

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

Citation: College of Early Childhood Educators vs Sophia McKenzie,  
2017 ONCECE 5  
Date: 2017-05-29

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 SOPHIA MCKENZIE, a current  
member of the College of Early Childhood Educators.

Panel:       Nici Cole, RECE – Chair  
              Larry O’Connor  
              Diane Laframboise, RECE

BETWEEN:	)	
COLLEGE OF EARLY CHILDHOOD	)	Lara Kinkartz,
EDUCATORS	)	WeirFoulds LLP,
	)	for the College of Early Childhood Educators
	)	
- and -	)	
	)	
SOPHIA MCKENZIE	)	Christopher Horkins,
REGISTRATION # 15780	)	Cassels Brock & Blackwell LLP,
	)	for the Member
	)	
	)	
	)	Elyse Sunshine,
	)	Rosen Sunshine LLP,
	)	Independent Legal Counsel
	)	
	)	Heard: November 7-11, 2016

## **REASONS FOR DECISION, DECISION AND ORDER(S)**

### **INTRODUCTION**

1. A panel of the Discipline Committee (the “Committee”) of the College of Early Childhood Educators (the “College”) heard this matter at Toronto on November 7, 8, 9, 10 and 11, 2016.
2. A Notice of Hearing, dated February 19, 2016 (Exhibit 1), was served on Sophia McKenzie (“Ms. McKenzie” or the “Member”).
3. Counsel for the College also submitted a Registrar’s Certificate, signed on October 20, 2016 by Beth Deazeley, Registrar and CEO of the College, outlining the Member’s registration status and history with the College. At the time the Registrar’s Certificate was signed, the Member’s certificate of registration was in good standing.

### **THE ALLEGATIONS**

4. The Notice of Hearing alleged that the Member is guilty of professional misconduct as defined in subsection 33(2) of the ECE Act, in that:
  - 1) she failed to supervise adequately a person who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(2);
  - 2) she failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8);
  - 3) she acted or failed to act in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 223/08, subsection 2(10);

- 4) she failed to comply with the ECE Act and the professional misconduct regulation made under the Act (being Ontario Regulation 223/08), contrary to Ontario Regulation 223/08, subsection 2(19);
- 5) she contravened a law, which contravention caused a child or children under her professional supervision to be put at or remain at risk, contrary to Ontario regulations 223/08, subsection 2(21);
- 6) she failed to maintain a safe and healthy learning environment, contrary to Ontario Regulation 223/08, subsection 2(8), and Standard III.A.1 of the College's *Code of Ethics and Standards of Practice* (the "Standards of Practice");
- 7) 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 Ontario regulation 223/08 subsection 2(8) and Standard IV. A. 2 of the College Standards of Practice;
- 8) she failed to abide by her obligation to comply with the College's Code of Ethics and Standard of Practice in the event of a conflict between the College's Code of Ethics and Standard of Practice and her work environment and /or the Policies and Procedures of her employer contrary to Ontario Regulations 223/08, subsection 2(8) and Standard IV.A.3 of the College's Standard of Practice;
- 9) she failed to observe and monitor the learning environment and anticipate when support or intervention was required, contrary to Ontario Regulation 223/08, subsection 2(8) and Standard IV.B.3 of the College's Standards of Practice;

- 10) 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 Ontario Regulation 223/08, subsection 2(8) and Standard IV.C.1 of the College's Standards of Practice;
- 11) she conducted herself in a manner that is unbecoming a member, contrary to the Ontario Regulation 223/08, subsection 2(22); and
- 12) she conducted herself in a manner that could reasonably be perceived as reflecting negatively on the profession of early childhood education contrary to Ontario Regulation 223/08, subsection 2(8) and Standard IV.E.2 of the College's Standard and Practice.

#### **MEMBER'S PLEA**

5. The Member denied the allegations of professional misconduct as set out in the Notice of Hearing dated February 19, 2016.

#### **OVERVIEW**

6. On June 15, 2015, between 4:00 and 4:30 p.m., a group of children from the toddler class of the Salvation Army Erin Mills Childcare Centre (the "Centre"), who were under the care of Ms. McKenzie, left the outdoor playground of the Centre. Three children went down to Glen Erin Drive, one of whom crossed the road. The children were ultimately returned to the Centre by members of the public. The issues to be determined by the Committee were whether this set of facts constituted acts of professional misconduct on the part of the member as alleged.

## **SUMMARY OF THE EVIDENCE**

### **(Partial) Agreed Statement of Facts**

7. Counsel for the College advised the Panel that an agreement had been reached on some of the facts and submitted into evidence an Agreed Statement of Facts, signed November 4, 2016 (Exhibit 3). The Agreed Statement of Facts provides as follows:
  - 1) Ms. McKenzie has been a registered early childhood educator (“RECE”) and a member of the College since July 2, 2009. Ms. McKenzie was a member of the College in good standing at all times that are material to this proceeding.
  - 2) At all relevant times, the Member was the RECE employed at the Centre. Ms. McKenzie’s responsibilities are set out in the Centre’s RECE Job Description.
  - 3) The Centre’s toddler program primarily included children ranging from 18-30 months. In addition, the Centre had mixed age approval that permitted a limited number of children as young as 15 months to be enrolled in the toddler program.
  - 4) On April 17 and 25, 2015, an inspection of the Centre was conducted by Jackie Bramhill, of the Ontario Ministry of Education, Child Care Quality Assurance and Licensing division.
  - 5) On the morning of June 15, 2015, an annual third party inspection of the Centre’s toddler playground was conducted by Jeff Elliot Playground Inspection (“Elliott”), pursuant to Centre policy.
  - 6) On June 15, 2015, between 4:00 and 4:30 p.m., the Member was responsible for supervising a group of ten (10) toddlers from the toddler class in the Centre’s

outdoor toddler playground, along with a second staff member, Ms. Amita Mathias, an early childhood assistant (“Ms. Mathias”). At the relevant time, Ms. McKenzie and Ms. Mathias were maintaining the staff/child ratio required by the Centre’s licence and by the relevant legislation and regulations.

- 7) On June 15, 2015, the latch to the playground gate was broken, and had been broken since at least April 2015. As a result, the gate was held shut with a bungee cord. The broken gate had been discussed at a staff meeting prior to June 15, 2015 and the Member was in attendance.
- 8) As of June 15, 2015, the Centre had not arranged for the gate to be repaired, and the Member was aware of this fact.
- 9) Between approximately 4:00 p.m. and 4:20 p.m. on June 15, 2015, a certain number of toddlers left the playground through the gate. Three children went down to Glen Erin Drive, one of whom crossed the road. The children were ultimately returned to the Centre by members of the public.
- 10) The Member’s recollection is that on June 15, 2015 there was only one bungee cord securing the gate.
- 11) The photographs that were taken after the incident in June 2015 and accurately depict the Centre’s toddler playground and surrounding area at the time they were taken. The photographs taken in June 2016 accurately depict the Centre’s toddler playground at that time. The Google Street View image accurately reflects the Centre’s location and the surrounding area.

12) The Centre's supervisor filed a Serious Occurrence Report with the Ministry of Education (the "Ministry"), and the Ministry Program Advisors visited the Centre on June 16 and 17, 2015, to follow up on the report.

13) On June 18, 2015, Sue Ewen, the Manager of Licensing and Compliance at the Ministry, issued a Notice of Direction suspending the Centre's Licensing and Compliance at the Ministry, issued a Notice of Direction suspending the Centre's licence as a result of the incident and sent a Notice to Parents informing them of the Centre's closure.

#### **Evidence of Lucas Kusiak**

8. Lucas Kusiak is a commercial insurance broker with three children who was driving home from work on Glen Erin Drive on June 15, 2015. Mr. Kusiak testified that Glen Erin Drive is a busy, four lane highway and that he took this route often. As Mr. Kusiak was driving north, he saw a child crossing Glen Erin Drive and signaling two other children to cross as well. Mr. Kusiak stopped his car in the middle of the road and signalled to another motorist to help get the child who crossed the street. Mr. Kusiak then ran to the two unsupervised children on the side of the Glen Erin Drive to get them before they crossed and took them up the hill to the gate of the Centre's playground.
  
9. Mr. Kusiak indicated that when he arrived at the gate of the Centre's playground with the two children, he saw the playground gate loosely secured with a stretched out bungee cord and two children outside the gate helping a third child to squeeze through the gate gap. He did not see any adults in the playground area, so he yelled until two staff members came around the corner of the building into the playground area – Ms. McKenzie being one of the

staff. Mr. Kusiak indicated that Ms. McKenzie was quite upset and she told him that she was aware of the broken gate latch and had been trying to get the Centre to fix it.

10. During Cross Examination, Mr. Kusiak's statement was reinforced that no staff were present on the playground when he arrived at the gate of the Centre with the children in his care. Mr. Kusiak was consistent in his recollection of the surrounding the details of the incident.
11. Mr. Kusiak stated that, after he returned the children to the Centre, he called 9-1-1 and reported the incident to the Ministry of Education (the "Ministry") the following day.
12. The Panel found that Mr. Kusiak was a credible witness. He had no vested interest in the Centre or outcome of the hearing. He presented himself with a clear recollection of the events and details of his statements were consistent throughout the hearing. He appeared to have genuine concern that was evident with the passion in which he testified.
13. Mr. Kusiak observed a child running across a busy four lane street and observed two other children at the side of the same busy four lane street about to cross. He stopped his vehicle mid-street to block traffic. He proceeded to return the two children to the Centre as he instructed another motorist to take charge of the child who ran across the street. He also observed that other children were trying to leave the playground through an improperly secured gate as he was returning the two children. The Committee agreed he was able to recollect with absolute clarity the events of the incident. He described that the child he observed in the process of squeezing through the gate was wearing a white t-shirt and had a "bit of a belly," which was making it difficult for him to get through the gap in the gate. These are not details a person is likely to invent. Mr. Kusiak was also the only person who



actually saw how the children were possibly able to squeeze through the gate. All parties were in agreement with the fact that three children left the playground and Mr. Kusiak returned the three children to the playground. Mr. Kusiak has never been to the Centre before and did not know the playground layout. Yet his description of where the staff came from is consistent with how the staff and children would typically enter the playground. The Committee finds that Mr. Kusiak's evidence was both internally consistent and consistent with other evidence in the hearing and the Committee places considerable weight on Mr. Kusiak's evidence.

#### **Evidence of Robin Salmon**

14. Robin Salmon is a nurse and the parent of two children who, at the time of the events at issue, attended the Centre. On June 15, 2015, she was driving to the Centre to pick up her children, when, while stopped at a red light, she saw children she recognized from the Centre heading towards the sidewalk on Glen Erin Drive. Ms. Salmon also saw a man (Mr. Kusiak) stop his truck in the middle of the street and attempt to stop two children on the sidewalk from crossing. At that time, Ms. Salmon was trying to get the attention of Mary Kennaley (the Supervisor of the Centre) who was standing on the corner of The College Way and Glen Erin Drive, near the Centre.
15. When Ms. Salmon arrived at the Centre, she saw the man returning the children from the sidewalk to the Centre and heard Ms. McKenzie say, "oh my God." Ms. McKenzie did not explain to Ms. Salmon how her son [Child 1] managed to leave the Centre, but did indicate that he had a history of leaving rooms.
16. Ms. Salmon reported the incident to the Ministry and withdrew her children from the Centre.

17. Ms. Salmon indicated that, prior to the incident of June 15, 2015, she had no concerns with Ms. McKenzie.

**Evidence of Nadia Ollivierre, RECE**

18. Nadia Ollivierre, RECE is a Program Advisor for Toronto West Region and part-time early childhood education professor at Sheridan College. As a Program Advisor, her duties include onsite centre visits for licence renewals and following up with Serious Occurrence Reports and complaints.
19. Ms. Ollivierre testified that on June 16, 2015, she attended at the Centre to follow-up on a Serious Occurrence Report related to children leaving the playground unnoticed. As part of her attendance, she spoke with Ms. McKenzie who told Ms. Ollivierre that she was not sure how the children left the playground. As Ms. Ollivierre was not at the Centre on June 15, 2015, her understanding of the incident was based on the reports of the people she interviewed.
20. Ms. Ollivierre testified that the Ministry found there was a high risk to the safety of the children and issued a notice of direction on the June 18, 2015. She explained that the notice of direction informed the licensee (the Centre) that its licence was being suspended because there was an immediate threat to the health, safety or welfare of the children who received those services of the Centre.

21. Ms. Ollivierre indicated that the Summary of Day Nursery Licencing inspection did not mention a broken gate latch and the annual playground inspection report dated June 15, 2015 also did not mention an issue with the gate's safety.

**Evidence of Karen Chandler, RECE – Expert Witness**

22. Karen Chandler, RECE had been a professor at George Brown College for almost 30 years and had worked in the field of early childhood education for over 40 years. Ms. Chandler had contributed to the development of the College's Code of Ethics and Standards of Practice as well as the Early Childhood Education Program Standard development by Ontario Colleges of Applied Arts and Technology, Ministry of Training, Colleges and Universities.
23. The College called Ms. Chandler as an expert witness. Ms. Chandler was qualified as an expert in the supervision of children by RECEs and in the application of College standards of practice and legislation to the supervision of children.
24. Ms. Chandler maintained that it is the role of an early childhood educator to ensure the children are safe and healthy and that RECEs must demonstrate a clear understanding of their role in supervising the children. When a child needs more individual attention, the RECE needs to recognize this pattern of behaviour and may need to ask for additional support.
25. Ms. Chandler testified that RECEs are to inspect indoor and outdoor environments and take appropriate action to prevent injury. Any hazard needs to be dealt with promptly to promote a safe environment and a condition, such as a faulty gate, must be reported and dealt with immediately.

26. Ms. Chandler stated that, as an RECE, Ms. McKenzie had an obligation to ensure the safety of the playground. If the gate to the playground was broken, at the very least, Ms. McKenzie should have taken responsive action to prevent injury and ensure the children do not leave the playground unaccompanied. It was her opinion that Ms. McKenzie should have ensured the gate was securely fastened and determined where she was most needed on the playground, by being aware of her positioning and scanning the playground continuously. For this reason, although there was a younger, crying child, Ms. McKenzie should have continued to supervise the broken gate as it was a safety hazard.
27. With respect to the evidence that the Ministry's and the *Jeff Elliot Play Ground Inspection* Annual Playground Inspection Reports concluded that the gate did not indicate a safety issue, Ms. Chandler testified that, as an early childhood educator, Ms. McKenzie should have questioned that decision if she felt that it was incorrect.
28. The Panel found Ms. Chandler to be a credible expert witness on professionalism in Early Childhood Education. Her extensive experience relating to professional standards of supervision contributed to what is expected of Early Childhood Educators to supervise children.

#### **Evidence of Sophia McKenzie, RECE**

29. On June 15, 2015, Ms. McKenzie was working at the Centre as an early childhood educator. Ms. McKenzie had been an employee at the Centre since November 15, 2010, working in the capacity as early childhood educator. Ms. McKenzie has been a registered member of the College since July 2, 2009. Ms. McKenzie indicated that on the afternoon of June 15, 2015, she was outside in the playground with a group of children. While she was

attending to a younger child who was crying for approximately 30 seconds, she heard a car screech. She looked across the street and saw a boy crossing the street. Shortly thereafter, she heard a man, which she later learned was Mr. Kusiak, yelling for a staff member and observed that he had two children from the Centre with him. By this point, Ms. McKenzie realized that the gate to the playground was open and she yelled to Amita Mathias, the assistant teacher, that children had gotten out of the playground. After Mr. Kusiak had brought back the two children to the Centre, Ms. Salmon arrived and advised Ms. McKenzie that she had seen her son across the street. Ms. McKenzie testified that prior to the incident, Ms. Mathias had left the playground to get something that a child had thrown over the gate, but Ms. McKenzie did not double check to ensure that the gate was secure upon Ms. Mathias' return to the playground.

30. Ms. McKenzie indicated that the gate to the playground had been broken for months and that Centre staff had mentioned the issue at a staff meeting prior to the incident, as was supported by the evidence of notes from the staff meeting of April 2015. In response to the staff's concerns about the gate, Mary Kennaley, the Centre Supervisor, put bungee cords on the gate to secure it. Ms. Kennaley was the only staff member at the Centre to deal with repairs and had a history of waiting a long time to address broken items. Ms. McKenzie had also raised concerns about the younger children in the class with Ms. Kennaley and the amount of support they required. However, Ms. Kennaley wanted the spaces in the class filled, so the younger children remained in the class.

31. Ms. McKenzie testified that she was always told that the gate, in the state it was in on June 15, 2015, was safe. She was never advised to not use the playground, even after a Ministry inspection, a playground inspection conducted by a professional and a health and safety inspection conducted by the Salvation Army a week prior. Ms. McKenzie testified that she

performed daily playground safety checks, as required and did so that morning. No written evidence of logs of the daily safety checks of the playground and equipment was provided at the hearing. Ms. McKenzie indicated that staff were assigned positions in the playground by the Centre and she was near her designated position, sitting at a picnic table, at the time of the incident.

32. Ms. McKenzie explained that this incident had been very difficult on her emotionally and that even at the time of the hearing, she continued to regularly think about what happened. She loved working with children and when she was terminated from the Centre following the incident. This was very upsetting to her and has caused her financial difficulties as a single mother.

#### **Evidence of Amita Mathias**

33. On June 15, 2015, Ms. Mathias was working as an assistant teacher at the Centre. She was with Ms. McKenzie on the playground during the events at issue. When the class was on the playground that afternoon between 4:00 and 4:30 p.m., she saw a hat belonging to one of the children on the other side of the playground fence. She went to get the hat, while still holding the gate closed so that no children could go through the gate. After she retrieved the hat, she closed the gate with the bungee cord and conducted a head count to ensure all 10 children remained in the playground. While she was attending to a crying child, she heard Ms. McKenzie yelling from the gate. When she looked over from the sand box, she saw a man, who was later identified as Mr. Kusiak, and a woman with two children from the Centre. Ms. Mathias does not know how the children managed to leave the playground unnoticed.

34. Ms. Matthias testified that the gate had been broken for 6-7 months before the incident of June 15, 2015 and that Ms. Kennaley promised to fix it.

### **Evidence of Mary Kennaley**

35. Mary Kennaley was called by the defence as a witness. She was declared to be a hostile witness. On June 15, 2015, Ms. Kennaley was working as the Centre Supervisor. As Centre Supervisor, her responsibilities included handling the Centre's finances, authorizing repairs and conducting employee performance reviews. Ms. Kennaley was aware that the gate latch was broken, but wanted to wait until more things required repair so she could call the repair person in to fix everything at once. In her opinion, the bungee cord she used to secure the gate closed was safe, especially since the Ministry and the playground inspector never mentioned issues with securing the gate in this manner.
36. Following the incident on June 15, 2015, Ms. Kennaley closed the playground until the gate was repaired on June 17, 2015.
37. Ms. Kennaley stated that it is the responsibility of Centre staff to perform a visual inspection of the playground before bringing children out and it is ultimately up to the staff using the area to determine whether it is safe. She further stated that it was Ms. McKenzie's and Ms. Mathias' job to supervise the children, regardless of the state of the gate.

### **FINDINGS**

38. The College bears the onus of proving the allegations set out in the Notice of Hearing on a balance of probabilities (more likely than not), based on clear, convincing and cogent evidence, in accordance with the Supreme Court of Canada's decision in *F.H. vs McDougall*, [2008] 3 S. C. R. 41.

39. Having considered the Exhibits filed, the testimony of each of the witnesses and the submissions made by College counsel and counsel for the Member, the Discipline Committee finds that the facts support a finding of professional misconduct as alleged in the Notice of Hearing. Specifically, the Panel finds that Ms. McKenzie is guilty of professional misconduct as defined in subsection 33(2) of the ECE Act in that:

- 1) she failed to supervise adequately a person who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(2);
- 2) she failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8);
- 3) she acted or failed to act in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 223/08, subsection 2(10);
- 4) she failed to comply with the ECE Act and the professional misconduct regulation made under the Act (being Ontario Regulation 223/08), contrary to Ontario Regulation 223/08, subsection 2(19);
- 5) she contravened a law, which contravention caused a child or children under her professional supervision to be put at or remain at risk, contrary to Ontario regulations 223/08, subsection 2(21);



- 6) she failed to maintain a safe and healthy learning environment, contrary to Ontario Regulation 223/08, subsection 2(8), and Standard III.A.1 of the Standards of Practice;
- 7) 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 Ontario regulation 223/08 subsection 2(8) and Standard IV. A. 2 of the Standards of Practice;
- 8) she failed to abide by her obligation to comply with the College's *Code of Ethics and Standards of Practice* in the event of a conflict between the College's *Code of Ethics and Standards of Practice* and her work environment and/or the Policies and Procedures of her employer contrary to Ontario Regulations 223/08, subsection 2(8) and Standard IV.A.3 of the Standards of Practice;
- 9) she failed to observe and monitor the learning environment and anticipate when support or intervention was required, contrary to Ontario Regulation 223/08, subsection 2(8) and Standard IV.B.3 of the Standards of Practice;
- 10) 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 Ontario Regulation 223/08, subsection 2(8) and Standard IV.C.1 of the Standards of Practice;
- 11) she conducted herself in a manner that is unbecoming a member, contrary to the Ontario Regulation 223/08, subsection 2(22); and

12) she conducted herself in a manner that could reasonably be perceived as reflecting negatively on the profession of early childhood education contrary to Ontario Regulation 223/08, subsection 2(8) and Standard IV.E.2 of the Standards and Practice.

## **REASONS FOR FINDINGS**

40. It was uncontested that Ms. McKenzie was responsible for the children on June 15, 2015. It was also uncontested that on June 15, 2015, the latch to the playground gate was broken and had been broken since at least April 2015 and held shut with a bungee cord. The broken gate had been discussed at a staff meeting prior to June 15, 2015 and Ms. McKenzie was aware of the broken gate and the fact it was held shut with a bungee cord. This indicates that staff needed to doubly ensure the children's safety with the toddler gate.
41. Ms. McKenzie's position was that she was on the playground sitting several feet from the gate at the time that the children left the playground yet she was not aware of the children leaving through the gate. The Panel found that this was not plausible. If Ms. McKenzie and Ms. Mathias had positioned themselves within the playground where they testified they were standing, they should and would reasonably have been aware of children leaving the playground. The Committee does not find it credible or possible that both Ms. McKenzie and Ms. Mathias could have been in those positions and yet not noticed children leaving the playground.
42. The Committee accepts Mr. Kusiak's version of events in terms of the children being outside the playground and on the street. He was the only witness who actually observed

how the children were able to leave the playground. The issue before the Committee was whether the Member lived up to her professional obligations. The Member allowed several toddlers to leave the playground unnoticed/unsupervised and this constitutes a failure to meet her professional standards which is an act of professional misconduct.

43. The expert evidence of Ms. Chandler indicated what was required as an Early Childhood Educator. She was unequivocal that an RECE has an obligation to continuously scan the environment and supervise to ensure the safety of the children under her care, regardless of the state of the gate, whether it has passed inspection, whether the Centre had failed to repair the gate, whether there were younger children who may have required additional attention or whether there were concerns about the RECE's staffing partner. Ms. McKenzie did not do this.
44. The Member failed to adequately supervise the children in her care, exposing them to physical risk. Her behaviour, which falls short of meeting the professional standards required of her, has caused members of the public to question the professionalism of early childhood educators.
45. Ms. McKenzie was responsible for supervising the toddlers in the playground and she did not keep track of the children in her care. This constitutes misconduct in that the Member:
  - o Failed to supervise adequately a person under the Member's professional supervision (s. (08)2(2), of O. Reg. 223/08); and,
  - o Conducted herself in a manner that is unbecoming a member, contrary to the Ontario Regulation 223/08, subsection 2(22).

46. Ms. McKenzie did not see the toddler leave the playground, which may have taken some time to do so. In this regard, she:
- Failed to comply with the ECE Act and the professional misconduct regulation made under the Act (being Ontario Regulation 223/08), contrary to Ontario Regulation 223/08, subsection 2(19).
47. The public trust and integrity of the profession was called into question with the loss of several children under the care of Ms. McKenzie, which reflects negatively on the profession. In this regard, Ms. McKenzie conducted herself in a manner that could reasonably be perceived as reflecting negatively on the profession of early childhood education contrary to Ontario Regulation 223/08, subsection 2(8) and Standard IV.E.2 of the College's *Code of Ethics and Standards and Practice*.
48. Although Ms. McKenzie knew the gate was unsafe, she continued to take the children out into the playground without reporting it to the owner or Ministry. In this regard, she failed to abide by her obligation to comply with the College's *Code of Ethics and Standard of Practice*. In the event of a conflict between the College's Code of Ethics and Standard of Practice and her work environment and/or the Policies and Procedures of her employer, the College's *Code of Ethics and Standards of Practice* takes precedence. Thus, Ms. McKenzie acted contrary to Ontario Regulations 223/08, subsection 2(8) and Standard IV.A.3 of the College's *Code of Ethics and Standard of Practice*.
49. Ms. McKenzie did not notice that the children were missing. The Committee believes that if Ms. McKenzie was where she and Ms. Mathias said they were positioned within the playground, then Ms. McKenzie should have been able to see the children attempting to leave the playground and immediately intervene. The safety of the children was put at

serious risk with two children standing unsupervised beside a busy four lane road and one child having crossed the busy four lane road. As a result, Ms. McKenzie:

- Acted/failed to act in a manner that, having regard for the circumstances, would reasonably be regarded by Members as disgraceful, dishonourable or unprofessional (s. 2(10) of O. Reg. 223/08);
- Contravened a law, which contravention caused a child or children under the member's professional supervision to be put at or remain at risk, contrary to Ontario regulations 223/08, subsection 2(21);
- Failed to observe and monitor the learning environment and anticipate when support or intervention was required, contrary to Ontario Regulation 223/08, subsection 2(8) and Standards IV.B.3, A. 2 of the College's Code of *Ethics and Standards of Practice*; and,
- 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 Ontario Regulation 223/08, subsection 2(8) and Standard IV.C.1 of the College's *Code of Ethics and Standards of Practice*.

50. Given the evidence presented, the Panel found that the Member was not positioned where she claimed to have been during the time of the event. On the Member's evidence, she was just feet away from the gate and yet children were able to leave the playground unsupervised. As such, M, McKenzie:

- Failed to supervise adequately a person under the Member's professional supervision (s. 2(2) of O. Reg.223/08).

51. The children were completely unsupervised while they were out of the playground. In this regard, Ms. McKenzie:

- Contravened a law, which contravention caused a child/children under the Member's professional supervision to be put at or remain at risk (s. 2(21) of O. Reg. 223/08); and
- Failed to maintain a safe and healthy learning environment, contrary to Ontario Regulation 223/08, subsection 2(8), and Standard III.A.1 of the College's *Code of Ethics and Standards of Practice*.

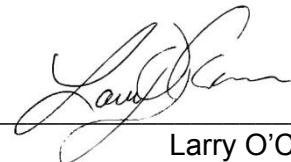
52. In view of our findings, the Panel requests that the Hearings Office schedule a penalty hearing at the earliest opportunity.

Date: May 29, 2017



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Nici Cole, RECE  
Chair, Discipline Panel



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Larry O'Connor  
Member, Discipline Panel



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Diane Laframboise, RECE  
Member, Discipline Panel