

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

Citation: College of Early Childhood Educators vs Jeffrey Joseph,  
2011 ONCECE 1  
Date: 2011-12-19

**IN THE MATTER** OF the *Early Childhood Educators Act*, 2007, S.O. 2007,  
c. 7, Sched. 8 and the Regulation (Ontario Regulation 223/08) thereunder;

**AND IN THE MATTER OF** discipline proceedings against Jeffrey Joseph,  
RECE, a member of the College of Early Childhood Educators.

PANEL: Valerie Sterling, RECE,  
Chair Barbara Brown,  
RECE Rosemary Sadlier

BETWEEN:	)	
	)	
COLLEGE OF EARLY	)	M. Jill Dougherty,
CHILDHOOD EDUCATORS	)	WeirFoulds LLP,
	)	for College of Early Childhood Educators
-and-	)	
	)	
JEFFREY JOSEPH	)	Jeffrey Joseph was not present,
REGISTRATION #	)	nor was he represented
00769	)	
	)	
	)	David Leonard,
	)	McCarthy Tetrault LLP,
	)	Independent Legal Counsel
	)	
	)	Heard: November 29, 2011

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

This matter came on for hearing before a Panel of the Discipline Committee (the "Committee") on November 29, 2011 at the College of Early Childhood Educators (the "College") at Toronto.

A Notice of Hearing (Exhibit 1), dated October 13, 2011, was served on Jeffrey Joseph (the "Member"), requesting his attendance before the Discipline Committee of the College of Early Childhood Educators on October 31, 2011 to set a date for a hearing, and specifying the charges. The hearing was subsequently set for November 29, 2011.

The Member did not appear, nor was he represented. Counsel for the College submitted an Affidavit of Service sworn by Jeffrey Donnelly, Manager, Professional Conduct and Hearings, sworn October 31, 2011 (Exhibit 1) detailing communications he had with the Member via Judy Cotnam, Case Manager Officer at Warkworth Institution, by facsimile with respect to the setting of a date of the hearing. Mr. Donnelly's Affidavit indicated that the Member had no intention of attending the set date or any hearing thereafter. The Member also stated to Mr. Donnelly in that same correspondence that he resigned his membership to the College. The Committee was satisfied that the Member was served with the Notice of Hearing and all disclosure documents and was aware of the time and date of the hearing (Exhibit 1). The Committee therefore proceeded to hear the matter in the absence of the Member.

The Committee is aware that the Member has submitted his resignation of the Certificate of Registration with the College. However, since the allegations relate to conduct that occurred when he was a member, this Committee has jurisdiction to decide on the matter of guilt related to professional misconduct, pursuant to subsection 18(3) of the Act.

## **THE ALLEGATIONS**

The allegations against Jeffrey Joseph as stated in the Notice of Hearing dated October 13, 2011, are as follows:

IT IS **ALLEGED** that Jeffrey Joseph, RECE, is guilty of professional misconduct and/or incompetence as defined in subsections 33(2) and (3) of the *Early Childhood Educators Act, 2007* (the "Act"), in that:

- (a) he abused a child or children under the Member's professional supervision physically, sexually, verbally, psychologically or emotionally, contrary to Ontario Regulation 223/08, subsection 2(3);
- (b) he failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8);

- (c) he acted in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 223/08, subsection 2(10);
- (d) he failed to comply with the Act and the professional misconduct regulation made under the Act (being Ontario Regulation 223/08), contrary to Ontario Regulation 223/08, subsection 2(19);
- (e) he contravened a law, the contravention of which is relevant to the Member's suitability to hold a certificate of registration contrary to Ontario Regulation 223/08, subsection 2(20);
- (f) he contravened a law, the contravention of which has caused or may cause a child who is under the Member's professional supervision to be put at or remain at risk, contrary to Ontario Regulation 223/08, subsection 2(21);
- (g) he conducted himself in a manner that is unbecoming a member, contrary to Ontario Regulation 223/08, subsection 2(22); and
- (h) he displayed in his professional responsibilities a lack of knowledge, skill or judgment or disregard for the welfare of a child or children of a nature and extent that demonstrates that the Member is unfit to carry out his professional responsibilities, or that his certificate of registration should be made subject to terms, conditions or limitations.

**PARTICULARS OF THESE ALLEGATIONS ARE AS FOLLOWS:**

1. The above allegations arose from conduct which occurred between January 31, 2009 and March 10, 2010, during which time the Member was a member of the College. As of December 9, 2008, the Member became a registered member of the College and remained a member in good standing until April 14, 2011, when his membership was suspended for non-payment of fees. Subsequently, on October 20, 2011, the Member sent the College a written notification that he wished to resign his membership in the College. His Certificate of Registration was cancelled, effective October 20, 2011.
2. When the conduct in question occurred, Mr. Joseph was employed as an Early Childhood Educator. From June 18 2007 until ust 28, 2009, he was employed at the [REDACTED]. Subsequently, from ~~September 3, 2009~~ until March 9, 2010, Mr. Joseph was employed as an Early Childhood Educator at [REDACTED].
3. Between the months of April and May 2009, Jeffrey Joseph (the "Membe . . . . . Childhood Educator at the [REDACTED], located at [REDACTED].
4. During this time, the Member was left alone with \_\_\_\_\_ (the "Children"), all of whom were then between the ages of 3 to 5 years.

5. During this time the Member was responsible for diaper changes. While changing the Children's diapers, the Member took photographs of the Children's genitals with his cell phone camera.
6. On March 25, 2010, in connection with the actions and the Children described above, the Member was charged with ten counts of production of child pornography, one count of sexual interference and one count of sexual assault.
7. Between August of 2008, and January of 2010, the Member downloaded child pornography into his computer through an unsecure wireless connection belonging to Adam Long.
8. On March 9, 2010, as a result of the actions described in paragraph 7 above, the Member was charged with two counts of possession of child pornography, one count of accessing child pornography, one count of making available child pornography and one count of fraudulently obtaining a computer service.
9. On April 4, 2011, the Member was convicted in Criminal Court of three counts of production of child pornography, one count of sexual interference, two counts of possession of child pornography, and one count of fraudulently obtaining a computer service.

## **MEMBER'S PLEA**

As the Member was not present, nor represented by counsel, the Committee proceeded on the basis that the Member denied the allegations set out in the Notice of Hearing. The Chair, on behalf of the Member, entered a plea of not guilty to the allegations.

## **THE EVIDENCE**

The College called one witness, Sue Corke, Registrar and Chief Executive Officer of the College of Early Childhood Educators.

### *Evidence of Ms. Corke*

Ms. Corke gave evidence as to the history of the Member's registration status with the College, as provided in the documentation that summarized the Member's registration status with the College and public register information (Exhibit 3).

Ms. Corke also gave evidence that upon serving the Notice of Hearing to the Member, the College received the Member's resignation in writing (Exhibit 4). The Member's Certificate of Registration was then cancelled, pursuant to the Act. Ms. Corke indicated that there are no provisions in the Act that allow the Registrar of the College to defer processing the cancellation of a Certificate of Registration when a member resigns in the face of a disciplinary hearing.

Counsel for the College entered into evidence the following additional documents:

Affidavit of Service sworn by Elena Moss (Exhibit 2)

The Affidavit of Service sworn by Elena Moss indicated that the Member, care of Mr. and Mrs. Joseph, was served with a cover letter from College counsel and Brief of Documents, which were sent by courier.

Certified Copy of Court Information – 10-6583 (Exhibit 5) and Certified Copy of Court Information- 10-7009 (Exhibit 6)

The evidence presented in the Court Documents confirms that on or about March 31, 2011, the Member was found guilty and convicted by the Ontario Court of Justice Ontario on the following charges:

- (a) that he on or about February 2, 2010, at the \_\_\_\_\_ in the Southwest Region, did have in his possession child pornography in the form of a computer picture file, contrary to section 163.1(3) of the *Criminal Code*;
- (b) that he between February 7, 2010 and March 9, 2010, at the \_\_\_\_\_ in the Southwest Region, did have in his possession child pornography in the form of a computer picture file videotape, contrary to section 163.1(4) of the *Criminal Code*;
- (c) that he between January 31, 2009 and January 1, 2010, at the \_\_\_\_\_ in the Southwest Region, did, fraudulently and without colour of right, directly obtain a computer service from Adam Long, contrary to section 342.1(1)(a) of the *Criminal Code*;
- (d) that he on or about May 26, 2009, at the \_\_\_\_\_ in the Southwest Region, did, with a part of his body, for a sexual purpose, directly touch the body

of a person under the age of sixteen years, namely a female child under five years old, contrary to section 151 of the *Criminal Code*; and

- (e) that he on or about April 17, 2009, at the [REDACTED] in the Southwest Region, did make child pornography in the form of a picture, contrary to section 163.1(2) of the *Criminal Code*, on three counts.

Further, on or about April 4, 2011, the following sentence was imposed on the Member:

- (a) imprisonment for a term of four-and-a-half years;
- (b) a lifetime weapons prohibition; and
- (c) a section 161 order for life.

*Affidavit of Jordan Glick* (Exhibit 7)

The Affidavit of Jordan Glick indicated that there was no record of a Notice of Appeal filed with the court on behalf of the Member.

*Transcript of Proceedings on Plea* (Exhibit 8)

The *Transcript of Proceedings on Plea* before the Honourable Mr. Justice Skowronski at [REDACTED] dated March 31, 2011, outlines the Member's guilty plea to the charges [REDACTED] against him.

*Transcript of Reasons for Sentence* (Exhibit 9)

The *Transcript of Reasons for Sentence* before the Honourable Mr. Justice Skowronski at [REDACTED] dated April 4, 2011, outlines the judge's reasons for sentence.

## **DECISION**

### **i. Onus and Standard of Proof**

The College bears the onus of proving the allegations contained in the Notice of Hearing on a balance of probabilities (more likely than not), based on clear, convincing and cogent evidence, in accordance with the Supreme Court of Canada's decision in *F.H. v. McDougall*, [2008] 3

S.C.R. 41.

## **DECISION**

Having considered the evidence and onus and standard of proof, and the submissions made by Counsel for the College, the Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that Jeffrey Joseph committed acts of professional misconduct as alleged, more particularly breaches of the *Early Childhood Educators Act, 2007*, section 33(2)(a) and (c), and Ontario Regulation 223/08, section 2, subsections (3), (8), (10), (19), (20), (21) and (22).

## **REASONS FOR DECISION**

Rules 13.05 and 13.06 of the *Rules of Procedure of the Discipline Committee and of the Fitness to Practise Committee* of the College of Early Childhood Educators allow the Committee to accept as proof that an offence was committed by a person, where there is a finding of guilt and conviction in a Canadian court, provided that there is no evidence to the contrary and that no appeal has been granted.

It is uncontested that on or about March 31, 2011, the Member pleaded guilty to and was convicted of: one count of possessing for the purpose of transmission, making available, distribution, sale, advertising or exportation child pornography, contrary to section 163.1, subsection (3) of the *Criminal Code*; one count of possessing child pornography, contrary to section 163.1, subsection (4) of the *Criminal Code*; one count of directly obtaining a computer service from Adam Long, fraudulently and without colour of right, contrary to section 342.1, subsection (1), paragraph (a) of the *Criminal Code*; one count of sexual interference, contrary to section 151 of the *Criminal Code*; and three counts of making child pornography, contrary to section 163.1, subsection (2) of the *Criminal Code*.

The Member was sentenced to imprisonment for a term of four-and-a-half years, given a section 161 order for life; and given a weapons prohibition for life.

These convictions are relevant to the Member's suitability to hold a Certificate of Registration and have caused children to be put at risk, pursuant to Ontario Regulation 223/08, subsections 2(20) and 2(21). In addition, the Committee noted that there was evidence that these incidents took place at the            The Member's actions in possessing and making child pornography, and sexual interference demonstrate a complete disregard for children's welfare, thereby putting the children at risk. The Committee agrees with the Honourable Mr. Justice Skowronski in that these offences are the most serious type and are an egregious breach of trust by someone placed in the position of temporary parent, as the Member was.

The Committee finds that the Member's conviction for possessing and making child pornography, and sexual interference as outlined herein constitute acts of professional misconduct, being more particularly breaches of Ontario Regulation 223/08, subsections 2(3), 2(8) and 2(19).

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

#### **PENALTY SUBMISSIONS**

Counsel for the College submitted that the appropriate penalty be as follows:

1. revocation of the Member's Certificate of Registration;

2. an order prohibiting the Member from applying under s. 36 of the Act to reinstate his membership in the College until a period of ten (10) years from the date of the Discipline Committee's order has elapsed;
3. a direction that the Registrar include on the register, in addition to the information prescribed by s. 29(2)(a)-(c) and the information prescribed in section 23.01 of By-law 1, the result of this proceeding [meaning the Committee's finding(s), particulars of the grounds for the finding(s), and the order made] including a summary of the decision;
4. a direction that the Committee's finding and order be published, in detail or in summary, with the Member's name but without any information identifying the children involved, on the College's website and in the *Member Newsletter*.

## **PENALTY DECISION**

The Committee makes the following order as to penalty:

1. The Registrar of the College of Early Childhood Educators is directed to immediately revoke the Member's Certificate of Registration.
2. Pursuant to subsection 33(5) of the *Early Childhood Educators Act, 2007*, the findings and order of the Committee shall be published in summary, with the name of the Member, in the official publication of the College, *Member Newsletter*, and the findings and order of the Committee shall be posted on the College's website.
3. Pursuant to subsection 29(2), paragraph (d) of the *Early Childhood Educators Act, 2007*, the Registrar is directed to include on the register the specific sections of the Ontario Regulation 223/08 the Member was found to have breached and to include a link to the full written decision of the Committee.

## REASONS FOR PENALTY DECISION

The Member's conviction for possessing and making child pornography, and sexual interference is based on his having computer picture and video files, and pictures taken with his cell phone. The Member's actions are reprehensible. Anyone who possesses or makes any child pornography perpetuates the abuse of children and must be dealt with severely.

The penalty must meet the objective of general deterrence to the members of the profession as well as the objective of specific deterrence to the Member.

The Member has brought the profession into disrepute. The fact that he engaged in possessing and making child pornography, and sexual interference requires that he receive the maximum penalty, revocation of his Certificate of Registration.

The Member's actions were criminal. Publication of the findings and order of the Committee, in summary, along with the name of the Member, in the *Member Newsletter*, as well as posting the findings and order of the Committee on the College's website advises the profession of the nature of the Member's misconduct and the consequences for such behaviour. Publication, with name, acts as a general deterrent, and informs the profession that such behaviour will not be tolerated and will result in the harshest penalty, revocation.

Publication serves the public interest by reassuring and informing the community that the profession acts decisively when matters of this nature are brought to its attention.

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

Dated: December 19, 2011

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Valerie Sterling, RECE  
Chair, Discipline Panel

  
Barbara Brown, RECE  
Member, Discipline Panel

  
Rosemary Sadler  
Member, Discipline Panel