

The Code of Ethics and the Discipline Process

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Overview

- The Early Childhood Educators Act, 2007
- The Code of Ethics
- Complaints & Discipline Process
- Cases

The Act

- 2007
- Self-governing, but regulated, profession
 - Codes of conduct
 - Discipline

The Act

- Practice of early childhood education defined (s.2)
- The planning and delivery of inclusive play-based learning and care programs for children in order to promote the well-being and holistic development of children, and includes,
 - (a) the delivery of programs to pre-school children and school aged children, including children with special needs;
 - (b) the assessment of the programs and of the progress of children in the programs;
 - (c) communication with the parents or persons with legal custody of the children in the programs in order to improve the development of the children; and
 - (d) such other services or activities as may be prescribed by the regulations.

The Act

- Establishes the College
 - Regulates profession
 - Develops, maintains qualifications for membership in the College
 - Ongoing education
 - Issues registration certificates
 - Establishes professional and ethical standards
 - Has complaints and discipline process

The Act

- Complaints Committee
 - Shall consider and investigate written complaints
 - Options
 - Direct to Discipline Committee or Fitness to Practice Committee or not
 - Require member to appear before CC to be reprimanded
 - Refer to alternative dispute resolution (if parties agree); if fails, back to Committee
 - Take any action it considers appropriate “not inconsistent with the Act, regulations or by-laws”

The Act

- Discipline committee
 - Professional Misconduct
- Fitness to Practice Committee
 - Incapacitated member
 - Member suffering from physical or mental condition or disorder so is unfit to continue or registration should be subject to terms

The Act

- Complaints Committee
 - Can refuse to hear a matter if it's not about
 - professional misconduct
 - Incompetence
 - Incapacity; or if it's
 - Frivolous, vexatious or an abuse of process
 - Member must be notified of complaint and have opportunity to respond in writing

The Act

- Complaints Committee
 - Need not hold a hearing before making a decision
 - Must give its decision in writing and its reasons
 - Reasons not required if there is a referral to the Discipline or Fitness and Practise Committees
 - May make interim decision to suspend/subject to terms if referred or concerned about harm to a child
 - Notice to member/opportunity to respond in writing
 - Must make “best efforts” to deal with a complaint within 6 months

The Act

- Discipline & Fitness committees can
 - Revoke registration
 - Suspend for a period, not exceeding 24 months
 - Impose terms, conditions, limitations
 - Suspend for a period any of the above if specified terms are met during the suspension period

The Act

- Discipline Committee can also
 - Reprimand, admonishment, counselling by the Committee
 - Impose a fine
 - Publish a finding
 - Fix costs to be paid by member

The Act

- Where unfounded, both committees
 - Must cause to be published the finding that the allegation was unfounded
 - May order the College to pay member's costs if commencement of the proceeding was unwarranted

The Regulations

- Professional misconduct regulation
 - Ontario Regulation 223/08
 - No amendments since passed
 - Defines professional misconduct

The Regulation

- Professional Misconduct – long list!
 - http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_080223_e.htm

The Regulation

- Professional Misconduct includes
 - Abuse of children
 - Practicing while under the influence or affected by illness or dysfunction and can't properly practice
 - In a conflict of interest
 - Breaching confidentiality
 - Failing to maintain standards of profession
 - Behaving disgracefully, dishonourably, unprofessionally

The Regulation

- Professional Misconduct includes
 - Providing false information
 - Using a name other than the name in the register, in the course of professional duties
 - Failing to comply with an order of the Discipline or Fitness to Practice committees
 - Failing to co-operate during an investigation

The Code

- 6 Standards of Practice
 - I: Caring and Nurturing relationships that support learning
 - II: Developmentally appropriate care and education
 - III: Safe, Healthy and Supportive learning environments
 - IV: Professional Knowledge and Competence
 - VI: Confidentiality and Consent to Release Information

The Code

- You need to comply with the Code in the event there is a conflict with the Code and your employer's policies
- Professionalism
 - With colleagues and others
 - With the College
 - As an individual

The Code

- Conflicts of Interest
 - See the end notes
 - Member has a personal, financial or other professional interest or obligation which gives rise to a *reasonable apprehension* that that interest or obligation may influence the member in the exercise of his or her professional duties
 - Actual influence not required; perception is all that is required

The Code

- Conflicts of Interest
 - See the end notes
 - “dual relationship”
 - Where ECE has one or more relationships
 - with a child under the ECE’s care;
 - With the child’s family:
 - A colleague; or
 - A supervisee (students, volunteers, other staff supervised by member)
 - Does not matter if arises before, during or after the provision of the professional service

Complaints & Discipline

- College website has basic information about the process
- Complaint form starts the process
- Member gets opportunity to respond on writing
- If it goes to a hearing...

Hearings

- Basic Process concepts
 - Initiation of complaint
 - Investigation
 - Referred to hearing
 - pre-hearing steps
 - Hearing
 - Disposition
 - Appeal rights – appeal to Divisional Court

Hearings

- Procedural fairness concepts in law
 - You have a right to respond/defend
 - You have a right to reasons for the decision
- Rules of Procedure (52 page document)

Hearings

- Who is involved in a contested hearing
 - The Panel (decision maker, like a judge)
 - The Prosecution
 - The defence (self-representation or hire counsel)
 - Independent Counsel to the Panel
 - Witnesses

Hearings

- Prosecutor
 - Has to prove a breach of the standards
 - Standard of proof is “balance of probabilities”
 - “clear and convincing, and based on cogent evidence”
 - “strong and unequivocal evidence within the standard of proof is required where either the issues, or the consequences for the individual are serious”

Hearings

- The accused/respondent
 - Right to your own counsel
 - You can self-represent as well
 - To the extent necessary, respond to the evidence, challenge it, provide your own evidence
 - You may decide to plead “no contest” (neither admit nor deny) or enter a guilty plea
 - See rules: “plea inquiry” at page 37 of Rules

Hearing

- Panel's job
 - Hears the evidence
 - Applies the relevant statutory framework
 - Makes a decision

Hearings

- Evidence
 - Witnesses under oath
 - Examination in chief (a.k.a. direct examination)
 - Cross examination
 - Re-direct examination
 - Documents are proved through witnesses and admitted as exhibits
 - Who might the witnesses be?

Hearing

- Independent Legal Counsel
 - Because panel members are not trained in law, they may need assistance on procedural or legal questions
 - ILC may assist in writing the decision
 - If any legal opinions are expressed by ILC, that might occur in open hearing to allow parties to respond; or opportunity to respond in writing
 - The panel must retain its independence – ILC cannot ‘usurp’ its function

Hearing

- Independent Legal Counsel: court decisions
 - “it is impermissible for ILC to take on the role of prosecutor or to make decisions that are to be decided by the panel”
 - “those who hear the evidence must decide, and the ILC may not descend into the arena and become counsel for one or either of the parties”

Hearings

- Motions
 - Some motions are heard by one panel member, some by three panel members, prior to the hearing
 - Some motions are to be heard by the panel at the hearing, e.g.
 - Exclusion of public from hearing
 - Exclusion of witnesses
 - Constitutional question

Hearings

- Motions
 - Related to disclosure
 - Exchange of documents/opportunity to view docs
 - Oral or written examinations of a party
 - Exchange of witness statements or expert witness reports
 - Order for ‘particulars’
 - List of documents to be disclosed by a party and what is in the party’s possession or control

Hearings

- Motions
 - A “paper” exercise
 - No live witness evidence
 - All through sworn affidavit evidence with exhibits, which form part of the sworn statement

Hearings

- Pre-Hearing Conferences
 - Settlement
 - Identification of the issues
 - Facts or evidence that may be agreed upon
 - Disclosure issues
 - Dates by which steps in the proceeding are to be completed by
 - Estimated duration of hearing
 - Anything else that want discussed

Cases

- So far
 - None under the Fitness to Practice committee
 - All related to professional misconduct
 - None have been contested
 - No contest; or
 - didn't show up to defend; or
 - there were guilty pleas

Cases

- Fact scenario
 - Group of ECEs all disciplined for the same set of facts
 - The day care facility closed
 - Agreed set of facts at the hearing

Cases

- Fact scenario
 - Group of ECEs were unaware that several children had left an enclosed playground; some children returned, three (two 2 year olds and one 18 month old) wandered across the street to a Shoppers Drug Mart
 - One injured his hand in the automatic door at Shoppers

Cases

- Charges professional misconduct under section 33(2) of the Act
 - Failed to supervise
 - Failed to maintain standards of profession
 - Conduct that was disgraceful, dishonourable and unprofessional
 - Failure to comply with the Act and regulation
 - Contravened the law, put child or children at risk
 - Failed to maintain a safe and healthy learning environment
 - Failed to observe and monitor the environment
 - Failed to collaboratively work with colleagues

Cases

- Discipline for all ECEs involved
 - Appear before discipline committee for reprimand
 - Imposed term to attend a course on professional supervision and care within six months
 - Suspend certificate for three months, starting six months after the date of the decision; suspension lifted if Member completed above course
 - Publish the finding and order
 - Registrar to record the results

Cases

- Other cases
 - Two involved fraud by supervisors
 - One was related to driving while drunk and driving while licence suspended
 - Two involved child pornography
 - One resulting from photos taken of children by the ECE during diaper changes
 - One involved a supervisor falsifying records regarding fire drills (they never happened)
 - One involved a member taking a nap when the children took a nap

Cases

- Fraud Case #1
- Supervisor stole \$15,000
 - Reprimand, suspension for six months; only three months if she did complete an ethics course
 - Publication of the finding and order with member's name
- This member was criminally convicted
 - Six-month conditional sentence, \$5000 for restitution for the day care centre's expenses (she had repaid the \$15,000)

Cases

- Fraud case #2
- Supervisor stole systematically from the centre over a number of years
 - Overpaid herself
 - Took cash deposits
 - Didn't pay child care fees for her own child
 - Issued false tax receipts to herself for child care fees never paid
 - She resigned; settlement between her and the centre for repayment of funds

Cases

- Penalty
 - Reprimand
 - Suspension from practice for 12 months
 - Last 7 months suspension will be lifted in consideration that she refrained from working for a period of time and if she completes required course (Ethical and Professional Standards)
 - Publication of findings and order
 - She must tell prospective employers about this discipline if employed within 12 months of this order; and employer will provide a report that member is carrying out her responsibilities with integrity

Cases

- What do you think about forcing people to take ethical courses?

Cases

- Drunk driving case
 - This involved evidence at the hearing because the member did not show
 - In that case the panel must proceed to have a hearing and College must prove the case
 - Witnesses:
 - Co-ordinator at the Centre where member worked
 - Ultimately terminated when Member didn't come through with counselling and the Employee Assistance Program and Co-ordinator filed a complaint with the College
 - Member plead guilty to criminal code charges

Cases

- Drunk driving case
- **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 the Member committed acts of professional misconduct as
 - breaches of the *Early Childhood Educators Act, 2007*, paragraphs 33(2)(a) and (c), O. Reg. 223/08, subsections 2(8), (10), (19), (20) and (22), and Standard IV.A.2 and Standard IV.E.2 of the College's Code of Ethics and Standards of Practice

Cases

- Drunk driving
 - Penalty
 - Suspension for six months (three months “already served” further to an interim decision)
 - Cannot commence employment again until there is a professional assessment re alcohol and substance abuse
 - Complies with treatment
 - Publication of decision

Cases

- Drunk driving case
 - Aggravating factors:
 - Not a single incident
 - Course of conduct became known in the community
 - Put children at risk (two children in her car while driving drunk)
 - Member failed to participate in the proceedings
 - Mitigating factor: Criminal offence was on lower end and was not an offence of dishonesty or moral turpitude
 - Really??

Cases

- Porn Case #1
- Where ECE took pictures of children under his care during diaper changes
- He quit
- He didn't show up to the hearing
- Witness – Registrar and CEO of the College
- Evidence of his conviction for child porn possession and sexual touching at the hearing

Cases

- Porn Case #2
- Online undercover investigation found porn on member's computer
- She resigned
- She was convicted under the Criminal Code
- Plead guilty

Cases

- Porn Case #2
- Penalty
 - Revoke licence
 - Do not apply for reinstatement for 2 years
 - Reprimand
 - Record results in register
 - publication

Cases

- Porn case #2
 - What do you think about allowing opportunity for reinstatement in 2 years?

Cases

- Illicit nap
 - Reprimand
 - Publication without identifying the member
- Mitigating circumstances
 - Isolated
 - No prior problems

Questions?

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