

NOTICE OF PUBLICATION BAN

In the matter of College of Early Childhood Educators and Laurie-Anna Marie Clark, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of, or any information that could identify, any person who is under 18 years old and is a witness in the hearing, or the subject of evidence in the hearing or under subsection 35.1(3) of the *Early Childhood Educators Act, 2007*.

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

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 LAURIE-ANNA MARIE CLARK, a current member of the College of Early Childhood Educators.

Panel: Rosemary Fontaine – Chair
 Sasha Fiddes, RECE
 Karen Guthrie, RECE

BETWEEN:)	
)	
COLLEGE OF EARLY CHILDHOOD EDUCATORS	)	Jill Dougherty and Ada Keon, for the College of Early Childhood Educators
)	
- and -)	
)	
LAURIE-ANNA MARIE CLARK REGISTRATION # 02995	)	Self-Represented
)	
)	
	)	Elyse Sunshine and Lonny Rosen, Rosen Sunshine LLP, Independent Legal Counsel
)	
	)	Heard: January 17, 2019 and February 27, 2019

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**”) on January 17, 2019. The hearing continued on February 27, 2019. Laurie-Anna Clark (the “**Member**”) was present but was not represented by Counsel. The College of Early Childhood Educators (the “**College**”) was represented by Jill Dougherty and Ada Keon. Elyse Sunshine and Lonny Rosen served as Independent Legal Counsel to the Discipline Committee.

THE ALLEGATIONS

The allegations against the Member, as stated in the Notice of Hearing dated October 30, 2018 (Exhibit #1), were as follows:

1. At all material times, the Member was a member of the College of Early Childhood Educators and employed as an Early Childhood Educator at Curiosity Children’s Centre Inc. (the “**Centre**”), a child care centre in Port Perry, Ontario.
2. On or about July 7, 2015, the Member was supervising a group of children at the Centre and was assisting a child, L., in the bathroom. When L. stuck his hand and/or hands into the toilet, the Member hit or struck L. in the back of the head with enough force that L.’s head hit the toilet seat. L. began to cry and the Member yelled at L.
3. On or about July 16, 2015, the owner/operator of the Centre terminated the Member’s employment at the Centre.
4. The Durham Children’s Aid Society conducted an investigation into the Member’s conduct and, on or about October 29, 2015, advised that the allegation of inappropriate physical redirection resulting in injury to L. was verified.

5. By engaging in the conduct set out in paragraph 2 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 physically, verbally, psychologically, and/or emotionally abused a child who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(3);

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

i. she failed to provide a nurturing learning environment where children thrived, contrary to Standard I.D of the Standards of Practice;

ii. she failed to establish professional and caring relationships with children and/or to respond appropriately to the needs of children, contrary to Standard I.E of the Standards of Practice;

iii. she failed to maintain a safe and healthy learning environment, contrary to Standard III.A.1 of the Standards of Practice;

iv. she failed to support children in developmentally sensitive ways and to provide caring, stimulating, and respectful opportunities for learning and care that are welcoming to children and their families, contrary to Standard III.C.1;

v. she failed to make decisions, resolve challenges and/or provide behaviour guidance in the best interests of the children under her professional supervision, contrary to Standard IV.B.4 of the Standards of Practice;

vi. she conducted herself in a manner that could reasonably be perceived as reflecting negatively on the profession of early childhood education, contrary to Standard IV.E.2 of the Standards of Practice;
and

- vii. she physically, verbally, psychologically or emotionally abused a child under her professional supervision, contrary to Standard V.A.1 of the Standards of Practice;
- c) 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);
- d) she failed to comply with the Act and/or 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).

MEMBER’S PLEA

The Member pleaded not guilty to all allegations.

THE EVIDENCE

The College called two witnesses to testify at the hearing: Lauren Reed and Jodi Konick. The Member testified in her own defence. The following documents were entered into evidence at the hearing:

Exhibit #	Description
1	Notice of Hearing
2	Updated Notice of Hearing
3	Affidavit of Service, dated January 8, 2019
4	Affidavit of Service, dated January 11, 2019
5	Member’s Registration Certificate
6	Serious Occurrence Report, dated July 7, 2015
7	Termination Letter, dated July 16, 2015

8	Mandatory Employer Report, dated April 25, 2016
9	Correspondence from P. Mercuria, Durham Children's Aid Society to J. Komick re Serious Occurrence
10	Letter from the Member to the College, undated
11	Consent to Share/Release Information
12	York Region Medical Appointment Travel Log
13	Letters from the Member's Physicians
14	Diagnostic Imaging Report, dated February 15, 2019
15	Bylaw 21, dated February 2011
16	Email from the Member to G Khorana of the College, dated September 1, 2017
17	Letter from G Khorana of the College to the Member, dated June 20, 2017, enclosing Registrar's Investigation and Related Documents
18	Registrar's Complaint dated May 20, 2017
19	Emails between G Khorana and the Member, dated July 12 & 17, 2019

Summary of Witnesses' Testimony

The evidence of the witnesses is summarized below:

Testimony of Lauren Reed

Lauren Reed testified that she was the educational assistant ("ECA") assisting the Member in supervising a group of toddler-aged children at the Centre. On or about July 7th 2015, Ms. Reed was in the toddler room. At that time, there were two staff (Ms. Reed and the Member) and 10 children aged between 12 months and two years. Ms. Reed testified that she was cleaning the tables in preparation for lunch or afternoon snack. She stated that she could see into the (in class) washroom and could see both toilets, as the washroom door had to be kept open. The Member was in the washroom completing the bathroom routine with a few children, including L.

L. was almost two years of age, one of the older children in the room. Ms. Reed described him as “spirited”, and as a “high-maintenance child”. Ms. Reed testified that L had outgrown the room.

The bathroom had two toilets, 2-3 potties, a sink and a change table that came off wall. The door to bathroom, which was located approximately six feet away from the tables, was kept open. The toilet was one foot inside the room. Ms. Reed testified that if she was standing in the food prep area, she could see both toilets.

Ms. Reed testified that the Member was not in her line of sight initially, as she was probably at the change table. Ms. Reed saw that L was playing in the toilet water, and that his arms were elbow-deep in the toilet water. The Member came into the witness’s sight line and at that time, Ms. Reed saw the Member with her open hand (palm) connecting with the head of L at the base of his skull. Ms. Reed observed that L’s head went forward and hit the toilet seat, and that L began to cry. The Member then said “that’s why you don’t play in the toilet” and “now you’ll stop playing in the toilet”. The Member then continued to do diaper change for the other children. L then ran to Ms. Reed, still crying. Ms. Reed testified that she picked L up and cuddled him and then washed L’s hands.

Ms. Reed testified that her 15-year-old daughter often came to the Centre at lunch or after school, and that she walked by her classroom at around that time. Ms. Reed stated that as soon as her daughter came into the toddler room, Ms. Reed burst into tears. Ms. Reed stated that she was explaining to her daughter what had happened, and that the director, Jodi Konick, walked by just after that. Ms. Konick asked “what’s going on?” Ms. Reed then said to Ms. Konick, “I just saw the Member shove L’s head into the toilet.” Ms. Reed indicated that she remembered Ms. Konick saying, “Stop, you need to make a report to CAS.” (The relevant children’s aid society was Durham Children’s Aid Society (“**CAS**”). Ms. Reed testified that she left the toddler room and did not return to the toddler room that day.

When asked if she had previous involvement with CAS, Ms. Reed testified that she had, in the capacity of a foster parent, as she had fostered a number of children.

Testimony of Jodi Konick

Jodi Konick, RECE had been the Owner/Operator of the Centre since 2003. She testified that the Member and Lauren Reed worked together in the toddler room, the Member in her capacity as an RECE, while Ms. Reed worked as an ECA. Ms. Konick testified that she had always maintained that the employees at the Centre have shared responsibilities, but the RECE is held accountable to make sure things are done, such as the necessary signed documentation. Ms. Konick indicated that Ms. Reed had worked at the Centre for ten (10) years, where she held different roles such as kitchen help, driver and ECA in various classrooms. The Member had been working at the Centre for almost three (3) months, and was still in her probation period when the incident with L occurred. Ms. Konick stated that during the probation period, an employee's employment can be terminated at any time (i.e. without notice).

Ms Konick testified that on July 7, 2015 at approximately 3:45 p.m., Ms. Reed told her that she saw L put his hands/arm in the toilet and that the Member reacted by hitting the back of his head and that he hit the front of his head on the toilet seat. Ms. Konick testified that, upon hearing this information, she called the after hours CAS intake line and received directions on what to do next. Ms. Konick stated that she was told by CAS to tell the Member that there has been an accusation against her, that the Member should leave the Centre immediately, and that CAS would be in touch with her. Ms. Konick testified that the CAS representative wanted to talk to J., L's mother, who also worked at the Centre, and told Ms. Konick to go and get J. Ms. Konick was advised by the CAS worker to take care, so as to not let anyone to "cross paths". CAS intake staff indicated to Ms. Konick that they would attend the Centre the next day to investigate this incident. In fact, CAS staff called the next day and made an appointment to come in on July 9th, 2015, for interviews. Ms. Konick stated that she was advised that a Ministry of Education ("**MOE**") Representative, Lisa Bruce would also come in for these interviews, which would be conducted jointly by CAS and MOE. On July 7, 2015, after her call with CAS intake, Ms. Konick reported the incident as a serious occurrence (category: alleged abuse/mistreatment) on CCLS (the Child Care Licensing System online reporting system) (Exhibit 6) and posted it in the Centre, as required by legislation. Ms. Konick stated that she managed the Centre day to day during the investigation and that she had to use supply staff and not tell anyone what was happening.

Ms. Konick testified that she felt terrible for the Member because she sent her home and the Member couldn't work during the course of the investigation. Ms. Konick told the Member that, since the Member was still within her three months' probation period, she could terminate the Member without cause, so that way the Member could move on. Ms. Konick didn't know the results of the CAS investigation when she terminated the Member's employment by letter dated July 16th, 2015 (Exhibit 7). Ms. Konick stated that she never directly received a letter from CAS in response to the outcome of the investigation.

Ms. Konick testified that she learned of the outcome of the CAS investigation on April 25, 2016, when she was contacted by the College and provided with a copy of a letter from CAS regarding the investigation of the Member (Exhibit 9) which the College had received on January 5th, 2016. This was the first time that Ms. Konick had seen the final response to the CAS investigation. At that point, she made a report to the College. This was the Mandatory Employer report dated April 25, 2016 (Exhibit 8).

Ms. Konick further testified that the Centre had always had behaviour management policies which were reviewed and signed off on by all employees annually. Ms. Konick indicated that the incident involving L would have contravened staff policy at the Centre and that corporal punishment was never acceptable.

Testimony of the Member

The Member, Laurie-Anna Clark, stated in her testimony that she has never harmed a child physically or mentally, or ever at any time. The Member stated that she would describe herself as "an over-achiever" type teacher who always came to the Centre early and left the Centre late. The Member stated in her testimony that the allegations were harmful to her personally. She stated that she was astonished when she went to a meeting on July 9th, 2015 and discovered CAS staff were at the Centre for the meeting. The Member thought the meeting was going to be about her relationship with Ms. Reed, who was her colleague in the toddler room at the Centre at the time (July 2015).

The Member denied that the incident with L. happened as related by Ms. Reed and Ms. Konick in their evidence. She said that there was no accident report because there was no accident. The Member stated that L. was crying because he was upset about being

taken out of the toilet, not because he was hurt. The Member recounted that L had opposed her while she removed him from the toilet and while she washed his hands. The Member said she told L that “we sit on the potty, that’s dirty, that’s yucky, don’t put your hands in the toilet”, and that she did not believe that that was too harsh. The Member stated her belief that Ms. Reed made this incident up because “Lauren had a grudge against me”. The Member believed that Ms. Reed had put the child and his mother through the trauma of this incident (i.e. the reporting of it and belief that it had occurred) and she couldn’t comprehend why Lauren would do that “just to get back at her”.

The Member testified that Ms. Reed told her that L was in the toilet but did not respond herself. The Member stated that the investigation meeting concluded with an understanding that there was no concrete evidence and this was the case of her word against Ms. Reed’s. The Member noted that there was no investigation into why Ms. Reed did not participate or assist the child herself. The Member expressed that Ms. Konick was very complimentary of her and said she was a good teacher, but that she had told Ms. Konick after an incident with a parent (described below) that she was not going to stay with the Centre after her probation period. The Member felt that she and Ms. Konick agreed to part ways, with no issues.

Under cross examination, the Member agreed that if the incident happened as described, it would be a breach of the College’s Code of Ethics and Standards of Practice. She agreed that correcting child by a swat or hit to back of head is not consistent with the standards for ECEs. The Member also agreed that the interior door to the bathroom was left open, that the change table/shelf could be viewed from the classroom.

Additionally, while under cross-examination, the Member provided new information about the incident, stating that “L’s head got caught in the toilet seat, around his neck and she was the one who helped him get it off”. The Member agreed that this was not included in her response to the Registrar’s Complaint or in her evidence in chief, and that she had not shared this information publicly before, but stated that she had never varied from this detail.

In her evidence, the Member explained why it may have appeared that she didn't respond to the College's correspondence (although there was no allegation of misconduct in this regard): she had an undisclosed address. The Member also outlined personal struggles which she had experienced since she was let go from the Centre (Exhibits 10-19), and submitted records confirming medical treatment she had received and efforts she undertook to attend appointments. The Member stated that she did cooperate with the College.

The Member testified that about an incident with a parent of a child at the Centre that occurred before the meeting on July 9, 2015, which she spoke to Ms. Konick about: a parent came to the Centre to pick up his child, a toddler. The parent had alcohol on his breath, and the Member told the parent that someone else had to pick up his child. The Member testified that she knew that Ms. Konick and Ms. Reed had a personal relationship with that parent and that was why nothing was done to protect the child, and that this incident caused a rift between them. (Of note, the Member did not ask Ms. Reed about this incident when she cross-examined Ms. Reed, nor did she say that she had raised this incident previously, except in reference to her evidence that she was not going to stay with the Centre after her probation period, following this incident).

In her testimony, the Member stated her belief that Ms. Reed had not been truthful about her CAS involvement, as Ms. Reed told her she had had prior dealings with CAS (but the Member presented no evidence to support this claim).

SUBMISSIONS OF THE COLLEGE

The College submitted that the onus of proof in the hearing lies with the College and that the standard of proof that the College was required to meet is the civil standard, proof on a balance of probabilities. The Panel was required to determine whether it is more likely than not that the actions which the member is alleged to have committed occurred. This must be based on evidence that is sufficiently clear, convincing and cogent.

The College argued that the evidence established, on a balance of probabilities, that the member struck L such that the toddler's forehead hit a toilet seat. The College submitted that this constitutes professional misconduct as defined in the Act and the professional misconduct regulation thereunder. In particular, the Member's conduct constitutes

physical abuse of a child under her professional supervision, a failure to maintain the standards of the profession, and conduct that would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional and conduct unbecoming a member.

The College submitted that the finding of professional misconduct on all grounds alleged in the Notice of Hearing was supported by the following evidence:

- a. That the Member was an RECE at the Centre during the relevant time period;
- b. That the Member was responsible for supervising children in the bathroom, one of whom was L.
- c. That Ms. Reed saw the Member strike L in the back of the head with an open palm in reaction to seeing L playing in the toilet; and
- d. That L was hit with such force that his head was pushed forward, making contact with the toilet seat.

The College submitted that the evidence of the independent witnesses should be accepted, noting that Ms. Reed witnessed the entire incident and reported the incident to Ms. Konick, that Ms. Konick reported the incident to CAS and also made a Serious Occurrence report to the MOE in relation to the incident, and that CAS conducted an investigation into this incident and advised that the allegation of inappropriate physical redirection resulting in injury to L was verified.

The College submitted that the Member's conduct in striking L violated the College's Standards of Practice. The College noted that striking a toddler has previously been held to constitute physical, verbal, psychological and/or emotional abuse of a child. Previous decisions of this Discipline Committee have also found such conduct to be disgraceful, dishonourable and unprofessional conduct. The College further submits that this also constituted conduct unbecoming a member and a breach of the professional misconduct regulation.

The College submitted that the Discipline Committee has jurisdiction to proceed with this proceeding despite that the Member's certificate of registration was suspended due to non-payment of fees in July 2018 (as per Exhibit 5 and confirmed by the Member),

because Section 18(3) of the Act provides that the Discipline Committee continues to have jurisdiction to deal with misconduct on the part of suspended members. The Member's certificate of registration was in good standing when the incident with L. occurred.

College Counsel submitted that the alternative theories proposed by the Member, namely that the child's head had become stuck in the toilet seat and she was assisting him to remove it, and that Ms. Reed bore a grudge against her due to a previous incident involving the member and a parent with whom Ms. Reed had a long standing friendship, should be rejected on the basis that these were not presented until the conclusion of the Member's evidence, thereby denying the College and other witnesses an opportunity to address these allegations.

SUBMISSIONS OF THE MEMBER

The Member denied all of the College's allegations, submitting that she had been falsely accused of misconduct. The Member emphasized that L had a toilet seat around his neck, and was never hit. She argued that if Ms. Reed saw L at the toilet from where she was in the classroom, L must have been at the side of the toilet, and that if his head hit the seat (which was only padded on the inside, not the outside), he would have hit his head on the porcelain toilet seat. The Member submitted that she never changed her story, and that she believed that the interview with CAS was going to be about classroom ratios, not the abuse of a child.

With respect to the witnesses, the Member submitted that the College's witnesses should not be believed. She argued that Ms. Reed had not been honest about her CAS history, and she submitted that the close relationship between Ms. Reed and Ms. Konick was a factor in the report to CAS being made and in her dismissal from the Centre. Indeed, the Member argued that Ms. Reed had made up the allegation and falsely accused her of harming a child.

DECISION ON THE ALLEGATIONS

The Panel found that the College met its burden of proof and established, on a balance of probabilities, that each allegation set out in the Notice of Hearing was proved. Specifically, the Member was guilty of professional misconduct as defined in subsection 33(2) of the Act, in that:

- she physically, verbally, psychologically, and/or emotionally abused a child who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(3);
- she failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8), in that:
 - she failed to provide a nurturing learning environment where children thrived, contrary to Standard I.D of the Standards of Practice;
 - she failed to establish professional and caring relationships with children and/or to respond appropriately to the needs of children, contrary to Standard I.E of the Standards of Practice;
 - she failed to maintain a safe and healthy learning environment, contrary to Standard III.A.1 of the Standards of Practice;
 - she failed to support children in developmentally sensitive ways and to provide caring, stimulating, and respectful opportunities for learning and care that are welcoming to children and their families, contrary to Standard III.C.1;
 - she failed to make decisions, resolve challenges and/or provide behaviour guidance in the best interests of the children under her professional supervision, contrary to Standard IV.B.4 of the Standards of Practice;
 - she conducted herself in a manner that could reasonably be perceived as reflecting negatively on the profession of early childhood education, contrary to Standard IV.E.2 of the Standards of Practice; and

- she physically, verbally, psychologically or emotionally abused a child under her professional supervision, contrary to Standard V.A.1 of the Standards of Practice;
- she acted or failed to act in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonorable or unprofessional, contrary to Ontario Regulation 223/08, subsection 2(10);
- she failed to comply with the Act and/or the professional misconduct regulation made under the Act (being Ontario Regulation 223/08), contrary to Ontario Regulation 223/08, subsection 2(19); 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 Notice of Hearing had all been proved by the College through the testimony of the witnesses called and documents filed as exhibits at the hearing. In particular, Ms. Reed observed the incident involving L and gave evidence that the Member had pushed or swatted L's head, causing it to hit the toilet, and reported this to Ms. Konick immediately thereafter, as Ms. Konick confirmed in her testimony. Additionally, the allegation that the Member used inappropriate physical redirection was verified by CAS in a letter dated October 15, 2015. (Exhibit 9).

The Panel evaluated each witness' honesty (the willingness to tell the truth as each witness believes it to be) and reliability (the witness' ability to observe, recall and recount accurately what transpired) by assessing the relevant factors, set out in the case of *Re Pitts and Director of Family Benefits Branch of the Ministry of Community & Social Services*, 1985 CanLII 2053 (ON SC), including:

1. the appearance and demeanour of the witness
2. the witness' powers of observation and opportunity to observe the events in question;
3. the witness' interest in the outcome;

4. any bias on the part of the witness;
5. whether the witness' evidence accords with common sense/the probability or improbability of the witness' story;
6. whether the witness' evidence was consistent with other evidence;
7. whether the witness' evidence was internally consistent; and
8. whether the witness was forthright in their evidence.

Based on its review of the totality of the evidence and after considering the relevant credibility factors, the Panel accepted Ms. Reed's evidence as to what transpired between the Member and L., having found Ms. Reed to be a credible witness for the reasons outlined below:

Ms. Reed was in the room and had direct sight lines to the washroom toilet where L was playing. She observed him with his hands in the water "elbow deep" and saw the Member intervene and shove L's head with her hand.

The Panel found that Ms. Reed had no interest in the outcome of the hearing that might cloud her recollection of the day's events back on July 7th, 2015. She had not known the Member outside of working with the Member at the Centre for three weeks in the Summer of July 2015. Ms. Reed stated that she and the Member worked together in various roles within the Centre, but weren't friends outside of work. Ms. Reed had no recollection of prior altercations or disagreements with the Member, or of having speak to Ms. Konick about her.

Ms. Reed commented that it was a stressful summer and that she had been "greatly impacted by the incident". She testified that this was the one and only time she had ever had to report a co-worker to CAS. She recognized a duty to report was "part of the job but not an enjoyable experience".

The Panel found that Ms. Reed answered questions in a matter of fact way during her evidence in chief and under cross examination and that she was able to respond appropriately to all questions in cross examination from Member. The Panel found Ms. Reed's evidence to be internally consistent. There was no contradiction between her

evidence in chief and her answers to questions during cross examination. Furthermore, the evidence was consistent with that of the second witness, Jodi Konick.

The reasons advanced by the Member for disbelieving Ms. Reed, including that she was not forthright about previous involvement with CAS and that she had a grudge against the Member as a result of the Member having intervened with another parent taking their child home due to a smell of alcohol, were not supported by any evidence. As such, the Panel did not accept these allegations as a basis for rejecting Ms. Reed's evidence and therefore had no reason to reject any portion of Ms. Reed's evidence.

Ms. Reed's evidence, that she was upset at having observed the incident involving L, was corroborated by Ms. Konick's evidence that Ms. Reed was extremely upset when she reported the incident to her. Additionally, the account of the incident in her evidence was entirely consistent with that in the serious occurrence report completed by Ms. Konick.

Based on the factors outlined above, the Panel found the second witness, Ms. Konick to also be credible for the following reasons: Ms. Konick recalled the steps she took and her discussions in her follow up to the incident on July 7, 2015 very well, with the aid of her log book notes and numerous documents which were entered as exhibits, such as the Serious Occurrence Report and Mandatory Report required by the College.

Ms. Konick's evidence during her testimony in examination in chief and under cross-examination by the Member was entirely consistent, and this was also consistent with the testimony and statements given under oath by Ms. Reed. Ms. Konick did not have an interest in the outcome of the hearing. As with Ms. Reed, the Member suggested that Ms. Konick's evidence should not be believed because a rift had arisen between her and the Member following the Member's intervention with a parent who was a friend of both Ms. Konick and Ms. Reed. However, this theory was not based in any evidence but the Member's belief, and was not probed with Ms. Konick. As such, the Panel was not persuaded that there was any reason not to accept Ms. Konick's evidence.

Ms. Reed's evidence was contradicted by the Member's version of what transpired. The Member's explanation for the incident was that she was attempting to remove L's head

from the toilet seat where he had been entangled. This explanation was not offered when she met with the CAS investigator and was confronted with the allegations only two days following the report. Nor was it included in her response to the College submitted September 1, 2017 (Exhibits 10 and 16), or in her evidence in chief. In fact, it wasn't until the end of the hearing that the Member raised this alternate explanation.

After considering the totality of the evidence and applying the credibility factors outlined above, the Panel found that the testimony of the Member lacked credibility. There were a number of reasons for this, which are outlined below:

Regarding the investigation of the incident, the Member acknowledged that she was removed from the Centre due to an allegation of abuse, that she was told not to return to the Centre pending completion of an investigation and that she would be interviewed by CAS. However, she stated that she did not ask what the allegation was because it was "not standard procedure" and she said she understood it was an allegation related to classroom ratios and conflict with Ms. Reed. The Panel found this to be implausible, as a discussion of conflict between staff was not an investigation of an allegation of abuse.

Further, the Member contradicted herself in several respects:

In her evidence in chief, the Member stated that the child did not want to come out of the toilet when she attempted to remove him and wash his hands, but she subsequently said that the child was stuck in the toilet seat and she had to extricate him. The Panel found these versions of events to be inconsistent.

When asked about why she did not report to Ms. Konick regarding the incident with L., she said at one time that there was no accident so there was no report, and subsequently said that she needed an opportunity to check the daily logs and emails to find reference to this. (Although these logs and emails were not available to the Member at the hearing, she expressly did not seek an adjournment of the hearing in order to obtain and review these records). The Panel found this statement to be contradictory to her explanation that there was nothing to report; had the entire incident been accidental, she would have filed a report, as she claimed was her practice and duty.

The Member also indicated that Ms. Reed had a grudge against her due to a disagreement with respect to a parent who had arrived at the centre with alcohol on his breath. However, the Member never raised this previously, including when cross examining Ms. Reed, which would have permitted Ms. Reed to address this allegation.

Other concerning aspects of the Member's evidence, which caused the Panel to find her not to be credible, included the following:

- The Member stated that she had not been given the report of the CAS investigation when she responded to the Registrar's complaint on September 1, 2017. However, the Member's response letter (Exhibit 16) referenced the Registrar's complaint (no. 50-252), which was sent to her on June 20, 2017 (Exhibit 17) with numerous attachments, including the employer's report, photographs of the child, and a letter from CAS. This documentary evidence led the Panel to conclude that the Member was aware of the outcome of the CAS investigation when she responded to the Registrar's complaint.
- In her response to the Registrar's complaint, submitted September 1, 2017 (Exhibit 16), the Member did not include the position advanced at the hearing, that she was attempting to remove L's head from the toilet seat or that Ms. Reed had a grudge against her due to her having had an interaction with another parent.

In light of the reasoning outlined above, the Panel found Ms. Konick and Ms. Reed to be credible witnesses, and the Member to be significantly less credible. As such, where their evidence differed, the Panel preferred the evidence of the College's witnesses. With respect to the events of July 7, 2015, the Panel found as facts that the Member, a self-professed "clean freak", saw L playing in toilet. The Panel found that the Member then hit or struck the back of L's head with her open palm such that his head made contact with the toilet. The Member then yelled at L. As verified by CAS in Exhibit 9, the Panel found that the Member used inappropriate physical redirection of a child, resulting in injury. As the Member acknowledged, striking a child as a corrective measure, and yelling at him, were not appropriate interventions, or at all consistent with the standards of practice expected of all ECEs. The Panel found that this is indeed what occurred, and therefore, all of the allegations of misconduct were proved by the College, on a balance of probabilities. The testimony of Ms. Reed and Ms. Konick, coupled with the documents

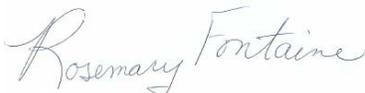
entered as exhibits provided clear, cogent and compelling evidence that the factual allegations were established. The Panel further found that, by engaging in the conduct outlined above, the Member engaged in professional misconduct as defined in subsection 33(2) of the Act, in that:

- a) she physically, verbally, psychologically, and/or emotionally abused a child who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(3);
- b) she failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8), in that:
 - viii. she failed to provide a nurturing learning environment where children thrived, contrary to Standard I.D of the Standards of Practice;
 - ix. she failed to establish professional and caring relationships with children and/or to respond appropriately to the needs of children, contrary to Standard I.E of the Standards of Practice;
 - x. she failed to maintain a safe and healthy learning environment, contrary to Standard III.A.1 of the Standards of Practice;
 - xi. she failed to support children in developmentally sensitive ways and to provide caring, stimulating, and respectful opportunities for learning and care that are welcoming to children and their families, contrary to Standard III.C.1;
 - xii. she failed to make decisions, resolve challenges and/or provide behaviour guidance in the best interests of the children under her professional supervision, contrary to Standard IV.B.4 of the Standards of Practice;
 - xiii. she conducted herself in a manner that could reasonably be perceived as reflecting negatively on the profession of early childhood education, contrary to Standard IV.E.2 of the Standards of Practice; and

- xiv. she physically, verbally, psychologically or emotionally abused a child under her professional supervision, contrary to Standard V.A.1 of the Standards of Practice;
- c) 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);
- d) she failed to comply with the Act and/or 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).

This Discipline Committee has previously and repeatedly found that striking or yelling at a child constitutes physical, verbal, psychological and/or emotional abuse of a child, and that a member who engages in such conduct conducts herself in a manner unbecoming a member as well as in conduct that constitutes disgraceful, dishonourable and unprofessional conduct which reflects negatively on the Member specifically and the profession in general. Such conduct is also a breach of the standards outlined above. The Panel so finds that the Member is guilty of all of the allegations of misconduct set out in the Notice of Hearing.

I, Rosemary Fontaine, sign this decision and reasons for the decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel.



September 27, 2019

Rosemary Fontaine, Chairperson

Date:

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

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 LAURIE-ANNA MARIE CLARK, a
current member of the College of Early Childhood Educators.

Panel: Barney Savage, Chair
 Lori Huston, RECE
 Lois Mahon, RECE

BETWEEN:)	
COLLEGE OF EARLY CHILDHOOD	)	Ada Keon
EDUCATORS	)	WeirFoulds LLP,
	)	for the College of Early Childhood Educators
- and -)	
)	
LAURIE-ANNA MARIE CLARK	)	Unrepresented
REGISTRATION # 02995)	
)	
)	
)	
	)	Elyse Sunshine,
	)	Rosen Sunshine LLP,
	)	Independent Legal Counsel
)	
	)	Heard: April 21, 2020

PENALTY DECISION AND REASONS

A panel of the Discipline Committee of the College of Registered Early Childhood Educators of Ontario (the “Panel”) held a penalty hearing via videoconference on April 21, 2020.

At the outset, the Panel directed the participants to refrain from making audio or video recordings of these proceedings without seeking permission of the Panel. No permission was sought.

MEMBER'S NON- ATTENDANCE

The Member did not attend the penalty hearing. The Panel was provided with two affidavits (Exhibits 1 and 2) with significant evidence to establish that the Member had been properly served with notice of the date and time and method of hearing. The College had made numerous efforts to get in touch with the Member and had advised her that the hearing would proceed in her absence if she failed to attend. The Member was not responsive and did not attend the hearing. Given the evidence that the Member had been informed of the date, time and instructions regarding the videoconference and that the hearing would proceed in her absence if she failed to attend, the Panel elected to proceed in the absence of the Member. The hearing therefore proceeded on a contested basis.

FINDINGS OF PROFESSIONAL MISCONDUCT

By decision dated September 27, 2019, following a contested hearing held on January 17, 2019 and February 27, 2019, the Panel found that the Member, Laurie-Anna Maria Clark (the "Member") was guilty of acts of professional misconduct in that:

- a) she physically, verbally, psychologically, and/or emotionally abused a child who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(3);
- b) she failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8), in that:
 - i. she failed to provide a nurturing learning environment where children thrived, contrary to Standard I.D of the Standards of Practice;
 - ii. she failed to establish professional and caring relationships with children and/or to respond appropriately to the needs of children, contrary to Standard I.E of the Standards of Practice;
 - iii. she failed to maintain a safe and healthy learning environment, contrary to Standard III.A.1 of the Standards of Practice;

- iv. she failed to support children in developmentally sensitive ways and to provide caring, stimulating, and respectful opportunities for learning and care that are welcoming to children and their families, contrary to Standard III.C.1;
 - v. she failed to make decisions, resolve challenges and/or provide behaviour guidance in the best interests of the children under her professional supervision, contrary to Standard IV.B.4 of the Standards of Practice;
 - vi. she conducted herself in a manner that could reasonably be perceived as reflecting negatively on the profession of early childhood education, contrary to Standard IV.E.2 of the Standards of Practice; and
 - vii. she physically, verbally, psychologically or emotionally abused a child under her professional supervision, contrary to Standard V.A.1 of the Standards of Practice;
- c) 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);
 - d) she failed to comply with the Act and/or 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).

In brief, the Panel found that the Member engaged in professional misconduct, by hitting and/or swatting a child on the back of the head with enough force that the child's head hit a toilet seat on July 7, 2015 at a childcare centre.

SUBMISSIONS ON PENALTY AND COSTS

The College submitted that the appropriate penalty would be an Order including:

1. a reprimand, to be delivered orally or electronically to the Member by a Panel, within 60 days of the date of the order;
2. suspension of the Member's certificate of registration for a period of nine months or the time required for the Member to comply with certain terms, conditions and limitations, whichever is greater;
3. terms, conditions and limitations including mentorship and coursework.
 - a) Coursework - prior to the Member recommencing work as an RECE, the Member shall provide the College with proof of her successful completion with a minimum passing grade of 70% (or to the satisfaction of the Director of Professional Regulation (the "Director") if a grade is not assigned) and at her own expense, the following course(s) (subject to the Director's preapproval):
 - i. Building positive and responsive relationships with children; and
 - ii. Positive intervention strategies
 - b) Mentorship – prior to the Member recommencing work as an RECE, she is to obtain pre-approval from the College for her chosen mentor. It is further submitted that a minimum of seven mentorship sessions is required in this instance to ensure that the Member is able to practice in a safe and responsible manner, with access to the support and guidance of a mentor.

The College also sought an Order directing the Member to pay the College's costs in the amount of \$30,000 within 60 days of the Order (collectively "the Proposed Order")

It was the submission of College Counsel that the Proposed Order was appropriate.

College Counsel submitted that the overriding purpose of professional discipline proceedings (and of the College generally) is to protect the public interest. In addition, it is important to maintain the public's confidence in the ability of the College and its discipline process to supervise the professional. College Counsel further submitted that the Panel should consider the principles of specific and general deterrence. Specific deterrence is concerned with ensuring that the particular individual will not engage in further professional misconduct. General deterrence sends a message to all College members and to the public that there are

serious consequences to acts of professional misconduct by members of the profession. Counsel also noted that the Panel should consider the principle of rehabilitation.

Counsel noted that the use of inappropriate physical force with young children is a persistent and potentially escalating problem with members of the College which requires an order that serves to deter not only the Member, but also other members from engaging in such conduct.

College Counsel submitted that there were a number of aggravating factors for the Panel to consider in its deliberations. There were:

- a) The child in question was a toddler, just 2 years old. His age made him more vulnerable, and less likely to be able to defend himself or report the Member's conduct had it not been noticed by adult witnesses;
- b) The Member struck the child with an open palm, with sufficient force, such that his head hit the toilet seat;
- c) The child was left with a red mark on his face where his face had connected with the toilet seat. The red mark faded shortly after the incident;
- d) The child was upset by the incident, and immediately after the incident began to cry;
- e) The Member did not console the child after he began to cry, and yelled at him "that's why you don't play in the toilet" and/or "now you'll stop playing in the toilet". The Member did not check for any possible injury, but rather continued with a diaper change routine for the other children that were present in the washroom. The child then ran, crying, to another staff member to be comforted; and
- f) The Member did not submit an incident report to the owner/operator of the Centre.

College Counsel advised that the only mitigating factor was that this incident was brief and isolated, and that there is no evidence to suggest it is reflective of a pattern of behaviour.

The penalty is generally consistent with those in comparable cases that have been considered by previous discipline panels of the College, including: *College of Early Childhood Educators v. Eusebio*, 2019 ONCECE 6, *College of Early Childhood Educators v. Hashimi*, 2018 ONCECE 3, *College of Early Childhood Educators v. Bechard*, 2019 ONCECE 4, and *College of Early Childhood Educators v. Coleman*, 2017 ONCECE 8. However, College Counsel noted that the

Member is not entitled to the same mitigation considerations as a member who enters a plea of guilty and engages with the College throughout the discipline process. In this case, College Counsel submitted that the Member has exhibited a pattern of unresponsive behaviour throughout the discipline process. Prior to the misconduct hearing, the Member did not consistently respond to the College's emails, letters or phone calls. Until the date of the hearing, the College had no indication of whether the Member would attend or call witnesses. At the hearing, the Member represented herself, and denied all the allegations. Since the hearing concluded, and a decision was rendered, the Member once again ceased communicating with the College and no joint submission as to order was entered into. As such, this case was distinguishable from cases where the members assumed responsibility for their actions and proceeded by way of an agreed statement of facts.

With respect to the \$30,000 cost award being sought by the College, Counsel submitted that the Act provides the authority for the Panel to fix costs. College Counsel made submissions that the Panel should consider the principle that the costs of prosecuting successful cases of professional misconduct against College members should not be borne exclusively by College members through their dues. College Counsel cited two cases to support this submission – *College of Early Childhood Educators v. Swain*, 2017 ONCECE 2 and *Robinson v. College of Early Childhood Educator*, 2018 ONSC 6150 (Div. Ct.).

To assist the Panel, in determining whether to award costs and the amount of costs to be awarded, College Counsel advised that the Panel could consider factors such as:

- (a) the nature of the findings of professional misconduct;
- (b) the relative success of the parties;
- (c) the nature and conduct of the Member's defence;
- (d) the length of the hearing and the reasons for it; and
- (e) the number of lawyers used by the College, their hourly rates and hours spent.

College Counsel noted that the College was fully successful in proving all allegations of professional misconduct in the Notice of Hearing. The allegations were serious in nature, as they pertained to the physical abuse of a young child. Counsel also pointed out that the hearing

was a two-day contested hearing, which required the participation of two witnesses of the College.

College Counsel also recognized that the costs associated with the consideration of this matter were greater as a result of the Member's lack of cooperation with the College and the fact that the hearing was contested.

College Counsel submitted that the actual costs incurred by the College were \$46,622.64. The College's request for an order in the amount of \$30,000.00, is less than 2/3 of the actual costs incurred and is consistent with case law in that regard.

DECISION ON PENALTY AND COSTS

This Panel has jurisdiction to impose a penalty and to order costs, pursuant to s.18(3) of the Act, despite the fact that the Member has stopped paying her membership fees and is administratively suspended until she does so.

For the reasons that follow, the Panel orders that:

- 1) The Member be reprimanded in person or electronically by a Panel, within 60 days of the date of the Order;
- 2) The Registrar is directed to suspend the Member's certificate of registration for a period of:
 - a) nine months; or
 - b) the period of time required for the Member to comply with certain terms, conditions and limitations set out in paragraphs 3(a) and 3(b) below, whichever is greater.

The suspension will take effect from the date the Member obtains a certificate of registration in good standing with the College, and will run without interruption as long as the Member remains in good standing with the College.

- 3) The Registrar is directed to impose the following terms, conditions and limitations on the Member's certificate of registration:

Coursework

- a) Prior to the Member commencing or resuming employment as a Registered Early Childhood Educator (“RECE”), or engaging in the practice of early childhood education, as defined in section 2 of the Early Childhood Educators Act, 2007, the Member must successfully complete, with a minimum passing grade of 70% (or to the satisfaction of the Director of Professional Regulation (the “Director”) if a grade is not assigned) and at her own expense, the following courses (subject to the Director’s preapproval):
- i) Building positive and responsive relationships with children; and
 - ii) Positive intervention strategies.
- b) The Member must provide the Director with proof of enrollment and successful completion of the courses.

Mentorship

- c) Prior to the Member commencing or resuming employment as an RECE or engaging in the practice of early childhood education, as defined in section 2 of the *Early Childhood Educators Act, 2007*, the Member, at her own expense, will arrange a mentoring relationship with a Mentor, who:
- i) is an RECE in good standing with the College,
 - ii) is employed in a supervisory position,
 - iii) has never been found guilty of professional misconduct and/or incompetence by the Discipline Committee of the College,
 - iv) is not currently found to be incapacitated by the Fitness to Practise Committee of the College,
 - v) is not currently the subject of allegations referred to the Discipline Committee or the Fitness to Practise Committee of the College, and
 - vi) is pre-approved by the Director. In order to pre-approve the Mentor, the Member will provide the Director with all requested information, including (but not limited to)

the name, registration number, telephone number, address and résumé of the Mentor.

For clarity, the Member can commence or resume employment as an RECE after arranging a mentorship relationship with a pre-approved Mentor.

- d) Within 14 days of commencing or resuming employment as an RECE, the Member will ensure that the Director is notified of the name, address and telephone number of all employers.
- e) The Member will provide the Mentor with a copy of the following documents within 14 days of being notified that the Mentor has been approved by the Director, or within 14 days after the release of such documents, whichever is earliest:
 - i) the Panel's Order,
 - ii) the Panel's Decision and Reasons regarding professional misconduct, and
 - iii) the Panel's Decision and Reasons regarding penalty.
- f) The Member will meet with the Mentor at least every 2 weeks after the Mentor has been approved by the Director to discuss the following subjects:
 - i) review of the College's Code of Ethics and Standards of Practice,
 - ii) the acts or omissions by the Member, which resulted in the Discipline Committee finding the Member guilty of professional misconduct,
 - iii) the potential consequences of the misconduct to the parents/children affected, and to the Member's colleagues, profession and self,
 - iv) strategies for preventing the misconduct from recurring, and
 - v) the Member's daily practice and any issues that arise, to ensure that she is meeting the College's Standards of Practice (without disclosing personal or identifying information about any of the children under the Member's care, or clients of her employer(s)).
- g) After a minimum of 7 sessions, the Member can seek the Director's permission to stop

participating in the mentorship sessions by providing the Director with a report by the Mentor that sets out the following:

- i) the dates the Member attended the sessions with the Mentor,
 - ii) that the Mentor received a copy of the documents referred to in paragraph 3(e),
 - iii) that the Mentor reviewed the documents set out in paragraph 3(e) and discussed the subjects set out in paragraph 3(f) with the Member, and
 - iv) the Mentor's assessment of the Member's insight into her behaviour.
- h) All documents delivered by the Member to the College or the Mentor will be delivered by email, registered mail or courier, and the Member will retain proof of delivery.
- i) The College may require proof of compliance with any of the terms in this Order at any time.

Costs

4. The Member is required to pay the College's costs fixed in the amount of \$12,000, to be paid within 60 days of the date of the Order.

REASONS FOR DECISION ON PENALTY AND COSTS

The Panel notes that as the Member did not attend, she is deemed to disagree with the College's submissions on penalty.

The Panel carefully considered the submission of College Counsel in reaching its conclusions. We took into consideration the precedents cited on the penalty and found them to be helpful in making our decision. It was clear that the Proposed Penalty was proportionate and consistent with the decisions of previous panels of the Discipline Committee of this College.

At the centre of this case is an inappropriate interaction between a child and a member of the profession. The Member had been found guilty of various acts of professional misconduct relating to this incident. In considering the appropriate penalty for this misconduct, we focused on the legislative mandate of the College to regulate the profession of early childhood education

in a manner that serves and protects the public interest. We are particularly conscious of the need to protect children in the care of registered early childhood educators. We asked ourselves whether the penalty recommended by College Counsel is sufficiently severe to demonstrate to the member, the profession and the public that such conduct cannot be tolerated.

The Panel considered the principle of specific deterrence – whether the penalty sends the appropriate message to this College member that her conduct was unacceptable. Also important was the principle of general deterrence – whether this penalty communicates clearly to the profession that there are significant consequences to committing acts of professional misconduct involving inappropriate use of physical force with children. We concluded that the proposed penalty meets these tests. The Panel was satisfied that the proposed penalty achieved public protection by temporarily removing the Registrant from practice so that she could reflect on the consequences of her misconduct and refine her understanding of the College's expectations through completion of additional training.

The Panel was also satisfied that a reprimand and a nine-month suspension would discourage other members from engaging in similar conduct by demonstrating that this Committee takes inappropriate physical contact with children seriously and that these acts of professional misconduct will attract sanctions, up to and including temporary removal from practice.

Furthermore, the Panel was hopeful that a suspension, in combination with a reprimand and re-education, would achieve the goals of remediation and specific deterrence by affording the Registrant an opportunity to improve her understanding of the College's professionalism, ethics and professional standards and by discouraging similar acts of misconduct when she returns to practice. The Panel was also hopeful that the Registrant's participation in additional training and mentorship would promote public confidence in the College's ability to regulate the profession and to ensure that registrants adhere to established standards of practice.

On the matter of costs, the Panel supports the principle that the costs of prosecuting cases that result in finding of professional misconduct should not be borne exclusively by the membership fees of all members. It is appropriate that the individual who has engaged in professional misconduct assume a significant proportion of these costs. We think this is particularly appropriate in this case, since the Member's conduct directly resulted in greater costs. The Panel carefully reviewed the costs awarded in comparable cases in which the member's response to the charge increased costs to the College. The actions of the Member in this case –

including ignoring correspondence from the College – had the effect of elevating costs unnecessarily. The Panel felt it was appropriate to balance these considerations with an assessment of whether a significant cost award would represent a barrier to the Member’s rehabilitation and return to the profession, which is contemplated by the coursework and mentorship described in the penalty. We do not lightly award any costs, given that the financial resources available to most members of the profession is modest. We believe this balance is achieved by requiring the Member to reimburse a total of \$12,000 to the College.

Dated: May 28, 2020

A handwritten signature in blue ink, appearing to read "Barney Savage", written over a horizontal line.

Barney Savage
Chair, Discipline Panel