

NOTICE OF PUBLICATION BAN

In the matter of College of Early Childhood Educators and Wayne Delroy Henry, this is notice that the College of Early Childhood Educators requests that no person shall publish or broadcast the identity of, or any information that could identify, any person who is under 18 years old and is a witness in the hearing, or the subject of evidence in the hearing or under subsection 35.1(3) and subsection 35.1(4) of the *Early Childhood Educators Act, 2007*.

An Order has also been made by the Ontario Superior Court of Justice and the Court of Appeal for Ontario, directing that the identity of the complainant and any information that could disclose such identity shall not be published in any document or broadcast in any way, pursuant to subsections 486.4(1), (2), (2.1), (2.2), (3) or (4) or 486.6(1) or (2) of the Criminal Code of Canada.

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

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 WAYNE DELROY HENRY, currently suspended for non-payment of fees, of the College of Early Childhood Educators.

Panel: Kristine Parsons, RECE,
Chairperson
Barney Savage
Barbara Brown, RECE

BETWEEN:)
COLLEGE OF EARLY)
CHILDHOOD EDUCATORS) Vered Beylin,
) for the College of Early Childhood
) Educators
)
- and -)
)
WAYNE DELROY HENRY) No Representation
REGISTRATION # 22196)
)
)
)
) Elyse Sunshine,

) Rosen Sunshine LLP,
) Independent Legal Counsel
)
) Heard: December 3, 2019

DECISION AND REASONS

This matter was heard before a panel of the Discipline Committee of the College of Early Childhood Educators (the “Panel”) on December 3, 2019.

PUBLICATION BAN

The Panel ordered a publication ban following a motion by College Counsel pursuant to section 35.1(3) of the Early Childhood Educators Act, 2007 (the “Act”). The Order bans the public disclosure, publication and broadcasting outside of the hearing room, any names or identifying information of any minor children who may be the subject of evidence in the hearing.

THE ALLEGATIONS

The allegations against the Member, as stated in the Notice of Hearing dated May 23, 2019 (Exhibit 1), were as follows:

1. Wayne Delroy Henry (the “Member”) initially registered with the College of Early Childhood Educators (the “College”) on October 1, 2009.
2. On January 6, 2014, the Member commenced employment with Sunshine Child Care Services (the “Centre”), a child care centre in Scarborough, Ontario. The Member’s résumé indicated that he was previously employed as a “lead ECE” at another child care centre from 2007 to 2011.
3. On January 17, 2014, the Member was arrested and charged with two counts of sexual assault, two counts of invitation to sexual touching involving a minor and two counts of sexual interference involving a minor. All charges related to the same child, who was between the ages of 6 and 12 at the time of the offences.
4. The Member’s employment with the Centre was terminated on January 17, 2014 for the charges described above.

5. The Member pleaded not guilty to the criminal charges against him. On September 19, 2017, Justice G. Dow delivered his Reasons for Judgement in the matter. He concluded that the Crown had met its burden of proof and the Member was found guilty of the following:

Count 1

- a. During the period from and including May 1, 2006 to and including January 13, 2014, the Member did for a sexual purpose touch [the child], a person under the age of sixteen years, directly with a part of his body, namely, his penis, contrary to section 151 of the *Criminal Code*.

Count 3

- b. During the period from and including May 1, 2006 to and including January 13, 2014, the Member did for a sexual purpose invite [the child], to touch directly a part of his body, namely, his penis, contrary to section 152 of the *Criminal Code*.

Count 5

- c. During the period from and including May 1, 2006 to and including January 13, 2014, the Member did commit a sexual assault on [the child], contrary to section 271 of the *Criminal Code*.
6. On February 21, 2018, Justice Dow delivered his Reasons for Sentencing. The Member was sentenced to six years and six months in a federal penitentiary, concurrently, for Count 1, Count 3, and Count 5 (less the six days' credit for pre-trial custody).
 7. On May 15, 2018, the Member's certificate of the registration with the College was revoked for nonpayment of fees.
 8. By engaging in the conduct set out in paragraphs 3-6 above, The Member engaged in professional misconduct as defined in subsection 33(2) of the Act, in that:

- (a) he 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);
- (b) he contravened a law, which contravention is relevant to his suitability to hold a certificate of registration, contrary to Ontario Regulation 223/08, subsection 2(20);
- (c) he contravened a law, which contravention has caused or may cause a child who is under his professional supervision to be put at or remain at risk, contrary to Ontario Regulation 223/08, subsection 2(21); and/or
- (d) he conducted himself in a manner that is unbecoming a member, contrary to Ontario Regulation 223/08, subsection 2(22).

MEMBER'S PLEA

As the Member was not present, nor represented by counsel, the Panel proceeded on the basis that the Member denied the allegations as set out in the Notice of Hearing..

NOTICE PROVIDED TO THE MEMBER

The College submitted that they made every effort to make the Member aware of the date and time of the hearing. The Member is incarcerated. The College provided evidence, through affidavits and witness testimony, to demonstrated that they were diligent on their efforts to provide the Member with notice of the hearing. In addition, the Panel was presented with examples of other cases, both from this College and other colleges, where Discipline panels elected to proceed with a contested hearing in the absence of the member. The Panel was satisfied that the Member had ample notice of this hearing, as well as the consequences of his non-attendance at and non-

participation in the hearing. The Panel therefore directed that the hearing proceed in the Member's absence

THE EVIDENCE

This matter proceeded as a contested hearing.

The following documents were entered as exhibits during the course of the hearing:

Exhibit	Title
1	Notice of Hearing
2	Registrar's Certificate
3	Superior Court of Judgement (SCJ) – Certified Indictment
4	SCJ – Certified Reasons for Judgement
5	SCJ – Certified Reasons for Sentencing
6	Court of Appeal – Reasons for Decision
7	Affidavit of Correspondence of Maria Serafini
8	Affidavit of Service
9	Member's Resume
10	Letter from the College to Member, June 24, 2019
11	Letter from College to Member, October 1, 2019

The College called two witnesses in support of its case.

Evidence of Maria Serafini

Ms. Serafini has worked as a Prosecutions Clerk at the College since August 2018. Her testimony was supported by the Affidavit of Correspondence submitted by the College as Exhibit 7.

Ms. Serafini's evidence was that she had contacted the Member's criminal lawyer to advise her of this discipline matter but was informed that she was no longer acting for

him. On October 23, 2018, Ms. Serafini served the Member with a letter from the College's Prosecutor regarding the College's position on penalty and costs, the Notice of Hearing and Disclosure by sending copies, via Fed Ex, to Joyceville Institution. These materials had been forwarded to the Member who had been released on bail.

Ms. Serafini's evidence was that attempts were made to personally serve the Member at his appeal hearing on June 7, 2019. However, as Mr. Henry was already in police custody, the process server was unable to effect personal service. Ms. Serafini next served the Member with the materials by sending copies via FedEx to Correctional Service Canada, care of Mr. Henry. On August 13, 2019, she called Correctional Service Canada to confirm that the Member was incarcerated in an Ontario institution. A clerk confirmed that he was indeed incarcerated.

Ms. Serafini also gave evidence that leave to appeal to the Supreme Court of Canada had not been sought by the Member in respect of his criminal conviction.

Evidence of Tina Vlahos-Bachoumi

Ms. Vlahos-Bachoumi has served as an investigator and team lead at the College since 2016. She gave evidence about the manner in which the College was notified of the criminal charges against the Member. She also confirmed the Member's membership status with the College and his employment history.

Evidence from the Criminal Proceedings

The College entered a number of documents into evidence, all of which were related to the Member's conviction for sexual assault under the Criminal Code which was referred to in the Notice of Hearing.

The College entered copies of the criminal court proceedings Reasons for Judgment and Reasons for Sentencing as Exhibits 4 and 5 respectively (collectively referred to as the "Superior Court Reasons"). These Superior Court Reasons show that based on the

evidence the Crown had proven, beyond a reasonable doubt that the Member had engaged in the following criminal acts:

- Count 1 - for a sexual purpose, touching a person under the age of sixteen years, contrary to section 151 of the Criminal Code;
- Count 3 - for a sexual purpose, inviting a person under the age of sixteen years, to touch directly a part of his body, contrary to section 152 of the Criminal Code; and
- Count 5 – committing a sexual assault contrary to section 271 of the Criminal Code.

The Superior Court Reasons establish that the Member was sentenced to six years and six months (less six days) in a federal penitentiary.

The Member appealed the Superior Court Reasons and in a decision dated June 20, 2019, the Court of Appeal dismissed the Member's appeal (Exhibit 6).

SUBMISSIONS OF COLLEGE COUNSEL AS TO FINDING

The College submitted that it had established the allegations of misconduct against the Member based on a balance of probabilities. College Counsel urged the Panel to give full weight to the findings of fact made by the Court in the Superior Court Reasons. The College noted that the Member had been found guilty of the criminal offences, beyond a reasonable doubt (which is a higher threshold), after mounting a vigorous defence where he was well-represented by counsel. The Member also appealed his conviction and was unsuccessful. The Member was convicted of a heinous crime that, although it did not occur within a child care setting, constitutes the most disturbing type of professional misconduct. The College submitted that because of a gap in the legislation, the Member could not be charged with sexual abuse under the Act. However, his conduct and the convictions fully made out the acts of professional misconduct as alleged. The College submitted that the Member contravened a law relevant to his suitability to practice by sexually abusing a child. He further contravened a law causing children to be at risk since children are at risk by someone who would sexually abuse a

child. This is a person who cannot be trusted to be around children. The College further submitted that the conduct constituted conduct that would be viewed by reasonable members of the profession as disgraceful, dishonourable and unprofessional and that no expert evidence was required in this regard. Finally, the Member engaged in conduct unbecoming a member of the profession since members of the profession should obviously not sexually assault children.

- The College also presented a number of cases to support their submission that findings of professional misconduct should be made when a member has been found guilty of criminal offences of a sexual nature, including: *College of Early Childhood Educators v Jeffrey Joseph*, 2011 ONCECE 1
- *College of Early Childhood Educators v Mark Lehtonen*, 2017 ONCECE 4
- *Ontario College of Teachers v Robert Charles Griffin*, 2019 ONOCT 68

DECISION ON THE ALLEGATIONS

The Panel found that the College met its onus and established, based on a balance of probabilities, that the Member is guilty of each allegation set out in the Notice of Hearing. Specifically, the Member is guilty of the following acts of misconduct as defined in subsection 33(2) of the Act, in that:

- he 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);
- he contravened a law, which contravention is relevant to his suitability to hold a certificate of registration, contrary to Ontario Regulation 223/08, subsection 2(20);
- he contravened a law, which contravention has caused or may cause a child who is under his professional supervision to be put at or remain at risk, contrary to Ontario Regulation 223/08, subsection 2(21); and/or

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

REASONS FOR DECISION

The Panel found that the allegations set out in the Notice of Hearings had been proved by the College through the testimony of the witnesses called and documents filed as exhibits at the hearing. The Panel relied significantly on the criminal proceedings (trial and appeal) and that the Member had been convicted of three counts of sexual offences against a minor, including sexual assault, and that his appeal of those findings was unsuccessful. There was no evidence that the Member sought leave to appeal to the Supreme Court of Canada. The Panel is aware that the criminal justice system affords every opportunity for defence, and that criminal convictions require a higher burden of proof than required for a finding of professional misconduct.

The Panel found, through the compelling and uncontroverted evidence presented by the College, that the Member is guilty of professional misconduct. The Panel found that the Member's conduct was a clear breach of each of the allegations of misconduct as set out in the Notice of Hearing. The Member acted in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional by sexually abusing a child. He further contravened a law, which contravention is relevant to his suitability to hold a certificate of registration by abusing a child in a most profound manner.

The Member was convicted of abhorrent acts towards a child. Such acts would render him completely unsuitable to work with children. The Member also contravened a law, which contravention has caused or may cause a child who is under his professional supervision to be put at risk. By sexually abusing a child, the Member has demonstrated that his membership in the profession puts children at risk. The Member cannot be trusted to ensure the well-being of children in his care. Finally, the Member

has conducted himself in a manner that is unbecoming a member. Members of the profession who conduct themselves in this kind of manner are an affront to the profession (and society as a whole) and severely compromise the reputation of the profession and undermine the trust and confidence that the public places in professional people.

PENALTY

Having found the Member to have committed the acts of misconduct alleged, the Panel proceeded with a penalty hearing. The Panel was satisfied that the College had taken every reasonable effort to make the Member aware of the fact that if findings of misconduct were made against him, the matter would proceed to a penalty hearing the same day. The Panel was also satisfied that the Member was advised as to the nature of the penalty that the College would be seeking.

SUBMISSIONS OF COLLEGE COUNSEL AS TO PENALTY AND COSTS

The College proposed that the Panel impose the following order that:

1. The Registrar be directed to revoke the Member's Certificate of Registration effective immediately; and
2. The Member be required to pay to the College costs in the amount of \$10,000.00 within sixty (60) days from the date of the Order.

College counsel submitted that the College was asking for revocation of the Member's Certificate of Registration because no other penalty could protect the public. Counsel urged the Panel to send the strongest possible message to the Member and the public that someone who has sexually abused a child has no place in the profession of early childhood education.

There were no mitigating factors in this case. College counsel identified six aggravating factors which the Panel was urged to consider in reaching its decision about penalty.

These are:

- The length of time over which the abuse of the child occurred.
- The repeated nature of the offences.
- The level of contact with the child, which included oral sexual contact and sexual intercourse.
- The Member was in a position of trust, which he abused.
- The emotional and psychological impact on the child.
- The sexual offenses represent a flagrant violation of the professional obligations of an RECE to ensure the safety and well-being of all children.

With respect to costs, College counsel submitted that the Panel has jurisdiction to order costs. In this case, many of the College's costs associated with prosecuting this case could have been avoided if the Member had participated in the discipline process. Therefore, the College submitted that it would be appropriate to order costs of \$10,000 as set out in the Discipline Committee Rules pursuant to Rule 16.05.

PENALTY DECISION

After careful and thorough consideration of the College's submissions on penalty and the case law presented, and in the absence of any submissions by the Member, the Panel imposed the following penalty:

1. The Registrar is directed to revoke the Member's Certificate of Registration effective immediately; and
2. The Member is required to pay to the College costs in the amount of \$10,000.00 within sixty (60) days from the date of this Order.

REASONS FOR PENALTY

The Panel accepted that while revocation of the Member's certificate of registration was not mandatory, it is the only appropriate order. The Member's criminal conduct was completely at odds with his responsibilities as a member of the profession of early childhood education. The Member's conduct demonstrates a complete disregard for the welfare of a child and is completely appalling for any individual, let alone someone whose job it is to ensure the well-being of young children. This was not a case where any remedial measures were indicated or would be effective. Of the aggravating factors in this case cited by College Counsel, the Panel was particularly impacted by the description in the Superior Court Reasons of the emotional and psychological impact of the abuse on the victim.

Through his criminal conduct, the Member has put the public at risk and has severely undermined the reputation of the profession of early childhood education and the trust that the public places in members of the profession. It is the Panel's view that the Member is no longer entitled to be a member of the profession.

The Panel agreed with the College that this was an appropriate case to order costs, and that the figure of \$10,000.00 is reasonable.

I, Kristine Parson, sign this decision and reasons for the decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel.



Kristine Parsons, RECE & Chairperson

December 16, 2019

Date