

NOTICE OF PUBLICATION BAN

In the matter of College of Early Childhood Educators and William George De Wit 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
Paul Jackson, RECE
Samantha Zuercher, RECE

BETWEEN:)	
)	
)	
COLLEGE OF EARLY CHILDHOOD)	Vered Beylin
EDUCATORS)	for the College of Early Childhood Educators
)	
- and -)	
)	
WILLIAM GEORGE DE WIT)	Not Present and Not Represented
REGISTRATION # 46164)	
)	
)	Elyse Sunshine,
)	Rosen Sunshine LLP
)	Independent Legal Counsel
)	
)	Heard: April 14 & 15, 2021

DECISION AND REASONS

This matter was heard by a panel of the Discipline Committee (the “Panel”) of the College of Early Childhood Educators (the “College”) on April 14 & 15, 2021. The hearing proceeded electronically (by videoconference) pursuant to the *Early Childhood Educators Act, 2007* (the “Act”), *the Hearings in Tribunal Proceedings (Temporary Measures) Act, 2020* and the College’s Rules of Procedure of the Discipline Committee and of the Fitness to Practise Committee.

At the outset, the Panel noted that the hearing was being recorded in the Zoom platform at the direction of the Panel for the hearing record, and ordered that no person shall make any audio or video recording of these proceedings by any other means.

MEMBER’S NON-ATTENDANCE AT THE HEARING

William George De Wit (the “Member”) was not present for the hearing. Counsel for the College provided evidence by way of affidavit (Exhibits 1, 3, 4 and 5) outlining the College’s attempts to communicate with the Member about the hearing. The affidavits provided by the College included evidence that the College had informed the Member of the purpose, date, time, and location of the hearing on several occasions and by several means of communication (including email, voicemail and registered mail).

Counsel for the College advised the Panel that, prior to the hearing, the Member had been suspended for nonpayment of his fees but that the Act provided for continuing jurisdiction of the Discipline Committee for acts of misconduct relating to the time he was still a member.

The evidence provided satisfied the Panel that the Member had been informed of the purpose, date, time and location of the hearing. The Panel was further satisfied that it had continuing jurisdiction over the Member, even though he was suspended for non-payment of fees. Accordingly, the hearing proceeded in the Member’s absence.

PUBLICATION BAN

The Panel ordered a publication ban following a motion by College Counsel, pursuant to section 35.1(3) of the Act. The order bans the public disclosure, publication and broadcasting outside of the hearing room, of 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 February 5, 2021, (Exhibit 1) which provided as follows:

1. At all material times, the Member was a member of the College and was employed as an Early Childhood Educator (“ECE”) at Campus Child Care Cooperative of Guelph Inc. (the “Centre”), located in Guelph, Ontario.
2. On or about March 27, 2018, the Member and other staff were supervising a group of pre-school aged children during nap time at the Centre. At approximately 2:00 p.m., the Member moved a 3½ year old boy (the “Child”) back to his cot. Rather than deescalating the situation by walking away from the Child, the Member remained seated next to him for a period of approximately 10-15 minutes. As a result, the Child was crying, screaming and repeatedly trying to push the Member away from his cot by hitting and kicking the Member. The Member then forcibly picked the Child up and repositioned him on the cot. The Member then walked away from the Child.
3. As a result of the Member’s conduct, the Child suffered deep bruising on his left arm in the location where he was held by the Member, as well as a small bruise on his back.
4. By engaging in the conduct set out in paragraphs 2 and 3 above, the Member engaged in professional misconduct as defined in subsection 33(2) of the Act, in that:
 - a) The Member physically abused a child who was under his professional supervision, contrary to Ontario Regulation 223/08, subsection 2(3.1);
 - b) The Member psychologically and/or emotionally abused a child who was under his professional supervision, contrary to Ontario Regulation 223/08, subsection 2(3.2);

- c) The Member failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8), in that:
- i. The Member failed to be knowledgeable about a range of strategies that support ongoing positive interactions with children and families, contrary to Standard I.B.2 of the College's Standards of Practice;
 - ii. The Member failed to engage in supportive and respectful interactions with children to ensure they feel a sense of security and belonging, contrary to Standard I.C.2 of the College's Standards of Practice;
 - iii. The Member failed to work in partnership with children, families and colleagues to create a safe, healthy and inviting environment that promotes a sense of belonging, well-being and inclusion, contrary to Standard III.C.1 of the College's Standards of Practice;
 - iv. The Member failed to know the current legislation, policies and procedures that are relevant to his professional practice and to the care and education of children, contrary to Standard IV.B.1 of the College's Standards of Practice; and/or
 - v. The Member failed to model professional values, beliefs and behaviours with children, families and colleagues, and/or he failed to understand that his conduct reflects on him as a professional and on his profession at all times, contrary to Standard IV.C.4 of the College's Standards of Practice.
- d) The Member 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); and/or
- e) The Member acted in a manner that is unbecoming a Member, contrary to Ontario Regulation 223/08, subsection 2(22).

WITHDRAWAL OF ALLEGATIONS

The College requested permission to withdraw the allegations contained in section 4(c) of the Notice of Hearing as outlined above. College Counsel submitted that these allegations related to a breach of standards and that the College wished to simplify the process and not call an expert, which would otherwise be required to prove the allegations.

The Panel withdrew allegation 4(c) in its entirety and the hearing proceeded with the remaining allegations in the Notice of Hearing.

THE MEMBER'S PLEA

As the Member was neither present nor represented by counsel, the Panel proceeded on the basis that the Member denied allegations 4(a), 4(b), 4(d) and 4(e) as set out in the Notice of Hearing.

This matter proceeded as a contested hearing.

EVIDENCE

Documentary Evidence

The following documents were entered into evidence at the hearing:

Exhibit #	Description
Exhibit 1	Notice of Hearing with Affidavit of Service
Exhibit 2	Registrar's Certificate
Exhibit 3	Affidavit of M.S.
Exhibit 3(a)	Disclosure Brief Index
Exhibit 4	Supplementary Affidavit of M.S.
Exhibit 5	Additional email communications to the Member
Exhibit 6	Affidavit of A.M. (College Investigator)

Evidence of the College

The College filed documentary evidence collected by College staff (M.S. and A.M.) relating to a number of individuals on whom the College intended to rely to prove its case. Although the individuals were not called to testify, the College submitted that hearsay evidence is admissible in these discipline proceedings and the Panel could accept the evidence as presented.

Evidence of the Child's Mother (the "Mother")

The evidence of the Mother was contained in the affidavit of A.M. (Exhibit 6) and consisted of email communications from the Mother to Centre staff, photographic evidence of the Child's injuries taken by the Mother on her cellphone and several interview summaries provided by Family and Child Services of Guelph and Wellington (FCS).

The Mother indicated that on the evening of March 27, 2018, she discovered marks (bruises) on the Child's upper left arm and back while bathing the Child. The Mother had asked the Child what happened, and the Child said he did not know. The Mother immediately photographed the bruises and emailed the photographs to the Centre's Director and Supervisor, asking for an explanation and expressing a lack of faith in the Child's teachers. The email the Mother sent suggested that the Mother had not been informed by the Centre of an accident or incident involving the Child that day.

The following morning, March 28, 2018, the Mother took the Child to the Centre and discussed the injury with the Centre's Director, DC ("DC"), and its Supervisor, KK ("KK"), and asked to have the Child moved out of his current classroom. The Mother indicated that she also showed the injury to one of the Child's teachers, whom the Mother liked and trusted. The teacher informed the Mother that it looked like a bad injury.

The Mother picked up the Child from the Centre shortly before noon and took the Child to their family physician, Dr. Shira Thomas. Dr. Thomas examined the Child and documented the injuries. Dr. Thomas indicated to the Mother that it looked like a grip injury and referred the Child to Guelph General Hospital. The Child was seen by the Hospital's the on-call pediatrician, Dr. Khadijah Taseen, who took pictures and examined the Child for further injuries.

In her email to Meghan Howe of FCS on April 30, 2018, the Mother reported a conversation she had with the Child in which the Child said that he likes his other teachers because they are nice to him but that he does not like the Member because the Member hurt him and is not nice. The Mother commented that it was a random conversation and that she found it remarkable that after a month, the Child's "words haven't wavered".

Evidence of the Child's Father (the "Father")

The evidence of the Father was contained in the affidavit of A.M. (Exhibit 6) and consisted of an April 30, 2018 Case Note provided by FCS and the FCS initial interview with the Mother, Father, and Child. In the interview with FCS, the Father advised that he does the morning routine with the Child. The Child did not have any marks on him prior to being dropped off at the Centre on the morning of March 27, 2018 at approximately 8:00 a.m. The Father also reported that the Mother told him that the Child had said that he did not like the Member and that the Member hurt him.

Evidence of the Child

The evidence of the Child was contained in Exhibit 6 and consisted of the summary of the interview on March 29, 2018 conducted by FCS staff at the home of the Child. The Child reported that he was put in time out by the Member, and that the Member hit him and hurt him.

Evidence of DC, Director and KK, Supervisor ("Centre Management")

The evidence of Centre Management was contained in Exhibit 6 and consisted of hand written notes of interviews with Centre staff, a summary of the intake call made by DC to report the incident to FCS, emails to the Mother, Case Note summaries of interviews conducted by FCS, and a Mandatory Employer Report filed with the College. Centre Management received an initial email about the incident from the Mother on the evening of March 27, 2018. They spoke

with the Mother during drop off the following morning and conducted interviews with staff at the Centre on the morning of March 28, 2018.

In her handwritten notes of the interviews with Centre staff on March 28, 2018, DC recorded the following:

CL ("CL"), RECE (staff member of the Centre) said that when she returned after her lunch break on March 27, 2018, the Member told her that the Child had a hard time settling and there was some frustration but the Member was not sure what caused it. The Child seemed fine for the rest of the afternoon. The following morning, after the Mother reported the Child's injury to the Centre, CL asked the Child about his injury and the Child said that the Member gave him a time out and hit him and hurt him. Other teachers at the Centre also asked the Child about the incident and he repeated what he said about the Member.

JH ("JH"), a supply staff member, said there was an issue with the Child in the corner but she was not sure what started it. JH described the Child as being loud and disrespectful toward the Member during nap time on March 27, 2018. She also said that the Child was aggressive and may have struck the Member. She reported that after naptime, the Child played and was well behaved.

DC recorded in her notes (page 70 of Exhibit 6) that the Member said the Child got into an altercation with another child during naptime on the afternoon of March 27, 2018. The Member reported that when he redirected the Child to his cot, the Child became angry and began pushing and kicking the Member. The Member stayed with him and if the Child kicked him he put his leg back. The Member reported that he picked the Child up and moved him to his cot. However, he could not recall how he picked up the Child and moved him. He was also not certain what time this occurred. The Member said he did not document the naptime incident on the Child's Antecedent, Behaviour, Consequences (ABC) Chart but that he told CL.

In her handwritten notes made on March 28, 2018, KK recorded that the Member reported that the children were yelling at each other and didn't appear to have contact. The Child then pushed another child and the Member intervened and told the Child to stop and use his words instead. The Member took the Child back to his cot and the Child started to hit and kick the Member. The Member moved the Child's hand and foot away when he did this. The Child

started to kick the bookshelf and the Member moved his leg in the way but the Child continued to kick. The Member picked him up and put him on the cot. KK's handwritten notes make reference to "right hand on leg left hand on left arm." KK also recorded that CL reported that the Child swatted in the air when upset at people and that when asked by another staff member and CL, the Child said, "Will hit me." and "Will gave me a time out."

DC initiated a report to FCS at 12:49 p.m. on March 28, 2018 based on her communications with the Mother and information she received in her interviews with the Centre's staff members. DC advised FCS in her intake call that she had received an email with pictures of an injury on the Child's arm from the Mother asking what had happened.

She reported that the Mother dropped off the Child at the Centre the morning after the incident and spoke with the Supervisor (KK) about moving the Child from the room but she did not accuse any particular teacher at that time. The Mother asked if she should call the police and was advised that it was up to her. DC advised FCS that on the morning of March 28, 2018, a teacher (CL) had asked the Child what happened to his arm and the Child had said that the Member did it. DC advised FCS that the Mother had picked up the Child at 11:30 a.m. to take the Child to the doctor.

DC informed FCS that the Child had been at the Centre since infancy and that she had no concerns about the family of the Child. She indicated that the Child had some self-regulation issues over a period of time, and as a result, the Centre had suggested to the family to have someone come in and observe the Child. The family had declined this in the past but was now in agreement.

DC advised FCS that she had interviewed staff that morning and that the Member told her that it had been a generally good day for the Child. However, during naptime, the Child and another child were playing and someone said "Ow" but the Member was not sure who. The Member saw the Child push the other child and told the Child not to push. At the end of sleep time, the Child was kicking and pushing the Member as he was assisting the Child to stay on his cot. DC indicated to FCS that the Member had said that he picked up the Child with his left hand on the Child's upper left arm and his right hand on the Child's right leg. DC indicated that she would call the Mother to advise that a report to FCS had been filed and that the Member had been sent home.

Centre Management was interviewed at the Centre by Constable John Hunt of the Guelph Police Service and Ashley Penney of FCS on April 3, 2018. The evidence from that interview was summarized in an FCS Case Note and provides the following information:

Centre Management reported that the Member was not coping well on the morning after the incident and had advised another staff member that he was upset because he had been offered a full-time position with the Centre and just as things were going well for him, something like this happened. He spoke to Centre Management about feeling accused and being a male in childcare.

Centre Management clarified with FCS staff in the April 3, 2018 interview that the Member had reported to Centre Management that the Child had pushed another child. The Member had tried to redirect the Child and this upset the Child who then started kicking and pushing the Member and kicking the bookshelf by the Child's cot, close to where another child was sleeping. The Member said he redirected the Child by moving the Child's leg back when he kicked him. The Member then picked up the Child and put him back on his cot.

Centre Management explained that the Centre does not have a policy against picking up children but the Centre does not recommend it, especially if a child is upset. The preference is to use redirection or to lead the upset child to a quiet area to give the child space to calm down. Centre staff do not use time outs. Staff are expected to stay engaged with an upset child so the child does not feel isolated. Staff should physically back up if a child's behaviour escalates or becomes physical.

Centre Management advised that the Child had been seen by a social development coordinator twice. The Mother was hesitant to accept this intervention because her older child had also worked with a social development coordinator and the family did not have a good experience. Staff stated in their interview on April 3, 2018 with FCS that, the Child finds transitions difficult and needs a lot of direction. The Child gets "dysregulated" when he thinks he is not doing a good job and is "triggered" by social interactions.

Centre Management reported that the Centre did not have any concerns about the Member. They had offered him a permanent position that was to start in April 2018. They have never

seen him pick up children in the past. The Member was well received by both the children and their parents. The Member was described as outgoing, caring and in tune with the children.

Evidence of CL, RECE

CL's evidence was contained in Exhibit 6 and consisted of her interview responses recorded in the handwritten notes of DC and KK (which have already been outlined in the section above), the interview summary of her interview with FCS and the transcript of her interview with Constable John Hunt of the Guelph Police Service.

In her interview with FCS conducted on April 3, 2018 at 10:15 a.m., CL reported that the Child was calm in the morning, did not eat much at lunch and then went to nap at 12:30 p.m. and was not upset or aggressive at that point. When CL returned from lunch, she was told by the Member that the Child had a temper tantrum and was screaming and crying. Neither the Member nor the placement student in the room, knew what had caused the Child's tantrum.

CL reported that the last time the Child was upset, he was screaming and had scratched his face and bit his arm but there were no marks left on his body. She told the Child's Mother about this and the Mother said she did not see this kind of behaviour in the Child at home and had declined the Centre's offer of a socioemotional consultant for the Child.

CL reported that on March 28, 2018, she was told by KK that the Child had scratches on him. When KK and CL asked the Child about the scratches, he said he did not know how he got them. When CL and another colleague asked him about how he got them and if anyone hurt him, the Child said, "Will hit me, he gave me time out." CL asked to see the marks and he showed her. When CV ("CV") arrived, CL asked the Child again about the marks and he repeated what he said.

During her April 3, 2018 interview with Constable John Hunt of the Guelph Police Service at 3:07 p.m., CL said that on the morning of March 28, 2018, she asked the Child if he got hurt. The Child said he had a "boo boo" on his arm. The Child then said, "Will hit me, he gave me a time out." CL then asked another staff member to come into the room to see the Child's arm. They asked the Child again what happened and he again said, "Will hit me, he gave me a time

out.” CL reported that she was shocked that the Child remembered and said the Member’s name because the Child has trouble saying and remembering people’s names.

CL described that the Child takes a long time to settle down and in the past, he had become really upset and scratched, bit and hit himself and knocked chairs down. When asked by Constable Hunt whether there were any issues between the Child and the Member, CL reported that there were no issues. She also said that the Member mentioned that the Child does not listen, but that it was not just the Member who said that. CL confirmed that the Centre staff do not use the word timeout. They use the word redirect, instead. CL confirmed that the only time she has seen the Member move the Child is when he took the Child by the hand on another occasion and led him to another area to redirect him.

Evidence of JH

JH is a part time staff member at the Centre. Her evidence was provided through the handwritten notes of DC and KK, her interview with FCS and her interview with the Guelph Police Service. JH was in the room with the Member during naptime but she did not see the Member pick up the Child. She reported that she heard the Child being disrespectful, not listening and yelling at the Member. She reported that she did not have any concerns with the Member or his interactions with any of the children.

Evidence of CV

CV is an Inclusion Facilitator at the Centre. She works from 10:00 a.m. to 1:00 p.m. each day to support the teachers. In her interview with FCS at 11:40 a.m. on April 11, 2018, CV reported that she did not see anything out of the ordinary on March 27, 2018. She reported that on March 28, 2018, she asked the Child to see the mark on his arm and the Child said, “Will hurt me.” When she asked the Child how it happened, the Child stated that he did not know. CV said she has never seen any inappropriate interactions between the Member and any of the children, including any physical interactions. She said that the Member usually gets on the children’s level and talks to them. She indicated that she would trust the Member with her own children.

Evidence of the Family and Child Services of Guelph and Wellington

The evidence of FCS was provided in Exhibit 6 through summaries of case notes and a May 7, 2018 verification letter (Exhibit 6, p. 132) that was provided to the Member. The evidence indicated that after thoroughly investigating what could have caused the injury to the Child, FCS verified that it was the actions of the Member that caused the Child's bruising. The FCS wrote to the Member indicating that a plan should be put in place in order for the Member to work with children in a safe manner.

Evidence of Guelph Police Service

The report of the investigating Constable, John Hunt (Exhibit 6, pp. 126 – 130) indicated that an injury to the Child occurred sometime between 8:00 a.m. and 7:00 p.m. on Tuesday, March 27, 2018. The Constable's interviews with Centre Management, Centre staff (CL and JH) and the Member led the police to conclude that while an injury occurred, it is "improbable to determine when it happened or who was responsible."

In the transcript of the Constable's interview with the Member, the Member told the Constable that the incident was not unusual, that major and minor incidents happened all of the time. When describing how the Member moved the Child, the Member said, "I moved him I didn't grab him," but then later in the interview the Member also says, "I took his ankle and his arm and I grabbed his arm. And moved him back onto his cot" (Exhibit 6, p. 94). When asked specifically about whether he touched the Child's biceps, the Member said, "No. I grabbed his ankle and wrist."

The police did not lay any criminal charges against the Member.

Evidence of Dr. Shira Thomas

Dr. Thomas's evidence was provided through a report to FCS (Exhibit 6, p. 5 and p. 138). Dr. Thomas indicated that she examined and documented the injuries on the Child's left arm and

back and the bruising looked to be a mark from the hand of a small adult and it was likely consistent with a grip injury.

Evidence of Dr. Kathleen Nolan, McMaster Child Advocacy and Assessment Place (CAAP)

Dr. Nolan's evidence was provided through a summary of the phone conversation she had with FCS on April 4, 2018 (Exhibit 6, p. 136-137). Dr. Nolan was provided with three photos of the Child's injured arm beside a ruler by an FCS caseworker. Dr. Nolan advised FCS that the marks indicated a pattern bruise that would be unusual for an accidental injury. While the marks could have been caused by a hit, there would need to have been more than one hit to cause the marking on both sides of the arm. It would be extremely unusual for the degree of injury to be self-inflicted by a 3-year-old. It was not possible to say whether the marks were made by an adult or bigger child, but the marking was consistent with the types of marks on children who reported being grabbed by someone.

Evidence of the Member's Response to the Allegations

The evidence of the Member was contained in Exhibit 6 and consisted of the Member's responses to his interview with Centre Management, as recorded in the hand written notes of DC and KK, the transcript of his interview with Constable John Hunt of the Guelph Police Service on April 3, 2018, and the Member's responses to his interviews on April 6 and 25, 2018 with staff at FCS as recorded in FCS Case Notes.

In his interview with the Centre Management on March 28, 2018, the Member stated that the Child pushed another child and he redirected the child to his cot to separate the two children. This upset the Child who began to hit and kick. He moved the Child's kicking leg away but the Child continued to kick at him. The Member picked him up and put him on his cot. In the handwritten notes of KK in Exhibit 6, made on March 28, 2018, the Member is reported as saying that he picked the Child up with his left hand on the Child's left arm and his right hand on the Child's leg. In the notes of DC also made on March 28, 2018, the Member is reported as having said he can't remember how he picked up the Child.

In his interview at 1:58 p.m. on April 3, 2018 with Constable John Hunt of the Guelph Police Service, the Member says he was told that a complaint was made and there was a mark on a

child. The Member had indicated in his interview with Constable Hunt that there were often major and minor incidents daily. He acknowledged that he returned to the classroom, inspected the marks on the Child and indicated that the Child said, "You hurt me." The Member acknowledged that the marks he saw on the Child were significant if they happened at the Centre. During the interview, when he was describing how he moved the Child, the Member said, "I took his ankle and his arm and I grabbed his arm. And moved him back onto his cot" (Exhibit 6, p. 94). When asked specifically about whether he touched the Child's biceps he said, "No. I grabbed his ankle and wrist."

In the Member's interview with FCS at 9:40 a.m. on April 6, 2018, the Member reported that on March 28, 2018, the Centre Director and Supervisor asked him what happened during naptime the previous day and told him to document the incident. He went outside to see the Child. In the presence of two other staff members, the Member asked to see the marks on the Child. They lifted up the Child's shirt high enough to be able to see the marks. The Child said that he [the Member] hurt him. The Member felt accused and wanted to go home but was told to take his lunch. After lunch, he was told that FCS had been contacted and that he was to go home until they completed their investigation.

Regarding the events on March 27, 2018, the Member said in his interview with FCS on April 6, 2018 the day started slowly but it was a busy day with typical behaviour and nothing significant. He described the events as follows:

- Typically, during nap time, the Child would be told to go back to his cot and he would become combative, so sometimes he would walk him back to the cot by taking his hand. The Member said this would often happen three or four times during a nap period.
- At some point on March 27, 2018, the Child and another child were at a table together swinging at each other so he went to take the Child by the hand. The Child pulled back. The Member was firm and he told the Child to go back to cot. The Child stopped halfway and kicked a cot. He was told no, taken by the hand and brought to his cot.
- The Child stood on his cot and was pushing the Member. The Member let go of the Child's hand and lowered the Child to the cot. The Member was sitting on the floor by the cot.
- The Child was kicking the Member and so the Member took the Child's shoe and moved the Child's foot away several times and told the Child, "No. thank you, that hurts."

- The Child stopped kicking and started hitting so the Member did the same thing he did with his foot. The Child went to kick the Member but missed and hit a basket of books and it hit another child.
- The Member went to get up and slipped and he hit the cot and the cot slid back against the wall. The Member repositioned himself and while sitting, the Member took the Child's wrist and shoe and moved him back on the cot.
- The Member demonstrated to the FCS interviewer how he moved the Child. The Member said the Child's tantrum only lasted 10 to 15 minutes which was not significant for the Child, as he has had previous tantrums that have lasted significantly longer, even up to 45 minutes.
- The Member reported he was angry when the Child was hitting him but he was mindful and did not need to calm down and did not to show his anger. The Member denied touching the Child on his shoulder and denied lifting the Child up. The Member did not see anyone (including other staff or children) hit or grab the Child.

In his interview with FCS at 3:00 p.m. on April 25, 2018, the Member reiterated that he redirected the Child back to his cot because of a "scrimmage" with another child. The Child was kicking and the Member was blocking the kicks and moving the Child's foot back onto the cot. The Child kicked at the bookshelf and kicked a basket that went through the cubby and connected with a child sleeping on the other side of the bookshelf.

The Member moved the Child on the cot by holding the Child with the Member's right hand holding the child's wrist and Member's left hand on the Child's foot and pushing him back on the cot. The interviewer reminded the Member about his earlier statement where he said he had slipped while repositioning himself and the Member said he did not know what the Child was doing as he slipped.

The Member demonstrated to the interviewer how he held the Child, indicating that he had grabbed the wrist and upper hand of the Child's left hand with his right hand and the Child's left foot with his left hand. The Interviewer asked the Member if he might have grabbed the Child's arm and the Member said it would have been too far out of reach. The interviewer suggested that, given the Child's size the upper arm would have been within reach but the Member denied that he ever touched the Child's upper arm. The Member was unable to recall where the Child's hand was before he took hold of it.

SUBMISSIONS OF THE PARTIES ON LIABILITY

The College submitted that the documentary evidence established that the Member engaged in the conduct as alleged on a balance of probabilities and that the conduct that was alleged constitutes the professional misconduct as set out in the Notice of Hearing.

The College submitted that the affidavits of College staff were supported by the documentary evidence that they had collected and that staff had been professional and diligent in the collection and compilation of those documents.

The College submitted that the weight the Panel should give the documentary evidence collected and provided in the affidavits of College staff can be individually assessed based on the reliability and credibility of those tendering the evidence. That can be done by examining the internal consistency of the witnesses' different accounts over time and the external consistency between different witnesses' accounts. The College also submitted that the proximity of the collection of the evidence to the incident can also be used to assess the reliability of the evidence. The College submitted that the evidence of the Child's injury was documented by photographs taken by the Mother immediately upon discovery of the Child's injury.

The College argued that the notes of Centre Management, the FCS and the Police were reliable and reflected accurately what was said in the interviews because they were taken soon after the discovery of the Child's injuries and they were recorded by professionals who understood the importance of accurate note taking and documentation. In the case of the police interviews, the notes were transcribed from recordings of the police Constable's interviews with the Member and CL. The Mother's evidence of what the Child said about the incident aligns with what the staff at the Centre said the Child told them. There was a high degree of consistency between the accounts of what the Child said between Centre staff and the Mother.

The College submitted that the Member's evidence can be relied on and found credible when it does not contradict itself and when it aligns with other evidence provided and is consistent with other accounts. The College submitted that the Member's descriptions and accounts about whether: 1) he picked up the Child; 2) how he held the Child; 3) what his mood was like during

the interaction 4) what the Child said when he asked the Child about his injury; and 5) the reason the Member gave for moving the Child became internally inconsistent after the Member realized he could be in trouble. The College provided examples in the evidence where the Member's accounts changed over time and between different statements relating to these five subjects.

The College submitted that the FCS interview with another child at the Centre should not be given weight because it was unclear whether the statements made by the other child related to the incident at issue or not

In the College's submission, the fact that the Child had previous behaviour challenges is irrelevant and should be given little weight, as it does not speak to the appropriateness of the extent of use of force used by the Member in this particular instance.

The College submitted that the Panel should not take into account the fact that the police elected not to lay criminal charges as against the Member as this is not binding on the Panel. The Panel should base its decision on the evidence presented by the College. The College submitted that it disagrees with the police's conclusion that there were no witnesses other than the Member and the Child and that they would not be able to get answers to questions from the Child and as such, did not lay charges. The College also disagreed with the police summary found at page 126 of Exhibit 6, because it did not reference the notes with Centre Management where the Member said he grabbed the Child's arm but instead, only referred to the Member's police interview where the Member said he never grabbed the Child by the arm. The College therefore urged the Panel to rely on the police transcript of the interview with the Member, not the police summary.

The College submitted that the Panel should accept the FCS conclusion in its verification letter that the bruising on the Child was caused by the Member and that the FCS was concerned that the Member is likely to use excessive force and go hands-on when he becomes frustrated.

The College submitted that all of the allegations in the Notice of Hearing are supported by the evidence presented by the College and that the Member behaved as alleged. The College did not suggest that the Member intended to harm the Child but that he was engaging in a power struggle with the Child, was frustrated and acted in a careless manner without consideration of

his strength or the appropriateness of his actions. The College submitted that there is no requirement for there to have been malice to make a finding of abuse. By forcefully grabbing the Child, the Member bruised the Child. This was abusive and while the physical contact was brief, it caused bruising that lasted several days.

The College submitted that the Member showed disregard for the Child's emotional wellbeing. The Member should have allowed the Child time to calm down and he should have "walked away." The College submitted that the Member engaged in a power struggle with the Child because he wanted to do things his own way.

The College submitted that the Member should also be found guilty of dishonourable, disgraceful or unprofessional conduct because the Member engaged in a prohibited practice by forcefully moving the Child by the leg and arm as though the Child were an object, which is unprofessional. Additionally, the Member did not report or document the Child's behaviour, as a reasonable member of the profession would expect the Member to have done.

The College submitted that allegation relating to unbecoming conduct does not need to involve dishonesty but can be found if the behaviour erodes the public's trust in the profession. Causing an injury to a child erodes the public's trust in the profession.

The College provided the Panel with cases where there had been similar acts of physical abuse including:

1. *College of Early Childhood Educators v. Jill Wendy Walsh*, 2020 ONCECE 11 (CanLII)
2. *College of Early Childhood Educators v. Kelly Anne Eusebio*, 2019 ONCECE 6 (CanLII)
3. *College of Early Childhood Educators v. Leslie Raybon*, 2021 ONCECE 2 (CanLII)

The College also referred the Panel to the decisions of *College of Early Childhood Educators v. Victoria Marie Alves*, 2019 ONCECE 5 (CanLII) and *College of Early Childhood Educators v. Malgorzata (Margaret) Lulek*, 2020 ONCECE 3 (CanLII), which the College submitted were similar cases where RECEs were found guilty of professional misconduct for single, brief incidents of physical and psychological abuse. In those two cases, however, no marks or bruises were left on the children involved.

The Member was not present and did not make submissions.

DECISION ON THE ALLEGATIONS

After having considered and weighed the evidence presented by the College, the Panel found that the College had met its onus and proved on a balance of probabilities that the Member had committed professional misconduct as follows:

- a) On the allegation in section 4(a) of the Notice of Hearing, that the Member physically abused a child who was under his professional supervision, contrary to Ontario Regulation 223/08, subsection 2(3.1), the Panel found the member guilty;
- b) On the allegation in section 4(b) of the Notice of Hearing, that the Member psychologically and/or emotionally abused a child who was under his professional supervision, contrary to Ontario Regulation 223/08, subsection 2(3.2), the Panel found the member guilty;
- c) As the allegation in 4(c) of the Notice of Hearing was withdrawn, the Panel did not make a finding on this allegation;
- d) On the allegation in 4(d) of the Notice of Hearing, that the Member 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), the Panel found the Member guilty
- e) On the allegation in 4(e) of the Notice of Hearing, that the Member acted in a manner that is unbecoming a Member, contrary to Ontario Regulation 223/08, subsection 2(22), the Panel found the Member guilty.

REASONS FOR DECISION

Credibility of the Evidence

The Panel considered the documentary evidence and made the following assessments as to its credibility and reliability:

Credibility of the Affidavit Evidence of College Staff

The Panel found this evidence to be reliable and credible. The College staff diligently documented and presented the evidence they collected during the course of the investigation.

Credibility of the Mother

The Panel found the Mother's evidence to be reliable and credible. She was able to see the injury on the Child and document the extent of the bruising. She was able to recount what the Child told her about the injury. The account of what the Child told the Mother was consistent with what Centre staff members reported that the Child had said. The Mother provided photographic evidence that was taken immediately upon discovering the Child's injury. The injury was scrupulously documented by the Mother with a ruler to show the size of the injuries and this was forwarded immediately to the Centre. Additional photographs of the Child's injuries were taken by an examining doctor the following day. Those photographs were consistent with the photographs taken by the Mother indicating that they can be relied on as an accurate depiction of the Child's injury.

In her interview with FCS on March 29 at 8:00 a.m., the Mother reported that on the evening she discovered the injury to the Child's arm (March 27, 2018), she and the Child's Father tried to do some role playing with the Child with dinosaurs to determine what had happened. While role playing, the Mother reported the Child said that he was put in a time out and was crying. The Mother said it sounded like the Child was saying "whale", however, as he kept saying it, the Mother could hear that he was saying Will. This seems plausible when coupled with the Mother's subsequent account of the Child reporting to her in Dr. Thomas's office that it was the Member who had held the Child in a way that could have caused the bruising.

Interview evidence with FCS indicated that the Centre's director, DC, called the Mother and spoke to her as the Mother was leaving Dr. Thomas's office with the Child and arriving at the Hospital. The Mother told DC that Dr. Thomas thought it was a grip injury. Dr. Thomas's report is consistent with this evidence. The Mother spoke with FCS later that afternoon at 4:27 p.m. on March 28, 2018, and reported that while she was waiting in Dr. Thomas's office, she placed her hand on the Child in a way that she thought might have likely caused the bruising, and asked the Child if someone held him that way. The Child responded yes, and that it was the Member.

This evidence that it was the Member who hurt the Child's arm is further substantiated by CL's account of the Child telling her "Will hit me he gave me a time out" and CV's account of the Child saying that "Will hurt me."

Credibility of the Evidence Provided by Centre Management (DC and KK)

The Panel found the evidence of DC and KK to be credible and reliable. They conducted staff interviews and made handwritten notes of their interviews with Centre staff in close proximity to finding out that the Child had injuries as reported to them in an email by the Mother. There is a high level of consistency between the handwritten notes of DC and KK, leading the Panel to believe that they accurately represented what was said by the Member and staff during their interviews. Similarly, accounts recorded by FCS of Centre Management's interviews and the intake call are consistent with Centre Management's handwritten notes and accounts of what happened in other sources of evidence. This includes the FCS case note summaries of interviews held with others involved, including the Mother and the Member. This indicated that the notes were accurate, taken diligently and accurately reflected what was said.

The contents of the intake interview of DC with FCS when she first reported the incident is consistent with the subsequent interviews FCS had with the Mother and with staff at the Centre. It is consistent with the Centre Management's subsequent interview with FCS. The Panel found the level of consistency between these interviews to be sufficient to rely on the accounts as an accurate representation of what was relayed to them as what took place.

Credibility of CL, RECE

The Panel found the evidence of CL to be credible and reliable. CL's evidence was presented through handwritten notes of Centre Management, and interviews with her by FCS and Guelph Police. CL was not present during the time when the Member and the Child were by the Child's cot when the injury to the Child is believed to have occurred but she does say in all three interviews that the Member told her the Child had a hard time settling or calming and had a tantrum while she was on her break.

The accounts given by CL to Centre Management, the FCS and the Police about what the Child said to her on March 28, 2018 about his injury are substantially consistent over time and her story does not waver. She indicated that the Child told her that “Will hit me. Will gave me a time out.” CL gave an extensive account of the Child’s challenging behaviour and stated that she did not have any concerns about the Member’s behaviour with any of the children or his professionalism. This suggests to the Panel that she does not have a reason for getting the Member in trouble and that the account of what the Child said to her can be reasonably relied on by the Panel.

Credibility of JH

The evidence of JH (part-time staff member at the Centre) was credible and reliable. She was in the room when the incident between the Member and the Child took place. In her interviews with Centre Management, FCS and with the Guelph Police, she indicated that the Child was being loud and disrespectful toward the Member. She indicated that the Child was aggressive, but could not confirm if the Child struck the Member, nor could she confirm if the Member picked up the Child. Her account was consistent in all three of her interviews and she had no reason to misrepresent what she was able to see and hear. Her evidence is also consistent with descriptions other staff gave of the Child’s disposition toward challenging behavior.

Credibility of CV

The Panel found the evidence of CV (teacher at the Centre) to be credible and reliable. CV was present when the Child showed his injury to staff and reported in her interview with Centre Management that she heard the Child say that the Member hurt the Child. This is corroborated by CL’s account of what the Child said. There is no evidence that CV and CL have a reason to concoct this story to discredit the Member or any bias towards him. In fact, the Member also corroborated that the Child said that the Member hurt him. CV went as far as saying that she would trust her own children with the Member. The Panel believes the accounts of what CV told Centre Management and the FCS were accurate representations of what she was able to hear and see.

Credibility of the Medical Evidence (Dr. Shira Thomas and Dr. Kathleen Nolan)

The Panel considered that both doctors became involved in this matter by virtue of their role as regulated health professionals. Neither of them had any stake in the outcome of these proceedings. They had no reason to misrepresent their interpretation of the Child's injuries. Dr. Thomas had the opportunity to physically examine the Child the morning after the injury was discovered on the Child. The Panel believes it is reasonable to assume the doctor is honest and competently recorded her examination of the Child. There is no evidence to contradict that assumption. Dr. Thomas said in her report that she believes the injury was consistent with a grip by a small adult. The evidence of Dr. Thomas was presented as an FCS Case Note summary of the FCS interview with her. The content of that interview is consistent with the Doctor's own report which was also included with the affidavit evidence in Exhibit 6. This internal consistency lends to its reliability.

Dr. Nolan, of the McMaster Child Advocacy and Assessment Program, was contacted by FCS and asked to review the photographs of the Child's injuries. As with Dr. Thomas, there is no reason to doubt the professionalism and competency of Dr. Nolan's assessment of the photographic evidence. Dr. Nolan offered to physically examine the Child but did not because the bruising was gone by the time Dr. Nolan's involvement occurred. The assessment of Dr. Nolan was based solely on the photographic evidence, but since the Panel found those photographs to be an accurate representation of the Child's injuries, the Panel is confident that Dr. Nolan's assessment of those photographs is reliable. Dr. Nolan's assessment is consistent with the assessment of Dr. Thomas's report which adds to its reliability.

Credibility of Evidence Provided by Guelph Police Services

While the Panel believes that there may be some useful information to be gleaned from the evidence provided by the Guelph Police Services, the Panel noted that the information was limited because the police did not interview as many witnesses as the FCS.

The police interviewed the Member, CL and JH. The content of the interviews of the Member and CL were transcribed from recordings. The interview of JH is summarized in the final police summary of the case. That summary relied on the notes taken by DC and KK on March 28,

2018 and the recorded interviews Constable Hunt had on April 3, 2018 with the Member, CL and on April 4, 2018 with JH. The police determined that the injuries occurred on March 27, 2018 between 8 a.m. and later that evening because the Child did not have bruises before going to the Centre and there were bruises on the Child when the Mother bathed him that evening. However, the police summary acknowledged that it is unknown precisely when the injury occurred and who was responsible.

The police summary report at page 129 of Exhibit 6 stated that there was an incident at the wake-up table where the Child got physical with another Child. The Member separated and redirected the Child. The Child struck the Member and the bookshelf. The Member was adamant that he did not grab the Child's arm but only moved his hand and foot. There were no witnesses to this and the police concluded that the Child's outburst at the wake-up table was not so unusual that staff reported it.

The police concluded that they did not believe they had sufficient evidence to lay a criminal charge against the Member. Their summary indicates that the Child was indeed injured but that they did not believe that they could prove that it was the Member who caused the injury. The injury could have occurred any time on March 27, 2018 and it was "improbable to determine when it happened or who was responsible."

It is worth noting that there was no reference to an interview with the Mother, Father or Child by the police or if they conducted any further interviews. There was also no indication in the evidence of when the police summary report was prepared or sent to FCS. The Panel also considered whether or not the police decided to lay charges is not definitive of whether the Member committed professional misconduct.

Credibility of the Evidence Provided by Family and Child Services of Guelph and Wellington

The Panel found the evidence of the FCS to be credible and reliable. The summaries of their contacts with witnesses and their interviews with the family, the Member, the staff and management at the Centre were thorough. The interviews were conducted by professional case workers who understood the significance of accurately reflecting the substance of their interviews.

There were extensive summaries of all of the points of contact with individuals who had knowledge of the events and who were able to provide information that was relevant to the Child's injury and what might have caused them. They interviewed staff, the family and Child, the Centre Management, and other children and families at the Centre. They collected evidence from medical professionals. They diligently conducted this investigation in a timely manner, when the information was fresh.

The interviews were prepared by multiple participants and assessed by a group of case workers and a supervisor before a final verification letter was prepared. The conclusion reached by FCS that the Member had caused the injury to the Child was backed by the evidence. This evidence included:

- the Member's original statement that he grabbed the Child by the arm and foot and moved him on his cot;
- the Member's use of the term "arm" when he spoke with the police;
- the change in the Member's story regarding the Child's arm: after seeing the marks on the Child's arm, the Member said it was the Child's wrist he had grabbed, not the arm;
- the Child's statement that the Member hurt him;
- the Member's statement that he was mad because the Child was hitting him, even though the Child may not have appeared to be mad; and
- the doctors' verification that the injury looked like a grab mark.

The Panel found this evidence to be reliable and credible.

Findings on the Facts

The Panel found that on a balance of probabilities that the Member grabbed and moved the Child with enough force to cause bruising to the Child's arm.

The Panel finds that the following events occurred:

The Member intervened in an altercation between the Child and another child. The Member redirected the Child to the Child's cot as it was nap time. The Child perceived this to be the equivalent of a time out.

The Child became upset and started hitting and kicking the Member and the bookshelf by his cot. The Member remained near the Child and moved his hand and foot each time the Child attempted to strike him or the bookshelf.

The Child's challenging behaviour continued and was not de-escalated because of the Member's proximity and interactions with the Child. The Member was seated on the floor between the Child's cot and the bookshelf and remained engaged with the Child.

At some point, the Member attempted to get up and slipped, causing the cot to move back against the wall. This, combined with the Child's challenging behaviour, frustrated the Member and he grabbed the Child's left arm and leg to reposition the Child on his cot with enough force to cause bruising to the Child's upper left arm. The Member did not report this as an incident or an accident and he did not log the Child's behaviour in the Child's ABC Chart, but only mentioned it to his colleague CL.

There was no evidence that suggested that the Member intended to cause harm to the Child but the Child did suffer an injury.

Findings on the Allegations:

Allegations 4(a): Physical Abuse

The Panel found that by grabbing the Child by his upper left arm and leg to reposition the Child on his cot with enough force to cause a bruise consistent with a grip mark, the Member is guilty of physically abusing a child who was under his professional supervision, contrary to Ontario Regulation 223/08, subsection 2(3.1).

In finding this to be physical abuse, the Panel considered

- The circumstances in which the conduct is alleged to have occurred;
- The nature of the conduct;

- The words and/or gestures which accompanied the conduct;
- The nature and extent of the force applied by the Member; and
- The intent, purpose or motive of the Member in engaging in the conduct.

The Panel notes that physical abuse does not require proof of an intention to cause bodily harm, nor does it require proof that the conduct caused a hurt or injury that interferes with the health or comfort of the person.

During the whole investigation the Member acknowledged that he was with the Child by his cot. The Child was hitting and kicking the Member and the Member was deflecting the Child's strikes. The Member stated in his interview with FCS that he repositioned himself as he was seated between the cot and the bookshelf and slipped causing the cot to push back. As the Member recounted in his interview, this was frustrating to him. That was compounded by the Child kicking the Member and then kicking the bookshelf, which disrupted the books, including a book making contact with another child. The Member told the FCS caseworker in his interview on April 6, 2018 that he was mad when the Child was hitting and kicking him. It was at that point, while frustrated and mad, that the Member grabbed the Child's arm to reposition the Child. The Panel finds that it is more likely than not that the Member's anger and frustration caused him to grab the Child with enough force to bruise the Child's arm thereby constituting physical abuse. The Panel relied on the evidence of the Father that the Child went to school in the morning without bruising on his arm. The Panel heard multiple accounts from the Member that there was an incident between the Child and the Member that occurred after lunch and during naptime that involved the Member acknowledging that he physically moved the Child. In the Member's account to the police, he said he grabbed the Child's arm at first. Although the Member later changed his version of events to say he grabbed the Child's wrist, the Panel finds that the Member's inconsistent statement weakened his credibility and that the reason the Member changed his version of where he grabbed the Child was because he knew the bruising was on the Child's arm and did not want to be viewed as responsible for this bruising. In the evening of the day of this incident the Mother found bruising on the Child's arm. The Panel found this to be sufficient evidence to find on a balance of probabilities that the Member's interaction with the Child was what caused the bruising and that because the handling was forceful enough to cause bruising, that the Member's action during a period of frustration constituted physical abuse.

Allegation 4(b): Psychological or Emotional Abuse

The Panel found that the Member psychologically and/or emotionally abused a child who was under his professional supervision, contrary to Ontario Regulation 223/08, subsection 2(3.2). Rather than backing away from the Child to allow him time and space to deescalate and calm down, the Member stayed close enough to the Child to be within the Child's striking distance. The Member's positioning near the Child between the cot and the bookshelf and the deflecting of the Child's foot, as the Child kicked at the Member, did not deescalate the situation. It escalated the situation to the point where the Member ultimately grabbed the Child forcefully enough to cause bruising as he repositioned the Child.

The Member admitted to repositioning the Child in his interview with the police saying "I took his ankle and his arm and I grabbed his arm. And moved him back onto his bed." , He also said he took the Child's arm and leg in his interviews with Centre Management. The psychological and emotional impact of being picked up forcefully by the arm and leg to be moved cannot be understated. The Panel finds that it is more likely than not that such conduct, by one's caregiver, caused psychological or emotional distress to the Child, who clearly was already in an emotionally distressed state. JH's interview with Centre Management indicated that the Child was loud and "disrespectful," which the Panel finds to be an indication that the Child was upset. CL indicated in her interview to Centre Management that the Member told him the Child had a temper tantrum. The Member told FCS and the police that the Child was kicking and lashing out, which are signs of emotional distress, anger and frustration, Rather than deescalating the situation by providing the Child with space or seeking support from a colleague the Member escalated the situation by remaining within the Child's space and acted out of frustration. The psychological abuse was rooted in the Member's decision to act in that frame of mind.

Allegation 4 (d): Disgraceful, dishonourable or unprofessional conduct

The Panel found that the Member 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) by grabbing the Child and by not effectively deescalating the Child's challenging behaviour.

The Panel recognizes that challenging behaviour is difficult to facilitate, particularly when they involve potential risks to the Child and other children. Early Childhood Educators are reasonably expected to remain calm and support children through challenging emotions. A professional would effectively model how to regulate emotions. By picking up the Child roughly enough to bruise the Child, the Member did not model the behaviour as a professional would be expected to. By not backing off to allow the Child to calm down, the Member escalated the situation and this was unprofessional.

Allegation (e): Conduct unbecoming

The Panel found that the Member acted in a manner that is unbecoming a Member, contrary to Ontario Regulation 223/08, subsection 2(22), as a result of acting out of frustration, failing to deescalate the situation with the Child and engaging in physical contact that resulted in bruising to the Child. Not reporting or documenting the Child's challenging behaviour that led up to the incident eroded the confidence the Mother had in the Child's teachers. Evidence that the Mother had lost confidence is found in her email to Centre Management when she wrote "I feel this is the worst way to find out about an injury to your child. Is there anyway [Child's Name] can move rooms. I have honestly lost faith in his teachers."

In this case, the Mother discovered the bruises on the Child when she was bathing him that evening. She had not been told there had been a tantrum or that the Member had to deal with some challenging behavior that involved the Child physically pushing another child or kicking and hitting the Member. Parents want to know when their Child has engaged in troubling behaviour. Striking at a teacher would reasonably be considered something a parent would want to know about. Finding bruising on one's child is particularly distressing to a parent when there is no explanation and when the bruising could only have occurred at the Centre while the Child was under the supervision of an REECE. The Child was dropped off at the Centre without a bruised arm, an incident occurred between the Member and the Child where the Member acknowledges that he moved the Child by the arm and leg and then bruising was found on the Child's arm by his mother later that evening. No information had been communicated to the Child's parents about the incident. It makes a parent wonder if their child is safe with their

caregivers. The causing of injury to a Child and the subsequent failure to communicate that an incident happened erodes the confidence in the profession and is unbecoming a member.

POSITIONS OF THE PARTIES ON PENALTY AND COSTS

The Panel was presented with evidence in Exhibits 3 and 7 that the Registrant was made aware of the fact that if findings of misconduct were made against him, the matter would proceed to a penalty hearing without further notice to him. College Counsel identified seven separate attempts to notify the Member of the hearing and possible subsequent penalty hearing. The College had advised the Member of the penalty it would be seeking if it were successful in establishing the acts of misconduct alleged in all seven of those notifications.

Evidence that the Member had received these communications from the College was presented in Exhibit 4 through the Member's email response on March 16, 2021. The Panel was therefore satisfied that the Member had been informed that a penalty hearing could occur in his absence and proceeded with the penalty portion of the hearing. As the Member was not present, he was deemed to contest the penalty that the College was seeking.

Submissions of the College on Penalty and Costs

The College requested that the Panel impose an order that:

1. The Registrar be directed to revoke the Member's Certificate of Registration effective immediately; and
2. The Member be required to pay to the College costs in the amount of \$10,000.00 within sixty (60) days from the date of the Order.

The College submitted that generally speaking, cases involving abuse of a child resulted in a suspension of 6 to 9 months. However, those cases all proceeded by way of an agreement on the facts, showing that those members had insight into their misconduct and were willing to work toward rehabilitation. This case did not involve any admissions and as such, the Member should not be entitled to the credit that is usually given when a member pleads guilty.

In addition, however, the College submitted that this Member demonstrated that he was ungovernable and does not submit to authority of the College to regulate the profession. In this case, the Member had not been responsive to any communications by the College (except for one). He refused to accept materials sent to him by the College. He failed to attend a pre-hearing conference and this discipline hearing. The Member also sent communications to the College where he stated that he did not want to keep his College membership. All of these factors would support the Panel making a finding that the Member was ungovernable and should be revoked.

The College also submitted that the penalty must send a broad message to the community of Early Childhood Educators and the public that the College is mandated to regulate members of the profession for the protection of the public.

The College said that the Panel and should take into consideration aggravating and mitigating factors. The College submitted that there were five aggravating factors: 1) the young age of the Child; 2) the force that was used that caused bruising; 3) the unnecessary power struggle the member engaged in with the Child; 4) the emotional impact the Member's behavior had on the Child which was evidenced by the Child's hitting and kicking the Member; 5) and finally, the Member's failure to document the incident.

The College submitted that the only mitigating factor in this case was that the Member had no prior discipline history with the College. The College also submitted other factors that the College said were neither aggravating nor mitigating but that the Panel should consider including: the fact that the incident was a brief single incident and there was no evidence of a pattern of behaviour.

The College provided cases for the Panel to consider where regulated professionals were found to be ungovernable and their registrations were revoked, including:

- *Ontario (College of Physiotherapists of Ontario) v. Bellamy*, 2017 ONCPO 15
- *Ontario (College of Massage Therapists of Ontario v. Alison Burnham*, 2017 ONCMTO 23
- *College of Early Childhood Educators v. Tara-Leigh Rachel George*, 2019 ONCECE 1
- *College of Early Childhood Educators v. Amal Ali*, 2019 ONCECE 2
- *College of Early Childhood Educators v. Wayne Delroy Henry*, 2019 ONCECE 18

- *College of Early Childhood Educators v. Carrie ChunJuan Tan, 2021 ONCECE 1*

On the issue of costs, the College submitted that the Panel has the authority to impose costs on a member who has been found guilty of professional misconduct to reimburse the College, in part, for the expense of investigating and holding a hearing into the matter. The College advised the Panel that under Tariff “A” of the Rules of the Discipline Committee, it may impose costs at the rate of \$10,000 per hearing day without receiving evidence of the expenses the College incurred in bringing the matter to a hearing. The College submitted that although the hearing proceeded over two days, it was only seeking costs for one day but did not want this to be viewed that as a departure from College’s position that Tariff A is the appropriate way to calculate costs. The College also stated that while there was no evidence of financial hardship to the Member if costs were to be ordered, there was an email from the Member in Exhibit 4, dated March 16, 2021, where the Member made comments regarding his financial situation. However, in all of the circumstances, the College submitted that an award of costs of \$10,000 was appropriate.

DECISION ON PENALTY AND COSTS

Having found the Member guilty of professional misconduct, the Panel made the following order on penalty and costs on April 15, 2021:

1. The Registrar was directed to revoke the Member’s Certificate of Registration, effective immediately; and
2. The Member is required to pay to the College costs in the amount of \$5,000.00 within sixty (60) days from the date of the 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. The Panel found that the Member was ungovernable.

In this case, the Member had shown through his unwillingness to communicate regarding the discipline process and his conduct demonstrating that he is not willing to be governed by the College and is not interested in rehabilitating himself or in continuing practicing the profession under the mandate of the College. For example, the Member:

- Refused to accept materials by the College Investigator before the matter was even referred to the Discipline Committee.
- Refused personal service of the materials through a process server. The process server sent the materials by registered mail but the Member refused to pick it up. The mail was confirmed delivered by Canada Post and then the correspondence was returned to the College unopened.
- Failed to attend a pre-hearing conference despite receiving ample and sufficient notice. All attempts by the College to communicate with the Member and come to a resolution in this matter were ignored or actively rebuffed. The Member did not take the opportunity to negotiate a resolution with the College in such a way that might allow him to continue his work as an RECE.
- Clearly indicated that he does not wish to retain his registration and has already been suspended for non-payment of his fees. He has clearly said in his email on page 8 of Exhibit 4, that he does not acknowledge the College's legislated authority to regulate him.

A reasonable approach for a member to take would be to participate in the process and at the very least communicate with the College. The Member opted not to participate. The unfortunate consequence of the Member's non-participation is the Panel was not able to hear the Member's account of what happened. Where a Member shows so little regard for the discipline process and the mandate of the College to self-regulate the profession, the protection of the public requires the revocation of the Member's registration. Over and above the question of ungovernability, the Panel concluded on a balance of probabilities that the Child was physically abused by the Member. The combination of the physical abuse and the Member's governability led the Panel to conclude that the revocation of his registration was an appropriate penalty.

REASONS FOR COSTS

Subsection 33(5)(4) of the Act provides that in an appropriate case, a panel may make an order requiring a member to reimburse the College for all or part of the College's legal costs and expenses, investigation costs and hearing costs when that member has been found to have committed an act of professional misconduct.

The Panel accepted that it is appropriate to hold members who have engaged in acts of professional misconduct responsible for some or all of the costs incurred by the College in investigating and prosecuting that conduct, the financial weight of which would otherwise be borne by the general membership of this profession, which funds the College's operations through registration fees. In consideration of the College's success in proving the allegations of professional misconduct in this case, and absent evidence of any other relevant factors or circumstances on the Member's part, the Panel felt that this was an appropriate case in which to order costs. The Panel felt that although the College was at liberty to seek the Tariff amount of \$10,000, such an amount was quite high in light of comments made by the Member regarding his personal financial situation as set out in his email at page 8 of Exhibit 4. While the Panel appreciates that there was no supporting documentation provided by the Member, in this particular case the Panel has exercised our discretion and elected to award costs in the amount of \$5,000.

The Panel found the proposed repayment timeframe of 60 days was reasonable and consistent with other cases.

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 28, 2021

Date

