

NOTICE OF PUBLICATION BAN

In the matter of College of Early Childhood Educators and Daniel Robert Harker, 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) and subsection 35.1(4) of the *Early Childhood Educators Act, 2007*.

An Order has also been made by the Ontario Superior Court of Justice directing that publication of any information tending to reveal the identity of the complainant herein is prohibited under subsection 486.4(2.1) of the Criminal Code.

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

PANEL: Karen Damley, Chairperson
Ce Cil (Cecile) Kim, RECE
Samantha Zuercher, RECE

BETWEEN:)
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COLLEGE OF EARLY) Vered Beylin
CHILDHOOD EDUCATORS) for the College of Early Childhood Educators
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- and -)
)
DANIEL ROBERT HARKER) Leah Shafran, Greenwood Defence
REGISTRATION # 43673) for Daniel Robert Harker
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) Elyse Sunshine, Rosen Sunshine LLP
) Independent Legal Counsel
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) Heard: March 12, 2020

DECISION AND REASONS

This matter was heard before a panel of the Discipline Committee of the College of Early Childhood Educators (the "Panel") on March 12, 2020.

PUBLICATION BAN

The Panel ordered a publication ban following a motion by College Counsel pursuant to section 35.1(3) and 35.1(4) of the *Early Childhood Educators Act, 2007*. The order bans the public disclosure, publication and broadcasting outside of the hearing room, of any names or identifying information of any minor children who may be the subject of evidence in the hearing.

THE ALLEGATIONS

The allegations against the Member as stated in the Amended Notice of Hearing dated February 11, 2020, are as follows:

1. At all material times, Daniel Robert Harker (the "Member") was a member of the College of Early Childhood Educators.
2. Between 2013 and 2016, the Member was employed as an Early Childhood Educator at two Child Care Centres in Toronto.

Incidents

3. Between on or about October 2012 and March 2016 the Member, on multiple occasions, was responsible for supervising children in their homes, at the request of the children's parents.
4. On four to five occasions, between October 2012 and December 2013, while supervising a 6 year old boy ("Child 1") the Member placed his hands under Child 1's pajamas and touched Child 1's penis. On one or two of those occasions, the Member also placed his mouth on Child 1's penis, over his clothes.
5. On one occasion, in October 2015, while supervising an 8 year old boy ("Child 2") the Member pulled down Child 2's underwear, placed his mouth on Child 2's penis and performed a sexual act on him. The Member then instructed Child 2 to keep it a secret.
6. On one occasion, in February 2016, while supervising Child 2 again, the Member pulled down Child 2's pants and underwear, placed his mouth on Child 2's penis and performed a sexual act on him. The Member then exposed his own penis and had Child 2 touch the

Member's penis with Child 2's hand. The Member then placed his mouth on Child 2's penis and performed a sexual act on him again.

7. On one occasion, in March 2016, while supervising a 6 year old boy ("Child 3"), the Member spent approximately 45 minutes to an hour at the Child's bedroom, despite an instruction from the Child's parents not to go into the bedroom. During that time, the Member tickled Child 3 over his clothes, on his crotch area, and all over his body. The Member then instructed Child 3 to keep it a secret.

Criminal Court Proceedings

8. In May 2018, the Member pleaded guilty to and was found guilty of the following criminal offences, in relation to the incidents described in paragraphs 4 – 7 above:
 - a) 3 counts of sexual interference, contrary to s.151 of the *Criminal Code*.
 - b) 1 count of sexual assault, contrary to s.271 of the *Criminal Code*.
9. In February 2019, the Member was sentenced to 5 years in custody. Additionally the judge imposed the following:
 - a) a lifetime order prohibiting contact with persons under the age of 16 pursuant to s.161(c) of the *Criminal Code*.
 - b) a lifetime order under the *Sex Offender Information Registration Act*,
 - c) a lifetime weapons prohibition, pursuant to s. 109 of the *Criminal Code*; and
 - d) a DNA order.

Professional Misconduct Alleged

10. By engaging in the conduct set out in paragraphs 3 – 7 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 (the "Act"), in that:
 - a) he sexually abused a child, contrary to s.1(1) of the Act;
 - b) he abused physically, sexually, verbally, psychologically or emotionally a child who was under his professional supervision, contrary to Ontario Regulation 223/08, subsection 2(3);

- c) he failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8), in that he abused physically, sexually, verbally, psychologically or emotionally a child under his professional supervision, contrary to Standard V.A.1 of the Standards of Practice;
- d) he 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);
- e) he contravened a law, which contravention is relevant to his suitability to hold a certificate of registration, contrary to Ontario Regulation 223/08, subsection 2(20);
- f) he contravened a law, which contravention has caused a child who was under his professional supervision to be put at risk, contrary to Ontario Regulation 223/08, subsection 2(21); and
- g) he conducted himself in a manner that is unbecoming a member, contrary to Ontario Regulation 223/08, subsection 2(22).

THE MEMBER'S PLEA

Although the Member was not present, his counsel confirmed that he admitted to all of the allegations in the Amended Notice of Hearing.

In addition, the Panel received a written plea inquiry which was signed by the Member and was satisfied that the Member's admission was voluntary, informed and unequivocal.

EVIDENCE

Counsel for the College and Counsel for the Member advised the Panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts, which read as follows.

The parties hereby agree that the following facts may be accepted as true by the Discipline Committee:

The Member

1. Daniel Robert Harker (the "**Member**") has had a certificate of registration with the College of Early Childhood Educators (the "**College**") for approximately 6 years. It was revoked for non-payment of fees on October 16, 2019. He does not have a prior discipline history with the College.

2. Between 2013 and 2016, the Member was employed as an Early Childhood Educator (“ECE”) at two Child Care Centres in Toronto.
3. Between on or about June 2012 and March 2016 the Member, on multiple occasions, was responsible for supervising children in their homes, at the request of the children’s parents.

Incidents involving Child 1

4. In June 2012 the Member was hired to provide childcare services on an occasional basis to a 5 – 6 year old boy (“Child 1”) in the Child’s home, after responding to an advertisement seeking occasional child care services the Child’s mother placed on www.kijiji.com.
5. On four to five occasions, between November 2012 and December 2013, while supervising Child 1, who was 6 years old at the time, the Member placed his hands under Child 1’s pajamas and touched Child 1’s penis. On one or two of those occasions, the Member also placed his mouth on Child 1’s penis, over his clothes.

Incidents involving Child 2

6. In 2013 the Member was working as an ECE at a daycare Centre (the “Centre”) and responsible for supervising a group of children, including a 5 – 6 year old boy (“Child 2”).
7. In 2015 Child 2 left the Centre. At that time the Member offered to provide occasional child care services to Child 2 and his older brother.
8. In October 2015, the Member was hired by the Child 2’s parents to provide childcare services on an occasional basis to Child 2 and his brother in their home. Child 2 was 8 years old at the time.
9. On one occasion, in October 2015, while supervising Child 2 in the Child’s home, the Member pulled down Child 2’s underwear, placed his mouth on Child 2’s penis and performed a sexual act on him. The Member then instructed Child 2 to keep it a secret.
10. On one occasion, in February 2016, while supervising Child 2 again, the Member pulled down Child 2’s pants and underwear, placed his mouth on Child 2’s penis and performed a sexual act on him. The Member then exposed his own penis and had Child 2 touch the Member’s penis with Child 2’s hand. The Member then placed his mouth on Child 2’s penis and performed a sexual act on him again.

Incident involving Child 3

11. In 2016 the Member had a profile on www.care.com offering child care services on occasional basis. The parents of a 6 year old boy (“**Child 3**”) contacted the Member through that website. They then hired the Member to provide child care services on an occasional basis to Child 3 in the Child’s home.
12. On one occasion, in March 2016, while supervising Child 3, the Member spent approximately 45 minutes to an hour at the Child’s bedroom, despite an instruction from the Child’s parents not to go into the bedroom. During that time, the Member tickled Child 3 over his clothes, on his crotch area, and all over his body. The Member then instructed Child 3 to keep it a secret.

Criminal Court Proceedings

13. In May 2018, the Member pleaded guilty to and was found guilty of the following criminal offences, in relation to the incidents described in paragraphs 4 – 12 above:
 - a. 3 counts of sexual interference, contrary to s.151 of the *Criminal Code*.
 - b. 1 count of sexual assault, contrary to s.271 of the *Criminal Code*.
14. During the sentencing hearing the judge heard numerous victim impact statements. The statements outlined how the Member’s conduct affected, and continues to affect, their lives and those of their family members. During the hearing the Member apologized to the victims and acknowledged the harm he had caused.
15. In February 2019, the Member was sentenced to 5 years in custody. Additionally the judge imposed the following:
 - a. a lifetime order prohibiting contact with persons under the age of 16 pursuant to s.161(c) of the *Criminal Code*.
 - b. a lifetime order under the *Sex Offender Information Registration Act*,
 - c. a lifetime weapons prohibition, pursuant to s. 109 of the *Criminal Code*; and
 - d. a DNA order.

Admissions of Professional Misconduct

16. The Member admits that he engaged in and is guilty of professional misconduct as described in paragraphs 4 to 12 above, and as defined in subsection 33(2) of the *Early Childhood Educators Act, 2007*, S.O. 2007, c. 7, Sch. 8 (the “**Act**”), in that:
 - a. he sexually abused a child, contrary to s.1(1) of the Act;

- b. he abused physically, sexually, verbally, psychologically or emotionally a child who was under his professional supervision, contrary to Ontario Regulation 223/08, subsection 2(3);
- c. he failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8), in that he abused physically, sexually, verbally, psychologically or emotionally a child under his professional supervision, contrary to Standard V.A.1 of the Standards of Practice;
- d. he 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);
- e. he contravened a law, which contravention is relevant to his suitability to hold a certificate of registration, contrary to Ontario Regulation 223/08, subsection 2(20);
- f. he contravened a law, which contravention has caused a child who was under his professional supervision to be put at risk, contrary to Ontario Regulation 223/08, subsection 2(21); and
- g. he conducted himself in a manner that is unbecoming a member, contrary to Ontario Regulation 223/08, subsection 2(22).

DECISION ON THE ALLEGATIONS

Having regard to the facts set out in the Agreed Statement of Facts, the Committee accepted the Member's admission and found that he committed professional misconduct as alleged in paragraph 16 above.

REASONS FOR DECISION

The Panel considered the Agreed Statement of Facts and the Member's plea and found that the evidence supported findings of professional misconduct as alleged in the Amended Notice of Hearing.

All allegations in the Amended Notice of Hearing are supported by the Agreed Statement of Facts. From 2012 to 2016, the Member was involved in three incidents of sexual misconduct with three different children six to eight years of age as detailed in the Agreed Statement of Facts included above. This constitutes sexual abuse under the Act.

Sexual abuse is inherently a breach of professional standards. It is never acceptable to sexually abuse children. The Member's conduct also breached several specific standards of practice including Standard V: Professional Boundaries, Dual Relationships and Conflicts of Interest; Standard II: Developmentally Appropriate Care and Education; and Standard I: Caring and Nurturing Relationships that Support Learning.

The Member further contravened a law, and put children at risk, specifically by committing three counts of sexual interference, contrary section 151 of the Criminal Code and one count of sexual assault contrary to section 271 of the Criminal Code.

The Panel further finds that the Member's atrocious conduct would be regarded by members of the profession as disgraceful, dishonourable and unprofessional. The Member's actions breached all aspects and values of the Code of Ethics. These values of care, respect, trust and integrity are fundamental to the Members of the College and guide their conduct. Early Childhood Educators are in a position of power and responsibility toward children under their professional supervision and are trusted by families to maintain the safety and security of their children. Breaching these values is considered disgraceful, dishonourable and unprofessional. The Member's conduct in sexually abusing children is reprehensible and on its face, constitutes conduct unbecoming.

POSITION OF THE PARTIES ON PENALTY AND COSTS

Counsel for the College and Counsel for the Member made a partial joint submission on penalty and requested that the Panel make an order:

1. Requiring the Member to appear before a Panel of the Discipline Committee to be reprimanded.
2. Directing the Registrar to immediately revoke the Member's certificate of registration.

The parties were not, however, in agreement on the issue of whether the Member should be required to reimburse the College for funding for therapy and counselling for the children who are the subject of sexual abuse pursuant to the program required by section 59.2 of the Act. The parties were also not in agreement as to the amount of costs that should be required. The College sought \$5,000 in costs, payable within 60 days.

College Submissions

The College submitted that the penalty must protect the public and send a message that this type of conduct is unacceptable and not tolerated. In this case, the agreed upon portions of the penalty were the only option. The Act requires that a Member who engaged in sexual abuse be revoked and receive a reprimand.

The prime aggravating factors in this case were the nature of the professional misconduct involved. Specifically:

1. The Member sexually abused three children in his care;
2. The victims were young and vulnerable (between the ages of six and eight);
3. Child 1 and Child 2 were abused repeatedly;
4. The abuse took place in the children's homes which should be their safe haven;
5. The sexual conduct was of a heinous nature;
6. The Member attempted to avoid detection to keep the abuse secret, which had an enormous emotional and psychological effect on the children;
7. The Member's conduct had a devastating and lasting impact on the children and their families;
8. The Member was in a position of trust which he exploited repeatedly by taking advantage of his position of power and authority over the children; and
9. The Member's actions "fly in the face" of all ECE's responsibility to protect children in their care

The College submitted that the only mitigating factor was that the Member accepted responsibility for his actions by pleading guilty in Superior Court and also through the Agreed Statement of Facts. The College submitted that while this mitigating factor should be considered by the Panel in connection with the agreed upon portion of the penalty, it does not justify deciding against an order for reimbursement of funding for therapy.

With respect to the request for an order that the Member be required to reimburse the College for funding for therapy for victims of sexual abuse as provided under section 59.2 of the Act, the College submitted that this reimbursement will assist in repairing the harm that the Member caused to the children and their families. It enhances public confidence by demonstrating that the College takes sexual misconduct very seriously and is supportive of the therapeutic needs of the affected children and families. It serves to deter the rest of the membership from committing acts of sexual misconduct. The College submitted that the Member's financial situation should not play any role in determining whether or not to require reimbursement.

The College will only seek monies from the Member for what is actually paid out to the victims.

The College also reminded the Panel that evidence of the impact of misconduct is not required to make such an order.

With respect to the request for \$5,000 in costs, the College submitted that costs are separate from penalty and not meant to be punitive, but it is fair and reasonable to have a guilty member pay for at least part of the College's costs in investigating and prosecuting discipline matters such that the costs are not borne by the membership through their dues. In this case, the College was seeking \$5,000 (or half the Tariff amount) because there were open submissions on penalty requiring half a day of hearing time (which could have been reduced had the Member agreed to the reimbursement order). The College submitted that all members have some

financial challenges and this is not the only determination as to whether a cost award is appropriate.

Member Submissions

The Member's Counsel agreed with the partial joint submission and indicated it was appropriate in the circumstances.

Member's Counsel submitted that an order for reimbursement was not required for several reasons. The Member has no ability to reimburse the College because of his financial circumstances and therefore any order for reimbursement would be meaningless. Member's Counsel provided an Affidavit from a law clerk that summarized the Member's financial information (the "Affidavit"). Additionally, the Member expressed remorse to the child victims and their families, which Counsel submitted goes a long way towards the family's rehabilitation. General deterrence has been achieved by the Criminal orders and the revocation of the Member's licence – all of which are public. Counsel also submitted that there has been no evidence that the victims have received therapy, or need therapy. Counsel presented case law from other regulators which, she submitted, establishes that reimbursement orders should not be made when there is no such evidence. Counsel further argued that if the Panel were to consider reimbursement, they should only consider reimbursement for the therapeutic costs for Child 2 at most, as Child 2 was the only child who the Member met while working at a child care facility as a member of the College.

With respect to costs, Member's Counsel submitted that the Member had no ability to pay costs. She relied on the Affidavit, which she indicated should be given weight because the Member is in jail and could not give the evidence himself. She argued that a cost award was not appropriate in this case because in other cases, the members had a chance of returning to the profession and in this case, the Member could not. Member's Counsel submitted that she had demonstrated evidence of hardship and costs were not appropriate in this case.

College's Reply

Counsel for the College submitted that the Member's apology does not have the same positive impact on families as therapy and should not negate the need for therapeutic support.

Counsel argued that the Affidavit should be given minimal weight as it is signed by a law clerk who repeatedly indicated that she was "advised and verily agrees" which does not confirm that the law clerk has confirmed knowledge of the information presented. College Counsel advised that the only aspects of the Affidavit which the College accepts are the date of the Member's arrest and the date of incarceration.

College Counsel pointed out that the financial information provided in the Affidavit is only a snap shot and could be incomplete. No evidence was presented to confirm that there are no other

sources of financial support for the Member or other assets. No evidence was provided that the Member will never be able to pay if an order for reimbursement and/or costs is made.

College Counsel indicated that the other penalties received by the Member such as revocation, are not a reason not to order costs or reimbursement for funding for therapy.

PENALTY DECISION

The Panel makes the following order as to penalty (the "Order"):

1. Requiring the Member to appear before a Panel of the Discipline Committee to be reprimanded.
2. Directing the Registrar to immediately revoke the Member's certificate of registration.
3. The Member is required to reimburse the College for funding provided for a person under the program required under section 59.2 of the Act.

REASONS FOR PENALTY

The penalty Order is meant to protect the public and enhance public confidence in the ability of the College to regulate registered early childhood educators. This is typically achieved through a penalty that addresses specific deterrence, general deterrence and, where appropriate, rehabilitation and remediation. Given the nature of the misconduct and because the Member is to be revoked, rehabilitation and remediation are not applicable in this case and would not be in the public interest. Lastly, the penalty is meant to be proportionate to the misconduct.

In this case, the parties were in agreement on the revocation and reprimand aspects of the penalty. The Panel recognizes that sections 33.2(1)(a) and 33.2(1)(b) of the Act requires the ordering of an oral reprimand and immediate revocation of the Member's certificate of registration given the finding of sexual abuse. As the Member is currently incarcerated, the College is directed to facilitate the delivery of the reprimand in the future once the Member becomes available for it.

Given that the Member and the College were not in agreement on the third point of the Order, requiring the Member to reimburse the College for therapy costs accessed by the victims, the Panel has considered the submissions of both the Member and the College.

The Panel is aware that this is the first hearing at the College where reimbursement for funding for therapy has been considered. The Panel considered that this Order establishes a precedent for this College and could have implications for other regulators. The Panel firmly believes requiring the Member to pay for funding for therapy, if accessed by the victims through the College's established process, enhances public confidence. Therapy is a critical aspect of helping the victims. Additionally, neither the victims themselves, nor the College membership at

large, should be forced to pay for the therapy required as a result of the Member's horrific actions. It is only fair that the cost of the therapy be borne by the Member who has caused the harm to the victims. It is hoped that this component of the Order will also have a deterrent effect on the membership at large by demonstrating that in addition to the loss of one's profession, engaging in sexual abuse will have financial ramifications as well.

Regarding the Member's position that there has been no evidence of the impact on the victim, the Panel does not find it necessary to have evidence of the victim impact as it is ordering only reimbursement of the therapy cost if incurred through the College's established approval process. The Act does not require the victims to testify or evidence to be provided in order for us to make this Order. The victims are very young children and requiring a victim impact statement, for example, would be a tremendous burden to place on them and may not be possible. It should also be abundantly evident to anyone that sexual abuse of a child will cause harm that may require or benefit from therapy.

The Panel distinguished many of the cases presented regarding the funding for therapy issue, notably *Sliwin v. College of Physicians and Surgeons of Ontario*, [2017] O.J. No. 1507 and *College of Physicians and Surgeons of Ontario v. Lee*, [2019] O.J. No. 3826, because they dealt with adult victims and also dealt with the request that the Member post security for the funding for therapy – neither of which were applicable in this case.

Regarding the Member's assertion that he does not have the financial means to pay for any order for funding, the Panel does not feel that sufficient evidence was presented to support this. Additionally, no evidence was presented to suggest that the Member's financial situation could not improve in the future. That said, the Member's ability to pay is not the sole determinative factor in making such an order.

Lastly, the Panel disagrees quite strongly with the Member's assertion that his expression of remorse goes a long way toward the victimized families' rehabilitation. An apology to the victimized families, while better than no apology, certainly does not make up for the harm caused nor does it preclude the fact that some victims may require professional therapy to help them carry on with their lives in a positive manner after experiencing sexual abuse. If this is deemed to be the case, and is approved through the established College process to access funding for therapy, the membership should not have to bear the entire cost of such therapy through their dues. A guilty member should be required to pay for the cost of the therapy paid out to victims by the College.

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.

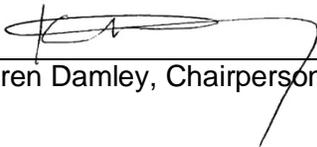
As the parties are not in agreement with respect to costs and the amount of costs to be ordered, the Panel considered the submissions made from both parties. The Panel finds that it is appropriate for costs of \$5,000 to be awarded in this case. Costs are typically awarded in cases even where the parties are in agreement on the basis that the membership should not have to pay for the entirety of the College's costs of investigating and prosecuting a member's misconduct through their dues. While the Member agreed to the mandatory elements of the penalty order, the penalty portion of the hearing did not proceed on consent and this prolonged the time and effort required for this hearing.

While the Panel agrees that a vigorous defense is the right of every Member, the resulting costs should not be borne entirely by the membership at large. The Member's position that costs should not be awarded as he does not have the financial means was not supported by sufficient evidence. Only a snapshot at a point in time was presented and there was nothing to suggest it was a complete picture of his financial position. Lastly, his financial position could certainly change for the better in the future.

The Panel orders that the Member pay the College its costs, fixed in the amount of \$5,000, to be paid within 60 days of the date of this decision.

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

May 5, 2020



Karen Damley, Chairperson

Date