

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

Citation: College of Early Childhood Educators vs Kelly Marion,
2018 ONCECE 4
Date: 2018-04-30

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 KELLY MARION, a current member
of the College of Early Childhood Educators.

PANEL: Susan Quaiff, RECE, Chairperson
Karen Damley
Sasha Fiddes, RECE

BETWEEN:)
)
COLLEGE OF EARLY) Jordan Stone,
CHILDHOOD EDUCATORS) WeirFoulds LLP,
) for the College of Early Childhood Educators
)
)
- and -)
)
KELLY MARION) Denise Cooney,
REGISTRATION # 19741) Paliare Roland Rosenberg Rothstein LLP
) for Kelly Lynn Marion
)
)
)
)
) Lonny Rosen,
) Rosen Sunshine LLP,
) Independent Legal Counsel
)
)
) Heard: March 27, 2018

DECISION AND REASONS

This matter came on for a hearing before a panel of the Discipline Committee of the College of Early Childhood Educators (the “Panel”) on March 27, 2018.

THE ALLEGATIONS

The allegations against Kelly Lynn Marion (the “Member”) as stated in the Notice of Hearing (Exhibit 1) dated February 26, 2018, are as follows:

- a. she physically, verbally, psychologically, and/or emotionally abused a child who was under her professional supervision, contrary to subsection 2(3) of Ontario Regulation 223/08, made under the *Early Childhood Educators Act, 2007, S.O. 2007, c. 7, Sched. 8* (the “Act”);
- b. she failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8), in that:
 - i. she failed to provide a nurturing learning environment where children thrived, contrary to Standard I.D of the Standards of Practice;
 - ii. she failed to establish professional and caring relationships with children and/or to respond appropriately to the needs of children, contrary to Standard I.E of the Standards of Practice;
 - iii. she failed to maintain a safe and healthy learning environment, contrary to Standard III.A.1 of the Standards of Practice;
 - iv. she failed to support children in developmentally sensitive ways and to provide caring, stimulating, and respectful opportunities for learning and care that are welcoming to children and their families, contrary to Standard III.C.1;
 - v. she failed to make decisions, resolve challenges and/or provide behaviour guidance in the best interests of the children under her professional supervision, contrary to Standard IV.B.4 of the Standards of Practice;
 - vi. she conducted herself in a manner that could reasonably be perceived as reflecting negatively on the profession of early childhood education, contrary to Standard IV.E.2 of the Standards of Practice; and
 - vii. she physically, verbally, psychologically or emotionally abused a child under her professional supervision, contrary to Standard V.A.1 of the Standards of Practice;

- c. she 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);
- d. she failed to comply with the Act, the regulations, or by-laws, contrary to Ontario Regulation 223/08, subsection 2(19); and
- e. she conducted herself in a manner that is unbecoming a member, contrary to Ontario Regulation 223/08, subsection 2(22).

THE MEMBER'S PLEA

The Member admitted to the allegations in the Notice of Hearing as set out in paragraphs a, b, c, d and e above.

The Panel received the Member's plea both orally and in writing through an Agreed Statement of Facts (Exhibit 2). The Panel also conducted a verbal plea inquiry and was satisfied that the Member's admission was voluntary, informed and unequivocal.

EVIDENCE

Counsel for the College and counsel for the Member advised the Panel that an agreement had been reached on the facts, and introduced the Agreed Statement of Facts, which read as follows:

The Member

1. The Member initially registered with the College of Early Childhood Educators (the "College") as a Registered Early Childhood Educator ("RECE") in July 2009 and remains in good standing with the College.
2. The Member has been employed as an RECE at Kids & Company Ltd. (the "Centre") for her entire career in early childhood education. When the incidents described below took place, she was employed at the Centre's location in Ajax, Ontario (the "Ajax Centre"). The Member has no disciplinary history with the Centre, apart from the incidents described in this Agreed Statement of Facts.
3. On September 21, 2015, the Member was suspended with pay from her position as an RECE at the Centre pending the outcome of an investigation by the Durham Children's Aid Society (the "CAS") into the incidents described below.
4. On October 2, 2015, following the CAS investigation and the incidents described below, the Centre placed the Member on a leave of absence. The Centre advised the Member that she would need to enroll in a counselling program and, that if she returned to work for the Centre, she would not return as Assistant Director and that she would not return to the Ajax Centre.

5. On January 11, 2016, the Member returned to work at a different Centre location in Toronto, Ontario. Prior to returning to work, the Member completed counselling with a registered social worker to address the stressors in her life. If the Member were to testify, she would testify that as a result of the lessons learned during counseling, and on reflecting on the events described below, she recognizes that she responded to the stresses in her life in an inappropriate manner. She has not had any incidents in her capacity as an RECE since the events described below.
6. Following the events described below, the Ajax Centre closed permanently.

Incident on or around September 18, 2015

7. On or around September 18, 2015, in the course of her duties at the Ajax Centre, the Member was supervising a group of pre-school aged children outside with another RECE, D.C.
8. A child, who was two to three years old, got into a physical altercation with his sister. D.C. and/or the Member sought to remove the child from the physical altercation with his sister.
9. The Member approached the child, grabbed him by the outside of his arms, lifted him off the ground, shook him, and placed him down on his bottom forcefully. The Member then got down on the child's level, positioned her face close to the child's, and shouted at him not to move. If the Member were to testify she would say that she has a naturally loud voice, and she did not intend to shout at the child.
10. The child began to cry and in D.C.'s observation was "terrified". When D.C. attempted to console the child and asked him to go play with the other children, he refused to move. If the Member were to testify, she would testify that the child began to cry when the Member told him that he had to stay seated.

Incidents in or around September 2015

11. On a date in or around September 2015, the Member was supervising a group of pre-school aged children at the Centre. A placement student at the Centre, A.M., advised the Member that one of the children, who was two to three years old, was having difficulty sleeping during naptime.
12. The Member sat beside the child, physically forced her to lie down, covered her in a blanket, and leaned over the child with her elbow on the opposite side of the bed so that the child could not get up.
13. When A.M. told the Member that she should not do that, the Member insisted that she was not putting any pressure on the child and that there was room for the child to move. The Member remained in this position for 10 to 15 minutes until the child fell asleep. During this time, the child was screaming that she needed to get comfortable, that she

wanted her Daddy, and that she wanted her baby (i.e. her doll), or words to that effect. At no time did the child say the Member was hurting her.

14. If the Member were to testify, she would testify that she did not intend to restrain the child, that she intended to help the child fall asleep, and that at all times the child had sufficient room to move around freely.
15. A few days later, the Member engaged in the same conduct with the child as described in paragraph 12 above. On this occasion, the child said "You're hurting me", "Don't do that", and/or words to that effect. The Member remained in this position for 10 to 15 minutes until the child fell asleep.
16. If the Member were to testify, she would testify that she did not intend to restrain the child and that at all times the child had sufficient room to move around freely. The Member would also testify that after the child told the Member she was hurting her, that the Member immediately provided the child with more room to move, and that the child fell asleep soon after.

CAS Investigation

17. As a result of the incidents described above, the CAS conducted a child protection investigation. On October 1, 2015, the CAS verified the allegation that the Member used inappropriate physical redirection with two children. While the CAS determined that the behavior was inappropriate, the CAS did not believe that the Member intended to harm the children.

College Standards of Practice

18. The Member agrees that the following are standards of the profession that were in force in September 2015, as set out in the 2011 College's Code of Ethics and Standards of Practice:
 - a. Standard I.D requires RECEs to provide nurturing learning environments where children thrive and families are welcome.
 - b. Standard I.E requires RECEs to establish professional and caring relationships with children and families and to respond appropriately to the needs of children.
 - c. Standard III.A.1 requires RECEs to maintain safe and healthy learning environments.
 - d. Standard III.C.1 requires RECEs to support children in developmentally sensitive ways and to provide caring, stimulating, and respectful opportunities for learning and care that are welcoming to children and their families.
 - e. Standard IV.B.4 requires RECEs to make decisions, resolve challenges and provide behaviour guidance in the best interests of the children under their professional supervision.

- f. Standard IV.E.2 requires RECEs to avoid conduct that could reasonably be perceived as reflecting negatively on the profession of early childhood education.
- g. Standard V.A.1 requires RECEs not to abuse physically, verbally, psychologically, or emotionally a child under their professional supervision.

Admissions of Professional Misconduct

19. The Member admits that she engaged in and is guilty of professional misconduct as described in paragraphs 1 to 17 above, and as defined in section 33(2) of the *Early Childhood Educators Act, 2007* (the “Act”), in that:

- a. she physically, verbally, psychologically, and/or emotionally abused a child who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(3);
- b. she failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8), in that:
 - viii. she failed to provide a nurturing learning environment where children thrived, contrary to Standard I.D of the Standards of Practice;
 - ix. she failed to establish professional and caring relationships with children and/or to respond appropriately to the needs of children, contrary to Standard I.E of the Standards of Practice;
 - x. she failed to maintain a safe and healthy learning environment, contrary to Standard III.A.1 of the Standards of Practice;
 - xi. she failed to support children in developmentally sensitive ways and to provide caring, stimulating, and respectful opportunities for learning and care that are welcoming to children and their families, contrary to Standard III.C.1;
 - xii. she failed to make decisions, resolve challenges and/or provide behaviour guidance in the best interests of the children under her professional supervision, contrary to Standard IV.B.4 of the Standards of Practice;
 - xiii. she conducted herself in a manner that could reasonably be perceived as reflecting negatively on the profession of early childhood education, contrary to Standard IV.E.2 of the Standards of Practice; and
 - xiv. she physically, verbally, psychologically or emotionally abused a child under her professional supervision, contrary to Standard V.A.1 of the Standards of Practice;

- c. she 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);
- d. she failed to comply with the Act, the regulations, or by-laws, contrary to Ontario Regulation 223/08, subsection 2(19); and
- e. she conducted herself in a manner that is unbecoming a member, contrary to Ontario Regulation 223/08, subsection 2(22).

DECISION ON THE ALLEGATIONS

Having regard to the facts set out in the Agreed Statement of Facts, including particularly the Member's admission to the conduct set out therein and that the admitted conduct contravened the Standards of Practice and the provisions of Ontario Regulation 223/08, as set out above, the Committee accepted the Member's admission and found that she committed all of the acts of professional misconduct set out in the Notice of Hearing.

REASONS FOR DECISION

The Panel considered the Agreed Statement of Facts and the Member's guilty plea and found that the evidence supported findings of professional misconduct in respect of each of the allegations set out in the Notice of Hearing.

The evidence established that the Member contravened the standards of practice in connection with three incidents: on September 18, 2015, she grabbed the child by the outside of his arms lifted him off the ground, shook him, and placed him down on his bottom forcefully, and then shouted at him and told him not to move; and on two occasions in or around September 2015, the Member physically forced a child to lie down and leaned over her with her elbow on the opposite side of the bed so the child could not get up, and the Member remained in this position for 10 – 15 minutes while the child screamed. A CAS investigation determined that this behaviour was inappropriate, although CAS did not find that the Member intended to harm the children involved. The Panel found that the Member's conduct in connection with these incidents constituted physical, verbal, psychological or emotional abuse of a child under her professional supervision, and that this was professional misconduct pursuant to subsection 2(3) of Ontario Regulation 223/08. This also constituted a failure by the Member to maintain each of the standards of the profession set out in the Notice of Hearing, contrary to Ontario Regulation 223/08, subsection 2(8), in that:

- a. she failed to provide a nurturing learning environment where children thrived;
- b. she failed to establish professional and caring relationships with children and/or to respond appropriately to the needs of children;
- c. she failed to maintain a safe and healthy learning environment;

- d. she failed to support children in developmentally sensitive ways and to provide caring, stimulating, and respectful opportunities for learning and care that are welcoming to children and their families;
- e. she failed to make decisions, resolve challenges and/or provide behaviour guidance in the best interests of the children under her professional supervision;
- f. she conducted herself in a manner that could reasonably be perceived as reflecting negatively on the profession of early childhood education; and
- g. she physically, verbally, psychologically or emotionally abused a child under her professional supervision;

Further, in conducting herself as she did with these children, the Member failed to comply with the Act, the regulations, or by-laws and acted in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, and which is professional misconduct contrary to Ontario Regulation 223/08, subsection 2(10). Through her conduct on three (3) separate occasions, the Member failed to live up to the standards of practice as outlined in the College's Standards of Practice.

Physical abuse of a child is reprehensible. It disgraces the profession and the member. It also constitutes conduct that is unbecoming a member, which is an act of professional misconduct pursuant to subsection 2(22) of Ontario Regulation 223/08.

Ms. Marion's voluntary admission to each of the allegations of professional misconduct and the facts set out in the Agreed Statement of Facts led the panel to find her guilty of professional misconduct.

POSITION OF THE PARTIES ON PENALTY

Counsel for the College and counsel for the Member made a joint submission as to an appropriate penalty. The joint submission as to penalty proposed that the Panel make an order as follows:

1. Requiring the Member to appear before the Panel to be reprimanded on the date of this Order.
2. Directing the Registrar to suspend the Member's certificate of registration for a period of five months. The suspension will take effect from the date of this Order, and will run without interruption as long as the Member remains in good standing with the College.
3. Directing the Registrar to impose the following terms, conditions and limitations on the Member's certificate of registration:

- a. 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 must successfully complete, with a minimum passing grade of 70% (or to the satisfaction of the Director of Professional Regulation (“Director”) if a grade is not assigned) and at her own expense, a course in behaviour guidance that is pre-approved by the Director. The Member must provide the Director with proof of enrollment and successful completion of the course.
- b. Prior to the Member commencing or resuming employment, the Member, at her own expense, will arrange for 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 for the Director 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, the Member can commence or resume employment after arranging a mentorship relationship with a pre-approved Mentor (assuming the requirements of subparagraph 3(a) have been met).

- c. 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:
 - i. the Panel’s Order,

- ii. the Agreed Statement of Facts,
 - iii. the Joint Submission on Penalty, and
 - iv. a copy of the Panel's Decision and Reasons, once available.
- d. The Member will meet with the Mentor every two 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)).
- e. After a minimum of five 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(c),
 - iii. that the Mentor reviewed the documents set out in paragraph 3(c) and discussed the subjects set out in paragraph 3(d) with the Member, and
 - iv. the Mentor's assessment of the Member's insight into her behaviour.
- 4. Requiring the Member to pay the College's costs fixed in the amount of \$1,500, to be paid in four equal installments of \$375, and based on the following schedule:

- a. \$375 to be paid on the date of this Order;
- b. \$375 to be paid on May 15, 2018;
- c. \$375 to be paid on June 30, 2018; and
- d. \$375 to be paid on August 15, 2018.

Each payment listed above shall be provided by means of a post-dated cheque, with all four cheques provided by the Member to the College on the date of this Order.

5. All documents delivered by the Member to the College or the Mentor will be delivered by registered mail or courier, and the Member will retain proof of delivery.

DECISION ON PENALTY AND COSTS

The Panel accepted the joint submission on penalty and made an order as to penalty and costs as set out above.

REASONS FOR PENALTY

The Panel understands that the penalty ordered 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 proportionate to the misconduct.

In considering the joint submission, the Panel was mindful that a jointly proposed penalty should be accepted unless its acceptance would bring the administration of justice into disrepute or it is otherwise not in the public interest.

The Panel is aware that no two cases are exactly alike. However, reviewing previous decisions of this Discipline Committee can help determine the level of appropriate penalty. The Panel therefore considered the previous cases that were presented. These included *College of Early Childhood Educators v. Guyett* 2017 ONCECE 3, *College of Early Childhood Educators v. Desson* 2013 ONCECE 9, *College of Early Childhood Educators v. Warden* 2015 ONCECE 5, and *College of Early Childhood Educators v. Coleman* 2017 ONCECE 8.

These cases established a range of penalties in cases where members have been found to have acted forcefully with children, thereby committing acts of misconduct including breaching the standards of practice, physically abusing a child and conducting themselves in a manner that members of the profession would reasonably regard as disgraceful, dishonourable and unprofessional. This range included a suspension in the range of three (3) to six (6) months, a

reprimand, as well as the imposition of terms, conditions and limitations on the members' certificates of registration.

The Panel found that the penalty proposed by the parties satisfies the principles of specific and general deterrence and public protection. The proposed five (5) month suspension is in keeping with the range of suspensions that were imposed in the previous cases that were put before the Panel. This suspension is appropriate, given that the use of force occurred on three (3) separate occasions and that CAS determined that the behaviour was inappropriate, although CAS did not believe that Ms. Marion intended to harm the children. Additionally, the Member cooperated with the College and, by agreeing to the facts and proposed penalty has accepted responsibility. The suspension, along with the reprimand, will act as a specific deterrent to the Member, and a general deterrent to other members of the profession, preventing them from engaging in such conduct. The terms, conditions and limitations, including coursework in behaviour guidance and the mentoring sessions, will help to rehabilitate the member and educate her in best practices for early learning. These will also protect the public.

Having considered all of these factors, the Panel was satisfied that the proposed penalty in this case satisfies the public interest.

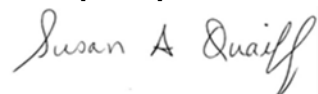
REASONS REGARDING ORDER AS TO COSTS

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 parties are in agreement with respect to costs and the amount of costs to be ordered. The Panel agrees that that this is an appropriate case for costs to be awarded and the amount proposed by the parties is reasonable.

Costs are not meant to be punitive but to ensure that the member bears the responsibility for paying for part of the actual costs incurred of her misconduct such that the membership does not have to bear the entire costs of one individual's misconduct.

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



Susan Quaiff, Chairperson

April 30, 2018

Date