

DISCIPLINE COMMITTEE  
OF THE ONTARIO COLLEGE OF EARLY CHILDHOOD EDUCATORS

Citation: College of Early Childhood Educators vs Anonymous,  
2012 ONCECE 1  
Date: 2012-04-17

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

AND IN THE MATTER OF discipline proceedings [REDACTED], RECE, a  
against member of the College of Early Childhood  
Educators.

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

BETWEEN : )  
)  
COLLEGE OF EARLY ) M. Jill Dougherty,  
CHILDHOOD EDUCATORS ) WeirFoulds LLP,  
) for College of Early Childhood Educators  
-and- )  
)  
[REDACTED], RECE )  
) Frank Mendicino,  
) Capo Sgro LLP,  
) for [REDACTED], RECE  
)  
)  
) David Leonard,  
) McCarthy Tetrault LLP,  
) Independent Legal Counsel  
)  
) Heard: April 17, 2012

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

This matter came on for hearing before a panel of the Discipline Committee (the "Committee") on April 17, 2012 at the College of Early Childhood Educators (the "College") at Toronto.

A Notice of Hearing (Exhibit 1), dated April 16, 2012, was served on Frank Mendicino of the law firm Capo Sgro LLP, on behalf of ██████████, RECE (the "Member"), requesting her attendance before the Discipline Committee of the College of Early Childhood Educators on April 17, 2012 for a hearing, and specifying the charges. Counsel for the College submitted an Affidavit of Service sworn by Samiyah Aziz, Hearings Coordinator (Exhibit 1), and sworn April 16, 2012 detailing confirmation that the Notice of Hearing was served on Mr. Mendicino.

The Member was in attendance at the hearing and represented by Mr. Mendicino.

Counsel for the College also submitted an Affidavit of Sue Corke, Registrar and Chief Executive Officer (Exhibit 2), sworn on April 12, 2012, which outlined the current registration status of the Member and any historical changes that may have occurred since becoming a member of the College.

### THE ALLEGATIONS

The allegations against the Member, as stated in the Notice of Hearing dated April 16, 2012, are as follows:

IT IS **ALLEGED** that ██████████ RECE (the "Member"), is guilty of professional misconduct as defined in subsection 33(2) of the *Early Childhood Educators Act, 2007* (the "Act"), 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 failed to maintain the standards of the profession, 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 failed to comply with the Act and the professional misconduct regulation made under the Act (being Ontario Regulation 223/08), contrary to Ontario Regulation 223/08, subsection 2(19); and
- (e) she conducted herself in a manner that is unbecoming a member, contrary to Ontario Regulation 223/08, subsection 2(22).

## STATEMENT OF UNCONTESTED FACTS

Counsel for the College advised the Committee that an agreement had been reached on the following facts, as stated in the Notice of Hearing dated April 16, 2012:

1. Between May 12, 2008 and August 29, 2011, the Member was employed as a and supply teacher for [REDACTED], and worked the majority of time at [REDACTED], located at [REDACTED].
2. Between August 8, 2011 and August 9, 2011, the Member worked at [REDACTED] (the "Centre"), located at [REDACTED].
3. During the periods described in paragraphs 1 and 2 above, the Member was to at all times be engaged as a play partner with the children in her care, and be responsible for the health and safety of the children.
4. On August 12, 2011, while the Member was responsible for supervising the children in the toddler room at the Centre, the Member failed to adequately supervise the children in her care when she took a nap during the children's nap time.

## PLEA OF NO CONTEST

The Member entered a plea of no contest to the allegations of professional misconduct against her, being more particularly breaches of:

- (a) Ontario Regulation 223/08, subsection 2(2);
- (b) Ontario Regulation 223/08, subsection 2(8);
- (c) Ontario Regulation 223/08, subsection 2(10);
- (d) Ontario Regulation 223/08, subsection 2(19); and
- (e) Ontario Regulation 223/08, subsection 2(22).

The Member consented to the Discipline Committee accepting, for purposes of this proceeding, the facts as set out in the Notice of Hearing and that those facts constitute professional misconduct.

The Member stated that:

- (a) she understood fully the nature of the allegations against her;

- (b) she understood that by not contesting the allegations, she was waiving the right to require the College to prove the case against her and the right to have a hearing;
- (c) her plea of no contest was made voluntarily;
- (d) she understood that depending on the penalty ordered by the Discipline Committee, that the Committee's decision and a summary of its reasons may be published in the Member Newsletter, including reference to her name; and
- (e) she understood that any agreement between the College and defence counsel with respect to the penalty proposed does not bind the Discipline Committee.

The Member provided the plea of no contest in accordance with Rule 3.02 of the *Rules of Procedure of the Discipline Committee and of the Fitness to Practise Committee*, and the Member's plea of no contest does not constitute an admission by the Member as to the facts or findings in any other civil, criminal or administrative proceeding.

## **DECISION**

Having considered the Exhibits filed, and based on the plea of no contest and the submissions made by counsel, the Discipline Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that \_\_\_\_\_, RECE, committed acts of professional misconduct as alleged, more particularly breaches of the *Early Childhood Educators Act, 2007*, paragraphs 33(2)(a) and (c), and Ontario Regulation 223/08, section 2, subsections (2), (8), (10), (19), and (22).

## **REASONS FOR DECISION**

The Member acknowledged that the facts referred to in the Notice of Hearing constitute professional misconduct and pleaded no contest to these allegations of

professional misconduct.

The Committee accepted as fact, which was not contested, that the Member took a nap during the children's naptime , and by doing so, failed to adequately supervise children under her care, contrary to subsection 2(2) of Ontario Regulation 223/08. In doing so, the Member failed to maintain the standards of the profession and failed to comply with the Act and Ontario Regulation 223/08 made under the Act. The Committee determined that the Member's actions would also be reasonably regarded by members as unprofessional and unbecoming a member of the College.

#### **JOINT SUBMISSION ON PENALTY**

Counsel for the College and the Member jointly submitted that the appropriate penalty to be imposed by the Discipline Committee in this matter would be that:

1. The Member be reprimanded and the fact of the reprimand be recorded on the register.
2. The Discipline Committee's finding and order (or a summary thereof) be published, without the Member's name, in the College's official publication and on the College's website, and the results of the hearing be recorded on the register.

Counsel for the College submitted that the proposed penalty (Exhibit 3) ought to be accepted by the Discipline Committee for the following reasons:

- (a) the incident involving the Member was isolated;
- (b) there was no indication of prior misconduct on the part of the Member;
- (c) a reprimand is the least severe penalty, which is an appropriate sanction for the incident itself, and

- (d) publication without the Member's name acts as a general deterrent and specific deterrent.

Counsel for the College also submitted that the proposed penalty is in the public interest, as it will not bring the administration of justice into disrepute and promotes transparency in the disciplinary process.

### **PENALTY DECISION**

After considering the joint submission of College counsel and the Member's counsel, the Committee makes the following order as to penalty:

1. The Member is required to appear before the Discipline Committee, immediately following the hearing, to be reprimanded and the fact of the reprimand is to be recorded on the register.
2. Pursuant to subsection 33(5) of the *Early Childhood Educators Act, 2007*, the findings and order of the Committee shall be published in summary, without the name of the Member, in the official publication of the College, *Member Newsletter*, and on the College's website.

### **REASONS FOR PENALTY DECISION**

In making its decision, the Committee took into consideration that the Member had pleaded no contest to professional misconduct and had agreed to be reprimanded by the Committee.

The Committee accepted the report that the incident involving the Member was an isolated incident and that there was no prior record of misconduct on the part of the Member. The Committee determined that a reprimand was an appropriate penalty in these circumstances. The reprimand by her peers serves as a specific deterrent to the

Member. This censure on behalf of the profession and the public reinforces to the Member that her conduct was unacceptable. The fact, recorded on the register, that the Member received a reprimand and was found guilty of professional misconduct serves as an additional deterrent to the Member.

Publication of the findings and order of the Committee, in summary, without the name of the Member in the *Member Newsletter*, provides a general deterrent to the profession and serves to protect the public interest. It reassures the public and educates members that the College will not tolerate this type of conduct and will deal with it appropriately.

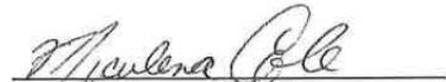
In conclusion, the Committee is confident that the penalty serves the interests of the public and the profession.

Date: April 17, 2012



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Rosemary Sadlier  
Chair, Discipline Panel



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Nici Cole, RECE  
Member, Discipline Panel



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Ann Hutchings, RECE  
Member, Discipline Panel