

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

Citation: College of Early Childhood Educators vs Diba Hashimi,  
2018 ONCECE 3  
Date: 2018-04-24

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 DIBA HASHIMI, a current member of  
the College of Early Childhood Educators.

**PANEL:** Susan Quaiff, RECE, Chairperson  
Karen Damley  
Sasha Fiddes, RECE

<b>BETWEEN:</b>	)	
	)	
COLLEGE OF EARLY	)	Jordan Stone,
CHILDHOOD EDUCATORS	)	WeirFoulds LLP,
	)	for the College of Early Childhood Educators
	)	
- and -	)	
	)	
DIBA HASHIMI	)	No Representation
REGISTRATION # 21798	)	
	)	
	)	
	)	
	)	
	)	Lonny Rosen,
	)	Rosen Sunshine LLP,
	)	Independent Legal Counsel
	)	
	)	Heard: March 27, 2018

## DECISION AND REASONS

This matter came on for a hearing before a panel of the Discipline Committee of the College of Early Childhood Educators (the "Panel") on March 27, 2018.

### THE ALLEGATIONS

The allegations against Diba Hashimi (the "Member") as stated in the Notice of Hearing dated March 20, 2018 (Exhibit 1), are as follows:

- a. she physically, verbally, psychologically, and/or emotionally abused a child who was under her professional supervision, contrary to, subsection 2(3) of Ontario Regulation 223/08, made under the *Early Childhood Educators Act, 2007, S.O. 2007, c. 7, Sched. 8* (the "Act");
- 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, the regulations, or by-laws, 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).

## **THE MEMBER'S PLEA**

The Member admitted to all of the allegations in the Notice of Hearing, as set out above.

The Panel received the Member's plea both orally and in writing, through an Agreed Statement of Facts (Exhibit 2). The Panel also conducted a verbal plea inquiry and was satisfied that the Member's admission was voluntary, informed and unequivocal.

## **EVIDENCE**

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

### **The Member**

1. The Member initially registered with the College of Early Childhood Educators (the "College") as a Registered Early Childhood Educator ("RECE") in September 2009 and is currently in good standing with the College, but subject to terms, conditions or limitations.
2. At all material times, the Member was employed as an RECE at Cougar Court Child Care Centre 15 in Scarborough, Ontario (the "Centre").
3. On October 30, 2015, the Member's employment with the Centre was terminated as a result of the incident described below.

### **Incident on October 29, 2015**

4. On October 29, 2015, the Member was responsible for supervising a group of pre-school aged children at the Centre. At approximately 11:15 a.m./11:30 a.m., the Member grabbed a child, pulled him towards her, and shoved, struck or slapped the child in the back of the head with her open palm. The force of the impact caused the child to fall forward and then back onto his back.
5. Minutes after the incident described above, the child was observed sitting by himself and holding the back of his head while the other children were eating lunch.

## **Children's Aid Society Investigation & Criminal Proceedings**

6. As a result of the incident described above, the Children's Aid Society of Toronto conducted a child protection investigation and verified allegations of risk of physical harm to the child.
7. On November 3, 2015, the Member was criminally charged with assault for the incident described above.
8. On April 28, 2016, the Member entered into an undertaking with the College (the "Undertaking"), whereby she agreed to refrain from the practice of early childhood education until the completion of her criminal proceedings and any College proceedings arising from the College's investigation.
9. On May 17, 2016, the charges against the Member were withdrawn after she entered into a peace bond requiring her to not contact the child and to keep the peace and be of good behaviour for 12 months.
10. On May 31, 2017, the Complaints Committee of the College decided to issue a verbal caution to the Member for breaching the Undertaking.

## **College Standards of Practice**

11. The Member agrees that the following are standards of the profession that were in force in October 2015, as set out in the 2011 College's Code of Ethics and Standards of Practice:
  - a. Standard I.D requires RECEs to provide nurturing learning environments where children thrive and families are welcome.
  - b. Standard I.E requires RECEs to establish professional and caring relationships with children and families and to respond appropriately to the needs of children.
  - c. Standard III.A.1 requires RECEs to maintain safe and healthy learning environments.
  - d. Standard III.C.1 requires RECEs 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.
  - e. Standard IV.B.4 requires RECEs to make decisions, resolve challenges and provide behaviour guidance in the best interests of the children under their professional supervision.
  - f. Standard IV.E.2 requires RECEs to avoid conduct that could reasonably be perceived as reflecting negatively on the profession of early childhood education.
  - g. Standard V.A.1 requires RECEs not to abuse physically, verbally, psychologically, or emotionally a child under their professional supervision.

## Admissions of Professional Misconduct

12. The Member admits that she engaged in and is guilty of professional misconduct as described in paragraphs 4 to 10 above, and as defined in section 33(2) of the Act, in that:
- a. she physically, verbally, psychologically, and/or emotionally abused a child who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(3);
  - b. she failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8), in that:
    - 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, the regulations, or by-laws, 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).

## **DECISION ON THE ALLEGATIONS**

Having regard to the facts set out in the Agreed Statement of Facts and the Member's plea, the Panel accepted the Member's admissions and found that she committed all of the acts of professional misconduct set out in the Notice of Hearing as outlined above.

## **REASONS FOR DECISION**

The Panel considered the Agreed Statement of Facts and the Member's guilty plea and found that the evidence supported findings of professional misconduct in respect of each of the allegations set out in the Notice of Hearing.

The evidence established that on October 29, 2015, the Member grabbed a child, pulled him towards her, and shoved, struck or slapped the child in the back of the head with her open palm. The force of the impact caused the child to fall forward and then back onto his back. The Panel found that this conduct constituted physical, verbal, psychological or emotional abuse of a child under her professional supervision, and that this was professional misconduct pursuant to subsection 2(3) of Ontario Regulation 223/08. This also constituted a failure to maintain each of the standards of the profession set out in the Notice of Hearing, contrary to Ontario Regulation 223/08, subsection 2(8), in that:

- a) she failed to provide a nurturing learning environment where children thrived;
- b) she failed to establish professional and caring relationships with children and/or to respond appropriately to the needs of children;
- c) she failed to maintain a safe and healthy learning environment;
- d) 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;
- e) she failed to make decisions, resolve challenges and/or provide behaviour guidance in the best interests of the children under her professional supervision;
- f) she conducted herself in a manner that could reasonably be perceived as reflecting negatively on the profession of early childhood education; and
- g) she physically, verbally, psychologically or emotionally abused a child under her professional supervision;

Further, in conducting herself as she did with this child, the Member acted in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful,

dishonourable or unprofessional, which is professional misconduct contrary to Ontario Regulation 223/08, subsection 2(10).

Physical abuse of a child is reprehensible. It disgraces the profession and the member. It also constitutes conduct that is unbecoming a member, which is an act of professional misconduct pursuant to subsection 2(22) of Ontario Regulation 223/08.

Ms. Hashimi's voluntary admission to each of the allegations of professional misconduct and the facts set out in the Agreed Statement of Facts led the panel to find the Member guilty of professional misconduct in respect of all of the allegations set out in the Notice of Hearing.

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

Counsel for the College and the Member made a joint submission as to an appropriate penalty. The joint submission as to penalty proposed that the Panel make an order as follows:

1. Requiring the Member to appear before the Panel to be reprimanded on the date of this Order.
2. Directing the Registrar to suspend the Member's certificate of registration for a period of seven (7) months. The suspension will take effect from the date of this Order, and will run without interruption as long as the Member remains in good standing with the College.
3. Directing the Registrar to impose the following terms, conditions and limitations on the Member's certificate of registration:
  - 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 ("Director") if a grade is not assigned) and at her own expense, a course in behaviour guidance that is pre-approved by the Director. The Member must provide the Director with proof of enrollment and successful completion of the course.
  - b. Prior to the Member commencing or resuming 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 for the Director 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 after arranging a mentorship relationship with a pre-approved Mentor (assuming the requirements of subparagraph 3(a) have been met).

- 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:
  - i. the Panel's Order,
  - ii. the Agreed Statement of Facts,
  - iii. the Joint Submission on Penalty, and
  - iv. a copy of the Panel's Decision and Reasons, once available.
- d. 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 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 five 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.
4. Requiring the Member to pay the College's costs fixed in the amount of \$1000, within 60 days of the date of the Order.
5. All documents delivered by the Member to the College or the Mentor will be delivered by registered mail or courier, and the Member will retain proof of delivery.

## **DECISION ON PENALTY AND COSTS**

The Panel accepted the joint submission on penalty and made an order as to penalty and costs as set out above.

## **REASONS FOR PENALTY**

The Panel understands that the penalty ordered in respect of findings of professional misconduct 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 public protection, 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.

The Panel recognized that the Member cooperated with the College by agreeing to the facts and proposed penalty. The Panel found that the penalty proposed satisfies the principles of specific and general deterrence and public protection. Specifically, the suspension of the Member, along with the reprimand, will act as specific deterrents to the Member, and general deterrents to other members of the profession, preventing them from engaging in such conduct. The Panel found that a suspension is necessary in this case to address the use of force including the slap to the head which caused the child to fall, and in circumstances where physical harm was caused, as verified by CAS.

The terms, conditions and limitations imposed as part of the penalty order, including a course in behaviour guidance and the mentoring sessions, will help to rehabilitate the member and educate her regarding best practices for early learning. This will also help to protect the public.

Having considered all of these factors, the Panel was satisfied that the proposed penalty protects the public interest.

The Panel is aware that no two cases are exactly alike. However, reviewing earlier cases can help determine the level of appropriate penalty. The Panel therefore considered the previous cases that were presented by counsel for the College, including *College of Early Childhood Educators v. Guyett* 2017 ONCECE 3, *College of Early Childhood Educators v. Desson* 2013 ONCECE 9, *College of Early Childhood Educators v. Warden* 2015 ONCECE 5, and *College of Early Childhood Educators v. Coleman* 2017 ONCECE 8. These cases established a range of penalties in circumstances where a member engaged in physical abuse of a child under her supervision, including suspensions in the range of three (3) to six (6) months as well as the imposition of terms, conditions and limitations on the members' certificates of registration. The College submitted that this case warranted a suspension of seven (7) months, which was slightly above this range, and that this reflected the College's and the public's expectations that such conduct warrants a harsher penalty than what had been ordered in the past. The Panel agreed that the public and the profession expected that such conduct would be addressed with more stringent penalties than those awarded previously, and in fact felt that physical abuse of a child warranted a penalty of significantly greater severity than that proposed by the parties. For this reason, the Panel considered rejecting the joint submission as to order, on the basis that it was not sufficiently harsh to address the Member's conduct. However, the Panel did not find that the penalty proposed jointly by the parties was so lenient that it would bring the administration of this College's Discipline Committee into disrepute or that it was contrary to the public interest, and the Panel therefore felt bound to accept the joint submission, based on the guidance of the Supreme Court of Canada in *R. v. Anthony-Cook* 2001 SCC 43.

In future, the Panel feels that the penalty imposed to address misconduct which includes physical abuse of a child needs to be stronger in order to deter this behaviour on the part of members of the profession, as we have noticed an increase in complaints and discipline proceedings involving this type of misconduct.

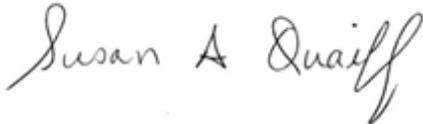
### **REASONS REGARDING ORDER AS TO COSTS**

Subsection 33(5)(4) of the Act provides that in an appropriate case, a panel may make an order requiring a member whom 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.

Costs are not meant to be punitive but are ordered to ensure that the member bears responsibility for paying for part of the actual costs incurred of her misconduct such that the membership does not have to bear the entire costs of one individual's misconduct.

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

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



April 24, 2018

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Susan Quaiff, Chairperson

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Date