

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

Citation: College of Early Childhood Educators vs Shawna Lee (Ferguson) Swain,
2015 ONCECE 7
Date: 2015-04-22

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

AND IN THE MATTER OF discipline proceedings against Shawna Lee Swain, a current
member of the College of Early Childhood Educators.

PANEL: Karen Damley, Chair
Barbara Brown, RECE
Rhiannon Brown, RECE

BETWEEN:)	
COLLEGE OF EARLY CHILDHOOD)	Jordan Glick,
EDUCATORS)	WeirFoulds LLP,
)	for the College of Early Childhood Educators
- and -)	
)	
SHAWNA LEE SWAIN)	Lisa White,
REGISTRATION # 14837)	on behalf of the Member
)	
)	
)	Erica Baron,
)	McCarthy Tétrault LLP,
)	Independent Legal Counsel
)	
)	Heard: April 22, 2015

REASONS FOR DECISION, DECISION AND ORDER(S)

1. This matter came on for a hearing before a panel of the Discipline Committee (the “Committee”) on April 22, 2015 at the College of Early Childhood Educators (the “College”) at Toronto.
2. Counsel for the College tendered a Notice of Hearing dated February 27, 2015 (Exhibit 1), that was served on Shawna Lee Swain, RECE (the “Member”), specifying the charges and requesting her attendance before the Discipline Committee of the College of Early

Childhood Educators on March 19, 2015 at 12:45 p.m. to set a date for a hearing. Counsel for the College also tendered an Affidavit of Service sworn by Lisa Searles, Hearings Coordinator (Exhibit 1), and sworn March 19, 2015, confirming the Notice of Hearing was served on the Member.

3. Counsel for the College submitted a Consent form indicating that the parties agreed to a hearing on April 22, 2015 signed by counsel for Member on April 20, 2015. The Member, who was not in attendance at the hearing, was represented by legal counsel.

THE ALLEGATIONS

4. The allegations against the Member, as stated in the Notice of Hearing, are as follows:
 - (a) She failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8) in that:
 - i. She failed to build a climate of trust, honesty and respect in the workplace, contrary to Standard IV.C.2; and,
 - ii. She conducted herself in a manner that could reasonably be perceived as reflecting negatively on the profession, contrary to Standard IV.E.2.
 - (b) She acted in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 223/08, subsection 2(10).
 - (c) She signed or issued, in her professional capacity, a document that she knew or ought to have known contained a false, improper or misleading statement, contrary to Ontario Regulation 223/08, subsection 2(16).
 - (d) She falsified a record relating to her professional responsibilities, contrary to Ontario Regulation 223/08, subsection 2(17).
 - (e) She failed to keep records as required by her professional duties, contrary to Ontario Regulation 223/08, subsection 2(18).
 - (f) She conducted herself in a manner that is unbecoming a member, contrary to Ontario Regulation 223/08, subsection 2(22).

5. Counsel for the College submitted a plea inquiry signed by the Member on April 16, 2015 (Exhibit 3), indicating the following:
 - (a) The Member understands the nature of the allegations made against her;
 - (b) The Member understands that by admitting the allegations, she is waiving the right to require the College to prove the case against her and the right to have a hearing;
 - (c) The Member voluntarily decided to admit to the allegations against her;
 - (d) The Member understands that depending on the order made by the Committee, the Committee's decision and a summary of its reasons could be published in the College's official publication, *Connexions*, including a reference to her name; and,
 - (e) The Member understands that any agreement between counsel for the College and herself with respect to the order proposed does not bind the Committee.
6. By entering into the plea inquiry, the Member submitted a plea of no contest to the allegations of professional misconduct.
7. Counsel for the College also submitted an affidavit signed on April 6, 2015 by S.E. Corke, Registrar and Chief Executive Officer at the College (Exhibit 4). The affidavit states that Ms. Swain is a member of the College, her current registration status is "Current Member" and it outlines the historical changes that occurred since the Member was issued a Certificate of Registration.

AGREED STATEMENT OF FACTS

8. Counsel for the College advised the Committee that an agreement had been reached on the facts and submitted into evidence an Agreed Statement of Facts, signed April 17, 2015 (Exhibit 5). The Agreed Statement of Facts provides as follows:

- (a) Shawna Lee Swain (“Ms. Swain” or the “Member”) is, and was at all times relevant to the Allegations in the Notice of Hearing, a registered member of the College of Early Childhood Educators (the “College”).
- (b) At all times relevant to the Allegations in the Notice of Hearing, the Member was employed as a Supervisor at Mother of Compassion Child Care Centre (the “Centre”).
- (c) In January 2014, the Member resigned from the Centre.
- (d) Shortly thereafter, in March 2014, an audit conducted on the Centre’s 2013 financial records revealed that approximately \$15,707.84 in child care funds were unaccounted for.
- (e) Following the auditor’s discovery, the Board of Directors (the “Board”) began an investigation into the Member’s conduct, as she was the Supervisor at the Centre at that time and responsible for the Centre’s day-to-day finances.
- (f) The auditor’s investigation revealed numerous anomalies in the financial records of the Centre that were attributed to the Member for the years 2011 to 2013. Ms. Swain acknowledges that she was responsible for the anomalies in that:
 - i. She falsified Safety Superstore receipts to the amount of \$22,087.25
 - ii. She purchased eight Orbit G2 Bundle Travel Systems for \$11,742.96 for the Centre using her personal Visa credit card and reimbursed herself using Centre funds. She then cancelled the order and failed to repay the Centre for the funds she used for the original purchase;
 - iii. She did not pay childcare fees for [Child 1], totaling \$2,425.00, which she was expected to pay;
 - iv. She purchased an iPad 2 16GB, at a cost of \$450.87 for personal use and expensed it through the Centre;
 - v. She falsified receipts for Scholastic Books and Fazel Bacchus Handi-Man and Repairs in the amount of \$10,578.01;
 - vi. She failed to deposit \$1,844.65 in cash payments made by parents into the Centre’s bank account;
 - vii. She reimbursed herself with \$3,138.91 in petty cash without providing receipts for the expenses;

- viii. She claimed a party receipt for \$374.84 as a reimbursement for herself, which was not an expense that should have been reimbursed by the Centre;

In total, the Member admits to appropriating \$52,642.49 in money and benefits that were not authorized by the Centre.

- (g) The Member additionally acknowledges receiving \$24,037.75 in maternity leave top-up funds from the Centre. The Centre has asserted that the Member was not entitled to these funds. If the matter were to proceed to a contested hearing, the Member would testify that the Centre had approved the top-up payments.
- (h) Since being confronted with these allegations, the Member has repaid the Centre the following amounts on the indicated dates:
 - i. On April 4, 2014, the Member repaid the Centre \$15,707.84;
 - ii. On April 22, 2014, the Member repaid the Centre \$5,000.00; and,
 - iii. On June 13, 2014, the Member repaid the Centre \$26,842.22.

In total, the Member has repaid to the Centre \$47,550.06.

- (i) The Member additionally paid to the Centre \$13,500 in September of 2013, prior to her departure from the Centre. The Centre has asserted that these payments were made in respect of [Child 1]'s tuition. If the matter were to proceed to a contested hearing, the Member would testify that this money was pre-emptive payback for monies misappropriated as indicated in paragraph 'h' above.
- (j) Since April 30, 2014, the Member has, of her own volition, been meeting with a clinical psychologist to address issues giving rise to this proceeding. Attached to the Agreed Statement of Fact as Schedule "A" is a copy of a letter, dated December 18, 2014, from the Member's Clinical Psychologist.
- (k) Ms. Swain admits that by reason of the facts set out above, she engaged in professional misconduct, as defined in subsection 33(2) of the ECE Act, in that:
 - i. She failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, standard 2(8) in that:
 - 1. She failed to build a climate of trust, honesty and respect in the workplace, contrary to Standard IV.C.2; and

2. She conducted herself in a manner that could reasonably be perceived as reflecting negatively on the profession, contrary to Standard IV.E.2.
 - ii. She acted in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 223/08, subsection 2(10).
 - iii. She signed or issued, in her professional capacity, a document that she knew or ought to have known contained a false, improper or misleading statement, contrary to Ontario Regulation 223/08, subsection 2(16).
 - iv. She falsified a record relating to her professional responsibilities, contrary to Ontario Regulation 223/08, subsection 2(17).
 - v. She failed to keep records as required by her professional duties, contrary to Ontario Regulation 223/08, subsection 2(18).
 - vi. She conducted herself in a manner that is unbecoming a member, contrary to Ontario Regulation 223/08, subsection 2(22).
- (l) The Member understands the nature of the allegations that have been made against her and that by voluntarily admitting to these allegations, she waives her right to require the College to otherwise prove the case against her.
- (m) The Member understands that the Discipline Committee can accept that the facts herein constitute professional misconduct.
- (n) The Member understands that the panel's decision and reasons may be published, including the facts contained herein along with her name.
- (o) The Member understands that any agreement between her and the College does not bind the Discipline Committee.
- (p) The Member acknowledges that she has had the opportunity to receive independent legal advice and has retained counsel to represent her throughout this proceeding.
- (q) The Member and the College consent to the panel viewing the Notice of Hearing, this Agreed Statement of Facts and the Joint Submission as to Penalty prior to the start of the hearing.

DECISION

9. Having considered the Exhibits filed, and based on the Agreed Statement of Facts and guilty plea, and counsel submissions, the Discipline Committee finds that the facts support a finding of professional misconduct. In particular, the Committee finds that Shawna Swain, the Member, committed acts of professional misconduct as alleged, more particularly breaches of Ontario Regulation 223/08, section 2, subsections 2(8), 2(10), 2(16), 2(17), 2(18), 2(22) and Standards IV.C.2 and IV.E.2 of the College's *Code of Ethics and Standards of Practice*.

REASONS FOR DECISION

10. The Committee finds the Member to be guilty of professional misconduct based on the facts presented and the allegations contained in the signed Agreed Statement of Facts and on her guilty plea in the plea inquiry. The facts in the agreement were uncontested by the Member and she acknowledged that her conduct under examination constituted professional misconduct. As such, the Committee accepts the Member's plea and the Agreed Statement of Facts.
11. The Member falsified receipts, reimbursed herself with petty cash which she was not entitled to, expensed personal items and failed to deposit payments made by parents into the Centre's bank account. Without considering the impact of her actions on the Centre, the Member took advantage of her position of authority to manipulate records for her own financial benefit, a direct violation of Ontario Regulation 223/08 subsections 2(16), 2(17) and 2(18). In a profession where one serves as a role model for children, the public and fellow RECEs, the Member's deceitful conduct failed to provide a positive image of the profession, contrary to Standard IV.E.2.

12. Moreover, by neglecting to pay Centre fees for [Child 1]'s childcare, the Member exploited Centre resources and the services provided by her colleagues. Her willingness to deceive her colleagues over a two year period is not conducive to a climate of trust, honesty and respect in the workplace and directly contravenes Standard IV.C.2.
13. The conduct exhibited by the Member is unacceptable for an early childhood educator. Her deceitful behaviour and lack of integrity is not only unbecoming, but would reasonably be regarded by members as disgraceful, dishonourable and unprofessional, contrary to subsections 2(10) and 2(22) of Ontario Regulation 223/08.
14. While the Committee recognizes that the Member has already repaid a significant portion of the appropriated funds to the Centre, it does not absolve her of the deliberate wrong-doing. The Committee finds the Member's decision to steal from the Centre inappropriate, unprofessional and contemptible.

JOINT SUBMISSION ON PENALTY

15. College counsel submitted a Joint Submission as to Penalty signed by the Member on April 16, 2015 (Exhibit 6), which provides as follows:
 - (a) Shawna Swain (the "Member") shall be reprimanded by the Discipline Committee and the fact of the reprimand shall be recorded on the Register.
 - (b) The Registrar shall be directed to suspend the Member's Certificate of Registration for a period of six (6) months commencing on the date of the Discipline Committee's Order, the final three (3) months of which suspension shall be suspended and shall not be imposed if the Member provides evidence, satisfactory to the Registrar of the College, of compliance with the term, condition and limitation imposed on the Member's Certificate of Registration, pursuant to paragraph "c" below.

- (c) The Registrar shall be directed to impose a term, condition and limitation on the Member's Certificate of Registration, to be recorded on the Register, requiring the Member to complete a course in "Ethical and Professional Standards," at her own expense and as prescribed by and acceptable to the College, and provide proof of such completion to the Registrar within six (6) months from the date of the Discipline Committee's Order. Should the Member complete the course to the Registrar's satisfaction within the first three months of her suspension, the latter three months of her suspension will be suspended in accordance with paragraph "b" above.
- (d) If the Member is employed as an RECE within the 12 months immediately following the date of the Order, she will promptly provide the decision of the Discipline Committee to her employer and will subsequently provide to the College Registrar, on the one-year anniversary of the Order, a report from her employer, satisfactory to the Registrar, indicating that the Member has shown honesty and integrity in carrying out her responsibilities as a registered member of the College in the place where she is working.
- (e) The results of the hearing shall be recorded on the Register.
- (f) The Discipline Committee's finding and Order shall be published, with the Member's name, in full on the College's website and in summary in the College's publication, *Connexions*.
- (g) The Member and the College agree that if the Committee accepts this Joint Submission as to Penalty, there will be no appeal of the Committee's decision in any forum.

16. College counsel submitted that the Committee should accept the joint submission as it is an appropriate and reasonable penalty for the misconduct found and it satisfies the College's duty to protect the public interest. It was argued that the Committee has accepted joint submissions as to penalty in previous hearings, adding that while the submissions are not binding to the Committee, both the Ontario Court of Appeal and the Divisional Court have held that joint submissions should not be rejected unless the Committee is of the view that it is "contrary to the public interest" and would "bring the administration of justice into disrepute."

17. Counsel for the College submitted that the proposed penalty was crafted with the aim of denouncing the conduct, deterring similar behaviour and rehabilitating the Member. The joint submission on penalty is appropriate for the professional misconduct found. A reprimand allows the College to dialogue with the Member and to convey to her the disapproval of her conduct and to reinforce the seriousness of her actions. The purpose of the reprimand is to remind the Member of her professional obligations and the need to adhere to the standards expected of her by the College. In addition to serving as a specific deterrent by discouraging future acts of misconduct by the Member, the reprimand, which will be published, will deter other members of the profession from erring in a similar fashion for fear of similar condemnation.
18. Counsel for the College stated that a suspension is a significant specific deterrence as the Member will be unable to be employed as an early childhood educator for several months. Moreover, the suspension also acts as a general deterrent by informing other members of the profession of the kind of penalty that awaits them should they commit similar acts of misconduct.
19. Requiring the Member to provide the Committee's Order to any employer for the next 12 months not only serves as a specific deterrent, but also serves a rehabilitative function. The fact that the Member will have to advise future employers of her misconduct places a supervisory order over her and requires her to take responsibility and ownership of her conduct.
20. Ordering the Member to complete a course in "Ethical and Professional Standards," is rehabilitative, not punitive, in that it seeks to address any underlying concerns that the College may have.

21. Finally, publication is an effective way of deterring future misconduct. As there is an element of public shaming associated with publication, the Member will be dissuaded from committing similar acts of misconduct in the future so as to avoid repeated public scrutiny of her actions. Moreover, publication allows the College to inform other members of the penalty for committing such acts of misconduct.
22. As indicated by counsel for the College, the joint submission was in line with previous penalties imposed by the Committee, referencing *College of Early Childhood Educators v. Darlene Campbell, 2015*, *College of Early Childhood Educators v. Sherrel Pucci, 2012* and *College of Early Childhood Educators v. Nicole Williams, 2013*.
23. Counsel for the Member submitted that the 37 year old Member, who resides in Markham Ontario with her family, has no previous history of disciplinary action involving professional misconduct with the College and has paid significant restitution to the Centre, as evidenced by the Agreed Statement of Facts. In addition to the \$47,550.06 she paid the Centre following her departure in January 2014, she paid \$13,500 to the Centre in September 2013, which was prior to the audit being conducted.
24. Counsel for the Member stated that the Member had repaid the Centre more than what was misappropriated, thus restitution has been made. It was further argued that the Member chose to repay the Centre based on her feelings of remorse.
25. The Member's counsel stated that at the time of the incidents in question, the Member was suffering from, and continues to suffer from, depression and that the Member is currently on medication, as confirmed by the letter from her family physician attached to the Agreed Statement of Facts, she is actively meeting with a clinical psychologist to address the issues that have brought her before the Committee.

26. It was argued by the Member's counsel that the Member's professional misconduct was not committed solely out of greed. The Member has admitted to her actions and has taken full responsibility; however, at the time the professional misconduct took place, the Member was dealing with mental health issues, which should be considered a mitigating factor.
27. It has been noted the Member has paid a substantial amount of restitution and is doing everything in her power financially to rectify the situation with the Centre. She has expressed remorse both verbally and in writing to the Centre on a number of occasions. By admitting to the allegations in the plea inquiry, thereby not requiring the College to prove the case against her, the Member took responsibility and demonstrated remorse for her conduct.
28. Since the police have been contacted by the Centre, and although the Member has not been charged, she may be charged in the future. As there is no statute of limitations in criminal law, the fact that the Member will have to live with potential criminal charges looming over her for an indefinite period of time serves as a specific deterrent.
29. Publication of the Committee's decision will act as the most powerful form of specific deterrence as it will make finding future employment difficult.
30. Completing a course in Ethical and Professional Standards in conjunction with the rehabilitation she has already undertaken by way of her mental health issues, will serve to effectively rehabilitate her.

PENALTY DECISION

31. Having considered the joint submission made by College counsel and counsel for the Member, the Committee makes the following order as to penalty:

- (a) The Member shall be reprimanded by the Discipline Committee in writing and the fact of the reprimand shall be recorded on the College register.
- (b) The Registrar shall be directed to suspend the Member's certificate of registration for a period of six months commencing on the date of the Order of the Committee.
- (c) The Registrar shall be directed to impose a term, condition and limitation on the Member's certificate of registration to be recorded on the register, requiring the Member to complete a course in "Ethical and Professional Standards," at her own expense and as prescribed by and acceptable to the College, within six months from the date of the Discipline Committee's Order. Should the Member complete the course within three months of her suspension, the latter three months of her suspension will be remitted.
- (d) If the Member is employed as an RECE within 12 months immediately following the date of the Order, she will promptly provide the decision of the Discipline Committee to her employer and will subsequently provide to the Registrar, on the one-year anniversary of the Order, a report from her employer, satisfactory to the College Registrar, indicating that the Member has shown honesty and integrity in carrying out her responsibilities as a registered member of the College in the place where she is working.
- (e) The results of the hearing shall be recorded on the public register.
- (f) The Discipline Committee's finding and Order shall be published, with the Member's name in full on the College's website and in summary in the College's official publication, *Connexions*.

REASONS FOR PENALTY DECISION

32. In matters where there is a joint submission as to penalty, the task before the Committee is to determine whether or not the submission falls within an appropriate range of penalty given the Member's misconduct. Recognizing that the Member has already made efforts to rehabilitate herself by meeting with a clinical psychologist and has expressed remorse for her conduct, the Committee has ordered a penalty consistent with the joint submission, having determined that the proposed penalty in its entirety is significant, reasonable and serves to protect the public interest.

33. As the Member was not in attendance at the hearing, a written reprimand provides the Committee 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 Committee recognizes the seriousness of the Member's actions and responds to acts of professional misconduct fairly and transparently.
34. Suspension of the Member's certificate of registration is appropriate in this matter, given the fact that the Member misappropriated thousands of dollars from the Centre, failed to pay [Child 1]'s childcare fees when she was required to and falsified receipts. A suspension holds the Member accountable for her actions and communicates to her the severity of her misconduct. While the suspension demonstrates the Committee's disapproval of the Member's conduct, it is not intended to be solely punitive. A suspension provides the Member with an opportunity to learn from her mistakes, reflect on her conduct and refocus on her professional responsibilities. The Committee is confident that the Member will use this time to focus on her own rehabilitation. She has accepted responsibility for her actions by entering into the Agreed Statement of Facts and Joint Submission as to Penalty.
35. Ordering the Member to complete a course in "Ethical and Professional Standards," is intended to bring her practice in line with current practice expectations by refreshing her knowledge base and reinforcing acceptable behaviour. 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 her

rehabilitation and holds 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 the committing of such acts are disadvantageous to her.

36. The purpose of remitting part of the Member's suspension is to motivate her to complete the required course in a timely manner. By responding to the Member's willingness to improve her professional practice with positive reinforcement, the Committee encourages her rehabilitation while allowing her to continue her career with minimal disruption. As this is a remedial penalty that serves to correct the Member's practice, it is important that the term of her suspension is reflective of the enthusiasm she has in undertaking the professional development she requires.
37. Mindful of the rehabilitative purpose of the penalty, the Member is required to not only inform her employer of the Committee's decision, but to provide the Registrar with evidence that she has demonstrated honesty and integrity in executing her responsibilities as an early childhood educator. The fulfillment of this requirement demonstrates to the College that the Member has reformed her practice and is able to conduct her duties as an educator in accordance with the College's standards.
38. Finally, publication on the public register, College website and in the newsletter, *Connexions*, promotes awareness of the high standards to which the College holds its members and assures both the public and other members of the profession that the College will not tolerate this kind of conduct. As transparency is essential to self-regulation, the Committee appreciates the importance of demonstrating that it acts decisively and in the public interest when faced with acts of misconduct. Publication will ensure that future potential employers are made aware of the Member's misconduct and are able to reference the finding of the Committee prior to making hiring decisions. It will also communicate to the

Member that the professional misconduct she committed is serious and the consequences for committing such acts are disadvantageous to her.

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

Date: April 22, 2015



Karen Damley
Chair, Discipline Panel



Barbara Brown, RECE
Member, Discipline Panel



Rhiannon Brown, RECE
Member, Discipline Panel