

**DISCIPLINE COMMITTEE
COLLEGE OF EARLY CHILDHOOD EDUCATORS**

Citation: College of Early Childhood Educators vs Francette Lusungi Diuka,
2018 ONCECE 8
Date: 2018-10-19

PANEL: Madeleine Champagne, Chair
Julie Cyr, RECE
Diane Laframboise, RECE

BETWEEN:)
)
COLLEGE OF EARLY CHILDHOOD) Marie-Andrée Vermette,
EDUCATORS) WeirFoulds LLP
) for the College of
) Early Childhood Educators
- and -)
)
FRANCETTE LUSUNGI DIUKA:) representing herself
50338)
)
)
)
)
)
)
) Renée Kopp,
) Jones Litigation Counsel LLP
) Independent Legal Counsel
)
) Date of hearing: September 12, 2018

DECISION WITH REASONS

This matter came on for hearing before a Panel of the Discipline Committee of the College of Early Childhood Educators (the "Panel") on September 12, 2018.

THE ALLEGATIONS

The Member

1. Francette Lusungi Diuka (the "Member") has been a Registered Early Childhood Educator (RECE) in good standing with the College of Early Childhood Educators (the "College") since July 2015.
2. During the period in question, the member was employed as an RECE at Garderie La Farandole (the "Centre"), located at Pierre-Elliott-Trudeau School in Toronto, Ontario.

Unsupervised children in the parking lot

3. On or around October 27, 2015, in the afternoon, the member and an assistant educator ("A.") were responsible for the supervision of a group of preschool children in the centre's fenced-in yard.
4. Two children from the preschool group the Member was supervising left the yard without supervision and made their way to the centre's parking lot. The children were both two years of age.
5. A parent noticed the two children in the parking lot after one of them fell and began to cry. The parent informed a staff member that the children were in the parking lot. The staff member then informed the Member of the situation.
6. The Member was not aware that the two children had left the yard until she was notified by the staff member. The Member has stated that after recording the departure times of some of the children in the group on the attendance sheet, she counted her children and realized that two of them were missing. She had already started looking for the children in the yard when she was informed that they were, in fact, in the parking lot. She then made her way to the parking lot and brought the children back.
7. At the time of the incident, A. was speaking with a parent.
8. The Member has related that at the time of the incident there were approximately twenty children in the area of the yard where the preschoolers were playing: there were the 12 to 15 preschoolers and a few school-age children who had come to play in the same area as the preschool children.
9. Following an earlier serious occurrence involving an unsupervised child in June 2015, the Ministry of Education had ordered the Centre to submit a supervision plan. The Member failed to comply with the supervision plan's requirement that children under her care must be supervised at all times.

Failure to report the occurrence

10. The Member failed to report the occurrence to her Supervisor in a timely manner. The Member's Supervisor and the Director of the Centre only learned about the incident the following day through an anonymous phone call.
11. After the incident, a Program Advisor with the Ministry of Education visited the Centre and observed instances of non-compliance, including the fact that the children in the preschool group were using the main schoolyard rather than the smaller yard approved by the Ministry for preschool children, and the fact that the latch on one of the gates into the yard was missing or broken.

College Standards of Practice

12. The Member agrees that the following are standards of the profession that were in force during the period in question, as set out in the College's Code of Ethics and Standards of Practice:
 - a. Standard III.A.1 requires RECEs to maintain safe and healthy learning environments;
 - b. Standard IV.A.2 requires RECEs to know, understand and abide by the legislation, policies and procedures that are relevant to their professional practice and to the care and learning of children under their professional supervision;
 - c. Standard IV.B.3 requires RECEs to observe and monitor the learning environment and anticipate when support or intervention is required;
 - d. Standard IV.C.1 requires RECEs to work collaboratively with colleagues in the workplace in order to provide safe, secure, healthy and inviting environments for children and families;
 - e. Standard IV.E.2 requires RECEs to avoid conduct which could reasonably be perceived as reflecting negatively on the profession of early childhood education.

Admissions of professional misconduct

13. In light of the facts stated above, the Member admits that she engaged in professional misconduct as described in sections 1(1) and 33(2) of the *Early Childhood Educators Act, 2007, S.O. 2007, c. 7, Sched. 8* (the "Act"), in that:
 - a. she failed to supervise adequately a person who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(2);
 - 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 maintain a safe and healthy learning environment, contrary to standard III.A.1 of the College's Standards of Practice;

- ii. she failed to know, understand and abide by the legislation, policies and procedures that are relevant to her professional practice and to the care and learning of children under her professional supervision, contrary to standard IV.A.2 of the College's Standards of Practice;
 - 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 College's Standards of Practice;
 - iv. she failed to work collaboratively with colleagues in the workplace in order to provide safe, secure, healthy and inviting environments for children and families, contrary to standard IV.C.1 of the College's Standards of Practice;
 - v. she conducted herself in a manner which could reasonably be perceived as reflecting negatively on the profession, contrary to standard IV.E.2 of the College's Standards of Practice.
- c. 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);
 - d. she failed to comply with the Act and/or the regulation on professional misconduct (that is to say Ontario Regulation 223/08), contrary to Ontario Regulation 223/08, subsection 2(19);
 - e. she contravened a law and said contravention caused a child or children under her professional supervision to be put at risk, contrary to Ontario Regulation 223/08, subsection 2(21); and
 - f. 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 agreed facts set out in the Agreed Statement of Facts (item 3) and the Member's guilty plea (item 4), the Panel has determined that the facts support the charge of professional misconduct and therefore finds Francette Lusungi Diuka guilty of professional misconduct as described in subsections 1(1) and 33(2) of the *Early Childhood Educators Act, 2007, S.O. 2007, c. 7, Sched. 8*, in that she contravened subsections 2(2), 2(8), 2(10) 2(19) 2(21) and 2(22) of Ontario Regulation 223/08, as set out in the Notice of Hearing.

REASONS FOR THE DECISION

The Panel considered the Agreed Statement of Facts and the Member's guilty plea and found that the facts support the allegations of professional misconduct set out in the Notice of Hearing.

The allegations of professional misconduct set out in the Notice of Hearing are corroborated by the facts established in paragraphs three to ten of the Agreed Statement of Facts. The evidence establishes that the Member failed to maintain the College's Standards of Practice when two two-year-old children under her supervision left the schoolyard and made their way into the Centre's parking lot. What is more, the Member was unaware that the children had left the yard. When she learned that the children had wandered away, she did not immediately inform her supervisor. This is all the more serious given the very young age of the children and the fact that the Ministry had already imposed a supervision plan on the Centre.

Having regard to the allegations, the Panel finds that the Member's conduct could be reasonably be regarded as disgraceful, dishonourable or unprofessional by members of the profession. The evidence establishes that the Member failed to maintain the College's standards of practice on October 27, 2015, when she left two children unsupervised. She only became aware of their absence when a staff member informed her that a parent had noticed two children wandering in the parking lot. The Panel finds that the conduct of the Member in this incident constitutes professional misconduct under subsection 33(2) of the Act. This conduct also constitutes a failure to maintain the professional standards referred to in paragraphs three to ten of the Agreed Statement of Facts, in that the evidence and the facts admitted to by the Member support the allegations of professional misconduct.

Given Ms. Diuka's voluntary admission of professional misconduct and the facts described in the Agreed Statement of Facts, the Panel finds the Member guilty of professional misconduct in respect of each of the allegations set out in the Notice of Hearing.

POSITION OF THE PARTIES ON PENALTY

Counsel for the College and the Member made a joint submission as to an appropriate penalty (item 5). The joint submission proposed that the Panel make an order:

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 (4) months. The suspension will take effect on 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 conditions and limitations on the Member's certificate of registration:

- a. Prior to commencing or resuming employment as a registered early childhood educator (RECE) or engaging in the practice of early childhood education, as defined in section 2 of the *Early Childhood Educators Act, 2007* (the "Act"), 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 or incompetence by the Discipline Committee of the College;
 - iv. is not currently found to be incapacitated by the Fitness to Practice Committee of the College;
 - v. is not currently the subject of allegations referred to the Discipline Committee or the Fitness to Practice Committee of the College; and
 - vi. is pre-approved by the Director of Professional Regulation (the "Director"). In order to be approved by the Director, the Member will provide the Director with all requested information, including (but not limited to) the name, registration number, telephone number, address, and resumé of the Mentor.

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

- b. The Member will provide the Director with the name, address and telephone number of her employer(s) within 14 days of commencing or resuming employment as an RECE.
- 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 of the publication of these documents, whichever is earlier:

- 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.
- 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. the College's Standards of Practice and Code of Ethics;
 - 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 for the parents and children affected, and for 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 her care or any of her employers' clients.
- e. After a minimum of five meetings with her Mentor, the Member can seek the Director's permission to stop participating in mentoring 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. confirmation that the mentor received copies of the documents referred to in paragraph 3c);

- iii. confirmation that the Mentor reviewed the documents referred to in paragraph 3c) and discussed the subjects set out in paragraph 3d) 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 registered mail, courier, or e-mail, and the Member will retain proof of delivery.
4. requiring the Member to pay costs fixed in the amount of \$1,250 to the College on the date of this Order.

DECISION ON PENALTY AND COSTS

The Panel took into consideration the Joint Statement on Penalty and made an order as to penalty and costs:

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 (4) months. The suspension will take effect on 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 conditions and limitations on the Member's certificate of registration:
 - a. Prior to commencing or resuming employment as a registered early childhood educator (RECE) or engaging in the practice of early childhood education, as defined in section 2 of the *Early Childhood Educators Act, 2007* (the "Act"), 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 or incompetence by the Discipline Committee of the College;

- iv. is not currently found to be incapacitated by the Fitness to Practice Committee of the College;
- v. is not currently the subject of allegations referred to the Discipline Committee or the Fitness to Practice Committee of the College; and
- vi. is pre-approved by the Director of Professional Regulation (the “Director”). In order to be approved by the Director, the Member will provide the Director with all requested information, including (but not limited to) the name, registration number, telephone number, address, and resumé of the Mentor.

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

- b. The Member will provide the Director with the name, address and telephone number of her employer(s) within 14 days of commencing or resuming employment as an RECE.
- 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 of the publication of these documents, whichever is earlier:
 - i. the Panel’s Order;
 - ii. the Agreed Statement of Facts;
 - iii. the Joint Statement on Penalty; 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. the College’s Standards of Practice and Code of Ethics;
 - 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 for the parents and children affected, and for 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 her care or any of her employers' clients.
- e. After a minimum of five meetings with her Mentor, the Member can seek the Director's permission to stop participating in mentoring 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. confirmation that the mentor received copies of the documents referred to in paragraph 3c);
 - iii. confirmation that the Mentor reviewed the documents referred to in paragraph 3c) and discussed the subjects set out in paragraph 3d) 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 registered mail, courier, or e-mail, and the Member will retain proof of delivery.
4. requiring the Member to pay costs fixed in the amount of \$1,250 to the College on the date of this Order.

REASONS FOR PENALTY

The Panel understands that the penalty ordered in respect of findings of professional misconduct 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 public protection, specific deterrence, general deterrence and, where appropriate, rehabilitation. 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 imposed penalty meets the aforementioned objectives. It is also reasonable, given the nature of the professional misconduct and the fact that the Member has admitted her guilt. The Panel proceeded to reprimand the Member on the day this order was issued. The purpose of a reprimand is to deter the Member from repeating the undesirable behaviour.

The Panel has directed the Registrar to suspend the Member's certificate of registration for a period of four (4) months. The duration of the suspension reflects the serious nature of the incident and sends a clear message to the Member that such conduct is unacceptable and will not be tolerated. The suspension will also serve as a general deterrent to other members of the profession by informing them of the potential consequences of such behaviour.

Conditions and limitations have also been added to the Member's certificate of registration. Requiring the Member to comply with these conditions and limitations will serve the purpose of holding her accountable for her undesirable behaviour, while also protecting the public. Placing conditions and limitations on the Member's certificate of registration may also serve as a general deterrent to other members of the profession.

The Panel deems these measures to be reasonable, since the safety of children was put at risk. The measures will serve as an appropriate warning to all members of the College that such behaviour will not be tolerated. Another deterrent factor is the requirement to pay costs fixed in the amount of \$1,250, which the Member must pay on the date of this Order.

The penalty also requires the Member to undertake a mentoring program before resuming employment as an early childhood educator. This highly prescriptive program will ensure that the Member receives professional support in order to prevent the recurrence of incidents that could jeopardize the safety of children. The purpose of this measure is to help rehabilitate the Member.

The Panel is satisfied that the various elements of the penalty support the objective of protecting the public.

REASONS REGARDING THE 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 whom 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.

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

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 that the amount proposed by the parties is reasonable.

I, Madeleine Champagne, sign this decision and reasons for the decision as Chair of this Panel and on behalf of the members of the Panel.



Madeleine Champagne, Chair

October 19, 2018

Date