

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

Citation: College of Early Childhood Educators vs Mark Lehtonen,
2017 ONCECE 4
Date: 2017-04-21

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 MARK
LEHTONEN, a current member of the College of Early Childhood
Educators.

Panel: Larry O’Connor, Chair
Susan Quaiff, RECE
Sasha Fiddes, RECE

BETWEEN:)	
COLLEGE OF EARLY CHILDHOOD)	Jill Dougherty,
EDUCATORS)	WeirFoulds LLP,
)	for the College of Early Childhood Educators
- and -)	
)	
MARK LEHTONEN)	Mark Lehtonen was not present,
REGISTRATION # 24543)	nor was he represented.
)	
)	
)	
)	
)	Ava Arbuck,
)	McCarthy Tétrault LLP,
)	Independent Legal Counsel
)	
)	Heard: October 27, 2016

REASONS FOR DECISION, DECISION AND ORDER(S)

1. This matter came on for a hearing before a panel of the Discipline Committee (the “Committee”) on October 27, 2016 at the College of Early Childhood Educators (the “College”) at Toronto.

2. A Notice of Hearing, dated July 15, 2016 (Exhibit 1), was served on Mark Lehtonen, RECE (the "Member"), specifying the charges and requesting his attendance before the Discipline Committee of the College on October 27, 2016 for a hearing. Counsel for the College tendered an Affidavit of Service sworn by Lisa Searles on June 10, 2016, confirming that the Member had been served with the Notice of Hearing and an Affidavit of Service sworn by Christine Le Dressay, law clerk, on October 26, 2016, confirming that the Notice of Hearing with the current hearing date had been served on the Member (Exhibit 1).

3. The Panel was satisfied that the Member was served with a Notice of Hearing and was aware of the time and date of hearing. The Member was not in attendance at the hearing, nor was he represented by legal counsel.

THE ALLEGATIONS

4. The allegations against Mr. Lehtonen, as stated in the Notice of Hearing, are as follows:
 - 1) He engaged in conduct that could reasonably be perceived as reflecting negatively on the profession of early childhood education, contrary to Standard IV.E.2 of the College's Standards of Practice and Ontario Regulation 223/08, subsection 2(8);
 - 2) He acted 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);
 - 3) He failed to comply with the Act and the professional misconduct regulation made under the Act (being Ontario Regulation 223/08), contrary to Ontario Regulation 223/08, subsection 2(19);
 - 4) He contravened a law, the contravention of which is relevant to his suitability to

hold a Certificate of Registration, contrary to Ontario Regulation 223/08, subsection 2(20);

- 5) He contravened a law, the contravention of which has caused or may cause a child who is under the member's professional supervision to be put at or remain at risk, contrary to Ontario Regulation 223/08, subsection 2(21); and
 - 6) He conducted himself in a manner that is unbecoming a member, contrary to Ontario Regulation 223/08, subsection 2(22).
5. Counsel for the College submitted a Registrar's Certificate, signed on October 21, 2016 by Beth Deazeley, Registrar and Chief Executive Officer at the College (Exhibit 2). The Registrar's Certificate states that Mr. Lehtonen was a member of the College from January 7, 2010 until he was suspended for non-payment of fees on May 15, 2014. It also states that Mr. Lehtonen entered into a voluntary agreement and undertaking, signed on February 8, 2013, to refrain from engaging in the practice of early childhood education or using any of the titles set out in section 4 of the *Early Childhood Educators Act, 2007* ("ECE Act").
6. As per section 18(3) of the ECE Act, even though Mr. Lehtonen's Certificate of Registration had been suspended on May 15, 2014, he remains subject to the College's jurisdiction for professional misconduct referable to any time during which he held a Certificate of Registration.

AGREED STATEMENT OF FACTS

7. Counsel for the College advised the Panel that an agreement had been reached on the facts and submitted into evidence an Agreed Statement of Facts, signed September 20, 2016 (Exhibit 3). The Agreed Statement of Facts provides as follows:

- 1) Mark Lehtonen (the "Member") was at all times relevant to these allegations

contained in the Notice of Hearing, a registered member of the College of Early Childhood Educators (the "College"). Effective May 15, 2014, the Member's certificate of registration was suspended for non-payment of fees.

- 2) Between on or about December 16, 2012 and on or about December 30, 2012, the Member had possession of nude photographs of a 17-year-old girl, [child 1], which he had obtained from the internet. He proceeded to determine [child 1]'s identity.
- 3) Between on or about December 16, 2012 and on or about December 30, 2012, the Member contacted [child 1] and sent the nude photographs to her. The Member threatened that if [child 1] did not provide him with additional nude images of herself, he would e-mail the photographs in his possession to other individuals.
- 4) [Child 1] reported the Member's threats to the police. After searching the Member's home, the police found electronic devices containing a significant amount of child pornography involving children between 8 and 17 years of age. The images that were stored on the Member's computer included images and videos of child nudity and child pornography. It was the Member and not anyone else who downloaded and stored the images.
- 5) On or about January 11, 2013, the Member was arrested and charged under the Criminal Code with:
 - a) One count of extortion;
 - b) One count of possession of child pornography; and,
 - c) One count of distribution of child pornography.

- 6) On or about January 18, 2013, the Member's employer, Footsteps Family Centre, terminated the Member's employment.

- 7) On or about January 15, 2013, the Member was released on a recognizance of bail, subject to various conditions, one of which was a prohibition from attending any public park, public swimming area, public arena, school yard, daycare centre, community centre, or any other place where persons under the age of 16 are present or can reasonably be expected to be present.

- 8) The Member was subsequently charged with various offences pertaining to events that occurred on or about January 4, 2013. With respect to these matters, the Member accessed, without permission, the e-mail account of a female acquaintance, H.M. The Member surreptitiously recorded video of another female acquaintance, T.K., while she was changing into a bathing suit. The Member was in possession of stolen private images of a female acquaintance, including nude or partially nude images. The Member was charged under the Criminal Code with:
 - a) One count of unauthorized use of a computer;
 - b) One count of voyeurism; and,
 - c) Three counts of possession of property obtained by crime.

- 9) On July 25, 2013, the Member failed to attend for fingerprinting as required by his promise to appear. Therefore, on August 15, 2013, he was charged under the Criminal Code with:
 - a) One count of fail to appear.

- 10) Between on or about November 7, 2013 and on or about November 9, 2013, the Member attended Wiggles and Giggles, an indoor children's play centre located at

24 South Court Street, in Thunder Bay, Ontario. Because the Member was subject to the bail condition set out in paragraph 7 herein, the Member was charged under the Criminal Code with:

- a) One count of breach of recognizance.

11) On September 10, 2015 at the Thunder Bay Court, the Member pled guilty to and was found guilty of:

- a) Extortion, contrary to section 346(1) of the Criminal Code;
- b) Possession of child pornography, contrary to section 163.1(4) of the Criminal Code;
- c) Unauthorized use of computer, contrary to section 342.1(1) of the Criminal Code;
- d) Voyeurism, contrary to section 162(1)(b) of the Criminal Code;
- e) One count of possession of property obtained by crime, contrary to sections 354(1)(a) and 355(b) of the Criminal Code; and,
- f) Breach of recognizance, contrary to section 145(3) of the Criminal Code.

The Member was sentenced to over one year in prison with respect to the above. The charges of distribution of child pornography, fail to appear, and two counts of possession of property obtained by crime were withdrawn.

12) The parties agree that these facts are substantially accurate.

13) The undersigned Member admits that by reason of the facts set out above, he engaged in professional misconduct, as defined in subsection 33(2) of the *Early Childhood Educators Act*, in that:

- a) He engaged in conduct which could reasonably be perceived as reflecting negatively on the profession of early childhood education, contrary to Standard IV.E.2 of the College's Standards of Practice and Ontario Regulation 223/08, subsection 2(8);
- b) He acted 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);
- c) He failed to comply with the Act and the professional misconduct regulation made under the Act (being Ontario Regulation 223/08), contrary to Ontario Regulation 223/08, subsection 2(19);
- d) He contravened a law, the contravention of which is relevant to his suitability to hold a Certificate of Registration, contrary to Ontario Regulation 223/08, subsection 2(20);
- e) He contravened a law, the contravention of which has caused or may cause a child who is under the Member's professional supervision to be put at or remain at risk, contrary to Ontario Regulation 223/08, subsection 2(21); and,

f) He conducted himself in a manner that is unbecoming a member, contrary to Ontario Regulation 223/08, subsection 2(22).

14) The Member understands the nature of the allegations that have been made against him and that by voluntarily admitting to these allegations, he waives his right to require the College to otherwise prove the case against him.

15) The Member understands that the Discipline Committee can accept that the facts herein constitute professional misconduct.

16) The Member understands that depending on any penalty ordered by the Discipline Committee, the panel's decision and reasons may be published, including the facts contained herein and the Member's name.

17) The Member understands that any agreement between him and the College does not bind the Discipline Committee.

18) The Member acknowledges that he has had the opportunity to receive independent legal advice but has declined to do so.

PLEA INQUIRY

8. Counsel for the College submitted a plea inquiry signed by Mr. Lehtonen on September 20, 2016 (Exhibit 4), indicating the following:
 - 1) Mr. Lehtonen understands the nature of the allegations that have been made against him;
 - 2) Mr. Lehtonen understands that by admitting the allegations, he is waiving the right to require the College to prove the case against him and the right to have a hearing;
 - 3) Mr. Lehtonen voluntarily decided to admit the allegations against him;
 - 4) Mr. Lehtonen understands that depending on the order made by the Panel, the Panel's decision and a summary of its reasons may be published in the official publication of the College, *Connexions*, including reference to his name; and,
 - 5) Mr. Lehtonen understands that any agreement between counsel for the College and himself with respect to the order proposed does not bind the Panel.
9. By signing the plea inquiry, Mr. Lehtonen acknowledged he understood the allegations and voluntarily submitted a guilty plea to the allegations of professional misconduct.

DECISION

10. Having considered the Exhibits filed, and based on the Agreed Statement of Facts and guilty plea, and the submissions made by College counsel, the Discipline Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that Mark Lehtonen committed acts of professional misconduct as alleged, more particularly breaches of Ontario Regulation 223/08, section 2, subsections 2(8), 2(10), 2(19), 2(20), 2(21), 2(22) and Standards IV.E.2 of the College's *Code of Ethics and Standards of Practice*.

REASONS FOR DECISION

11. Mr. Lehtonen has pleaded guilty and acknowledged that his conduct in the Agreed Statement of Facts constitutes professional misconduct. As such, the Committee accepts the Member's guilty plea and Agreed Statement of Facts and finds Mr. Lehtonen guilty of professional misconduct.
12. Further, the Discipline Committee has considered Mr. Lehtonen's signed plea inquiry, acknowledging he is pleading guilty and has accepted the Agreed Statement of Facts as if being before the Committee in person. The certified court documentation (Exhibit 5), confirms Mr. Lehtonen pleaded guilty to charges of extortion, possession of child pornography, unauthorized use of a computer, voyeurism, possession of property obtained by crime and breach of recognizance and was convicted of these offences in the Ontario Court of Justice.
13. Mr. Lehtonen's actions have demonstrated overall disregard for the welfare of children, thereby putting children at risk. The Committee finds these offences to be most serious and

intolerable, making Mr. Lehtonen totally unsuitable to be in a position of trust and authority over children.

14. The Committee denounces Mr. Lehtonen's breach of recognizance as a blatant disregard for the Criminal Code of Canada (the "Criminal Code").

JOINT SUBMISSION AS TO ORDER

15. College Counsel and the Member jointly submitted a Joint Submission as to Order (Exhibit 6), signed by the Member on September 20, 2016, which provides as follows:

- 1) Mr. Mark Lehtonen (the "Member") shall be reprimanded by the Discipline Committee in writing, and the fact of the reprimand shall be recorded on the register.
- 2) The Registrar is directed to revoke the Member's Certificate of Registration and to record a notation of the revocation on the register. The Member undertakes (pursuant to the Undertaking and Acknowledgement attached as Schedule "A"), never to re-apply to the Registrar or the College for a new Certificate of Registration or to seek reinstatement of his Certificate of Registration.
- 3) The results of the hearing shall be recorded on the register for an unlimited period of time in accordance with the *Early Childhood Educators Act, 2007* and the College's by-laws.
- 4) The Discipline Committee's Decision and Order shall be published in full, including the Member's name, on the College's website and in summary in the College's publication, *Connexions*.

- 5) The Member and the College agree that if the Committee accepts this Joint Submission as to Order, there will be no appeal of the Committee's decision to any forum, and the parties waive any such right of appeal.
16. As per the Joint Submission as to Order, College Counsel advised the Committee that Mr. Lehtonen signed an undertaking never to reapply to the College for reinstatement of his certificate or for a new certificate, signed September 20, 2016.

SUBMISSIONS ON PENALTY

17. College counsel indicated that while a joint submission is not binding on the Discipline Committee, the Supreme Court of Canada and the Ontario Court of Appeal have held that a joint submission must be given "serious consideration" and should not be rejected unless the Committee is of the view that "the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest."
18. College counsel stated that although Mr. Lehtonen's certificate of registration was suspended for non-payment of fees on May 15, 2014, the professional misconduct occurred while he was a member of the College. Pursuant to 18(3) of the ECE Act, a person whose certificate of registration expires or is revoked, suspended or cancelled continues to be subject to the jurisdiction of the College for professional misconduct, incompetence or incapacity referable to the time when they held a certificate of registration.
19. College counsel submitted that given the College's continuing jurisdiction under s.18, all possible orders under s. 33 of the ECE Act, including the imposition of conditions, suspension and revocation are available to the Discipline Committee, even though Mr.

Lehtonen's certificate of registration is currently suspended for non-payment of fees, making him technically not a member of the College.

20. College counsel maintained that the proposed penalty is appropriate, protects the public interest by serving the functions of general and specific deterrence, is proportionate to the misconduct as found, and is consistent with the penalties imposed by the Discipline Committee of the College in analogous cases, including the College of Early Childhood Educators v. Jeffrey Joseph [2011] and the College of Early Childhood Educators v. Bridget Theobald [2013].

PENALTY DECISION

21. After considering the joint submission made by College Counsel and the Member, the Committee makes the following order as to penalty:

- 1) Mr. Lehtonen (the "Member") shall be reprimanded by the Discipline Committee in writing, and the fact of the reprimand shall be recorded on the register.
- 2) The Registrar is directed to revoke the Member's Certificate of Registration and to record a notation of the revocation on the register. The Member undertakes (pursuant to the Undertaking and Acknowledgement attached as Schedule "A"), never to re-apply to the Registrar or the College for a new Certificate of Registration or to seek reinstatement of his Certificate of Registration.
- 3) The results of the hearing shall be recorded on the register for an unlimited period of time in accordance with the *Early Childhood Educators Act, 2007* and the College's by-laws.

- 4) The Discipline Committee's Decision and Order shall be published in full, including the Member's name, on the College's website and in summary in the College's publication, *Connexions*.

REASONS FOR PENALTY DECISION

22. Mr. Lehtonen was convicted of extortion, possession of child pornography, unauthorized use of a computer, voyeurism, one count of possession of property obtained by crime and breach of recognizance. Mr. Lehtonen's actions are reprehensible. Anyone who possesses child pornography perpetuates the abuse of children and must be dealt with severely. The Committee agrees with the Joint Submission that the maximum penalty is required – immediate revocation of Mr. Lehtonen's Certificate of Registration.
23. The Committee understands that it has the statutory authority (ECE Act, 2007) to direct the Registrar to revoke Mr. Lehtonen's Certificate of Registration immediately and indefinitely. As per the Joint Submission (Exhibit 6), Mr. Lehtonen will permanently refrain from ever reapplying or seeking a certificate of registration with the College (Schedule "A") and this will be noted on the College's register to protect the public interest.
24. This penalty meets the objective of general deterrence to the members of the profession as well as the objective of specific deterrence to Mr. Lehtonen.
25. The fact that the revocation of Mr. Lehtonen's Certificate of Registration will be noted on the College's public register ensures a transparent process that will protect the public interest. Mr. Lehtonen's undertaking not to reapply ensures that he will never practice in the Early Childhood profession again.

26. Mr. Lehtonen demonstrated he was unworthy to maintain his Certificate of Registration with the College. Mr. Lehtonen's actions were criminal. The Committee found that Mr. Lehtonen failed to maintain the standards of the profession by contravening the law. Publication of his name will appear in the newsletter, *Connexions*, and the findings and order of the Committee will be posted on the College's public register. By publishing and posting the findings and order, we are holding Mr. Lehtonen accountable to the public of Ontario. Through this transparent process, the revocation, publication and posting on the public register, assures public confidence in the profession and its practices. A public reprimand offers a transparent written process not only to Mr. Lehtonen but to the College's members and the public.

27. In conclusion, the Committee is confident that this penalty serves in the interest of the public and the profession.

Date: April 21, 2017



Larry O'Connor
Chair, Discipline Panel



Susan Quair
Member, Discipline Panel



Sasha Fiddes
Member, Discipline Panel