



## DECISION AND REASONS

This matter came on for a hearing before a panel of the Discipline Committee of the College of Early Childhood Educators (the "Panel") held a hearing on December 17, 2018.

### PUBLICATION BAN

The Panel ordered a partial publication ban following a motion by College Counsel pursuant to section 35.1(3) of the *Early Childhood Educators Act, 2007*. The order bans the public disclosure, publication and broadcasting outside of the hearing room, of identifying information of any minor children.

### THE ALLEGATIONS

Counsel for the College advised the Panel that the College was requesting leave to withdraw the allegations set out in paragraphs 6 (d) & (e) (standards of practice, psychological abuse) of the Notice of Hearing dated, October 24, 2018) Counsel for the College advised the Panel that the College was not calling evidence on 6 (d) & (e) (standards of practice, psychological abuse) and as such, could not provide the allegations. The Panel granted this request and withdrew these allegations.

The remaining allegations against the Member as stated in the Notice of Hearing, are as follows:

1. At all material times, Amal Ali (the "**Member**") was a member of the College of Early Childhood Educators (the "**College**") and was employed as an Early Childhood Educator at the Learning Enrichment Foundation (operator of the Donald C. MacDonald Child Care Centre) (the "**Centre**"), located in Toronto, Ontario.
2. On or about December 10, 2015, the Member was working at the Centre when she physically grabbed and/or took hold of a child, M., in a rough and/or aggressive manner. The child was approximately 19 months of age.
3. Specifically, the Member observed two children fighting and/or hitting each other. As a result, the Member grabbed M. by the arms, held his arms behind his back, and directed and/or yelled at the second child to hit him.
4. The Member said to the second child, words to the effect of, "Hit him. Slap him."
5. The incident was reported to the Centre by a parent who observed the incident. The Member was terminated by the Centre on December 21, 2015.

6. By engaging in the conduct set out in paragraph 2-5 above, the Member engaged in professional misconduct as defined in subsection 33(2) of the *Early Childhood Educators Act, 2007*, S.O. 2007, c. 7, Sch. 8, in that:
- (a) she failed to supervise adequately a person who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(2);
  - (b) she verbally abused a child who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(3);
  - (c) she physically abused a child who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(3.1);
  - (f) she acted or failed to act 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); and/or
  - (g) she conducted herself in a manner that is unbecoming a member, contrary to Ontario Regulation 223/08, subsection 2(22).

### **THE MEMBER'S PLEA**

As the Member was not present, nor represented by counsel, the Panel proceeded on the basis that the Member denied the allegations as set out in the Notice of Hearing (Exhibit #1).

### **NOTICE PROVIDED TO THE REGISTRANT**

The College presented the Panel with the Affidavit of Service (Exhibit #1) and the affidavit of Maria Serafini, dated November 30, 2018 (Exhibit #3).

These Affidavits demonstrated, *inter alia*, that:

- Prior to the hearing, the Member received nine (9) notifications of the date of the hearing and that the hearing could proceed in her absence. These notifications occurred by registered mail, personal service and e-mail. Additional attempts were made to reach the Member by telephone.
- Prior to the hearing, the Member received five (5) notifications relating to the penalty and costs that would be sought by the College in the event findings of misconduct were made. These communications were sent by registered mail and e-mail. Additional attempts were made to reach the Member by telephone.

All of the Affiants stated in their affidavits that they did not receive any response from the Member to the correspondences that were sent to her in connection with this hearing.

Further, on the day of the hearing, when the Member did not attend, College counsel attempted to reach the Member by telephone and e-mail. In addition, the hearing start time was delayed to accommodate the Member in case she was running late. No response to any of the communications was made by the Member and the Member did not attend the hearing.

The Panel was satisfied that the Member had ample notice of this hearing, as well as the consequences of her non-attendance at the hearing and proceeded in her absence.

## **THE EVIDENCE**

This matter proceeded as a contested hearing.

The following documents were entered as exhibits during the course of the hearing:

Exhibit #1 ~ Notice of Hearing

Exhibit #2 ~ Certificate of Registration for Amal Ali

Exhibit #3 ~ Affidavit of Maria Serafini

Exhibit #4 ~ Letter of Confirmation dated December 3, 2018

Exhibit #5 ~ Affidavit of Olivia Bonney

Exhibit #6 ~ Affidavit Ryan Sequeira

Exhibit #7 ~ Letter to Amal Ali from Ryan Sequeira dated October 16, 2017

Exhibit #8 ~ Letter to Amal Ali from Ryan Sequeira dated January 31, 2018

Exhibit #9 ~ Letter dated to Amal Ali from Ryan Sequeira dated April 27, 2018

Exhibit #10 ~ Affidavit Peter Frampton

Exhibit #11 ~ Letter to Amal Ali dated October 10, 2018 (Position on Penalty)

Exhibit #12 ~ E-mail and letter to Amal Ali dated November 22, 2018 (Position on Penalty and Costs)

The following is a summary of the evidence presented by the College to the Panel at the hearing:

### ***Evidence of Maria Serafini***

Ms. Serafini gave evidence about the number of times the College tried to reach the Member. On August 29, 2018, Ms. Serafini contacted the Member's former counsel and was advised that he was no longer acting for her. She therefore sent disclosure materials directly to the Member on August 31, 2018. These were confirmed delivered confirmed on September 5, 2018. No response was received.

- On September 18, 2018. Ms. Serafini was carbon copied on an e-mail sent by College Counsel asking to discuss the case, although the e-mail was successfully delivered, no response was received. Ms. Serafini sent a subsequent e-mail and attempted to contact the Member by telephone. The Member did not respond.

Further correspondences were sent to the Member and a process server

- Attempted, on five (5) different times to deliver the hearing documents. On November 19, 2017 the documents were successfully delivered to the Member's adult son. Through the balance of the month of November 2017, additional attempts were made to correspond with the Member but she did not communicate with anyone at the College. Ms. Serafini confirmed with the Manager of Registration that the Member had not updated her contact information with the College.

### ***Evidence of Ryan Sequeira***

Mr. Sequeira is an investigator at the College. He was assigned to investigate a complaint made by way of a Mandatory Employer Notification Report dated April 15, 2016 regarding the Member. The complaint related to an incident that occurred at the Centre on December 10, 2015. On January 30, 2018, Mr. Sequeira interviewed Olivia Bonney, a witness to the incident, by telephone.

Bonney was not provided with notes from her interview with the Centre or any other materials to refresh her memory prior to the interview. Mr. Sequeira made notes of the interview and in the interview, Ms. Bonney described to Mr. Sequeira that she observed a young child hitting another child and then the Member grabbed the child and held him and said to the other child "you hit her back, slap him, slap him." Ms. Bonney told Mr. Sequeira that she was very upset by what she saw and while she didn't wish to get the Member in trouble, she reported the incident to the Supervisor.

Mr. Sequeira also testified that although the Member was sent the Mandatory Employer Report and given 60 days to respond, she did not respond. He also sent her additional documents in January 2018 and April 2018, for her review and comment, and she did not respond nor communicate with him.

### ***Evidence of Olivia Bonney***

Ms. Bonney provided affidavit evidence. She could not attend the hearing as she was experiencing serious medical difficulties. The Panel accepted that it could accept hearsay evidence. The Panel accepted that Ms. Bonney's evidence was necessary to determine the case on the merits and it was reliable. The Member was also aware that Ms. Bonney's evidence was to be presented by way of affidavit and chose not to object. The Panel accepted Ms. Bonney's evidence which can be summarized as follows:

On the morning of December 1, 2015, Ms. Bonney arrived at the Centre to drop off her child. She observed through the window, a boy hit another child. She then observed the Member grab the child and pull his arms behind his back. She told the other child to hit the boy and said words to the effect of, "hit him back" or "slap him back." The other child did as instructed.

Ms. Bonney was very upset by what she observed and debated leaving her son at the Centre but because she is a single mother and did not have anyone else who could care for her child, she left him there. She reported the incident to the Supervisor the next morning.

On December 14, 2015, she was interviewed by the Centre regarding the incident. Notes were made by the Centre and Ms. Bonney reviewed those notes and made some corrections to them.

On January 30, 2018, Ms. Bonney was interviewed by Ryan Sequeira about the incident and she provided her best recollection of what occurred.

Ms. Bonney did not wish the Member to be fired but wanted her to get some training before she continued working with children.

### ***Evidence of Peter Frampton***

Mr. Frampton also provided his evidence by way of affidavit. The Panel accepted that his evidence related to a narrow issue but was still reliable and necessary and thus accepted it.

Mr. Frampton was the Executive Director of the Foundation that operates the Centre. He provided the Centre's Behaviour Management Policy Guidelines that were signed by the Member.

Mr. Frampton further gave evidence that a Supervisor at the Centre had received a report regarding the incident that occurred with the Member on December 10, 2015. As a result, the Centre conducted an investigation and ultimately, terminated the Member on December 21, 2015. Mr. Frampton's evidence was that the child that was grabbed by the Member was 19 months old.

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

College counsel submitted that even though the Member did not attend the hearing, the burden remains on the College to prove the case based on a balance of probabilities. College counsel submitted that the evidence has been unchallenged by the Member after being presented with many opportunities to respond to requests for correspondence from the College. Ms. Bonney is a credible and reliable witness. She recalled with great detail the incident and felt the need to act on what she had witnessed. Ms. Bonney reported the incident to the Centre Supervisor on the afternoon of December 10, 2015. There is no indication that Ms. Bonney had a reason to lie. Her statements on December 14, 2015 and when interviewed on January 30, 2018 are consistent. The Member was terminated by her employer one week after the incident. The Member called no evidence. The College established all of the allegations on a balance of probabilities.

## **DECISION ON THE ALLEGATIONS**

The Panel found that the College met its onus and, based on a balance of probabilities, established that the Member s committed the following acts of misconduct as defined in subsection 33(2) of the Act, in that:

- She failed supervise adequately a person who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(2);
- She verbally abused a child who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(3);
- She physically abused a child who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(3.1);
- She acted or failed to act 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); and
- She conducted herself in a manner that is unbecoming a member, contrary to Ontario Regulation 223/08, subsection 2(22).

## **REASONS FOR DECISION**

The Panel found that the allegations set out in the amended Notice of Hearing had been proven by the College through the testimony of the witnesses called and documents filed as exhibits at the hearing. The Panel fully accepted the affidavit evidence of Olivia Bonney and Peter Frampton.

The Panel finds it regrettable that the member chose not to attend the hearing or participate in the governance process of the College in any way. There was evidence before the Panel that the Member abused of her role of authority. The Member's actions were the opposite of those expected of a professional. She demonstrated a complete lack of appropriate supervision. She did not aim to stop the children (aged 19 months) from fighting, but rather she encouraged the children to engage in aggressive behaviour. She physically held one child, while encouraging another to slap him. There were many other options available to this Member to deal with the children's behaviour, but she chose not to utilize them and instead, chose to act in a physically and verbally abusive manner. Her actions were completely unprofessional and in direct violation of the Centre's behaviour management policies and procedures. Although the College withdrew the allegations on standards, the Panel finds that the Member's conduct was so flagrant, expert evidence would have been required to establish it was a breach of standards. Her conduct was completely unbecoming a member of the profession. Both children were victims in that the Member failed to provide a safe and nurturing environment. The children could not stand up for themselves or report her behaviour based on their very young age. This Member has completely failed to act with integrity and lacks a caring, empathetic and fair manner.

The Panel found through the compelling and uncontested evidence presented by the College, that the Member is guilty of professional misconduct. The Panel also found that the Member consistently and repetitively failed to respond to the College's correspondence and attend the Discipline hearing. She consistently chose to disregard her obligations to the profession and to her governing body.

By her behaviour, the Member has demonstrated that she is unlikely to meet her professional obligations and has no regard for the College and its mandate.

## **PENALTY**

Having found the Registrant to have committed the acts of misconduct alleged, the Panel proceeded with a penalty hearing. The Panel was satisfied that the Registrant was well aware of the fact that if findings were made against her, the matter would proceed to a penalty hearing the same day and the nature of the penalty that the College was seeking.

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

The College proposed that the Panel impose the following order that:

1. The Registrar be directed to revoke the Member's Certificate of Registration effective immediately; and
2. The Member be required to pay to the College costs in the amount of \$10,000.00 within thirty (30) days from the date of the Order.

College counsel submitted that the penalty needs to protect the public. The public needs to have confidence in professional regulation. In this case, the Member completely failed in her duties and instead of using appropriate early childhood strategies, she turned the Centre into a "baby fight club."

College Counsel pointed out a number of aggravating factors in this case including:

1. There was no justification for the Member's conduct;
2. Here behaviour flies in the face of what Registered Early Childhood Educators are trained to do;
3. The Member violated the Centre's Behaviour Management Policy;
4. The children involved were very young toddlers; and
5. The Centre is supposed to be a safe haven for children.

The College submitted that the Member misused her position of power and in this case, revocation is the only appropriate penalty. In addition, the Member has demonstrated that she is ungovernable by not only her conduct, but her demonstrated unwillingness to be governed by the College by not responding to communications and not attending the hearing. College counsel provided case law to support that revocation is an appropriate penalty where a Member is ungovernable.

With respect to the proposed costs, College Counsel submitted that the Panel had jurisdiction to order costs. Costs are not meant to be punitive. While the College's actual costs are higher, the College was seeking \$10,000 based on the College's tariff.

## **PENALTY DECISION**

After careful and thorough consideration of the College's submissions on penalty and the case law presented, and in the absence of any submissions by the Member, the Panel imposed the following penalty:

1. The Registrar is directed to revoke the Member's Certificate of Registration effective immediately; and

2. The Member is required to pay to the College costs in the amount of \$10,000.00 within thirty (30) days from the date of this Order.

## **REASONS FOR PENALTY**

The College provided the Panel with a number of cases in support of its proposed penalty order. Counsel for the College submitted that, while this case law was not binding on the Panel, many of the principles in these cases could provide guidance to the Panel with respect to the appropriate penalty in this case.

The Panel had regard for certain sentencing principles when deciding the appropriate penalty in this case. This included the College's overarching public protection mandate, as well as the principles of specific and general deterrence. The Panel found that revocation in this case sends a strong message both to the Member, as well as the profession as a whole and the general public, that this kind of reprehensible conduct will not be tolerated. In addition, self-regulation is a privilege and not a right. A repeated refusal to abide by the rules and regulations of the College, as well as the refusal to engage with the College, including attending discipline proceedings, will result in serious sanctions, including the most serious sanction of revocation of one's Certificate of Registration. Additionally, as the Member was not present at the hearing, there was no evidence she was accountable for her actions or remorseful. The Panel acknowledges that there is no requirement that a Member must attend the discipline hearing, but feels that a responsible member, who is willing to be governed by her professional regulatory body, would attend the hearing or at least, communicate with her regulator at some point. In addition, the Panel notes that the Member's certificate was suspended for nonpayment of fees in October 2018. This further demonstrates she has no interest in the College and the ECE profession.

By failing to communicate or engage in discussions with the College, the Member required the College to incur the full costs of a contested hearing. As well, by refusing to participate in the College's discipline process, the Member showed a disregard for the College's authority and thereby ignored the important role the discipline process serves in protecting public safety and maintaining professionalism.

In closing, it was clear to the Panel that the Member has blatantly ignored, and failed to communicate with the College. This has culminated in her not attending this Discipline hearing, even though the Panel found that she had ample notice of this hearing, as well as her responsibilities and consequences for non-attendance at the hearing, including revocation of her Certificate of Registration. The Panel accepted that revocation is the only appropriate order, and was of the view that any possible remedial measures would be ineffective.

The Panel agreed with the College that this was an appropriate case to order costs, and that the figure of \$10,000.00 was reasonable.

**I, Barbara Brown, sign this decision and reasons for the decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel.**



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Barbara Brown, RECE, Chairperson

January 14, 2019

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Date