

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

Citation: College of Early Childhood Educators vs Daniel Capstick,
2013 ONCECE 8
Date: 2013-09-19

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

AND IN THE MATTER OF discipline proceedings against Daniel Capstick, a former member
of the College of Early Childhood Educators.

PANEL: Sophia Tate, RECE, Chair
Susan Quaiff,
RECE Rosemary
Fontaine

BETWEEN:)	
COLLEGE OF EARLY CHILDHOOD)	M. Jill Dougherty,
EDUCATORS)	WeirFoulds LLP,
)	for the College of Early Childhood Educators
- and -)	
)	
DANIEL CAPSTICK)	Daniel Capstick was not present,
REGISTRATION # 00137)	nor was he represented
)	
)	
)	David E. Leonard,
)	McCarthy Tétrault LLP,
)	Independent Legal Counsel
)	
)	Heard: September 19, 2013

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

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on September 19, 2013 at the College of Early Childhood Educators (the “College”) at Toronto.

Counsel for the College tendered a Hearing Brief of Documents (Exhibit 1) containing a

Notice of Hearing dated June 24, 2013 (Tab 1, Exhibit 1). The Notice of Hearing was served on Daniel Capstick (the “Member”) specifying the charges and requesting the Member’s attendance before the Discipline Committee of the College of Early Childhood Educators (the “Committee”) on July 24, 2013 to set date for a hearing. Counsel for the College submitted an Affidavit of Service sworn by Agatha Wong, Hearings Coordinator (Tab 2, Exhibit 1) and sworn July 8, 2013, detailing confirmation that the Notice of Hearing was served on the Member.

Counsel for the College also tendered a Consent form dated July 23, 2013 (Tab 3, Exhibit 1) indicating that the parties consented to hold the hearing on September 19, 2013.

The Member was not in attendance at the hearing, nor was he represented by legal counsel. Satisfied that the Member was served with the Notice of Hearing and was aware of the date of the hearing, the Committee proceeded to hear the matter in the absence of the Member.

THE ALLEGATIONS

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

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

- (a) He failed to supervise adequately a person who was under his professional supervision, contrary to Ontario Regulation 223/08, subsection 2(2).
- (b) He failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8), in that:
 - (i) he failed to maintain a safe and healthy learning environment, contrary to Standard III.A.1 of the College’s *Code of Ethics and Standards of Practice* (the “Standards of Practice”);
 - (ii) he failed to know, understand and abide by legislation, policies and/or procedures relevant to his professional practice and/or to the care and learning of children under his professional supervision, contrary to Standard IV.A.2 of the College’s Standards of Practice;
 - (iii) he failed to provide guidelines, parameters and direction to supervisees that

respected their rights and/or failed to ensure a level of supervision that was appropriate in light of the supervisee's education, training, experience and the activities being performed, contrary to Standard IV.C.3 of the College's Standards of Practice; and

(iv) he engaged in conduct that could reasonably be perceived as reflecting negatively on the profession of early childhood education, contrary to Standard IV.E.2 of the College's Standards of Practice.

(c) He 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) He failed to keep records as required by his professional duties, contrary to Ontario Regulation 223/08, subsection 2(18).

(e) He conducted himself in a manner unbecoming a member, contrary to Ontario Regulation 223/08, subsection 2(22).

Counsel for the College submitted an affidavit signed on August 29, 2013 by S.E. Corke, Registrar and Chief Executive Officer of the College (Tab 4, Exhibit 1). The affidavit outlines the historical changes that occurred since the Member was issued a Certificate of Registration and specifies that his current registration status is "Cancelled/Resigned".

Although the Member has submitted a resignation form dated August 19, 2013 to the College (Tab 5, Exhibit 1), the allegations made against him are related to events that allegedly took place when his membership was still current. It is therefore within the jurisdiction of the Committee to adjudicate this matter, pursuant to subsection 18(3) of the ECE Act.

AGREED STATEMENT OF FACTS

Counsel for the College advised the Committee that an agreement had been reached on the facts and submitted into evidence an Agreed Statement of Facts, signed August 19, 2013 (Tab 6, Exhibit 1). The Agreed Statement of Facts provides as follows:

1. Daniel Capstick ("**Mr. Capstick**") was at all times relevant to the allegations contained in the Notice of Hearing a registered member of the College of Early Childhood Educators (the "**College**").

2. From on or about September 6, 2011 until on or about March 15, 2013, Mr. Capstick was the site supervisor at the Schoolhouse Playcare Centre called Blair Ridge (the “Centre”).
3. As the site supervisor, Mr. Capstick was the primary user of a laptop computer (the “laptop”) that belonged to the Centre. Mr. Capstick would often bring the laptop home on weekends and other staff members would have to ask Mr. Capstick for permission to sign it out.

4. Mr. Capstick failed to discharge his obligations to the Centre and its users, and failed to administer the Centre’s policies and procedures in that he:

conducted inappropriate internet searches on the laptop that related to sex and personal ads and kept pornographic pictures of women and at least one video clip containing sexuality and nudity on the laptop. In 2002, while working at another Schoolhouse Playcare Centre location, Mr. Capstick was issued a warning letter for storing a personal binder containing sexually explicit stories and drawings in a staff cupboard that was accessible to other staff members and occasionally accessible to children;

did not conduct fire drills, despite providing information to the head office to indicate that such fire drills had been conducted;

did not review the Centre’s policies and procedures with new staff, despite submitting information to the head office that such a review had occurred;

did not train staff on children’s anaphylactic plans, placing children at risk of harm and/or injury.

5. The parties agree that these facts are substantially accurate.

6. Mr. Capstick admits that by reason of the facts set out above, he engaged in professional misconduct, as defined in subsection 33(2) of the *Early Childhood Educators Act, 2007*, in that:

He failed to supervise adequately a person who was under his professional supervision, contrary to Ontario Regulation 223/08, subsection 2(2).

He failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8), in that:

he failed to maintain a safe and healthy learning environment, contrary to Standard III.A.1 of the College’s Standards of Practice;

he failed to know, understand and abide by legislation, policies and procedures relevant to his professional practice and/or to the care and learning of children under his professional supervision, contrary to Standard IV.A.2 of the College’s Standards of Practice;

he failed to provide guidelines, parameters and direction to supervisees that respected their rights and/or failed to ensure a level of supervision that was appropriate in light of the supervisee’s education, training, experience and the

activities being performed, contrary to Standard IV.C.3 of the College's Standards of Practice; and,

he engaged in conduct that could reasonably be perceived as reflecting negatively on the profession of early childhood education.

He 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).

He failed to keep records as required by their professional duties, contrary to Ontario Regulation 223/08, subsection 2(18).

He conducted himself in a manner unbecoming a member, contrary to Ontario Regulation 223/08, subsection 2(22).

GUILTY PLEA

7. Mr. Capstick understands the nature of the allegations that have been made against him and that by voluntarily admitting to these allegations, he waives his right to require the College to otherwise prove the case against him.
8. Mr. Capstick understands that the Discipline Committee can accept that the facts herein constitute professional misconduct.
9. Mr. Capstick understands that the panel's decision and reasons may be published, including the facts contained herein along with his name.
10. Mr. Capstick understands that any agreement between him and the College does not bind the Discipline Committee.
11. Mr. Capstick acknowledges that he has had the opportunity to receive independent legal advice but has declined to do so.
12. Mr. Capstick and the College consent to the panel viewing the Notice of Hearing, this Agreed Statement of Facts and the Joint Submission as to Penalty prior to the start of the hearing.

Counsel for the College also submitted a plea inquiry signed by the Member on August 19, 2013

(Tab 7, Exhibit 1) indicating the following:

- The Member understands the nature of the allegations made against him;
- The Member understands that by admitting to the allegations, he is waiving his right to require the College to prove the case against him and the right to have a hearing;
- The Member voluntarily decided to admit to the allegations against him;

- The Member understands 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, *Connexions*, including reference to his name; and
- The Member understands that any agreement between counsel for the College and himself 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 College counsel, the Discipline Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that Daniel Capstick, the Member, committed acts of professional misconduct as alleged, more particularly breaches of Ontario Regulation 223/08, section 2, subsections (2), (8), (10), (18) and (22) and Standards III.A.1, IV.A.2, IV.C.3 and IV.E.2 of the College's *Code of Ethics and Standards of Practice*.

REASONS FOR DECISION

The Committee has determined that the Member is guilty of professional misconduct based on the admitted facts and admitted allegations contained in the signed Agreed Statement of Facts. In particular, the agreed statement indicates that the Member received a warning letter in 2002 for storing sexually explicit materials in a cupboard that was accessible to staff and occasionally accessible to children. Although the Member's conduct in 2002 is not subject to this hearing, the Member's past conduct is consistent with and supportive of the allegations in the Notice of Hearing and the admissions in the agreed statement concerning the recent inappropriate use of the Centre's laptop.

Indeed, the Member has admitted to using the Centre's laptop to conduct personal Internet searches relating to sex and to store pornographic pictures and multimedia. The Committee

considers such actions to be conduct that could reasonably be perceived as reflecting negatively on the profession of early childhood education, contrary to Standard IV.E.2.

Furthermore, the Member did not abide by policies and procedures relevant to his professional practice, in contravention of Standard IV.A.2., when he failed to conduct fire drills, review Centre policies and procedures with new staff and train staff on children's anaphylactic plans. His failure to equip staff with the tools and knowledge that they needed was a violation of Standard IV.C.3, which outlines the importance of providing guidance and direction to supervisees. Moreover, by submitting information to the head office indicating that he had fulfilled his supervisory duties, the Member used deceit and avoided keeping records as required by his professional duties, contrary to subsection 2(18) of the Professional Misconduct Regulation (Ontario Regulation 223/08). The Member's omissions placed the children under his professional supervision at risk of harm or injury, indicating that the Member was not maintaining a safe and healthy learning environment in accordance with Standard III.A.1 or adequately supervising children under his professional supervision, as stipulated in subsection 2(2) of the Professional Misconduct Regulation.

The Member's actions and omissions are disgraceful, dishonourable, unprofessional and unbecoming a member of the College and as such, are direct violations of subsections 2(10) and 2(22) of the Professional Misconduct Regulation.

JOINT SUBMISSION ON PENALTY

Counsel for the College advised the Committee that in addition to resigning from the College, the Member had signed an undertaking not to apply for the reinstatement of his membership with the College for a six-month period following the date of the Committee's decision (Tab 8, Exhibit 1). The undertaking further states that the Member will take a course in "Ethical and Professional Standards" before reapplying to the College.

College counsel and the Member submitted a Joint Submission as to Penalty signed by the Member on August 19, 2013 (Tab 8, Exhibit 1), which provides as follows:

1. Mr. Capstick shall be reprimanded by the Discipline Committee and the fact of the reprimand shall be recorded on the College's Register.
2. Having resigned his membership in the College, Mr. Capstick undertakes (pursuant to the undertaking executed and attached as Schedule "A") to not re-apply to the College for a period of 6 months following the Discipline Committee decision and, in the event that he re-applies to the College for reinstatement of his membership, he will participate in and successfully complete a course of study, satisfactory to the College, in "Ethical and Professional Standards", at his own expense.
3. The Discipline Committee's finding and Order, including reference to the undertaking signed by Mr. Capstick, shall be published in full on the College's website and in summary in the College's publication, *Connexions*.
4. The results of the hearing shall be recorded on the Register.
5. The Discipline Committee's finding and Order shall be published, with Mr. Capstick's name, in full on the College's website and in summary in the College's publication, *Connexions*.
6. Mr. Capstick and the College agree that if the Committee accepts this Joint Submission as to Penalty, there will be no appeal of the Committee's decision to any forum.

Counsel for the College submitted that the Committee should accept the joint submission as it protects the public interest, is proportionate to the misconduct found and is consistent with previous penalties imposed by self-regulating professions in analogous cases. College counsel stated that the most pertinent principle in this matter is general deterrence. The issue of specific deterrence is no longer relevant, given that the Member has resigned from the College. There is no need for the Committee to specifically deter the Member as he is no longer a registered early childhood educator. A reprimand is therefore the last opportunity for the Committee to dialogue with the Member and to convey disapproval of his conduct.

Beyond this measure, College counsel noted that the Member has agreed to participate in educational coursework if he applies to have his membership reinstated, asserting that this term of the Member's undertaking satisfies the public interest and reflects the College's focus

on remediation. Counsel for the College further submitted that although the Member's resignation affects the Committee's ability to impose a suspension, the Member's undertaking to refrain from applying for reinstatement for a six-month period is akin to a six-month suspension.

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 Member shall be reprimanded by the Discipline Committee, and the fact of the reprimand shall be recorded on the College's register.
2. The Discipline Committee's finding and order, including reference to the undertaking signed by the Member, 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*.
3. The results of the hearing shall be recorded on the register.

REASONS FOR PENALTY DECISION

The Committee accepts the joint submission made by counsel for the College and the Member, having determined that the submission falls within a reasonable range of penalties given the Member's conduct.

In evaluating the joint submission, the Committee considered the Member's resignation and undertaking. The Member's resignation from the College limits the penalty orders that the Committee can issue. The Committee cannot direct the Registrar to suspend the Member's Certificate of Registration, nor can it impose terms, conditions or limitations on a cancelled certificate. The Member's undertaking, however, ensures that he will not reapply for the reinstatement of his membership for at least six months. Furthermore, the Member has

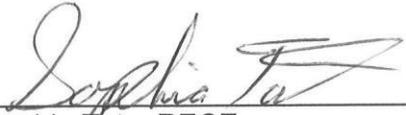
agreed to complete a course in ethical and professional standards before making an application to the College. This term of his undertaking ensures that the Member will participate in remedial training before any potential re-entry into the practice of early childhood education. The Committee further notes that in the event that the Member completes the course and subsequently applies for reinstatement after a six-month period, the College would consider his application, but he is not guaranteed readmission into the profession. As such, the resignation and undertaking have the effect of protecting the public interest.

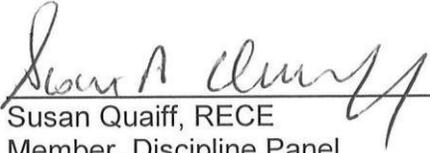
In addition to the Member's undertaking, the Committee has ordered a penalty that serves the functions of deterrence and public protection. The reprimand helps the Member to understand the gravity of his actions and serves as a specific deterrent, dissuading the Member from engaging in similar conduct in the future.

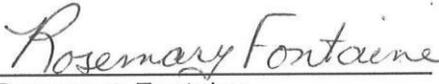
Publication with the Member's name acts as a general deterrent to early childhood educators at large. It indicates to members of the profession that they are held accountable for their actions and demonstrates that the College will follow through with concerns about misconduct. Notation of the Committee's decision on the public register and publication on the College website and in *Connexions* promote transparency, informing employers of a member's past conduct. Publication also signals to members of the public that the Committee is protecting their interests and 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: September 19, 2013


Sophia Tate, RECE
Chair, Discipline Panel


Susan Quaff, RECE
Member, Discipline Panel


Rosemary Fontaine
Member, Discipline Panel

SCHEDULE "A"

UNDERTAKING TO THE COLLEGE OF EARLY CHILDHOOD EDUCATORS

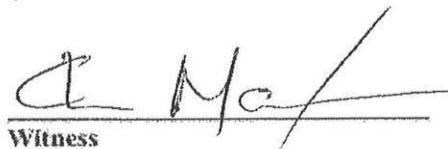
This Undertaking is given in connection with Discipline Committee hearing (the "Hearing") of the College of Early Childhood Educators (the "College") in respect of its former member, Mr. Daniel Capstick, who resigned from the College prior to the Hearing.

Mr. Capstick agrees to not apply for the reinstatement of his membership with the College for a 6 month period from the date of the Discipline Committee decision. Mr. Capstick additionally undertakes to participate in and successfully complete a course of study in "Ethical and Professional Standards" that is satisfactory to the College at his own expense prior to reapplying for membership with the College.

DATED: August 19, 2013


Daniel Capstick

-
DATED: August 19, 2013


Witness