

NOTICE OF PUBLICATION BAN

In the matter of College of Early Childhood Educators and Konstantina (Dina) Zimmerman this is notice that the Discipline Committee ordered 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) of the *Early Childhood Educators Act, 2007*.

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

PANEL: Barney Savage, Chairperson
Ce Cil Kim, RECE
Nicole Gouveia-Martinez, RECE

BETWEEN:)
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COLLEGE OF EARLY) Vered Beylin
CHILDHOOD EDUCATORS) for the College of Early Childhood Educators
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- and -)
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KONSTANTINA (DINA) ZIMMERMAN) Rahim Jamal
REGISTRATION # 03115) Kastner Lam LLP
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) Elyse Sunshine, Rosen Sunshine LLP
) Independent Legal Counsel
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) Heard: May 20, 2020

DECISION AND REASONS

This matter was heard via videoconference by a panel of the Discipline Committee of the College of Early Childhood Educators (the "Panel") on May 20, 2020. It was heard together with the matter of *College of Early Childhood Educators v Tammy Ann Mullins* ("T.M.") on consent of the parties.

At the outset, the Panel ordered that no person shall make any audio or video recording of these proceedings by any means, with the exception of oral evidence that is recorded at the direction of the Panel.

PUBLICATION BAN

The Panel ordered a publication ban following a motion by College Counsel, on consent of the Member, 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 were contained in the Notice of Hearing dated May 5, 2020, (Exhibit 2) which provided as follows

1. At all material times, Konstantina (Dina) Zimmerman (the "Member") was a member of the College of Early Childhood Educators working as a registered early childhood educator ("RECE") at a child care centre in Windsor, Ontario (the "Centre").
2. On or about April 29, 2016, the Member and another RECE, T.M., were responsible for supervising a group of 10 pre-school aged children at the Centre. At approximately 10:30/10:40 a.m., the Member and T.M. took the children outside to the playground. Without the Member or T.M. noticing, a child (the "Child") left the playground through a gate that had been left open.

3. The Member and T.M. realized that the Child was missing shortly after he left the playground. T.M. searched for the Child while The Member stayed with the children. Approximately 15-30 seconds later, T.M. saw the Child outside the playground with a woman who had stopped her car to assist the Child. T.M. brought the Child back to the playground.
4. As a result of the conduct described in paragraphs 2-3 above, the Member received a written warning from the Centre.
5. By engaging in the conduct set out in paragraphs 1-4 above, the Member engaged in professional misconduct as defined in subsection 33(2) of the Act in that:
 - (a) she failed to supervise adequately a person who was under her professional supervision, contrary to Ontario Regulation 223/08 (the "Regulation"), subsection 2(2);
 - (b) she failed to maintain the standards of the profession contrary to The Regulation, subsection 2(8) in that:
 - (i) she failed to maintain a safe and healthy learning environment, contrary to Standard III.A.1 of the College's Standards of Practice (the "Standards");
 - (ii) she failed to know, understand and abide by the legislation, policies and procedures that are relevant to the Member's professional practice and to the care and learning of children under her professional supervision, contrary to Standard IV.A.2 of the Standards;
 - (iii) she failed to observe and monitor the learning environment and anticipate when support or intervention was required, contrary to Standard IV.B.3 of the Standards;
 - (iv) she failed to work collaboratively with colleagues in the workplace in order to provide a safe, secure, healthy and inviting environment for children and families, contrary to Standard IV.C.1 of the Standards; and/or
 - (v) 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;

- (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 The Regulation, subsection 2(10); and/or
- (d) she conducted herself in a manner that is unbecoming a member, contrary to The Regulation, subsection 2(22).

WITHDRAWAL OF ALLEGATIONS

The College requested permission to withdraw allegations 5(b)(ii) and 5(b)(iv) in the Notice of Hearing as outlined above. The Member consented to the withdrawal of these allegations. On this basis, the Panel withdrew these allegations and the hearing proceeded on the basis of the remaining allegations in the Notice of Hearing.

EVIDENCE

Counsel for the College and the Member advised the Panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts (Exhibit 4), which provided as follows:

1. The Member has had a certificate of registration with the College for approximately 11 years.
2. The Member is in good standing with the College and has no prior history of discipline or complaints with the College.
3. At all material times, the Member was employed as an RECE at the Centre, in Windsor, Ontario. The Member has worked at the Centre for approximately 27 years.

The Incident

4. On April 29, 2016, the Member and another RECE, T.M., (collectively the "Staff") were responsible for supervising a group of 10 preschool-aged children at the Centre.

5. At approximately 10:40 a.m., the Staff took the children outside to the Centre's playground. The playground was partially covered, fenced and had a number of gates, one of them leading out to a patch of grass beyond which was the sidewalk and street. The Staff did not check the playground gates to ensure that they were closed before letting the children go outside and did not notice that the gate leading to the outside of the playground was open.
6. After the Staff let all the children out to the playground, the Member began to check that the gates were closed. The Staff then conducted a headcount and noticed they were missing a child. At that point they realized that a non-verbal 4 year-old boy (the "Child") was missing.
7. T.M. promptly began searching for the Child, while the Member remained with the other children. T.M. ran back into the building, returned to the playground and quickly checked a shed that was located on the playground. T.M. then noticed that the gate was open, and ran to the sidewalk by the Centre. T.M. did not see the Child. If T.M. were to testify, she would advise that her view was obstructed by a white van parked on the sidewalk. T.M. then quickly returned to the playground.
8. A woman was driving on the street adjacent to the Centre. If the woman were to testify, she would advise that she noticed the Child in the middle of the street, with traffic driving slowly around him. It was raining at the time. The woman got out of her car, picked up the Child and carried him back toward the playground.
9. T.M. came out of the playground when she saw the woman with the Child, exclaimed "Oh my God, how did he get out", and brought the Child back inside the playground.
10. In total, the Child was alone and unsupervised for a short period of time. He was not harmed in the course of the incident.
11. T.M. immediately reported the incident to the Centre's Supervisor on behalf of both Staff, while The Member remained with the children.
12. The Child's parents were promptly informed of the incident. The Member spoke with the Child's father and apologized on behalf of both Staff. According to the Centre's Supervisor,

the Child's father later advised her that the Child was not adversely affected by the incident and he was not worried about the care the Child received at the Centre. The Child continued attending the Centre after the incident.

13. The Member was remorseful after the incident, took responsibility for and learned from what happened, and expressed relief that the Child was unharmed.
14. As a result of the incident, the Member received a written warning from the Centre.
15. Prior to the incident, both the Member and T.M. knew that that the playground's gates were not always closed and the Member had concerns regarding the gates not being locked. If the Member were to testify, she would advise that she had frequently brought up her concerns with the Centre's management. After the incident, the Centre updated its policies and procedures to make explicit the requirement that the gates leading outside the playground be secured and locked by Staff, and locks were purchased for that purpose. The Member has reviewed and implemented the updated policies and procedures.

Admissions of Professional Misconduct

16. The Member admits that she engaged in and is guilty of professional misconduct as described above and as defined in subsection 33(2) of the Act in that:
 - (a) she failed to supervise adequately a person who was under her professional supervision, contrary to the Regulation, subsection 2(2);
 - (b) she failed to maintain the standards of the profession contrary to the Regulation, subsection 2(8) in that:
 - (i) she failed to maintain a safe and healthy learning environment, contrary to Standard 111.A.1 of the Standards;
 - (ii) she failed to observe and monitor the learning environment and anticipate when support or intervention was required, contrary to Standard IV.B.3 of the Standards;

(iii) 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;

(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 the Regulation, subsection 2(10); and/or

(d) she conducted herself in a manner that is unbecoming a member, contrary to the Regulation, subsection 2(22).

THE MEMBER'S PLEA

The Member admitted to the allegations in the Agreed Statement of Facts.

The Panel received a written plea inquiry (Exhibit 6) which was signed by the Member. The Panel also conducted a verbal plea inquiry and was satisfied that the Member's admission was voluntary, informed and unequivocal.

SUBMISSIONS OF THE PARTIES ON LIABILITY

The College submitted that the facts as presented support the findings of misconduct. The College submitted that the evidence established that the Member failed to adequately supervise a pre-school age child under her care. The College submitted that this was a major breach of the standards of the profession. The Member failed to maintain a safe and healthy learning environment for the Child. She was a very experienced RECE and she was aware of fact that the gates were not always locked. She did not properly observe the environment. The risk associated with a lost child reflects negatively on the profession and this is especially true when a non-verbal young child ends up in the roadway and as such, is clearly conduct unbecoming. The College further submitted that this was unprofessional conduct, and while the wording of the legislation includes conduct that would be viewed as disgraceful or dishonourable, in this case, there was no evidence of it being anything other than unprofessional.

The Member submitted that she admitted to the conduct and as such, findings should be made.

FINDINGS AND REASONS FOR DECISION

Having regard to the facts set out in the Agreed Statement of Facts, the Panel accepted the Member's admission and found her guilty of professional misconduct as alleged in the Agreed Statement of Fact and the Notice of Hearing as amended by the deletion of clause 5(b)(ii) and 5(b)(iv). The Panel considered the Agreed Statement of Facts and the Member's plea and found that the evidence supported the findings of professional misconduct as alleged in the Notice of Hearing. The allegations in the Notice of Hearing are supported by the evidence before the Panel, and in particular paragraph five of the Agreed Statement of Facts. The evidence shows that the Member contravened the standards of practice when she failed to secure the outdoor play environment, thereby placing the safety of the children at risk. The safety of one vulnerable child in particular was compromised because of this mistake. The evidence established that the Member failed to adequately supervise the Child such that he was found wandering on the road. Such conduct would reasonably be perceived as reflecting negatively on the profession. This is a prevailing problem in the profession and members have an obligation to carefully supervise the children for whom they are responsible. The evidence further supports findings that the Member conducted herself in a manner that is unbecoming and acted in an unprofessional manner.

POSITION OF THE PARTIES ON PENALTY

Counsel for the College and Counsel for the Member made a joint submission as to an appropriate penalty and costs order (the "Proposed Order"). The parties submitted 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 four months. The suspension will take effect from the date of this Order and will run without interruption as long as the College has not otherwise prohibited the Member from practising or suspended the Member for any other reason.
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 a RECE or engaging in the practice of early childhood education, as defined in section 2 of the *Early Childhood Educators Act, 2007* ("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 of Professional Regulation (the "Director"). In order 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 resume of the Mentor.

For clarity, the Member can commence or resume Employment as an RECE after arranging a mentorship relationship with a pre-approved Mentor.

- b. Within 14 days of commencing or resuming Employment, the Member will ensure that the Director is notified of the name, address, and telephone number of all employer(s).

- 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, or within 14 days after the release of such documents, whichever is earliest:
 - i. the Panel's Order,
 - ii. the Agreed Statement of Facts,
 - iii. the Joint Submission on Penalty and Costs, and
 - iv. a copy of the Panel's Decision and Reasons.

- 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 Standards (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.
 - f. All documents delivered by the Member to the College or the Mentor will be delivered by email, registered mail or courier, and the Member will retain proof of delivery.
4. Requiring the Member to pay the College's costs fixed in the amount of \$1,000, to be paid within 18 months of the date of this order.

Submissions of the College on Penalty and Costs

Counsel for the College submitted that the Proposed Order was appropriate and reasonable in light of the facts agreed upon. Counsel indicated that the Panel should consider a number of different factors in determining the appropriate penalty. The College submitted that the Panel should consider that a message needs to be sent broadly to members of the profession and to the public that professional misconduct of this nature has significant consequences. The penalty should also send a message to this particular Member that the conduct is unacceptable. The penalty should offer an opportunity for reflection and rehabilitation for the Member. The penalty should also be generally proportionate to other similar decisions keeping in mind the unique facts of this case.

Counsel noted that failure to adequately supervise children has been an issue that has required repeated decisions by the Discipline Committee. College Counsel provided three cases where there was similar conduct at issue:

- *College of Early Childhood Educators vs Jenny Kar Yun Li*, 2018 ONCECE 7
- *College of Early Childhood Educators vs Jessica Lealess*, 2018 ONCECE 2
- *College of Early Childhood Educators vs Sophia McKenzie*, 2017 ONCECE 5 (on misconduct) and *College of Early Childhood Educators vs. Sophia McKenzie*, 2017 ONCECE 9 (on penalty)

Counsel noted that while no two cases are precisely the same, these cases contained some elements that presented both greater and lesser risks to children, based on the length of time children were unsupervised and the danger posed to children. College Counsel submitted that on balance, these cases support the range of penalty agreed to by the parties in the Proposed Order.

Counsel for the College identified the aggravating factors that the Panel should consider in determining the appropriate penalty:

- The Child was extremely vulnerable, primarily because he was a non-verbal child with an identified special need.
- There was a significant risk of harm because the Child was able to quickly walk to a road.
- The failure of the gate to properly close was a risk that the Member was already aware of, because of previous experience.

College counsel also identified a number of mitigating factors in this case, including:

- The Member acknowledged her error and cooperated with the investigation.
- The Member pled guilty and agreed to proceed by way of an Agreed Statement of Facts and Joint Submission on Penalty and Costs.
- The Member has a long history in the profession and there have been no other incidents or complaints.
- The Member properly conducted a headcount, recognized that the Child was missing and acted quickly.
- The Child was unsupervised for a very short period of time.
- The Member reported the incident immediately to Centre management.

Counsel also directed the Panel's attention to three other considerations:

- The Child was unharmed.
- The Child does not appear to have experienced any emotional harm.

It appears to be an isolated incident, and there is no pattern of misconduct. College Counsel also submitted that the costs contained in the proposed Order were appropriate and were a symbolic amount in the circumstances.

Submissions of the Member on Penalty and Costs

Counsel for the Member submitted that the Proposed Order was the subject of careful deliberation and discussion between the parties . Counsel submitted that the Proposed Order met the test for a joint submission as it did not bring the administration of justice into disrepute and it would not be an abuse of process for the Panel to accept it. Counsel highlighted the fact that the Member was fully cooperative with the College. He submitted that the Member was an experienced RECE with no history of complaints or other discipline matters. He noted that it had been 4 years since the incident occurred and there had been no issues since.

Counsel for the Member outlined that the Member had acknowledged her mistake and had responded to the mistake the way you would want a member of the profession to do – she took immediate action and responsibility. She was remorseful. She had made an unprompted apology to the parents of the Child.

Member's Counsel submitted that in comparing this case to other cases, it was important to note that the Child was unsupervised for very short period of time – shorter than most other cases. The Child was not injured or harmed and suffered no adverse effects – in fact, the Child continued to attend at the Centre following the incident.

PENALTY DECISION

The Panel accepted the joint submission on penalty and makes the following order as to penalty:

1. The Member is required to appear before the Panel to be reprimanded on the date of this Order.
2. The Registrar is directed to suspend the Member's certificate of registration for a period of four months. The suspension will take effect from the date of this Order and will run

without interruption as long as the College has not otherwise prohibited the Member from practising or suspended the Member for any other reason.

3. The Registrar is directed 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 a RECE or engaging in 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 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 as an RECE after arranging a mentorship relationship with a pre-approved Mentor.

- b. Within 14 days of commencing or resuming Employment, the Member will ensure that the Director is notified of the name, address, and telephone number of all employer(s).
- 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, or within 14 days after the release of such documents, whichever is earliest:
 - i. the Panel's Order,
 - ii. the Agreed Statement of Facts,
 - iii. the Joint Submission on Penalty and Costs, and

- iv. a copy of the Panel's Decision and Reasons.
 - 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 Standards (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.
 - f. All documents delivered by the Member to the College or the Mentor will be delivered by email, registered mail or courier, and the Member will retain proof of delivery.
- 4. The Member is required to pay the College's costs fixed in the amount of \$1000, to be paid within 18 months of the date of this Order. Requiring the Member to pay the College's costs fixed in the amount of \$1,000, to be paid within 18 months of the date of this order.

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. It is the Panel's conclusion that the Order would not offend these principles.

The Panel is aware that no two cases are exactly alike. However, reviewing earlier cases can help determine the level of appropriate penalty. The Panel therefore considered the previous cases that were presented and determined that the Order was consistent with the range of penalties in such cases and took into consideration the specific facts of this case.

We were conscious of the principle of general deterrence, given the number of cases the College has considered on the issue of supervision of children. However, while the penalty may be on the lighter side compared to some other cases, it was still appropriate and reasonable given the facts of this case and was significant enough, in our view, to demonstrate to the public and other member of the profession that the College takes these cases very seriously. Appropriate supervision of children is one of the most fundamental parts of being an RECE. With regard to specific deterrence, we are hopeful that the reprimand and suspension will provide the Member with an opportunity to reflect on her error in judgment. It is further our hope that the support and guidance of a mentor will provide this particular Member with the opportunity to improve her practice and make a continued contribution to the profession.

The Panel appreciated that although the Member committed a serious error and breach of standards, when the error was discovered, she handled the situation in a responsible and professional manner, including taking the self-initiative to contact the Child's family. It is for this reason that we also felt the Order was appropriate in the circumstances.

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

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.

The Panel orders that the Member pay the College its costs, fixed in the amount of \$1000 within 18 months of the date of this Order. The deadline for paying the fine is extended from the Discipline Committee's usual practice because of the current challenges pertaining to Covid-19.

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



Barney Savage, Chairperson

June 2, 2020

Date