

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

PANEL: Kristine Parsons, RECE, Chairperson
Purvi Manek, RECE
Barney Savage

BETWEEN:)
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COLLEGE OF EARLY) Vered Beylin
CHILDHOOD EDUCATORS) for the College of Early Childhood Educators
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- and -)
)
KELLY LYNN MARION) Denise Cooney,
REGISTRATION # 19741) Paliare Roland Rosenberg Rothstein LLP
) for Kelly Lynn Marion
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)
)
) Elyse Sunshine,
) Rosen Sunshine LLP
) Independent Legal Counsel
)
) Heard: May 27, 2020

DECISION AND REASONS

This matter was heard via videoconference by a panel of the Discipline Committee of the College of Early Childhood Educators (the "Panel") on May 27, 2020.

At the outset, the Panel ordered that no person shall make any audio or video recording of these proceedings by any means, with the exception of oral evidence that is recorded at the direction of the Panel.

THE ALLEGATIONS

The allegations against the Member were contained in the Notice of Hearing dated February 20, 2020, (Exhibit 1) which provided as follows:

1. At all material times, Kelly Lynn Marion (the "Member") was a member of the College of Early Childhood Educators (the "College") and was employed as an Early Childhood Educator ("RECE") at Kids and Company Daycare Centre (the "Centre").
2. On March 27, 2018 the Member attended a hearing before a Panel of the Discipline Committee (the "First Discipline Panel") of the College and pleaded guilty to committing several acts of professional misconduct. The First Discipline Panel accepted a joint submission by the Member and the College as to the penalty. Among other things, it directed the College's Registrar to suspend the Member's Certificate of Registration for a period of 5 months, and to impose terms conditions and limitations on her certificate of registration. The First Discipline Panel signed the order (the "2018 Order") on the day of the hearing, March 27, 2018 and the suspension began that day.
3. In violation of the 2018 Order, the Member continued her employment as an RECE at the Centre for a period of 3 ½ months.
4. On July 16, 2018 the Centre's management conducted a random check of employees' membership status on the College's public register and learned of the Member's suspension. As a result, the Centre immediately removed the Member from her role.

5. By engaging in the conduct set out in paragraphs 3 - 4 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) she contravened an order of the Discipline Committee, contrary to the Act, subsection 1(1);
 - (b) 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 (the "Regulation"), subsection 2(10);
 - (c) She inappropriately used a title in respect of her practice, contrary to the Regulation, subsection 2(12); and/or
 - (d) she acted in a manner that is unbecoming a member, contrary to the Regulation, 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 2a), which provided as follows:

The Member

1. The Member initially registered with the College in July 2009. She is in good standing with the College.
2. At all material times, the Member was employed as an RECE at the Centre.

Prior History

3. On March 27, 2018 the Member attended a hearing before the First Discipline Panel and pleaded guilty to three incidents of physical, verbal and psychological or emotional abuse of two children under her professional supervision. The incidents

occurred in September 2015 and each of the children was 2-3 years old.

- a. On one occasion, the Member grabbed a child by the outside of his arms, lifted him off the ground, shook him and placed him down on his bottom forcefully. The Member then shouted at the child and told him not to move.
 - b. On two occasions, the Member physically forced another child to lie down and leaned over the child with her elbow on the opposite side of the bed so the child could not get up. The Member remained in this position for 10 – 15 minutes each time while the child screamed.
4. The First Discipline Panel accepted a joint submission by the Member and the College as to the penalty. The Discipline Panel signed the 2018 Order on the day of the hearing which, among other, imposed the following penalty:
- a. a 5 month suspension of the Member's certificate of registration, which began that day;
 - b. coursework in behaviour guidance of children, which the Member was required to pre-approve with the Director of Professional Regulation of the College (the "Director") and successfully complete prior to commencing or resuming employment as an RECE; and
 - c. 5 mentorship sessions with a Mentor that the Member was required to pre-approve with the Director. The Member was not allowed to commence or resume employment prior to arranging a mentorship relationship with a pre-approved Mentor.
5. The Member was represented by counsel during the plea and penalty hearing.

The Incident

6. The Member did not advise the Centre's management of the discipline hearing or the Order.
7. In violation of the Order, the Member immediately resumed her employment at the Centre. The Member continued her employment as an RECE at the Centre for a

period of 3½ months. During this time the Member also failed to comply with the terms, conditions and limitations in the Order, as follows:

- a. the Member failed to complete the required pre-approved coursework; and
 - b. the Member failed to arrange a mentoring relationship with a pre-approved mentor.
8. Those terms, conditions and limitations were designed to address the gaps in the Member's knowledge, skills and judgment regarding her practice as an RECE before she returned to working with children.
 9. On July 16, 2018, the Centre's management conducted a random check of employees' membership statuses on the College's public register and learned of the Member's suspension, and the terms, conditions and limitations on the Member's certificate of registration. As a result, the Centre immediately removed the Member from her role as an RECE and contacted the College.
 10. On July 19, 2018 the Member self-reported her conduct to the College. A week later the Centre filed a mandatory employer report with the College.
 11. If the Member were to testify, she would say that her conduct was a serious lapse in judgment for which she is deeply remorseful.

Additional information

12. In accordance with the terms of the Order, the Member applied for and received pre-approval to complete an 11 week anger management course (the "Course"). The Member completed the Course in December 2018, and provided the College with proof of completion.
13. In January 2019, the College pre-approved the Member's proposed mentor. On April 3, 2019, the Member's pre-approved mentor submitted the mentorship report, which was approved by the College's Director of Professional Regulation.
14. The College does not have evidence as to the date the Member resumed practising as an RECE. If the Member were to testify, she would advise that she resumed

practising as an RECE on January 29, 2019, after providing the College a certificate of completion for the Course and after her mentor was pre-approved by the College.

Admissions of Professional Misconduct

15. The Member admits that she engaged in and is guilty of professional misconduct as described in paragraphs 6 to 9 above, and as defined in subsection 33(2) of the Act, in that:

- a. The Member contravened an order of the Discipline Committee, contrary to the Act, subsection 1(1);
- b. The Member 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 the Regulation, subsection 2(10);
- c. The Member inappropriately used a title in respect of her practice, contrary to the Regulation, subsection 2(12); and/or
- d. The Member acted in a manner that is unbecoming a Member, contrary to the Regulation, 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

Counsel for the College indicated that this case is the first of its kind for this College – an incident in which a Member flagrantly disregarded an order of the Discipline Committee. Counsel submitted that the decision could have an important impact on future cases of its kind.

The College indicated that this Member has been a member of the profession since 2009. Following a hearing, the 2018 Order was issued. However, the evidence showed, and the Member admitted, that she breached the 2018 Order in three ways:

1. She continued to work as a RECE, despite being suspended;
2. She did not complete the required coursework; and
3. She did not arrange a Mentor prior to returning to her employment.

The Member also continued to use the title of Registered Early Childhood Educator (RECE). The College stressed that restricted use of this title is intended to protect the public interest and protect children. By continuing to use this title while she was suspended and before she had completed her remediation, the Member engaged in a breach of trust and may have placed the safety of children in jeopardy.

The College submitted that the Member's actions constituted conduct that is disgraceful, dishonourable and unprofessional. The Member acted in a manner that was deliberate and deceitful. She shamed herself and the profession as a whole and her conduct was clearly unbecoming.

Counsel for the Member made no submissions on the question of liability.

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 considered whether the allegations made in the Notice of Hearing are supported by the evidence presented in the Agreed Statement of Facts. In particular, the Panel found that paragraphs 6 through 14 of the Agreed Statement of Facts (Exhibit 2B) support the allegations of professional misconduct.

The Panel concluded that the Member's conduct in returning to work and not complying with her remediation, was a clear breach of the 2018 Order and she therefore engaged in misconduct by

contravening an order of the Discipline Committee. The Member's conduct would reasonably be regarded by members of the profession as disgraceful, dishonourable and unprofessional. Members of a regulated profession are expected to comply with an order of their regulatory body. The Member engaged in serious acts of professional misconduct, including physical abuse of a child, necessitating the 2018 Order. The Member compounded her misconduct by not complying with the 2018 Order. RECEs are expected to be models of professionalism. As part of regulating the profession in the public interest, the College is required to hold hearings into whether members of the profession have engaged in misconduct. By not complying with the 2018 Order of the Discipline Committee, the member acted in a manner that was completely unbecoming. Members of the profession are required to comply with the law and with the requirements of their regulatory body. The Member failed to do so by not complying with the 2018 Order.

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 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 Order.
2. Directing the Registrar to suspend the Member's certificate of registration for a period of 9 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:

Coursework

- a. 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 Act, 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, an ethics course (subject to the Director's pre-approval).

- b. The Member must provide the Director with proof of enrollment and successful completion of the course.

Mentorship

- c. 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 ("Employment"), the Member, at her own expense, will arrange for 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 Agreed Statement of Facts,
 - iii. the Joint Submission on Penalty and Costs, and
 - iv. a copy of the Panel's Decision and Reasons.
- f. The Member will meet with the Mentor every two 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 Standards (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 seven 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.
4. Requiring the Member to pay the College's costs fixed in the amount of \$1,000, to be paid in accordance with the following schedule:
- a. \$250 on September 1, 2020
 - b. \$250 on October 1, 2020
 - c. \$250 on November 1, 2020
 - d. \$250 on December 1, 2020

SUBMISSIONS OF THE COLLEGE ON PENALTY AND COSTS

Counsel for the College submitted that the Proposed Order was appropriate and reasonable in light of the facts agreed upon. The penalty should send a message that this type of conduct is unacceptable and deter other RECEs from engaging in this type of conduct. It should also ensure that it deters this specific Member from engaging in this type of conduct again and support her rehabilitation.

The question of general deterrence is important because this is the first case of its kind at the College, and would be precedent setting for future hearings. While there are no comparable cases at this College, where a member has been found guilty of misconduct for failing to comply with an order of the College, College Counsel indicated that there are decisions from other

regulatory bodies that may be considered in assessing the appropriateness and proportionality of the proposed penalty. College Counsel referred the Panel to two companion cases from the Ontario College of Nurses:

- *College of Nurses of Ontario v Kruczek (nee Guarrasi)*, 2014 CanLII 90722 (ON CNO)
- *College of Nurses of Ontario v Guarrasi*, 2012 CanLII 99759 (ON CNO)

While the member in those cases was ultimately revoked, College Counsel indicated that there were significant distinguishing factors that were not applicable in this case.

The College further submitted six aggravating factors for the Panel to consider:

- The Member's breach was deliberate, and not simply a situation where she misunderstood the 2018 Order and what was required of her.
- The Member resumed employment immediately following the issuance of the 2018 Order.
- This was not a momentary lapse in judgment, as the Member worked for 3.5 months following the 2018 Order.
- The conduct of the Member did not stop until her employer discovered, through a random check, that the Member was suspended and not in possession of a valid Certificate of Registration.
- The Member failed to comply with previous terms and restrictions that directly related to the safety of children.
- The Member's actions were dishonest, deceiving both her employer and the parents of the children that she was entrusted with.

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

- The Member expressed remorse and cooperated with the College.
- The Member pleaded guilty thereby saving the College the time and expense of a contested hearing.

College Counsel also asked the Panel to consider an additional three factors:

- There was no evidence to suggest that the Member had engaged in any abusive behaviour toward the children at the Centre while she was working during the time she was to have been suspended.
- The Member did not falsify any records to cover up her breaches of the 2018 Order (as had occurred in the case before the College of Nurses).
- The Member eventually complied with the educational requirements of the 2018 Order.

SUBMISSIONS OF THE MEMBER ON PENALTY AND COSTS

Counsel for the Member indicated that the Member had accepted responsibility for her error. The Member committed a lapse of judgment. Member's Counsel submitted that the Member is a single mother and this impacted her judgment regarding returning to work and not complying with the 2018 Order. The Member is committed to returning to the profession. She reported that the Proposed Order had been the subject of significant negotiation between the parties, and that the penalty strikes the balance between deterrence and remediation.

PENALTY DECISION

The Panel accepted the joint submission on penalty and makes the following order as to penalty (the "Order"):

1. The Member is required to appear before the Panel to be reprimanded immediately following the hearing of this Order.
2. The Registrar is directed to suspend the Member's certificate of registration for a period of 9 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:

Coursework

- 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 must successfully complete, with a minimum passing grade of 70% (or to the satisfaction of the Director if a grade is not assigned) and at her own expense, an ethics course (subject to the Director's pre-approval).
- b. The Member must provide the Director with proof of enrollment and successful completion of the course.

Mentorship

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

REASONS FOR PENALTY

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. The Panel concluded that the proposed penalty is consistent with the public interest and does not bring the administration of justice into disrepute.

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 Member's disregard for her obligations to her regulator is of grave concern. The Panel was further concerned by the deliberate nature of the Member's conduct. It is the fundamental responsibility of a member to comply with an Order of this College. The privilege of self-regulation and the ability of the profession to self-govern and to fulfil its mandate to protect the

public interest require members to comply with orders made by their regulator. A failure to do so is a serious matter indeed.

The penalty meets the goal of general deterrence by sending a clear message to the membership that failing to comply with an order from a statutory committee of the College is serious and will result in significant sanction and could even warrant revocation (indeed, had this not been a joint submission, the Panel may have been so inclined). The Panel considered the mitigating factors of the Member's cooperation and her guilty plea and participation in the discipline process. The penalty meets the goal of specific deterrence through the suspension and reprimand of the Member. Finally, the penalty meets the goals of protection of the public and remediation through the suspension, as well as the terms, conditions and limitations placed upon the Member's certificate of registration. The penalty should be proportionate to the misconduct, based on previous decisions but considering the specific facts of the case at hand. In this particular case, the Panel does not have the benefit of prior decisions from this Committee. However, the Panel considered the case law presented by the parties from the College of Nurses and the parties' submissions about the range of penalties that had been awarded by other regulators.

The Panel was satisfied that with the remedial mentorship, along with the steps the Member had already completed pursuant to the 2018 Order, the Member will be provided with the guidance and advice she requires in order to return to professional practice in a safe and effective manner. It is the Panel's contention that an important element of returning to professional practice should include a respect for the role of the College as the public body responsible for regulating the profession in the public interest.

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 in accordance with the following schedule:

- e. \$250 on September 1, 2020
- f. \$250 on October 1, 2020
- g. \$250 on November 1, 2020
- h. \$250 on December 1, 2020

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.



Kristine Parsons, Chairperson

June 9, 2020

Date