

NOTICE OF PUBLICATION BAN

In the matter of College of Early Childhood Educators and Stephanie Alexandra Todd this is notice that the Discipline Committee ordered under subsection 35.1(1) of the *Early Childhood Educators Act, 2007* that information that may identify the person described in this decision as the complainant may not be published, broadcasted, or transmitted in any manner.

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

PANEL: Garry Bates, Chairperson
Ann Hutchings, RECE
CeCil Kim, RECE

BETWEN:)
)
COLLEGE OF EARLY) Vered Beylin
CHILDHOOD EDUCATORS) for the College of Early Childhood Educators
)
)
- and -)
)
Stephanie Alexandra Todd) Not present and not represented
REGISTRATION # 63361)
)
)
)
)
)
)
) Elyse Sunshine,
) Rosen Sunshine LLP
) Independent Legal Counsel
)
) Heard: July 14 & 16, 2021

DECISION AND REASONS

This matter was heard by a panel of the Discipline Committee (the "Panel") of the College of Early Childhood Educators (the "College") on July 14 and 16, 2021. The hearing proceeded electronically (by videoconference) pursuant to the *Early Childhood Educators Act, 2007* (the "Act"), *the Hearings in Tribunal Proceedings (Temporary Measures) Act, 2020* and the College's Rules of Procedure of the Discipline Committee and of the Fitness to Practise Committee.

At the outset, the Panel noted that the hearing was being recorded in the Zoom platform at the direction of the Panel for the hearing record, and the Panel ordered that no person shall make any audio or video recording of these proceedings by any other means.

MEMBER'S NON-ATTENDANCE AT THE HEARING

Stephanie Alexandra Todd (the "Member") was not present for the hearing. Counsel for the College provided evidence by way of affidavit (Exhibits 1, 3, 4 and 4A) outlining the College's attempts to communicate with the Member about the hearing. The affidavits provided by the College included evidence that the College had informed the Member of the purpose, date, time, and location of the hearing on several occasions and by several means of communication (including email, voicemail and registered mail).

The evidence provided satisfied the Panel that the Member had been informed of the purpose, date, time and location of the hearing

The Panel was further satisfied that it had continuing jurisdiction over the Member, even though she was suspended for non-payment of fees. Accordingly, the hearing proceeded in the Member's absence.

PUBLICATION BAN

The Panel ordered a publication ban following a motion by College counsel, pursuant to section 35.1(1) of the Act. The order bans the public disclosure, publication and broadcasting outside of

the hearing room, the name of or any information that may identify the person described in this decision as the complainant

THE ALLEGATIONS

The allegations against the Member were contained in the Notice of Hearing dated April 30, 2021, (Exhibit 1) which provided as follows:

1. At all material times, the Member was registered with the College and was employed as a Registered Early Childhood Educator (“RECE”) at a child care centre (the “Centre”), located in Toronto, Ontario.
2. On or about the evening of February 9, 2018, the Member attended an off-site party organized by the Centre for its staff. During the evening the Member consumed alcohol. At approximately 9:35 p.m. the Member appeared to be intoxicated. She approached the Complainant, a male RECE who was standing near the bar. The Member grabbed the Complainant’s penis, slapped his buttocks and then swiped her finger across his buttocks.
3. The Complainant was very distraught by the Member’s actions. He immediately looked at her and told her that the touch was unwelcomed. The Member responded *What, you’re gay, you have no attraction towards me, it’s ok*. The Member’s conduct upset the complainant, who immediately left the party.
4. By engaging in the conduct set out in paragraphs 2 and 3 above, the Member engaged in professional misconduct as defined in subsection 33(2) of the Act, in that:
 - a) The Member failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8), in that:
 - i. The Member failed to model professional values, beliefs and behaviours with children, families and colleagues, and/or failed to understand that her conduct reflects on her as a professional and on her profession at all times, contrary to Standard IV.C.4 of the College’s Standards of Practice;

- ii. The Member failed to understand that she is responsible for maintaining and managing professional boundaries with children, families and colleagues, contrary to Standard V.B.1 of the College's Standards of Practice;
 - iii. The Member failed to understand the boundary violations with children, families or colleagues include sexual misconduct and non-sexual boundary violations, contrary to Standard V.B.4 of the College's Standards of Practice; and
 - iv. The Member failed to establish and maintain clear and appropriate boundaries in professional relationships with children under their professional supervision, their families and colleagues, contrary to Standard V.C.1 of the College's Standards of Practice;
- 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 Ontario Regulation 223/08, subsection 2(10); and/or
- c) The Member acted in a manner that is unbecoming a member, contrary to Ontario Regulation 223/08, subsection 2(22).

THE MEMBER'S PLEA

As the Member was neither present nor represented by counsel, the hearing proceeded on the basis that the Member denied allegations as set out in the Notice of Hearing.

This matter proceeded as a contested hearing.

EVIDENCE

Documentary Evidence:

The following documents were entered into evidence at the hearing:

Exhibit #	Description
Exhibit 1	Notice of Hearing with Affidavit of Service
Exhibit 2	Registrar's Certificate
Exhibit 3	Affidavit of D.G. (College Prosecutions Clerk)
Exhibit 4	Supplementary Affidavit of D.G.
Exhibit 4A	Hearings Office email to the Member
Exhibit 5	Affidavit of the Complainant
Exhibit 6	Affidavit of A.S. (College Investigator)

Summary of Evidence

The Panel heard oral testimony from the Complainant (summarized below). Additionally, he provided the Panel with an affidavit (the "Complainant's Affidavit") which included an Incident Report Letter written at the request of his employer (Exhibit 5).

The College also submitted an Affidavit from A.S., a College Investigator (the "A.S. Affidavit") (Exhibit 6). The College submitted that the Panel could accept the documentary evidence contained in the A.S. Affidavit as witness evidence. Although the individuals were not called to testify, the College submitted that hearsay evidence is admissible in these discipline proceedings and the Panel could accept the evidence as presented. The A.S. Affidavit contained a chronological compilation of investigative documents and included emails, letters and interviews collected over the course of the College's Investigation into the complaint made by the Complainant.

Included in the A.S. Affidavit were letters and documents from the Director and the Assistant Director at the Centre where the Member and the Complainant worked including; the Mandatory Employers Report ("MER"), the Centre's Sexual Harassment Policy (the "Policy"), the Centre's Incident Reports, and letters of disciplinary action.

The A.S. Affidavit also contained the Investigator's notes, both formal and rough of interviews of the Complainant and Centre Staff as well as two letters of response from the Member and one email from the Member with text messages attached.

Evidence of the Complainant

The Complainant is a RECE and his registration with the College has been, and remains, in good standing. At all material times he was employed, and continues to be employed, at the Centre.

He described the Centre in glowing terms, as very supportive with a family-like atmosphere. The Centre sponsored staff social events often throughout the year.

He and the Member did not work in the same room at the Centre, yet they sometimes took breaks together and attended many of the same frequently held work sponsored social events. He described his relationship with the Member as friendly and professional. The Complainant stated that he and the Member did not have any romantic involvement, and prior to the incident, he had never had any concern about or issues with her.

On Friday, February 9, 2018, at 6:30 p.m., the Centre hosted a social event for the Centre's staff in a party room, located within a condominium building (the "Social Event"). Staff members were permitted to bring and consume alcohol at the Social Event.

The Complainant arrived at the Social Event by himself at approximately 6:45 p.m., He believed that the Member was already there before him. He described the condominium party room as being large, with only about 25 out of 42 staff in attendance, so they were spread out. The room was noisy, with loud music playing and dimmed mood lighting.

At around 9:30 p.m. the Complainant was at the bar, where the staff bags were being stored, retrieving his IPAD. Other Staff were on the opposite side of the bar.

The Complainant stated that the Member approached him and grabbed his penis over his pants, slapped his buttocks and swiped her finger across his buttocks. He said that the touch was forceful, but not painful.

The Complainant testified that the Member's touch was unwelcome and made him feel uncomfortable. It was inconsistent with what he knew of the Member.

The Complainant told the Member her actions were not ok. The Member responded "*What, you're gay, you have no attraction towards me, its ok.*" The Member was standing in close

proximity to the Complainant but backed off when he refused her touch. Her speaking tone was sarcastic and nonchalant. The Member's comments made him feel sad.

The Complainant advised that his tone of voice, at the time of the incident, was quiet because he did not want to make a scene. There were no eyewitnesses to the incident.

During the Social Event, the Complainant consumed perhaps two glasses of wine. The Member seemed intoxicated and he recalled that she was drinking tequila.

The Complainant left the Social Event at 9:35 p.m. after the incident, via Uber, because he felt vulnerable. He had planned on staying a half hour later. He did not report the incident to anyone that weekend or when he returned to work on Monday, February 12, 2018. He didn't want to discuss it with anyone he didn't know. He was thinking about what to do.

On Tuesday, February 13, 2018 he discussed the incident with the Member before starting work. He asked if she had any recollection of what happened at the Social Event. She stated that she did not remember the incident and apologized, saying she felt like an "asshole" for doing it. The Complainant advised the Member that he would be speaking to both the Assistant Director and the Director about the incident as it should not have happened. The Member again apologized saying that she was so sorry that the incident had happened. He had no further interactions with the Member.

The Complainant reported the incident as he had advised the Member. He was aware that the Centre had investigated the incident and suspended the Member from work for one day. He felt uneasy about the one-day suspension which the Member received as he felt that if the situation was reversed, he would have been fired on the spot or received a much greater suspension.

The Complainant also testified that the Centre's social events policies have changed since the incident and that staff social events are now held at restaurants.

Evidence of D.M.

D.M. Is the Director of the Centre. Her evidence was contained in the A.S. Affidavit. She filed

the MER after leading an internal investigation of the reports that came from the incident on the evening of February 9, 2018, at the Social Event.

Following the Centre's internal investigation, D.M. issued a letter dated February 15, 2018 of reprimand to the Member and informed the Member that she was suspended from the Centre for one day (the "Suspension Letter"). In the Suspension Letter, D.M. reiterated that the Complainant had informed the Centre of the incident and alleged that at the Social Event, the Member had touched his genitals and buttocks and that when he had informed her that her conduct was not ok, she had replied that he was likely gay.

The Suspension Letter went on further to state that it was the understanding of the Centre's supervisors that the Member had no recollection of the incident and that she was intoxicated. As this was a Centre hosted function, the expectation was that staff would conduct themselves in a professional manner.

The Member did not dispute the Suspension Letter and signed her acknowledgement.

In a letter to the Complainant dated February 16, 2018, D.M. wrote that she and the Member had discussed the matter and the Member reiterated her lack of knowledge of the event, although she did not deny it could have happened. She reported that the Centre found the Member's actions were in violation of the Policy

The Policy defines workplace sexual harassment as follows:

Engaging in a course of vexatious comments or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome. (Occupational Health and Safety Act 2016)

The Policy further states that *Sexual violence and harassment may be verbal, physical, deliberate, unsolicited or unwelcome. It may be one incident or a series of incidents.*

Evidence of S.M.

S.M. is the Assistant Director at the Centre and has worked there for approximately 30 years. S.M.'s testimony was contained in the A.S. Affidavit by way of the notes from her interview with A.S.

On February 13, 2018, the Complainant asked S.M. to have a private discussion where he relayed the details of the incident that occurred at the Social Event.

After speaking with the Complainant, S.M. reviewed the Policy. She then gave the Complainant a copy of the Policy.

S.M. spoke with the Member on the afternoon of February 13, 2018 and informed her about the information she received from the Complainant. She gave the Member a copy of the Policy. During S.M.'s conversation with the Member, the Member indicated that she had been intoxicated at the Social Event and could not remember the incident.

S.M. indicated that she observed the Member consume alcohol at the Social Event but it did not seem like an excessive amount. S.M. left the Social Event at 9:00 pm and was uncertain if the Member consumed alcohol after 9:00 pm.

S.M. stated that when the Member was at work, she was typically quiet and reserved but during the Social Event the Member was very affectionate towards people and at times, put her arm around people. S.M. stated this seemed out of character for the Member.

S.M. relayed that the Complainant and the Member did not work in the same room at the Centre, but they were friendly with each other and there were times that they had breaks together.

As a result of the Centre's investigation into the incident, the Member was given a formal written reprimand and a one day suspension. S.M. stated that disciplinary action was necessary, as sexual harassment cannot be tolerated.

S.M. stated that shortly after the incident, the Member's employment was terminated for an unrelated matter.

Evidence of M.J. and K.D.

M.J. and K.D. were staff members of the Centre and were present at the Social Event. Their evidence was contained in the Centre's incident report prepared by S.M.

While, M.J. was present at the Social Event, he did not observe the incident and said that nothing unusual or troubling had occurred that night.

K.D. was also present at the Social Event and reported that she stayed until the end of the evening to do the security check. She indicated that near the end of the gathering, it appeared that the Member was intoxicated and was being quite affectionate to several of the male staff members. She did not witness any direct interaction between the Complainant and the Member.

Evidence of the Member

Although the Member was not present at the hearing and did not present any evidence, there was evidence from her contained in the A.S. Affidavit. This evidence consisted of a letter she wrote to the Centre, dated February 14, 2018, her response to the College, dated January 22, 2020, and an email exchange she had with A.S., dated February 3, 2020 and her further response to the College, dated February 17, 2020.

The Member worked at the Centre from August 14, 2017, until approximately one month after the incident.

On February 14, 2018, she wrote to the Centre, expressing that she was very sorry for what the Complainant had said that she did. The Member expressed shock and had no idea that the incident had happened. She said that she would never touch anyone that she worked with, that this behaviour was not who she was and that she would never make a comment about someone's sexual orientation. She would not disrespect someone like that.

On January 22, 2020, the Member wrote to the College expressing her anger and shock at the investigation and describing it as a threat to her new job. She denied the incident and accused the Complainant of falsifying the incident. She indicated that there was no proof of the incident and she only apologized in order to diffuse the situation.

She felt attacked by the Centre's supervisors when they tried to make her believe that she was so intoxicated that she acted in a way that she believes is contrary to her nature.

The Member subsequently provided three text messages from Centre colleagues who stated that they did not see the incident.

SUBMISSIONS OF THE PARTIES ON LIABILITY

College Submissions

The College submitted that it had provided evidence to support the allegations set out in the Notice of Hearing based on a balance of probabilities.

The College submitted that the parties had two different versions of the events at issue. However, the College submitted that the Complainant's version of events remained consistent, while the Member's changed. The evidence established that at the Social Event, the Member became intoxicated and she was observed not to be behaving in her usual manner. While there was no direct witness to the events at issue, other than the Complainant and the Member, the College submitted that the Panel should find it more likely than not that the events took place as described by the Complainant.

The College asserted that the evidence supported the allegations that she failed to maintain the standards of the profession by engaging in sexual harassment of a colleague. The College submitted that because this was a straightforward case where the breach of standards was obvious, expert evidence was not required.

The College submitted that the Member's behaviour was clearly conduct unbecoming and expert evidence is also not required to establish that. The Member's behaviour suggests that she is unlikely to meet her professional obligations and it reflects negatively on the profession.

Member's Submissions

The Member was not present and did not make any submissions

PANEL'S CREDIBILITY ASSESSMENT

As there were no witnesses to the incident, credibility was an important consideration. In considering credibility, the Panel had regard to both the accuracy of the witnesses' evidence and their truthfulness. The Panel considered the evidence of the witnesses and made the following assessments as to their credibility:

The Complainant

The Panel recognized that the Complainant was not subject to cross examination and his evidence was therefore uncontroverted.

The Complainant testified in a clear and straightforward manner. The Panel found no inconsistencies with his testimony.

The Panel found his description of events to be plausible. His description of events accorded with common sense. Although there were no eyewitnesses to the incident, this is often the case with unwanted sexual encounters. The room where the Social Event was held was big, noisy and dark, so it is plausible that the incident went unseen by others. Also, the fact that the Complainant left the Social Event quickly and quietly, would reasonably amount to the event continuing and no one noticing that there was an issue.

The Complainant had no motive or bias. He had worked at the Centre for several years and had a permanent position and some seniority. He had a collegial working relationship with the Member. Evidence provided to the Panel, from all sources, corroborates that there was only a professional working relationship between the Member and the Complainant. He had little to gain and possibly could face some embarrassment in bringing the matter forward.

The fact that the Complainant wanted to reflect on the incident before making a report is not surprising given he was shocked at the occurrence of the incident. In any event, there is no typical way to respond after someone has been the victim of an unwanted sexual encounter.

The Complainant's evidence that the Member was not acting in her usual professional work manner at the Social Event is consistent with the evidence from S.M. Further, evidence collected from S.M. and K.D. corroborates his testimony that the Member was intoxicated.

The Panel found the Complainant to be a credible witness, and his description of the events of February 9, 2018 to be reliable.

A.S.

The Panel found A.S. to be a credible witness. A.S. conducted an impartial investigation into the events at issue. She made contemporaneous notes of her investigation.

The Panel did not identify any inconsistencies in the Investigator's evidence and no issues were raised about the nature of the investigation.

D.M. and S.M.

The Panel found the evidence presented by both the Director and Assistant Director of the Centre to be credible and consistent with information presented by other witnesses. The internal investigation which they conducted was contemporaneously documented with notes and emails to the involved staff.

There was no suggestion that D.M. or S.M. had any interest in the outcome of the hearing. They reported the incident by way of a MER, as is their duty, and no one claimed to have seen anything that they did not personally witness.

K.D. and M.J

The Panel was given very little evidence from the staff members at the Centre. The evidence of K.D. was only useful to corroborate that the Member was indeed consuming alcohol, a fact that

the Member did not dispute, and that the Member was being affectionate towards other male staff members. The evidence of M.J. was of no evidentiary value.

The Member

The Member did not attend the hearing, was not represented and provided no sworn evidence. This is her right. The Panel was able to consider her credibility in relation to the documents from the Member contained in the A.S. Affidavit. The letters from the Member were internally inconsistent and contradictory.

The Member's letter to the Centre, which was written just after the incident, is apologetic. She admits that she had no recollection of the incident. In contrast, two years later, she writes to the College and makes accusations against the Complainant and her Supervisors. These accusations appear to have no basis and were not corroborated.

The Member asserts that she lost her job because of the Complainant, but this is not plausible and inconsistent with external evidence from the Centre which establishes that she lost her job because of unrelated performance issues.

In the evidence of D.M. and S.M. the Panel notes the Member's own signed acknowledgement of the incident in the February 15, 2018 Suspension Letter. This contradicts the Member's responses to the College in 2020

The Panel also did not give weight to the text messages from colleagues sent by the Member to the College because neither the people nor the contents were identifiable or verifiable.

The Panel finds the Member not to be credible.

FINDINGS ON THE ALLEGATIONS AND REASONS

The College was required to prove the allegations of professional misconduct on a balance of probabilities with clear, cogent and convincing evidence. In other words, the Panel had to

decide whether, based on the evidence, it was more likely than not that the alleged acts of professional misconduct occurred.

1. Did the events of February 9, 2018 occur?

In making factual findings, the Panel considered 2 questions:

- a) *Did the Member approach the Complainant, grab his penis, slap his buttocks and swipe her finger across his buttocks, and*
- b) *Did the Member respond to concerns raised by the Complainant about her conduct by saying "What you're gay, you have no attraction towards me, it's ok?"*

Based on the careful consideration of evidence, and on the credibility assessment outlined above, the Panel makes the following findings with respect to the facts alleged in paragraphs 2 and 3 of the Notice of Hearing:

The Panel finds that it is more likely than not that the Member engaged in the sexual touching and harassment towards the Complainant at the Social Event, The Panel found the Complainant to be a credible witness and accepted his version of events. The Complainant was consistent in his description of events that occurred at the Social Event, the Member grabbed his penis, slapped his buttocks and then swiped her finger across his buttocks. When he responded to her conduct, the Member immediately replied, "*What you're gay, you have no attraction towards me, it's ok.*" The Complainant's evidence was uncontroverted. The Member's evidence in her letter of February 13, 2018 to the Centre is that she did not recall the incident and while she does not believe she would do such a thing, she did not deny that it could have happened, nor does she state that these are all false accusations. The Member simply apologized for her behavior. This letter was written shortly after the events at issue and it is only two years later, when writing to the College, that the Member actually denies the incident and accuses the Complainant of lying.

There is ample evidence that the Member was intoxicated at the Social Event and this could contribute both to why the Member may have acted in a way that was out of character for her but also why she perhaps could not recall the incident. Witnesses, including the Complainant, K.D. and S.M. recall that throughout the night, the Member was becoming more and more intoxicated. In addition, S.M. testified that the Member was increasingly becoming affectionate

with other colleagues and suggested that the Member was not behaving as her usual self. K.D. also stated that she witnessed the Member displaying affection towards other male colleagues in the room.

When the Complainant confronted the Member about her actions the following workday, she apologized and stated that she had no recollection of acting in that manner.

The Panel concluded that the events happened as described by the Complainant.

Findings of Professional Misconduct

The Panel concluded that the acts of the Member constituted professional misconduct and that the College had proven all of the allegations set out in the Notice of Hearing. The specific findings on the allegations are as follows:

2. Failure to Maintain Standards

The Panel finds that the Member committed acts of professional misconduct as defined in subsection 33(2) of the Act and specifically, breaches of Ontario Regulation 223/08, in that she failed to model professional values, beliefs and behaviors with her colleagues by her unwelcome sexual advances to a male colleague who made it quite clear that such action was unwanted and made him feel uncomfortable. She failed to maintain the standards of the profession when she engaged in sexual harassment of another member. The evidence supports that the Member failed to maintain and manage professional boundaries with a colleague as is evidenced by her unwelcome sexual advances and the discomfort of the Complainant with her actions. This is a breach of Standard V, Professional Boundaries, Dual Relationships and Conflict of Interest Sections B1 and B4 of the College's Standards of Practice. Additionally, the Member failed to establish clear and appropriate boundaries in a professional relationship with a colleague contrary to Standard V, Professional Boundaries, Dual Relationships and Conflict of Interest Section C1 of the College's Standards of Practice.

The Member's inappropriate comments relating to the Complainant's sexuality support a finding that the Member failed to understand that her conduct reflects on her as a professional and on her profession at all times. The fact that the events at issue occurred at the Social Event outside the regular work environment was not considered a mitigating factor by the Panel as Standard IV Professionalism and Leadership, Section C 4 of the College's Standards of Practice makes clear that the conduct of RECEs reflects on them and the profession at all times. When the Complainant advised that he did not appreciate her conduct, her response showed a lack of sensitivity towards him by questioning his sexual orientation.

It is so obvious that such conduct would be a breach of standards that no expert evidence was required. The Member's unprofessional actions were inconsistent with all expectations for a RECE. The Member's conduct failed to build a climate of trust, honesty and respect in the workplace and was a failure, on her part, to respect her colleagues and to build a secure, healthy and inviting environment.

3. Disgraceful, Dishonourable or Unprofessional Conduct

Generally speaking, conduct that demonstrates lack of integrity, dishonesty, abuse of power, or disregard for the welfare and safety of members of the public, is conduct that will not be tolerated. It is often the case that the same conduct will be viewed as both a specific act of misconduct (such as a breach of standards) and disgraceful, dishonourable or unprofessional conduct. The Panel finds that by touching the Complainant in a sexual manner and then making a comment regarding the Complainant's sexuality, it is more likely than not that the Member's conduct would constitute disgraceful, dishonourable or unprofessional conduct. The Member's conduct would reasonably be regarded by members of the profession as disgraceful, dishonourable and unprofessional. It is not conduct that parents or the public would expect from someone responsible for caring for their child. This behaviour led the Complainant to feel vulnerable and uncomfortable and self-grieve for several days. This conduct undermines public confidence in the profession. It also demonstrated a disregard for the comfort level and well-being of a colleague. By her actions, 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 Ontario Regulation 223/08, subsection 2(10). The Panel was struck by the Member's lack of insight into her conduct and her attempts at

distancing herself from her responsibility. The Panel therefore makes a finding of professional misconduct.

4. Conduct Unbecoming

The allegation of “conduct unbecoming” is generally intended to capture conduct outside the practice of the profession. Not all private misbehavior is conduct unbecoming a member. However, behaviour that reflects on one’s integrity or competence to the point where public protection is required is conduct unbecoming. By engaging in unwanted physical touching of a colleague and making inappropriate comments to that colleague, this reflects poorly on the Member’s integrity. This is behaviour that cannot be tolerated and the Panel finds it constitutes conduct unbecoming a member contrary to Ontario Regulation 223/08, subsection 2(22).

HEARING ON PENALTY AND COSTS

At the conclusion of the liability hearing, the Panel delivered an oral decision outlining its findings of professional misconduct. The following documents were entered into evidence on the issue of penalty:

Exhibit 1	Penalty Hearing – Proposed Order
Exhibit 2	Penalty Hearing – Communications re College’s penalty and costs position

The evidence presented in Exhibit 1 and 2 of the penalty hearing indicated that the College had advised the Member of the penalty that the College would seek and costs, should a finding of misconduct be made against her. The evidence also showed that the Member was made aware that the matter could proceed to a penalty hearing without further notice to her and in her absence. The Panel was therefore satisfied that the Member had been informed a penalty hearing could occur in her absence, and what the penalty might be, and therefore proceeded with the penalty hearing.

As the Member was not present, she was deemed to contest the penalty and costs order that the College was seeking.

POSITIONS OF THE PARTIES ON PENALTY

The College submitted that the Panel should make the following order on penalty (the "Proposed Order"):

1. The Member is required to appear before the Panel to be reprimanded within 60 days of the date of this Order.
2. Directing the Registrar to suspend the Member's certificate of registration for a period of
 - a. 7 months; or
 - b. the period of time required to comply with terms, conditions and limitations set out in paragraphs 3(a) and 3(b) below,

Whichever is greater.

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 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 of Professional Regulation (the "Director") if a grade is not assigned) and at her own expense, an ethics course which shall include instructions on maintaining professional boundaries (subject to the Director's pre-approval):

The Member must provide the Director with proof of enrollment and successful completion of the course(s).

Mentorship

- b. 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, 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, once the suspension in section 2 above ends, the Member can commence or resume employment as an RECE after arranging a mentorship relationship with a pre-approved Mentor.

- c. 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.
- d. 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, and
 - ii. the Panel's Decision and Reasons.
- e. 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 his employer(s)).
- f. After a minimum of 5 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.

- g. 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.
- h. The College may require proof of compliance with any of the terms in this Order at any time.

The College submitted that the intent and purpose of the Proposed Order is multi-fold. It should enhance public confidence in the College's ability to self-regulate. It should deter the membership as a whole from engaging in similar conduct and send a strong statement to the public and membership that the College takes sexual harassment seriously and it will not be tolerated. Everyone deserves to be protected from sexual harassment. RECEs, as members of a regulated body, are expected to abide by certain legal duties and obligations and ensuring proper professional boundaries at all times is one of these. The penalty ordered should also serve as a deterrent to the Member from engaging in similar conduct. It must also send a clear message to the Member that sexual harassment is not acceptable. The penalty should also provide the Member with the opportunity to learn from her errors and enable her to return to the profession remediated.

College counsel noted that this is a one-of-a-kind case. As such, it should send a clear message that sexual harassment is not acceptable.

To provide the Panel with some comfort regarding the proportionality of the Proposed Order requested by the College, counsel provided the Panel with 4 cases from other regulators where their discipline committees had to deal with conduct of a similar nature. These cases were:

1. *Ontario College of Teachers v. Phillips, 2019 ONOCT 74*
2. *College of Nurses of Ontario v. Robichaud, 2016 105648 (ONCNO)*
3. *Ontario (College of Physicians and Surgeons of Ontario) v. Mourcos, 2018 ONCPSD 11*
4. *Ontario (College of Pharmacists) v. Khandwalla, 2019, ONCPDC 18*

Each of these cases involved a component of sexual harassment and unwanted touching. Only the *Phillips* case involved the consumption of excessive alcohol. All were not contested or the

member entered a plea of no contest in contrast to the contested case at hand. The panels in these cases ordered penalties of a similar nature to the Proposed Order. College counsel further submitted that the penalty must take into account the aggravating and mitigating factors in this case. She presented seven aggravating factors, specifically:

1. The Member made an invasive and unwelcome contact with the Complainant's most intimate parts.
2. The Member attempted to justify her actions by inappropriate remarks regarding the Complainant's sexual orientation.
3. The incident occurred at a work sanctioned function organized by the Centre and staff members were expected to act in a professional manner at all times.
4. The Member consumed excessive amounts of alcohol and became intoxicated in a professional setting, indicating a serious error in judgment.
5. The Member's conduct represents a moral failure and could impact how RECEs are viewed by the public.
6. The Member's actions caused distress to the Complainant and made him feel vulnerable, resulting in his leaving the Social Event after the incident and spending the weekend in reflection and self- grief.
7. There was a long-term impact on the Complainant as he now keeps physical distance from colleagues and still feels the need to protect himself even after three years.

College counsel noted that as a mitigating factor, the Member has no prior discipline history.

College counsel also noted a number of other factors that the Panel could consider in respect of the Proposed Order. College counsel advised that this was an isolated incident and there was no indication of any other similar conduct on the part of the Member. The incident itself was very brief. The Member was not in a position of authority or power over the Complainant. However, the Member does not have any personal insight into her error and tried to slanderously attack the Complainant and chose not to attend the hearing or to express any remorse. As such, College counsel submitted that she should not be entitled to the same considerations as given to those who attend and express remorse, which would normally be considered a mitigating factor. It was noted that the Member is under no obligation to attend the hearing. The College did not argue that she was ungovernable as there were some periods of responsiveness,

notwithstanding that she failed to attend two pre-hearing conferences as well as this hearing and was often non-responsive to College communications.

The Member was not present and did not make submissions.

PENALTY DECISION

Having considered the findings, the submissions presented by College counsel, and the evidence, the Panel makes the following Order as to penalty:

1. The Member is required to appear before a Panel to be reprimanded within 60 days of the date of this Order.
2. Directing the Registrar to suspend the Member's certificate of registration for a period of
 - a. 7 months; or
 - b. the period of time required to comply with terms, conditions and limitations set out in paragraphs 3(a) and 3(b) below,

Whichever is greater.

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 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 which shall include instructions on maintaining professional boundaries (subject to the Director's pre-approval):

The Member must provide the Director with proof of enrollment and successful completion of the course(s).

Mentorship

- b. 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, 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, once the suspension in paragraph 2 above ends, the Member can commence or resume employment as an RECE after arranging a mentorship relationship with a pre-approved Mentor.

- c. 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.
- d. 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, and
 - ii. the Panel's Decision and Reasons.
- e. 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)).
- f. After a minimum of 5 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(d),
 - iii. that the Mentor reviewed the documents set out in paragraph 3(d) and discussed the subjects set out in paragraph 3(e) with the Member, and
 - iv. the Mentor's assessment of the Member's insight into her behaviour.
- g. 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.
- h. The College may require proof of compliance with any of the terms in this Order at any time.

REASONS FOR PENALTY

The Panel understands that the penalty 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 penalty should be proportional to the misconduct.

A reprimand to the Member provides the Panel with the opportunity to express its disapproval of the Member's conduct and reinforce the messages it wishes to convey through the penalty. Moreover, by recording the fact of the reprimand on the Public Register, the public is assured that the Panel recognizes the seriousness of the Member's actions and responds to acts of professional misconduct fairly and transparently. Also, a recording on the Public Register conveys to the membership and to the public that the College takes sexual harassment very seriously and that it will not be tolerated.

Suspension of the Member's certificate of registration is appropriate in this matter. A suspension holds the Member accountable for her actions and communicates to her the severity of her misconduct. While the suspension demonstrates the Panel's disapproval of the

Member's conduct, it is not intended to be solely punitive. Her suspension provides the Member with an opportunity to learn from her mistakes, reflect on her conduct and refocus on her professional responsibilities. A significant suspension of this length also sends a message to the public and the profession that this kind of conduct will not be tolerated and significant consequences will ensue.

Ordering the Member to complete a course in ethics, including maintaining professional boundaries, is intended to bring her practice in line with current practice expectations by refreshing her knowledge base and reinforcing acceptable behavior. The course will encourage her to reflect on her practices and refocus on the ethical and practice standards to which an early childhood educator is held. Serving a remedial purpose, the course is designed to correct the errors in the Member's professional practice, thereby reducing the likelihood of recommitting acts of professional misconduct. The significance in holding the Member financially responsible for the course is that it requires her to make an investment in rehabilitation and hold her accountable for her own learning and success. It also demonstrates to the Member that the professional misconduct she committed is serious and the consequences for committing of such acts are disadvantageous to her.

A mentorship program provides the Member with an opportunity to be directly involved in her personal rehabilitation. It provides the Member with the opportunity to learn better how to meet the standards expected of an RECE while working directly with an appropriate role model. It also provides a level of supervision.

Having considered all of these factors, the Panel is satisfied that the proposed penalty in this case is appropriate and in the public interest.

COSTS AND REASONS FOR COSTS

Submissions of the College on Costs

College counsel submitted that an order for costs in the amount of \$15,000 was appropriate, representing one full hearing day and a half a day for the penalty hearing. College counsel submitted that costs are not meant to be punitive but rather are an apportioning of costs for the hearing between the Member and the College. The College's authority for assigning costs is

found in the Act at subsection 33(5)(4) and the *Rules of Procedure of the Discipline Committee and Fitness to Practise Committee* approved and published by the College (the “Rules”).

College counsel noted that a unified costing system, Tariff A to the Rules, was established in 2017 by the College and has formed the basis for contested hearings since then. The Tariff sets the cost for each day of hearing at \$10,000 and requires the College to claim such costs without the need to provide evidence. The Tariff A amount is predetermined and assigned by the College as \$10,000 per hearing day, in the current case 1 ½ days.

College counsel submitted that the College is nonprofit, with revenues limited to registration fees which generally are low in comparison to other professional organizations. Contested hearings consume considerable resources of the College, all of which come from member fees. College counsel provided the Panel with a number of factors that could be considered in making a cost order. She noted that the College had been completely successful in proving all of the allegations of misconduct against the Member. She indicated that the Panel could also consider the length of the hearing, but indicated that this was addressed by the Tariff. College counsel noted that the Member had the right not to attend the hearing but a failure to attend inhibits the prosecution’s ability to narrow the scope of evidence, thus taking more time and resources of the College.

College counsel submitted that all cost orders have a negative impact on members and it is fair and appropriate for the Panel to consider the financial situation of the Member. However, in the case at hand, the Member chose not to attend and take the opportunity to present information relative to her financial situation. College counsel noted that the Panel may choose to put some weight to the wording in the Member’s correspondence (D.G.’s affidavit) and the College would agree to a longer than normal time for the payment if the Panel should feel that it is warranted.

College counsel provided the Panel with 5 previous cases involving the College where costs were awarded using Tariff A in the Rules:

1. *College of Early Childhood Educators v. Sophia McKenzie*, 2017 ONCECE 9
2. *College of Early Childhood Educators v. Tara-Leigh George*, 2019 ONCECE
3. *College of Early Childhood Educators v. Amal Ali*, 2019 ONCECE 2
4. *College of Early Childhood Educators v. Carrie Chunjuan Tan*, 2021 ONCECE 1
5. *College of Early Childhood Educators v. Rehana Islam*, 2019 ONCECE 12

In the majority of the cited cases, the Member was allowed in the range of 30 to 60 days to pay the College. Exceptions were made where a case for financial hardship was presented by a member.

ORDER AS TO COSTS

The Panel orders that the Member contribute to the costs incurred by the College in the amount of \$15,000.00. The Panel orders that the costs be paid on the basis of a minimum of \$3000 annually, unless the Director approves an alternative payment schedule, and until such time as the \$15,000.00 shall be paid in full.

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 Panel accepted that it is appropriate to hold members who have engaged in acts of professional misconduct responsible for some or all of the costs incurred by the College in investigating and prosecuting that conduct, the financial weight of which would otherwise be borne by the general membership of the profession, which funds the College's operations through registration fees. In consideration of the College's success in proving the allegations of professional misconduct in this case, and absent evidence of any other relative factors or circumstances on the Member's part, the Panel felt that this was an appropriate case to order costs. The amount of the costs requested by the College is in accord with Tariff A as set forth in the Rules, and is consistent with the previous cases cited above.

The Member was informed well in advance of the hearing and provided with documentation showing the costs that would be sought by the College if the hearing were to be contested and if the Member were to be found guilty. The Member knew of the potential cost exposure and nonetheless chose to proceed with a lengthy and expensive contested hearing, a hearing that was paid for entirely by the rest of the College members. Additionally, the Member has been suspended for failure to pay her membership and as a result, she no longer contributes to funds that the College uses to pay for these hearings.

The Panel was mindful that RECEs generally do not have incomes as great as those of some other regulated professionals, and that costs in the amount of \$15,000.00 may pose a financial hardship, however, the Member did not do anything to mitigate her costs. In the *McKenzie* and *Islam* cases previously cited, the members appeared before the panels by representation, and presented evidence of financial hardship. The Member chose not to do this in the case at hand.

Although not required to do so, the Panel on its own direction reviewed the limited correspondence from the Member, with a view to examining the issue of financial hardship. The Panel considered the impact of the COVID pandemic particularly as it related to employment, the Member's lack of Internet service and computer, and general statements made in emails from the Member, (Affidavit of D.G., Hearings Coordinator) and determined that some consideration could be provided in this case. The Panel found that the amount of the cost was fair, consistent and in line with previous cases that have been decided on the basis of Tariff A and therefore determined that it was not a factor for consideration. On average, previous cases determined under Tariff A provided for the payment to the College within 30 to 60 days. The Panel determined that the length of time for payment of the costs in this case could be an area for consideration. The Panel found that permitting the cost to be paid at the rate of a minimum of \$3,000 per year was reasonable and fair.

I, Garry Bates, sign this decision and reasons for the decision as Chair of this Discipline panel and on behalf of the members of the Discipline panel.



Garry Bates, Chair

September 7, 2021

Date