

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

Citation: College of Early Childhood Educators vs Nicole Williams,
2013 ONCECE 3
Date: 2013-03-25

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 Nicole Williams, a member of the
College of Early Childhood Educators.

PANEL: Bruce Minore, Chair
 Ann Hutchings, RECE
 Sophia Tate, RECE

BETWEEN:)	
COLLEGE OF EARLY CHILDHOOD	)	M. Jill Dougherty,
EDUCATORS	)	WeirFoulds LLP,
	)	for College of Early Childhood Educators
- and -)	
)	
NICOLE WILLIAMS	)	John R. Carruthers,
REGISTRATION # 08126	)	Cattanach Hindson Sutton VanVeldhuizen,
	)	for Nicole Williams
)	
	)	David Leonard,
	)	McCarthy Tétrault LLP,
	)	Independent Legal Counsel
)	
	)	Heard: March 25, 2013

REASONS FOR DECISION, DECISION AND ORDER(S)

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on March 25, 2013 at the College of Early Childhood Educators (the “College”) at Toronto.

A Notice of Hearing (Exhibit 1), dated November 15, 2012, was served on Nicole Williams (the “Member”), specifying the charges and requesting her attendance before the Discipline Committee of the College of Early Childhood Educators (the “Committee”) on December 13, 2012 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 November 27, 2012, detailing confirmation that the Notice of Hearing was served on the Member.

Counsel for the College also tendered a Hearing Brief of Documents (Exhibit 2) containing a Consent form dated December 12, 2012. The Consent form indicated that both parties consented to hold the hearing on March 25, 26, 27 and 28, 2013. The matter was adjudicated on March 25, 2013.

The Member was in attendance at the hearing and was represented by John R. Carruthers from the law firm Cattanach Hindson Sutton VanVeldhuizen.

The Hearing Brief of Documents included an affidavit signed on March 13, 2013 by S.E. Corke, Registrar and Chief Executive Officer of the College of Early Childhood Educators, which outlined the current registration status of the Member and the historical changes that occurred since she became a member of the College. The affidavit indicated that the Member's registration status was that of "current member".

THE ALLEGATIONS

The allegations against the Member, as stated in the Notice of Hearing, dated November 15, 2012, are as follows:

IT IS ALLEGED that **Nicole Williams, RECE** (the "**Member**"), is guilty of professional misconduct as defined in subsection 33(2) of the Act, in that:

- (a) 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);
- (b) she signed or issued a document that the member knew or ought to have known contained a false, improper or misleading statement, contrary to Ontario Regulation 223/08, subsection 2(16);
- (c) she falsified a record relating to her professional responsibilities, contrary to Ontario Regulation 223/08, subsection 2(17);

- (d) she failed to keep records as required by her professional duties, contrary to Ontario Regulation 223/08, subsection 2(18);
- (e) she contravened a law that is relevant to her suitability to hold a Certificate of Registration, contrary to Ontario Regulation 223/08, subsection 2(20);
- (f) she conducted herself in a manner that is unbecoming a member, contrary to Ontario Regulation 223/08, subsection 2(22);
- (g) she failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8);
- (h) she failed to know, understand and abide by the legislation, policies and procedures that are relevant to her professional practice and to the care and learning of children under her professional supervision, contrary to Standard IV.A.2 of the College's Standards of Practice and/or engaged in conduct which could reasonably be perceived as reflecting negatively on the profession of early childhood educators, contrary to Standard IV.E.2; and
- (i) she failed to build a climate of trust, honesty and respect in the workplace, contrary to Standard IV.C.2 of the College's Standards of Practice.

Counsel for the College indicated to the Committee that she intended to withdraw the allegations listed in paragraphs (e) and (i) and the particulars of the allegations found in paragraphs 3(ii) (except for the particulars regarding payments from [...]), 3(v), 3(b), 3(c), 3(d), 3(e) and 3(f). College counsel stated that she was requesting that these allegations and particulars be withdrawn as the Member had not admitted to these allegations or these particulars. She advised the Committee that an agreement had been reached on the facts but that these allegations and particulars were not included in the agreement of fact.

The allegations in paragraphs (e) and (i) and the particulars of the allegations in paragraphs 3(ii) (except for the particulars regarding payments from [...]), 3(v), 3(b), 3(c), 3(d), 3(e) and 3(f) were subsequently withdrawn with the permission of the Committee.

AGREED STATEMENT OF FACTS

Counsel for the College and counsel for the Member indicated that an Agreed Statement of Facts could be found in the Hearing Brief of Documents. The Agreed Statement of Facts, signed March 22, 2013, provides as follows:

1. Nicole Williams, RECE, (“**Ms. Williams**” or the “**Member**”) is, and was at all times relevant to these allegations, a member of the College of Early Childhood Educators (Registration number 08126).
2. Ms. Williams was the Directrice at La Garderie des Moussaillons (the “**Centre**”) for 18 years. On July 22, 2011, the Board of Directors (the “**Board**”) retained the law firm Rueter Scargall Bennett LLP (the “**Firm**”) to investigate the Centre’s financial management after learning that Ms. Williams had increased her salary without the Board’s authorization.
3. The Firm provided a report to the Board dated September 1, 2011, a copy of which was provided to the College, which indicated that Ms. Williams had misappropriated funds and increased her salary without the Board’s authorization. The report also indicated that Ms. Williams had kept, for herself, cash payments that were made by parents for their children’s registration. Ms. Williams’ misconduct occurred at a time when the Centre was experiencing budget shortfalls and had to impose salary freezes on employees and fee increases on parents, and cut expenses for the classrooms.
4. Ms. Williams acknowledges the following misconduct as contained in the Firm report and as alleged in the Notice of Hearing:
 - (a) Ms. Williams was paid \$98,952.56 in 2009 and \$105,007.68 in 2010, even though her base salary was \$80,496.00 for the 2009 and 2010 periods. If this matter were to proceed to hearing, Ms. Williams would testify that she received more than her base salary for the 2009 and 2010 years as a direct result of Region of York subsidies, payments of unused sick days and payments of unused vacation days. Ms. Williams acknowledges that even if her salary were adjusted to reflect the above, she was still paid in total more than she ought to have been paid in the 2009 and 2010 years. In any event, the Board was not aware of any payment to Ms. Williams above her base salary and did not approve these increases;
 - (b) Ms. Williams kept for herself cash payments of \$7,800 from a parent named [...] for his child’s registration which Ms. Williams subsequently paid back to the Centre when she resigned her employment;
 - (c) Since 2002, Ms. Williams had not paid childcare fees for her son, totalling \$40,626.25, which she was expected to have paid. If this matter were to proceed to hearing, Ms. Williams would testify that she entered into an agreement with a previous member of the Board wherein she understood she was to receive a forgiveness of the child care fees for her son in exchange for Ms. Williams agreeing to continue to work, on a limited basis, during her maternity leave and, more broadly, in consideration of her commitment to the centre. Ms. Williams has not produced a copy of any agreement that she had with any member of the Board, nor has any resolution or written agreement of that nature been located by the current Board.

- (d) The current Board denies that there was such an agreement with Ms. Williams and did not approve the forgiveness of Ms. Williams' childcare fees. If called to testify, Ms. Andre DeGuise, the President of the current Board, and Sylvie Martin and Mona Babin, the President and Vice-President, respectively, of the previous Board would testify that the only arrangement made with Ms. Williams in respect of those fees was that the fees would be reduced by Ms. Williams hourly rate multiplied by the hours spent by her at the Centre during her maternity leave; and
 - (e) Ms. Williams issued tax receipts to herself and her husband for amounts that had never been paid in childcare fees to the Centre in respect of her son.
5. Ms. Williams pleads no contest to the following misconduct as contained in the Firm report. She therefore neither admits nor denies the misconduct, though she acknowledges that the misconduct was identified in the report:
- (a) Ms. Williams failed to record in the Centre's log book and deposit petty cash payments received for a "graduation" event totalling \$330. Ms. Williams bought cakes and dips with money collected from parents, but expensed these purchases through the Centre as if she had made the payments; and
 - (b) For an Easter fundraiser, Ms. Williams failed to record and deposit cash payments totalling \$370. Ms. Williams bought toys at Wal-Mart with money collected from parents, but these purchases were expensed through the Centre as if she had made the payments.
6. During the course of the investigation by the Firm, Ms. Williams resigned from the Centre. She subsequently entered into a confidential settlement with the Centre wherein the Centre agreed to not pursue any claims against Ms. Williams except for a complaint to the College of Early Childhood Educators, and Ms. Williams agreed to pay a sum of money that was stipulated to be satisfactory to the Centre and confidential between the Centre and Ms. Williams in Minutes of Settlement back to the Centre.
7. The parties agree that the facts agreed to are substantially accurate.

GUILTY PLEA

8. Ms. Williams admits that by reason of the facts set out above, she engaged in professional misconduct, as defined in subsection 33(2) of the Early Childhood Educators Act 2007, in that:
- (a) 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);

- (b) she signed or issued a document that the member knew or ought to have known contained a false, improper or misleading statement, contrary to Ontario Regulation 223/08, subsection 2(16);
- (c) she falsified a record relating to her professional responsibilities, contrary to Ontario Regulation 223/08, subsection 2(17);
- (d) she failed to keep records as required by her professional duties, contrary to Ontario Regulation 223/08, subsection 2(18);
- (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 maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8); and
- (g) she failed to know, understand and abide by the legislation, policies and procedures that are relevant to her professional practice and/or engaged in conduct which could reasonably be perceived as reflecting negatively on the profession of early childhood educators, contrary to Standard IV.E.2.

Within the Hearing Brief of Documents was a Plea Inquiry, signed by the Member on March 22, 2013 and indicating the following:

- a) The Member 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 newsletter, including reference to her name.
- e) She understood that any agreement between counsel for the College and her own counsel with respect to the order proposed does not bind the Committee.

DECISION

Having considered the Exhibits filed, and based on the Agreed Statement of Facts and guilty plea, and the submissions made by counsel for the College and counsel for the Member, the

Discipline Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that Nicole Williams committed acts of professional misconduct as alleged, more particularly breaches of Ontario Regulation 223/08, section 2, subsections (8), (10), (16), (17), (18), (22) and Standards IV.A.2 and IV.E.2 of the College's *Code of Ethics and Standards of Practice*.

REASONS FOR DECISION

Each of the allegations in the Notice of Hearing can be traced back to an action or actions listed in the Agreed Statement of Facts. The Member did not contest the facts in the agreement and acknowledged that her conduct as described in the statement constitutes professional misconduct. As such, the Committee accepts the Member's plea and the Agreed Statement of Facts.

The Member systematically defrauded the Centre over a number of years. She raised her salary by a substantial amount without the Board's authorization and kept, for herself, cash payments made by a parent for his child's registration. The Member also made purchases for the Centre with funds collected from parents and then expensed these purchases as if she had made the payments herself. Taking into account the fact that the Member had not paid child care fees to the Centre since 2002, it can be concluded that the Member fraudulently gained close to \$100,000.

The Committee notes, furthermore, that the Member's misconduct extends beyond workplace fraud as she issued tax receipts to herself for amounts that had never been paid in child care fees to the Centre in respect of her son.

JOINT SUBMISSION ON PENALTY

College counsel and counsel for the Member jointly submitted a Joint Submission as to Penalty, which was included in the Hearing Brief of Documents. The joint submission was signed and dated March 22, 2013, and it provides as follows:

1. The Member shall be reprimanded in person by the Discipline Committee and the fact of the reprimand shall be recorded on the College's Register.
2. The Member shall be suspended from membership in the College for 12 months, commencing on the date of the Discipline Committee's order herein. The latter 7 months of the suspension will be suspended, in consideration of Ms. Williams having refrained from working as an Early Childhood Educator during 2012 and the first three months of 2013 *and* provided that Ms. Williams completes the course work referenced in paragraph 3(a) below within 5 months from the date of the Discipline Committee's order herein.
3. The Registrar shall be directed to impose a term, condition and limitation on the Member's Certificate of Registration, to be recorded on the Register, requiring the Member to participate in and successfully complete a course of study in "Ethical and Professional Standards", at her own expense, as prescribed by and acceptable to the College, within 5 months from the date of the Discipline Committee's order herein. For greater clarity, the Member will be required to complete the course of study in "Ethical and Professional Standards" whether or not her suspension is suspended pursuant to paragraph 2.
4. The results of the hearing shall be recorded on the Register.
5. 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 publication, *Member Newsletter*.
6. If Ms. Williams is employed as an RECE within the 12 months immediately following the date of the Order, she will promptly provide the decision of the Discipline Committee to her employer and will subsequently provide to the Registrar, on the one year anniversary of the Order, a report from her employer, satisfactory to the Registrar, indicating that the member has shown honesty and integrity in carrying out her responsibilities as a registered member of the College in the place where she is working.

Counsel for the College submitted that the Joint Submission as to Penalty protects the public interest as it acts as a specific deterrent to the Member and a general deterrent to early childhood educators at large. She stated that the proposed penalty is consistent with previous penalties imposed by the Committee and by other self-regulating professions in analogous

cases, citing *College of Early Childhood Educators vs. Sherrel Pucci, RECE, Ontario College of Social Workers and Social Service Workers v. Sanford Champion, Ontario (College of Pharmacists) v. Foster, Moore (Re), [2002] O.C.P.S.D. No.5* and *Ontario College of Teachers v. Williams*.

College counsel indicated that the Committee has, in the past, accepted joint submissions as to penalty, adding that while such submissions are not binding on the Committee, both the Ontario Court of Appeal and Divisional Court have held that joint submissions should not be rejected unless they are “contrary to the public interest” and would “bring the administration of justice into disrepute.”

Counsel for the Member submitted that the Joint Submission as to Penalty serves the functions of public protection, transparency and deterrence while still rehabilitating the Member and allowing her to reintegrate into the profession. He stated that the Member has cooperated throughout the College’s complaints and discipline process by participating in a pre-hearing conference, signing an Agreed Statement of Facts and a Joint Submission as to Penalty and attending the hearing in person. The Member’s counsel indicated that the Member now understands the importance of good judgment, adding that she cares about children and does not have a history of misconduct.

The Member herself made submissions, providing her interpretation of some matters before the Committee, but acknowledging a lack of judgement for which she declared remorse. She indicated that she worked at the Centre for a number of years and had loved her job. The Member stated that she has become wiser from this process and is willing to accept the penalty, including the course, the reprimand and the publication of the Committee’s decision.

PENALTY DECISION

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

1. The Member is to be reprimanded in person by the Discipline Committee, and the fact of the reprimand is to be recorded on the College's public register.
2. The Member's Certificate of Registration shall be suspended for 12 months, commencing on the date of the Discipline Committee's order herein. The latter seven months of the suspension will be suspended, provided that Ms. Williams fulfills the following term, condition or limitation within five months from the date of the Discipline Committee's order herein:
3. The Registrar is directed to impose a term, condition or limitation on the Member's Certificate of Registration, to be recorded on the public register, requiring the Member, at her own expense, to participate in and successfully complete a course of study in "Ethical and Professional Standards" as prescribed by and acceptable to the College, within five months from the date of the Committee's order. For greater clarity, the Member will be required to complete the course of study in "Ethical and Professional Standards" whether or not her suspension is suspended.
4. If Ms. Williams is employed as an RECE within the 12 months immediately following the date of the order, she will promptly provide the decision of the Discipline Committee to her employer and will subsequently provide to the College Registrar, on the one-year anniversary of the order, a report from her employer, satisfactory to the Registrar, indicating that the Member has shown honesty and integrity in carrying out her responsibilities as a registered member of the College in the place where she is working.

5. The Registrar is directed to record the results of this hearing on the public register.
6. The Discipline Committee's finding, order and reprimand shall be published, with the Member's name, in full on the College's website and in summary in the College's publication *Connexions*, formerly known as *Member Newsletter*.

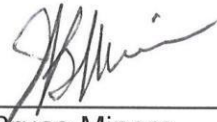
REASONS FOR PENALTY DECISION

In matters where there is a joint submission as to penalty, the task before the Committee is to determine whether or not the submission falls within an appropriate range of penalty given the member's misconduct. Ontario courts have indicated that joint submissions are to be given serious consideration and should not be rejected unless they are contrary to public interest and would call into question the administration of justice.

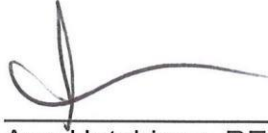
Although the Committee has determined that the proposed penalty is reasonable, it does believe that the jointly proposed penalty falls at the lowest end of the appropriate penalty range in terms of severity given the Member's conduct. The Committee holds this view given that the Member was in a senior position of authority as the Directrice at La Garderie des Moussaillons when the misconduct occurred. Furthermore, the Committee is not convinced of the depth or authenticity of the Member's remorse due to certain statements that she herself made during the hearing. Had the matter gone to a contested hearing and had there been a finding of misconduct, the Committee likely would have imposed a more severe penalty.

The imposed penalty must satisfy the requirements of specific deterrence, general deterrence and the protection of public interest. The Committee has determined that the joint submission made by counsel generally meets these conditions. Furthermore, the proposed penalty includes educative elements that would encourage the Member to improve her practice. Mindful of the rehabilitative intent of the College's complaints and discipline process, the Committee accepts the Joint Submission as to Penalty.

Date: March 25, 2013



Bruce Minore
Chair, Discipline Panel



Ann Hutchings, RECE
Member, Discipline Panel



Sophia Tate, RECE
Member, Discipline Panel