

**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", with a long horizontal flourish extending to the right.

Barney Savage
Chair, Discipline Panel