the Discipline Committee of the College of Early Childhood Educators (the "Committee") on January 29, 2013 to set date for a hearing. Counsel for the College submitted an Affidavit of Service sworn by Agatha Wong, Hearings Coordinator (Exhibit 1), and sworn January 14, 2013, detailing confirmation that the Notice of Hearing was served on the Member.

A subsequent Notice of Hearing dated April 3, 2013 (Exhibit 2) was served on the Member, specifying the charges and requesting the Member's attendance before the Committee on April 24, 2013 for a hearing. Counsel for the College submitted an Affidavit of Service sworn by Susan Marshall, Legal Assistant (Exhibit 2), and sworn April 23, 2013, detailing confirmation that the Notice of Hearing was served on the Member.

The hearing was scheduled to commence at 9:00 a.m. on April 24, 2013. The Member did not appear, nor was she represented by legal counsel. The Committee was satisfied that the Member was served with the Notices of Hearing and all disclosure documents and was aware of the time and date of the hearing. The Committee therefore proceeded to hear the matter in the absence of the Member and commenced the proceedings at 9:25 a.m.

Counsel for the College submitted a Hearing Brief of Documents of the College of Early Childhood Educators (Exhibit 3), which included an affidavit signed on January 29, 2013 by S.E. Corke, Registrar and Chief Executive Officer of the College. The affidavit outlined the current registration status of the Member and the historical changes that occurred since she became a member of the College.

THE ALLEGATIONS

The allegations against the Member, as stated in the Notice of Hearing dated December 17, 2012 (Exhibit 1), are as follows:

IT IS ALLEGED that **Debbi Kelly** (the “**Member**”), is guilty of professional misconduct as defined in subsection 33(2) of the Act, in that:

- (a) she failed to maintain the standards of the profession, namely Standards IV.A.2, IV.C.2 and IV.E.2 of the College’s Standards of Practice, contrary to Ontario Regulation 223/08, subsection 2(8);
- (b) she acted in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 223/08, subsection 2(10);
- (c) she signed or issued a document that she knew or ought to have known contained a false, improper or misleading statement, contrary to Ontario Regulation 223/08, subsection 2(16);
- (d) she falsified a record relating to her professional responsibilities, contrary to Ontario Regulation 223/08, subsection 2(17);
- (e) she conducted herself in a manner that is unbecoming a member, contrary to Ontario Regulation 223/08, subsection 2(22);
- (f) she failed to co-operate in an investigation conducted by the College, contrary to Ontario Regulation 223/08, subsection 2(25); and
- (g) she failed to take reasonable steps to ensure that the requested information, which she was required to provide to the College under the Act, regulations or by-laws, was provided in a complete and accurate manner, contrary to Ontario Regulation 223/08, subsection 2(26).

Counsel for the College advised the Committee that the Complaints Committee had previously withdrawn their referral of the allegations listed in paragraphs (f) and (g), stating that the College would therefore proceed with allegations (a), (b), (c), (d) and (e) of the Notice of Hearing dated December 17, 2012.

The allegations against the Member, as stated in the Notice of Hearing dated April 3, 2013 (Exhibit 2), are as follows:

- (a) she failed to maintain the standards of the profession, namely Standards IV.A.2, IV.C.2 and IV.E.2 of the College’s Standards of Practice, contrary to Ontario Regulation 223/08, subsection 2(8);
- (b) she acted in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 223/08, subsection 2(10);

- (c) she signed or issued a document that she knew or ought to have known contained a false, improper or misleading statement, contrary to Ontario Regulation 223/08, subsection 2(16);
- (d) she falsified a record relating to her professional responsibilities, contrary to Ontario Regulation 223/08, subsection 2(17);
- (e) 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); and
- (f) she conducted herself in a manner that is unbecoming a member, contrary to Ontario Regulation 223/08, subsection 2(22).

Counsel for the College indicated to the Committee that she intended to withdraw the allegations in paragraphs (a), (b), (c), (d) and (f) of the Notice of Hearing dated April 3, 2013 as these allegations are listed in the first Notice of Hearing dated December 17, 2012. The allegations in paragraphs (a), (b), (c), (d) and (f) of the Notice of Hearing dated April 3, 2013 were subsequently withdrawn with the permission of the Committee.

Counsel for the College indicated that the College would therefore be proceeding with allegation (e) of the Notice of Hearing dated April 3, 2013.

AGREED STATEMENT OF FACTS

Counsel for the College advised the Committee that an agreement had been reached on the facts, indicating that an Agreed Statement of Facts, signed March 11, 2013, could be found in the Hearing Brief of Documents of the College of Early Childhood Educators. The Agreed Statement of Facts provides as follows:

1. Debbi Kelly (the “**Member**”) is, and was at all times relevant to these allegations, a member of the College of Early Childhood Educators (Registration number 08402). Although she is alleged to have started misappropriating funds prior to 2009 when she was not a member of the College, she continued to do so in 2009 when she was a registered member of the College and was charged with fraud over \$5,000 on February 4, 2012.

2. The Member was the supervisor at the Highview Wilson Childcare Centre (the "Centre") for 23 years. After the Centre's auditor raised concerns about the Centre's financial management, the board of directors (the "Board") reviewed the Centre's operations. On August 23, 2011, the Centre retained Williams HR Law (the "Firm") to investigate allegations that had been made about the Member regarding possible misappropriation of funds.
3. On August 25, 2011, the Board suspended the Member's employment while the Board investigated the matter.
4. On September 29, 2011, the Firm provided a report to the Board, which concluded that the Member misappropriated funds of over \$300,000 from 2008 until she was suspended on August 25, 2011. In particular, the Firm concluded that:
 - (i) The Member issued corporate credit cards in the Centre's name and made significant personal purchases without any knowledge or authorization from the Board;
 - (ii) The Member concealed her fraudulent activities by redirecting the credit card statements to her home address and by forging signatures of Board members so that all merchandise would be delivered to her home address;
 - (iii) The Member falsified invoices and wrote unauthorized cheques payable to herself and attempted to conceal her fraudulent activities by altering the names of the payees on the cheques;
 - (iv) The Member wrote a number of unauthorized and improper cheques payable to herself and forged signatures of Board members in order to get around the dual signature requirement;
 - (v) The Member accepted petty cash slips from staff members, forged their signatures and changed the amounts on receipts that they submitted in order to make significant payments to herself; and
 - (vi) The Member falsified a number of documents, including documents submitted to the City of Toronto and the Ministry of Children and Youth Services.
5. On September 30, 2011, the Member's employment with the Centre was terminated.
6. On February 4, 2012, the Member was charged with fraud over \$5,000, uttering a forged document and two counts of obtained credit by false pretense.
7. On December 7, 2012, the Member pleaded guilty to and was convicted of those offences.
 - (a) The Member admits that by reason of the facts admitted above, she is guilty of professional misconduct as defined in subsection 33(2) of the Act, in that:

- (b) she failed to maintain the standards of the profession, namely Standards IV.A.2, IV.C.2 and IV.E.2 of the College's Standards of Practice, contrary to Ontario Regulation 223/08, subsection 2(8);
- (c) she acted in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 223/08, subsection 2(10);
- (d) she signed or issued a document that she knew or ought to have known contained a false, improper or misleading statement, contrary to Ontario Regulation 223/08, subsection 2(16);
- (e) she falsified a record relating to her professional responsibilities, contrary to Ontario Regulation 223/08, subsection 2(17); and
- (f) she conducted herself in a manner that is unbecoming a member, contrary to Ontario Regulation 223/08, subsection 2(22).

GUILTY PLEA

- 8. The Member understands the nature of the allegations that have been made against her and that by voluntarily admitting to these allegations, she waives her right to require the College to otherwise prove the case against her.
- 9. The Member understands that the Discipline Committee can accept that the facts herein constitute professional misconduct.
- 10. The Member understands that depending on any penalty ordered by the Discipline Committee, the panel's decision and reasons may be published, including the facts contained herein and the Member's name.
- 11. The Member understands that any agreement between her and the College does not bind the Discipline Committee.
- 12. The Member acknowledges that she has had the opportunity to receive independent legal advice but has declined to do so.

The Hearing Brief of Documents of the College of Early Childhood Educators also contained a Plea Inquiry signed by the Member and indicating the following:

- a) She understood the nature of the allegations made against her;

- b) She understood that by admitting to the allegations, she was waiving her right to require the College to prove the case against her and the right to have a hearing;
- c) She voluntarily decided to admit to the allegations against her;
- d) She understood that depending on the order made by the Committee, the Committee's decision and a summary of its reasons could be published in the College's official publication *Member Newsletter/Bulletin des membres*, including reference to her name; and
- e) She understood that any agreement between counsel for the College and herself with respect to the order proposed does not bind the Committee.

Counsel for the College tendered the Member's Certificate of Criminal Conviction (Exhibit 4) and a Court Proceedings Transcript of December 7, 2012 (Exhibit 5). The documents indicate that the Member has pleaded guilty to and been convicted of obtaining credit by false pretence and of fraud over \$5,000, in contravention of the Criminal Code.

DECISION

Having considered the Exhibits filed, and based on the Agreed Statement of Facts and guilty plea, and the submissions made by College counsel, the Discipline Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that Debbi Kelly committed acts of professional misconduct as alleged, more particularly breaches of Ontario Regulation 223/08, section 2, subsections (8), (10), (16), (17), (20) and (22) and Standards IV.A.2, IV.C.2 and IV.E.2 of the College's *Code of Ethics and Standards of Practice*.

REASONS FOR DECISION

In the Agreed Statement of Facts, the Member admits to having contravened Ontario Regulation 223/08, section 2, subsections (8), (10), (16), (17) and (22) and Standards IV.A.2, IV.C.2 and IV.E.2 of the College's *Code of Ethics and Standards of Practice*. The Plea Inquiry signed by the

Member further indicates that the Member understood the allegations made against her and that she voluntarily decided to admit to the allegations. As such, the Committee accepts the Member's guilty plea and the Agreed Statement of Facts.

With respect to subsection 2(20) of Ontario Regulation 223/08, the Member's Certificate of Criminal Conviction and the Court Proceedings Transcript of December 7, 2012 allow the Committee to reasonably conclude that the Member has contravened a law relevant to her suitability to hold a Certificate of Registration.

The Member held a position of trust, leadership and responsibility at the Centre. Her failure to maintain the standards and to act honestly and dutifully has caused the public to question the integrity of the profession. The Member's behaviour as described in the Agreed Statement of Facts is disgraceful, dishonourable and unprofessional. By engaging in this conduct, the Member has failed to comply with the Act and the professional misconduct regulation made under the Act.

Furthermore, the Member has acted in a manner unbecoming of an REECE, as evidenced by her criminal conviction of December 7, 2012 relating to fraud of over \$5,000 and to obtaining credit by false pretence.

JOINT SUBMISSION ON PENALTY

College counsel and the Member jointly submitted a Proposed Penalty, which provides as follows:

1. An Order directing that Ms. Kelly's certificate of registration be revoked, pursuant to section 33(4)(1) of the *Early Childhood Educators Act, 2007* and a notation of the revocation shall be recorded on the register.
2. An Order directing that the results of the hearing be recorded on the Register.

3. An Order directing that the Discipline Committee's finding and Order be published, with the Member's name, in full on the College's website and in summary in the College's publication, *Member Newsletter*.

Counsel for the College submitted that the Committee should accept the Proposed Penalty as it protects the public interest by serving the functions of general deterrence to early childhood educators at large and specific deterrence to the Member. College counsel further stated that the penalty was consistent with previous penalties imposed by the Discipline Committee and by other professional self-regulatory bodies in analogous cases.

PENALTY DECISION

After considering the joint submission made by College counsel and the Member, the Committee makes the following order as to penalty:

1. The Registrar is directed to revoke the Member's Certificate of Registration and to record a notation of the revocation on the register.
2. The Registrar is directed to record the results of this hearing on the register.
3. The Discipline Committee's finding and order shall be published, with the Member's name, in full on the College's website and in summary in the College's official publication *Connexions*, formerly known as *Member Newsletter*.

REASONS FOR PENALTY DECISION

The Committee accepts the Proposed Penalty, having determined that it is reasonable given the Member's actions.

Imposing the maximum penalty of revocation is appropriate as the Member's egregious conduct was unbecoming of a registered early childhood educator. The Member falsified

records relating to her professional duties, misappropriated a significant amount of funds, contravened the Criminal Code and failed to maintain the standards of the profession.

While the Member has pleaded guilty and signed an Agreed Statement of Facts and Proposed Penalty, there is no evidence that the Member made restitution before the Centre's auditor raised concerns about a possible misappropriation of funds. As such, the Committee does not believe that there are strong mitigating factors and is not issuing a less severe penalty order.

By revoking the Member's Certificate of Registration, the Committee informs the public that it finds professional misconduct of this nature intolerable and will effectively discipline members for engaging in such conduct. Revocation is in line with the previous penalties imposed by the Discipline Committee and by other self-regulating bodies in analogous cases, and it serves the function of specific deterrence by removing the Member from the early childhood education profession.

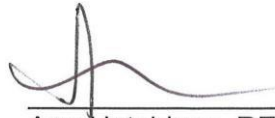
The mandate of general deterrence is then fulfilled by publication of the Committee's decision with the Member's name on the College's website, on the public register and in the College's newsletter. Publication with the Member's name promotes fairness and transparency, reassuring the public that the Committee acts decisively when matters of this nature are brought to its attention.

In conclusion, the Committee is confident that the penalty serves the interests of the public and of the profession.

Date: April 24, 2013



Nici Cole, RECE
Chair, Discipline Panel



Ann Hutchings, RECE
Member, Discipline Panel



Rosemary Sadlier
Member, Discipline Panel