



## **DECISION AND REASONS**

This matter was heard by a panel of the Discipline Committee (the “Panel”) of the College of Early Childhood Educators (the “College”) on February 16, 2021. The hearing proceeded electronically (by videoconference) pursuant to the *Early Childhood Educators Act, 2007* (the “Act”), the *Hearings in Tribunal Proceedings (Temporary Measures) Act, 2020* and the College’s Rules of Procedure of the Discipline Committee and of the Fitness to Practise Committee.

At the outset, the Panel ordered that no person shall make any audio or video recording of these proceedings by any means except as directed or explicitly permitted by the Panel.

## **THE ALLEGATIONS**

The allegations against the Member were contained in the Notice of Hearing dated January 26, 2021, (Exhibit 1) which provided as follows:

1. At all material times, Melanie Ruth Brown (the “Member”) was a member of the College and was employed as a casual Early Childhood Educator (“ECE”) / Educational Support Personnel (“ESP”) by the Renfrew County District School Board (“RCDSB”).
2. On or about May 9, 2019 the Member worked at AJ Charbonneau Public School, located in Arnprior, Ontario (the “School”). The Member entered, without permission or authorization, a room belonging to Leaps and Bounds Children’s Centre (the “Centre”), located on the School’s premises. She then removed 3 iPads, and took them home for her personal use.
3. The police subsequently located the iPads in the Member’s home, and returned them to the Centre.

### **Allegations of Professional Misconduct**

4. By engaging in the conduct set out in paragraph 2 – 3 above, the Member engaged in professional misconduct as defined in subsection 33(2) of the Act, in that:
  - a. she failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8), by failing to model professional values, beliefs and behaviours

with children, families and colleagues and failed to understand that her conduct reflects on her as a professional and on her profession at all times, contrary to Standard IV.C.2 of the Standards of Practice;

- b. she acted or failed to act in a manner that, having regard for the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 223/08, subsection 2(10); and
- c. she conducted herself in a manner that is unbecoming a member, contrary to Ontario Regulation 223/08, subsection 2(22).

## **EVIDENCE**

Counsel for the College and the Member advised the Panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts (Exhibit 2), which provided as follows:

### **The Member**

1. The Member has had a certificate of registration with the College for approximately 11 years. She is in good standing with the College and does not have a prior discipline history with the College.
2. At all material times, the Member was employed as a casual ECE / Educational Support Personnel by the RCDSB in Pembroke, Ontario.

### **The Incident**

3. On May 9, 2019 the Member worked at the School. The Member entered, without permission or authorization, a room belonging to the Centre, located on the School's premises. She then removed 3 iPads, and took them home for her personal use.
4. On May 13, 2019, the Centre's Supervisor noticed that the iPads were missing. After unsuccessfully searching for them, the Centre's Supervisor notified the School's Principal and Custodian that they were missing.

5. Police were notified and investigated the incident. On May 21, 2019, the police advised the School's Principal that the iPads were located at the Member's residence. Police returned the iPads to the Centre.

#### **Additional Information**

6. The Member was removed from RCDSB's casual supply list as a result of the incident described above.
7. There were no criminal charges laid as a result of this incident.
8. If the Member were to testify, she would advise the following:
  - a. She was ultimately going to return the iPads; and
  - b. She had never stolen property from the RCDSB or the Centre prior to this incident.

#### **Admissions of Professional Misconduct**

9. The Member admits that she engaged in and is guilty of professional misconduct as described in paragraphs 3 to 5 above, and as defined in subsection 33(2) of the Act, in that:
  - a. she failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8), by failing to model professional values, beliefs and behaviours with children, families and colleagues and failed to understand that her conduct reflects on her as a professional and on her profession at all times, contrary to Standard IV.C.2 of the Standards of Practice;
  - b. she acted or failed to act in a manner that, having regard for the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 223/08, subsection 2(10); and
  - c. she conducted herself in a manner that is unbecoming a member, contrary to Ontario Regulation 223/08, subsection 2(22).

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

The Member admitted to the allegations in the Agreed Statement of Facts.

The Panel received a written plea inquiry (Exhibit 3) which was signed by the Member. The Panel also conducted a verbal plea inquiry and was satisfied that the Member's admission was voluntary, informed and unequivocal.

### **SUBMISSIONS OF THE PARTIES ON LIABILITY**

The College submitted that the Member was a casual employee for the RCDSB at the time of the incident. She entered, without permission or authorization, the Centre that was also located on the School's premises. The Member removed three iPads from the Centre and took them home for personal use. By entering the Centre, the Member was in breach of school board policy and procedure. The College submitted that all of the allegations were supported by the facts set out in the Agreed Statement of Facts, the admissions by the Member and that these supported findings of misconduct. The College submitted that the Member's actions were contrary to policy and breached the School's trust in her. Her conduct reflected negatively on her and on the profession and eroded the public's trust. Her actions lacked honesty and integrity and were clearly unbecoming.

The Member's legal counsel submitted that there were no criminal charges laid in respect of this incident.

### **FINDINGS AND REASONS FOR DECISION**

Having regard to the facts set out in the Agreed Statement of Facts, the Panel accepted the Member's admission and found her guilty of professional misconduct as alleged in the Agreed Statement of Facts and the Notice of Hearing

The Panel finds that all of the allegations set out in the Notice of Hearing are supported by the facts contained in the Agreed Statement of Facts presented by the parties. The Panel finds that the College met its onus and established that it was more likely than not that the Member engaged in the acts of misconduct as alleged.

The Panel finds that on May 9, 2019, the Member entered, without permission or authorization, a room belonging to the Centre on School premises. She removed 3 iPads, without permission to do so, and took them home for her personal use.

The Panel finds that such conduct constitutes a failure to maintain the standards of the profession. By entering a room and removing property without permission or authorization, the Member failed to model professional values. Such actions demonstrate that she failed to understand that her conduct reflects on her as a professional and on her profession at all times. Removing property without permission for personal use, especially such that the police were contacted, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional. It is also clearly conduct unbecoming a member of the profession.

## **POSITION OF THE PARTIES ON PENALTY**

Counsel for the College and Counsel for the Member made a joint submission as to an appropriate penalty and costs order (the "Proposed Order"). The parties submitted that the Panel should make an order as follows:

1. Requiring the Member to appear before a Panel of the Discipline Committee to be reprimanded immediately following the hearing of this matter.
2. Directing the Registrar to suspend the Member's certificate of registration for a period of 6 months. The suspension will take effect from the date of this Order and will run without interruption as long as the College has not otherwise prohibited the Member from practising or suspended the Member for any other reason.
3. Directing the Registrar to impose the following terms, conditions and limitations on the Member's certificate of registration:

### **Mentorship**

- 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 Act, 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 of Professional Regulation (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, once the suspension in section 2 above ends, the Member can commence or resume employment as an RECE after arranging a mentorship relationship with a pre-approved Mentor.

- b. 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.
- c. 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 Agreed Statement of Facts,
  - iii. the Joint Submission on Penalty and Costs, and
  - iv. the Panel’s Decision and Reasons.

- d. 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)).
  
- e. After a minimum of 5 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(c),
  - iii. that the Mentor reviewed the documents set out in paragraph 3(c) and discussed the subjects set out in paragraph 3(d) with the Member, and
  - iv. the Mentor's assessment of the Member's insight into her behaviour.

**Other**

- f. The College may require proof of compliance with any of the terms in this Order at any time.

- g. 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.
4. Requiring the Member to pay the College's costs fixed in the amount of \$1,000, to be paid within 6 months of the date of this Order.

### **Submissions of the College on Penalty and Costs**

The College submitted that this was the first case before the Committee where there was a single incident of taking property in an unauthorized manner. As such, it was especially important to guide the profession.

The College submitted that the penalty ordered should achieve a number of objectives. The penalty needs to send a general message to the profession and the public that such conduct is unacceptable and will not be tolerated. The penalty should also achieve general deterrence by deterring other RECEs from engaging in this kind of misconduct.

The penalty should accomplish specific deterrence by sending a message specifically to this Member that there are significant consequences to such behaviour, to deter her from engaging in similar conduct in the future.

As well, because the Member would continue to be a member of the profession the penalty should include a rehabilitative component. The penalty should support the Member in gaining insight about the misconduct and support her in returning to the profession and conducting herself professionally and appropriately when she does return to practice.

The Panel was also asked to consider that the penalty should generally be within the range established for previous cases with comparable facts and provided three cases for the Panel to consider:

- o *College of Early Childhood Educators v. Renaud (2020)*
- o *College of Early Childhood Educators v Christine Sbardella (2019)*
- o *College of Early Childhood Educators v Shawna Lee (Ferguson) Swain (2017)*

The College also indicated that the Panel could consider aggravating and mitigating factors and identified three aggravating factors for the Panel to consider:

- The Member's action constituted a breach of trust.
- The Member's action was dishonest and showed a lack of integrity.
- The Member did not voluntarily return the iPads. They were found at her home and returned by the Police.

The College identified three mitigating factors for the Panel to consider:

- The Member acknowledged wrongdoing and cooperated in the discipline process.
- The Member entered a guilty plea and agreed to a proposed penalty, thereby saving the College the time and expense of a contested hearing.
- The Member has been a registered member of the College of Early Childhood Educators for 11 years with no prior discipline history.

The College also submitted that the Panel could consider the fact that this was a single incident. The property was returned to the Centre. The College also indicated that the Member did not falsify or attempt to falsify any documents or conceal her misconduct.

The College submitted that the costs were agreed upon by the parties and represented a symbolic amount of the total costs actually incurred.

### **Submissions of the Member on Penalty and Costs**

The Member submitted that this was a single isolated incident.

This was a lapse of judgment for which the Member was deeply regretful. This was not a criminal act. The Member fully cooperated with the investigation and immediately returned the property. The Member has been a member of the College for over a decade with no prior issues. This matter has had a significant impact on her. The proposed penalty would accomplish specific deterrence as she would not be able to earn her livelihood for 6 months. She wishes to remain a member of the College. The Member is capable of rehabilitation.

## **PENALTY DECISION**

The Panel accepted the joint submission on penalty and makes the following order as to penalty:

1. The Member is required to appear before a Panel of the Discipline Committee to be reprimanded immediately following the hearing of this matter.
2. The Registrar is directed to suspend the Member's certificate of registration for a period of 6 months. The suspension will take effect from the date of this Order and will run without interruption as long as the College has not otherwise prohibited the Member from practising or suspended the Member for any other reason.
3. The Registrar is directed to impose the following terms, conditions and limitations on the Member's certificate of registration:

### **Mentorship**

- a. Prior to the Member commencing or resuming employment as a RECE or engaging in the practice of early childhood education, as defined in section 2 of the Act, 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, once the suspension in section 2 above ends, the Member can commence or resume employment as an RECE after arranging a mentorship relationship with a pre-approved Mentor.

- b. 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.
- c. 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 Agreed Statement of Facts,
  - iii. the Joint Submission on Penalty and Costs, and
  - iv. the Panel's Decision and Reasons.
- d. 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)).

- e. After a minimum of 5 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(c),
  - iii. that the Mentor reviewed the documents set out in paragraph 3(c) and discussed the subjects set out in paragraph 3(d) with the Member, and
  - iv. the Mentor's assessment of the Member's insight into her behaviour.

#### **Other**

- f. The College may require proof of compliance with any of the terms in this Order at any time.
- g. 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.

#### **REASONS FOR PENALTY**

The Panel understands that the penalty ordered should protect the public and enhance public confidence in the ability of the College to regulate registered early childhood educators. This is achieved through a penalty that addresses specific deterrence, general deterrence and, where appropriate, rehabilitation and remediation. The penalty should be proportionate to the misconduct.

In considering the joint submission, the Panel was mindful that a jointly proposed penalty should be accepted unless its acceptance would bring the administration of justice into disrepute or it is otherwise not in the public interest.

It is the Panel's conclusion that the requirement for general deterrence is satisfied by a six-month suspension of the Member's certificate of registration. This sends a signal to the profession and the general public that the unauthorized removal of Centre property by an RECE is unacceptable, and will have significant consequences. The Panel believes that the requirement for specific deterrence is satisfied by the Member's suspension, which will prevent her from practicing for a significant time period and give her the opportunity to reflect on her conduct, as well as by the reprimand which will demonstrate the Panel's concerns with her behavior.

Remediation and rehabilitation of the Member is also supported by the penalty. The Mentorship will provide the Member with the opportunity to gain greater insight into her actions and to learn about appropriate conduct for an RECE.

#### **ORDER AS TO COSTS**

Subsection 33(5)(4) of the Act provides that in an appropriate case, a panel may make an order requiring a member who the panel finds has committed an act of professional misconduct to pay all or part of the College's legal costs and expenses, investigation costs and hearing costs.

The parties are in agreement with respect to costs and the amount of costs to be ordered. The Panel agrees that this is an appropriate case for costs to be awarded and the amount proposed by the parties is reasonable.

The Panel orders that the Member pay the College its costs, fixed in the amount of \$1000 to be paid within 6 months of the date of the Order.

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



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Kristine Parsons, RECE, Chairperson

February 25, 2021

Date