

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

Citation: College of Early Childhood Educators vs Dorothy Rainey,  
2013 ONCECE 5  
Date: 2013-05-22

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 Dorothy Rainey, a former member of  
the College of Early Childhood Educators.

PANEL:            Sophia Tate, RECE, Chair  
                      Nici Cole, RECE  
                      Rosemary Sadlier

BETWEEN:	)	
COLLEGE OF EARLY CHILDHOOD	)	Jordan S. Glick,
EDUCATORS	)	WeirFoulds LLP,
	)	for the College of Early Childhood Educators
	)	
- and -	)	
	)	
DOROTHY RAINEY	)	Dorothy Rainey,
REGISTRATION # 08291	)	on her own behalf
	)	
	)	
	)	Caroline Zayid,
	)	McCarthy Tétrault LLP,
	)	Independent Legal Counsel
	)	
	)	Heard: May 29, 2013

**REASONS FOR DECISION, DECISION AND ORDER(S)**

This matter came on for hearing before a panel of the Discipline Committee (the “Committee”) on May 29, 2013 at the College of Early Childhood Educators (the “College”) at Toronto.

A Notice of Hearing dated March 14, 2013 [Exhibit 1(a)] was served on Dorothy Rainey (the “Member”) specifying the charges and requesting the Member’s attendance before the Discipline Committee of the College of Early Childhood Educators (the “Committee”) on April 16, 2013 to set date for a hearing. Counsel for the College submitted an Affidavit of Service sworn

by Agatha Wong, Hearings Coordinator [Exhibit 1(b)], and sworn March 27, 2013, detailing confirmation that the Notice of Hearing was served on the Member.

Counsel for the College tendered a Consent form dated April 11, 2013 [Exhibit 2(a)], indicating that the parties consented to hold the hearing on May 29, 2013 at 9:00 a.m. College counsel submitted a second Consent form dated May 23, 2013 [Exhibit 2(b)], stating that the parties consented to hold the hearing on May 29, 2013 at 1:00 p.m. The second Consent form further indicates that the Member agreed to have her matter heard by the same panel who heard a matter involving one of her former employees, Cynthia Skinner.

The Member was in attendance at the hearing and was not represented by legal counsel.

## **THE ALLEGATIONS**

The allegations against the Member, as stated in the Notice of Hearing, are as follows:

IT IS ALLEGED that Dorothy Rainey (the “**Member**”), is guilty of professional misconduct as defined in subsection 33(2) of the ECE Act, in that:

- (a) she failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8), in that:
  - (i) she failed to know, understand and abide by the legislation, policies and procedures that are relevant to her professional practice and to the care and learning of children under her professional supervision, contrary to Standard IV.A.2 of the College’s Standards of Practice;
  - (ii) she failed to work collaboratively with colleagues in her workplace in order to provide a safe, secure, healthy and inviting environment for children and families and failed to support, encourage and work collaboratively with her co-workers to enhance the culture of her workplace, contrary to Standard IV.C.1 of the College’s Standards of Practice; and
  - (iii) she failed to provide guidelines, parameters and direction to supervisees that respected their rights and failed to ensure a level of supervision which was appropriate in light of her supervisees’ education, training, experience and the activities being performed, contrary to Standard IV.C.3 of the College’s Standards of Practice; and
- (b) she 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).

Counsel for the College submitted an affidavit signed on May 23, 2013 by S.E. Corke, Registrar and Chief Executive Officer of the College (Exhibit 3). The affidavit outlines the historical changes that occurred since the Member became a member of the College and specifies that her current registration status is “Cancelled/Resigned”.

Although the Member has submitted her resignation to the College, the allegations made against her are related to events that took place when her membership was still current. It is therefore within the jurisdiction of the Committee to adjudicate this matter, as stipulated by subsection 18(3) of the ECE Act.

### **AGREED STATEMENT OF FACTS**

Counsel for the College advised the Committee that an agreement had been reached on the facts and submitted into evidence an Agreed Statement of Facts, signed May 22, 2013 (Exhibit

4). The Agreed Statement of Facts provides as follows:

1. Dorothy Rainey (“**Ms. Rainey**”) 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**”).
2. On July 25, 2011, Ms. Rainey was promoted to Regional Supervisor at YMCA Child Care, Parry Sound YMCA (the “Centre”), and she managed 15 employees, including Ms. Cynthia Skinner, RECE.
3. In early February 2012, Ms. Lori Gerard, an ECE placement student, observed Ms. Skinner’s behaviour, and she expressed the following concerns to her college-placement advisor:
  - Ms. Skinner yelled at the children daily;
  - Ms. Skinner forced-fed a girl;
  - Ms. Skinner did not help the children put on their coats and gloves. If the children could not zip up their coats themselves or put on their gloves, they would go outside with their coats unzipped and without gloves;
  - In one instance, Ms. Skinner grabbed a child forcefully;
  - During nap time, Ms. Skinner placed her body on children so that they could not move around. This is what she called “snuggling.” If children did not listen to her, she said to them, “Don’t let me come over there and snuggle you”;

- Ms. Skinner intimidated the staff, including Ms. Rainey.
4. On February 28, 2012, the Centre began a full review of its operations and met with staff to discuss the Centre's high turnover rate and allegations of inappropriate treatment of staff and children.
  5. On March 7, 2012, Ms. Rainey received a performance memo, which outlined concerns about her role as a supervisor, including her leadership and relationship-building skills. The memo stated that Ms. Rainey was expected to fully cooperate with the ongoing investigation and work collaboratively with senior staff in order to improve her skills.
  6. On March 30, 2012, Ms. Rainey resigned from the Centre.
  7. Two separate investigations were conducted by the Children's Aid Society in respect of child protection concerns at the YMCA. The first investigation was closed as a result of insufficient information to support the allegations. The second investigation verified two allegations against Ms. Skinner which occurred in the winter of 2011 at the YMCA as follows:
    - One incident of force-feeding involving a child who was under the age of three;
    - One incident of restraint involving a child who was under the age of three.

Ms. Rainey was not aware of the second investigation.

8. Ms. Rainey admits that:
  - As the Regional Supervisor, she was responsible for the well-being of the children in her programs and for the proper training and supervision of her staff. In that role:
    - She failed to report certain offenses to the CAS, which she was required by law to report;
    - She failed to adequately train and orient new staff;
    - She failed to perform certain supervisory functions that were necessary to support the development of staff and to facilitate a safe and nurturing environment for children;
    - She failed to handle employees' concerns about the hostile work environment.

If this matter were to proceed to hearing, Ms. Rainey would testify that she received only positive reviews during her entire employment at the YMCA. When she was promoted to Regional Supervisor, her workload increased significantly and was more heavily weighted towards paperwork and meetings outside the Centre. As a result, Ms. Rainey was not able to oversee the Centre on a day-to-

day basis as she had done in the past. Further, 2 of 5 full-time early childhood educators employed at the Centre were on maternity leave, creating tension among part-time and contract staff. Nonetheless, Ms. Rainey acknowledges that in accepting the role as Regional Supervisor, she failed to discharge the obligations as noted above.

9. The parties agree that these facts are substantially accurate.

## **GUILTY PLEA**

10. Ms. Rainey admits that by reason of the facts set out above, she engaged in professional misconduct, as defined in subsection 33(2) of the *Early Childhood Educators Act, 2007*, in that:

- (a) she failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8);
- (b) she failed to know, understand and abide by the legislation, policies and procedures that are relevant to her professional practice and to the care and learning of children under her professional supervision, contrary to Standard IV.A.2 of the College's Standards of Practice;
- (c) she failed to work collaboratively with colleagues in her workplace in order to provide a safe, secure, healthy and inviting environment for children and families and failed to support, encourage and work collaboratively with her co-workers to enhance the culture of her workplace, contrary to Standard IV.C.1 of the College's Standards of Practice;
- (d) she failed to provide guidelines, parameters and direction to supervisees that respected their rights and failed to ensure a level of supervision which was appropriate in light of her supervisees' education, training, experience and the activities being performed, contrary to Standard IV.C.3 of the College's Standards of Practice; and
- (e) she 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).

11. Ms. Rainey understands the nature of the allegations that have been made against her and that by voluntarily admitting to these allegations, she waives her right to require the College to otherwise prove the case against her.

12. Ms. Rainey understands that the Discipline Committee can accept that the facts herein constitute professional misconduct.

13. Ms. Rainey understands that the panel's decision and reasons may be published, including the facts contained herein along with her name.

14. Ms. Rainey understands that any agreement between her and the College does not bind the Discipline Committee.

15. Ms. Rainey acknowledges that she has had the opportunity to receive independent legal advice but has declined to do so.

16. Ms. Rainey and the College consent to the panel viewing the Notice of Hearing, this Agreed Statement of Facts and the Joint Submission as to Penalty prior to the start of the hearing.

Counsel for the College also submitted a plea inquiry signed by the Member on May 22, 2013 (Exhibit 5), which indicates the following:

- The Member understood the nature of the allegations made against her;
- The Member understood that by admitting to the allegations, she is waiving her right to require the College to prove the case against her and the right to have a hearing;
- The Member voluntarily decided to admit to the allegations against her;
- The Member understood that depending on the order made by the Committee, the Committee's decision and a summary of its reasons could be published in the College's official newsletter, including reference to her name; and
- The Member understood that any agreement between counsel for the College and herself with respect to the order proposed does not bind the Committee.

## **DECISION**

Having considered the Exhibits filed, and based on the Agreed Statement of Facts and guilty plea, and the submissions made by College counsel, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that the Member committed acts of professional misconduct as alleged, more particularly breaches of Ontario Regulation 223/08, section 2, subsections (8) and (10) and Standards IV.A.2, IV.C.1 and IV.C.3 of the College's *Code of Ethics and Standards of Practice*.

## **REASONS FOR DECISION**

Evidence in support of each of the allegations in the Notice of Hearing is found in the Agreed Statement of Facts. The Member pleaded guilty and acknowledged that her conduct as described in the statement constitutes professional misconduct. As such, the Committee accepts the Member's guilty plea and the Agreed Statement of Facts.

By failing to fulfill her role as Regional Supervisor, the Member has demonstrated a disregard for the dignity of children and families at the Centre. Furthermore, through her inaction, she has neglected her responsibility to provide guidelines, parameters and direction to her supervisees and to support a safe, healthy and inviting environment for children and families.

## **JOINT SUBMISSION ON PENALTY**

College counsel and the Member submitted a Joint Submission as to Penalty (Exhibit 6), which provides as follows:

1. Ms. Rainey shall be reprimanded by the Discipline Committee and the fact of the reprimand shall be recorded on the Register of the College.
2. Having resigned her membership in the College, Ms. Rainey undertakes (pursuant to the undertaking executed and attached as Schedule "A") to not re-apply to the College for a period of 6 months following the Discipline Committee decision.
3. The results of the hearing shall be recorded on the Register.
4. The Discipline Committee's finding and Order, including reference to the undertaking signed by Ms. Rainey, shall be published in full on the College's website and in summary in the College's newsletter, *Connexions*.
  - (a) Ms. Rainey and the College will make submissions to be considered by the Discipline Committee regarding whether the publication of the findings and Order of the Discipline Committee on the College's website and in *Connexions* should include reference to Ms. Rainey's name.
5. Ms. Rainey and the College agree that if the Committee accepts this Joint Submission as to Penalty, there will be no appeal of the Committee's decision to any forum.

Counsel for the College submitted that the Committee should accept the joint submission as it protects the public interest by generally deterring other early childhood educators from

engaging in similar conduct. College counsel stated that issues of rehabilitation and specific deterrence are no longer relevant, given that the Member has resigned from the College. The Committee cannot play a part in the Member's rehabilitation, and there is no need for the Committee to specifically deter the Member as she is no longer a registered early childhood educator. A reprimand is therefore the last opportunity for the Committee to dialogue with the Member and to convey disapproval of her conduct. Counsel for the College further submitted that although the Member's resignation affects the Committee's ability to impose a suspension, the Member's undertaking to not apply for reinstatement for a six-month period is akin to a six-month suspension.

While the College and the Member agreed on the reprimand and the publication of the Committee's decision, College counsel indicated that the parties did not reach an agreement as to the terms of publication. College counsel submitted that the Committee should publish its decision with the Member's name, stating that publication with name serves the function of general deterrence and is necessary for maintaining public confidence in the integrity of the College's discipline process. In support of this view, College counsel cited a number of Ontario College of Teachers discipline cases in which hearing panels denied a member's request to remain anonymous in the publication of the hearing's outcome.

College counsel further stated that publication with name is consistent with previous penalties imposed by the Committee, indicating that in all but one of the Committee's decisions, publication has been ordered with the member's name.

The Member submitted that the Committee's finding and order be published without reference to her name as she is just coming to the end of an unblemished career. She stated that in all her years at the Centre, she had only received positive performance reviews. The Committee was provided with nine documents [Exhibit 7 and Exhibit 8(a)], two of which are

letters written by nurse practitioner Laura Moon in 2012 indicating that workplace concerns had taken a toll on the Member's health and was affecting her ability to perform work duties. The seven other documents are letters from parents and colleagues, indicating that the Member had a very positive impact on children, families and employees at the YMCA, given her willingness to make herself available to serve parents and colleagues. The Committee was also provided with a copy of an article about the YMCA [Exhibit 8(b)], which features a photo of the Member and a child and describes how the YMCA is making a difference in this child's life.

The Member further submitted that she will not take on supervisory roles, stating that she is currently employed as a casual assistant for a local agency and is not left alone with children. The Member stated that she will be able to keep her position if her name is not published but that she risks losing her job if her name is published.

### **PENALTY DECISION**

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

1. The Member is to be reprimanded in person by the Discipline Committee, and the fact of the reprimand is to be recorded on the public register.
2. The Registrar is directed to record the results of this hearing on the public register.
3. The Discipline Committee's finding and order shall be published, including reference to the undertaking signed by the Member, with the Member's name, in full on the College's website and in summary in the College's official publication, *Connexions*.

## **REASONS FOR PENALTY DECISION**

The Committee accepts the joint submission made by counsel for the College and the Member, having determined that it falls within a reasonable range of penalties given the Member's misconduct.

The Member's resignation from the College limits the penalty orders that the Committee can issue in that it cannot direct the Registrar to suspend the Member's Certificate of Registration under subsection 33 of the ECE Act. However, the Committee notes that the Member's undertaking ensures that she will not reapply for the reinstatement of her membership for at least six months. Should the Member apply for reinstatement after this period, the College would consider her application, but she is not guaranteed readmission into the profession. As such, the resignation and undertaking have the effect of protecting the public interest.

Beyond the Member's undertaking, the Committee has ordered a penalty that serves the functions of deterrence and public protection. The reprimand helps the Member to understand the gravity of her inaction and serves as a specific deterrent, dissuading the Member from engaging in similar conduct in the future.

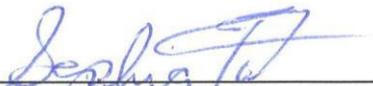
Although the Member submitted that the Committee's decision should be published without reference to her name, the Committee has not been provided with compelling evidence that such anonymity is necessary. Publication with name is informative to employers and members of the public, and the Committee is not satisfied that the reasons provided by the Member outweigh the need for public protection and transparency.

Furthermore, the Committee is of the view that publication on the public register, on the website and in the College newsletter with reference to the Member's name acts as a general deterrent to early childhood educators at large. It indicates to members of the profession that they are held accountable for their actions and inaction and demonstrates that the College

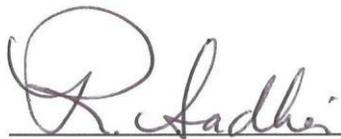
will follow through with concerns about misconduct. This measure will remind registered early childhood educators who are in positions of authority that they have a particularly important duty to adhere to the College's ethical and professional standards at all times.

In conclusion, the Committee is confident that the penalty serves the interests of the public and of the profession.

Date: May 29, 2013

  
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Sophia Tate, RECE  
Chair, Discipline Panel

  
\_\_\_\_\_  
Nici Cole, RECE  
Member, Discipline Panel

  
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Rosemary Sadler  
Member, Discipline Panel

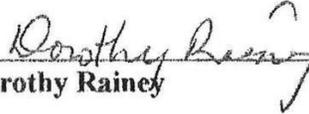
SCHEDULE "A"

UNDERTAKING TO THE COLLEGE OF EARLY CHILDHOOD EDUCATORS

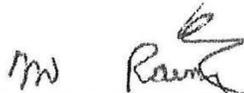
This Undertaking is given in connection with Discipline Committee hearing (the "Hearing") of the College of Early Childhood Educators (the "College") in respect of its former member, Ms. Dorothy Rainey, who resigned from the College prior to the Hearing.

Ms. Rainey agrees to not apply for the reinstatement of her membership with the College for a 6 month period from the date of the Discipline Committee decision.

DATED: ~~April~~ <sup>May</sup> 22, 2013

  
\_\_\_\_\_  
Dorothy Rainey

DATED: ~~April~~ <sup>May</sup> 22, 2013

  
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Witness