

**NOTICE OF PUBLICATION BAN**

In the matter of College of Early Childhood Educators and Fatima Sahara Sidibe 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:** Kristine Parsons , RECE, Chairperson  
Melissa Downey, RECE  
Ulana Pahuta

**BETWEEN:** )  
)  
COLLEGE OF EARLY ) Vered Beylin  
CHILDHOOD EDUCATORS ) for the College of Early Childhood Educators  
)  
)  
- and - )  
)  
FATIMA SAHARA SIDIBE ) Zoë Hountalas,  
REGISTRATION # 07350 ) Koziebrocki Law  
) For the Member  
)  
)  
)  
) Elyse Sunshine,  
) Rosen Sunshine LLP  
) Independent Legal Counsel  
)  
) Heard: March 3, 4 & 5, 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 March 3, 4 and 5, 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 ordered that no person shall make any audio or video recording of these proceedings by any means, with the exception of oral evidence that is recorded at the direction of the Panel.

## **PUBLICATION BAN**

The Panel ordered a publication ban following a motion by College Counsel, on consent of the Member, pursuant to section 35.1(3) of the Act. The order bans the public disclosure, publication and broadcasting outside of the hearing room, any names or identifying information of any minor children who may be the subject of evidence in the hearing.

## **THE ALLEGATIONS**

The allegations against the Member were contained in the Notice of Hearing dated November 5, 2019, (Exhibit 1) which provided as follows:

1. At all material times, Fatima Sahara Sidibe (the “Member”) was a member of the College working as an early childhood educator at YWCA Bergamot Early Learning Centre (the “Centre”), a child care centre in Etobicoke, Ontario.
2. On or about June 3, 2016, the Member and two other staff members, Edlinda Gacaj and Vijayalakshmi Ethiraju (collectively, the “Staff”), were responsible for supervising a group of eight children (the “Children”) in the infant program room at the Centre.
3. That morning, the Staff prepared to take the Children out for a walk. Before placing the Children in strollers, they filled out the Centre’s transitional attendance record. They then placed seven of the eight Children in strollers and left the Centre for a walk, forgetting a 14-month-old child (“Child X”) who was asleep in the infant program room. Neither the Member, nor the Staff, checked the room or performed a headcount before leaving the Centre.
4. Approximately 10 to 12 minutes after the Staff left the Centre, one of the Member’s co-workers found Child X crying alone in the infant program room.

5. The Staff did not realize that Child X was not in one of the strollers until they received a call from their supervisor approximately 40 minutes after they left the Centre.
6. On or about June 8, 2016, the Member was suspended for ten days without pay, which was later reduced to a seven-day suspension.
7. By engaging in the conduct set out in paragraphs 2-5 above, the Member engaged in professional misconduct as defined in subsection 33(2) of the Act, in that:
  - a. She failed to supervise adequately a person who was under her professional supervision, contrary to *Ontario Regulation 223/08*, subsection 2(2);
  - b. She failed to maintain the standards of the profession contrary to *Ontario Regulation 223/08*, subsection 2(8) in that:
    - i. she failed to maintain a safe and healthy learning environment, contrary to Standard III.A.1 of the College's Standards of Practice;
    - ii. she failed to know, understand and abide by the legislation, policies and procedures that are relevant to the Member's professional practice and to the care and learning of children under her professional supervision, contrary to Standard IV.A.2 of the College's Standards of Practice;
    - iii. she failed to observe and monitor the learning environment and anticipate when support or intervention was required, contrary to Standard IV.B.3 of the College's Standards of Practice;
    - iv. she failed to work collaboratively with colleagues in the workplace in order to provide a safe, secure, healthy and inviting environment for children and families, contrary to Standard IV.C.1 of the College's Standards of Practice; and/or
    - v. She conducted herself in a manner that could reasonably be perceived as reflecting negatively on the profession of early childhood education, contrary to Standard I.V.E.2 of the College's Standards of Practice;
  - c. she acted or failed to act in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to *Ontario Regulation 223/08*, subsection 2(10);
  - d. she 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 Regulation 223/08*, subsection 2(21); and/or
  - e. she conducted herself in a manner that is unbecoming a member, contrary to *Ontario Regulation 223/08*, subsection 2(22).

## THE MEMBER'S PLEA

The Member pleaded not guilty to all allegations.

## EVIDENCE

### Documentary Evidence:

The following documents were entered into evidence at the hearing:

<b>Exhibit #</b>	<b>Description</b>
Exhibit 1	Notice of Hearing and Affidavit of Service
Exhibit 2	Affidavit of LG (redacted)
Exhibit 3	Affidavit of MS (redacted)
Exhibit 4	Floor Plan of Centre
Exhibit 5	Sample Infant Outdoor Transition Form
Exhibit 6	Discipline Letter – E. Gacaj
Exhibit 7	Discipline Letter – V. Ethiraju
Exhibit 8	Interview of S. Haye-Wright by College Investigator
Exhibit 9	Letter of June 26, 2017 to F. Sidibe from College Investigator
Exhibit 10	Response August 10, 2017 of F. Sidibe
Exhibit 11	Interview of F. Sidibe by College Investigator
Exhibit 12	Letter of October 10, 2017 to F. Sidibe re final opportunity to respond
Exhibit 13	Response no. 2 email of Oct 23, 2017 of F. Sidibe
Exhibit 14	Email of Karen Hipson to Tina Vlahos-Bachoumis re Outdoor transitional record Oct 4 and 5, 2017
Exhibit 15	Job description of RECE
Exhibit 16	Job description of ECE Assistant Supervisor
Exhibit 17	YWCA Ethical Obligations and Code of Conduct
Exhibit 18	YWCA Playground Policy
Exhibit 19	Toronto Children's Services Guidelines
Exhibit 20	Notes of Karen Hipson
Exhibit 21	Serious Occurrence Report
Exhibit 22	Mandatory Employer Report – F. Sidibe
Exhibit 23	Mandatory Employer Report – E. Gacaj (redacted)
Exhibit 24	Mandatory Employer Report – V. Ethiraju (redacted)
Exhibit 25	Discipline Letter – F. Sidibe
Exhibit 26	EMF K. Hipson encl. minutes of settlement
Exhibit 27	K. Chandler C.V.
Exhibit 28	Acknowledgement of Expert Duty
Exhibit 29	Letter of Retainer for K. Chandler (no encls)
Exhibit 30	Addendum retainer letter for K. Chandler (no encls)
Exhibit 31	Expert witness report of K. Chandler

### **Witness Evidence of the College:**

Counsel for the College called five (5) witnesses who provided the following testimony:

#### **Evidence of the College's First Witness: Edlinda Gacaj**

Edlinda Gacaj, RECE, has been employed at the YWCA since 2003, and the Centre as an RECE and assistant supervisor since 2015. Ms. Gacaj stated that at the time of the incident, she worked in the infant room for 3.5 hours of the day in an RECE role, and in a supportive, administrative role to the Centre's Manager for the remaining 3.5 hours of the day. Ms. Gacaj testified that when she worked in the infant room, her role was solely as an RECE and she was not responsible for supervising any of the other Staff.

Ms. Gacaj testified that on June 3, 2016, she was working with the Member and Ms. Ethiraju in the infant room. The infant room opened at 7:30 a.m., but her shift began at 9:00 a.m. Ms. Gacaj explained that it was a typical morning, but very busy. The Children usually go outside for a walk at 9:00 a.m. When Ms. Gacaj arrived, she assisted the Member and Ms. Ethiraju in preparing the Children to go outside. Ms. Gacaj explained that Ms. Ethiraju was inside the classroom, passing the infants to herself and the Member, who were in the hallway with three strollers. The Member was loading the Children into the strollers, putting sunscreen and hats on the infants and getting them ready to go outside.

During this time, additional infants started to arrive, with parents bringing supplies which had to be put away. Ms. Gacaj testified that throughout this period, she was aware that Child X was still in the infant room. She explained that the Member and Ms. Ethiraju told her that Child X had been crying and that they wanted to put him in the stroller last. Ms. Gacaj further testified that she saw Child X strapped in and sleeping in a rocker. She noted that she could see the rocker while she was in the hallway, standing at the doorway to the infant room. Ms. Gacaj stated that the Member was standing further along the hallway and that the Member probably could not see the rocker from there. Ms. Gacaj did not remember if the Member came closer to the doorway. She explained that they will often put infants into the rocker to fall asleep, but that they cannot leave them in the rocker and must then transfer them to a crib, as this is a Ministry requirement. Ms. Gacaj noted that the rocker is very light, but did not think that Child X could tip it over.

Ms. Gacaj testified that since some of the Children were crying, she decided to leave the Centre first, with one of the strollers containing two Children. Ms. Gacaj further testified that before she exited the Centre, she filled out the Outdoor Transition Form (the "Form") and checked off all eight infants (including Child X), since all of the infants, other than Child X, were in the strollers and ready to go. She explained that all three Staff were "reminding each other" about Child X still being in the rocker. Ms. Gacaj admitted that it was a mistake to fill out the Form and check off Child X, if he was not in the stroller. She testified that neither the Member, nor

Ms. Ethiraju, asked her about the Form or said anything about the Form being filled out ahead of time.

Ms. Gacaj then exited the Centre with one stroller out the front door, and waited for her colleagues. When the Member and Ms. Ethiraju joined her outside, none of them conducted an additional headcount. Ms. Gacaj admitted that they should have done another attendance check outside. The Staff then took the Children for the walk. Ms. Gacaj noted that the strollers had blue sun covers on them, which partially obstructed the view inside. However, the shades just went over top and the strollers were open at the front and side, so the infants were still visible. Ms. Gacaj explained that while she would look at the other strollers, they mostly walked in single-file, unless the sidewalk would allow them to walk side-by side. Ms. Gacaj testified that she was not aware that Child X was not in one of the strollers, until the Centre's Manager (the "Manager") called her on her cell phone. When Ms. Gacaj informed the Member and Ms. Ethiraju that Child X was not with them, they were all shocked and shaken.

The Staff immediately returned to the Centre, where they were interviewed individually by the Manager. Ms. Gacaj testified that she received a 10-day suspension, which the Staff grieved through their union, leading to it being shortened to a seven-day suspension. She further confirmed that she plead guilty in a disciplinary hearing before the College with respect to this incident.

When questioned during cross-examination as to whether the Staff divided up responsibilities between themselves and took responsibility for certain infants, Ms. Gacaj testified that each RECE was not responsible only for particular Children. Rather, herself, Ms. Ethiraju and the Member were responsible for all the Children and that they work together. Ms. Gacaj further acknowledged that when Child X was left behind, it was not solely Ms. Ethiraju's responsibility as the last RECE in the room. Rather, Ms. Gacaj believed that all three Staff should have remembered that Child X was still in the rocker and that they were all responsible.

Ms. Gacaj testified that this incident did not impact her relationship with the Member. She explained that all three Staff worked together afterward, with no issues. However, following the incident, some policies did change at the Centre. For instance, the Form has changed such that the staff are now responsible for specific Children and the staff also have to confirm that they have performed a physical check of the room.

### **Evidence of the College's Second Witness: Vijayalakshmi Ethiraju**

Vijayalakshmi Ethiraju has been employed at the Centre as an RECE, since 2007. In June 2016, she was working in the infant room with the Member, and Ms. Gacaj. Ms. Ethiraju testified that she got along well with both the Member and Ms. Gacaj and they communicated well.

Ms. Ethiraju testified that on the date of the incident, June 3, 2016, it was a very busy morning with six Children arriving before 9:00 a.m. The staff were feeding and changing the Children. She testified that Child X had a difficult morning and had been fussy and crying. Ms. Ethiraju

changed him and put him in the rocker, where he fell asleep. Ms. Ethiraju explained that some children like to fall asleep in the rocker, but they are not allowed to sleep continuously there. She further noted that while the rocker was light, she did not think that Child X could have tipped it over.

As the Staff were preparing the infants for their morning walk, Ms. Ethiraju was inside the room handing the Children to the Member and Ms. Gacaj, who were in the hallway. When asked whether the Member could have seen the rocker from where she was standing in the hallway, Ms. Ethiraju noted that if the Member was nearer to the change table in the hallway, she would not be able to see the rocker. Ms. Ethiraju testified that Ms. Gacaj was the first staff member to go outside, because two of the Children were crying, and they did not want the other infants to begin crying as well. Ms. Ethiraju testified that prior to taking one of the strollers outside, she observed Ms. Gacaj completing the Form, although Ms. Ethiraju did not see the Form itself. As Ms. Gacaj left, she announced that she was taking two of the infants. Ms. Ethiraju testified that at this point, all of the Staff reminded each other that Child X was still sleeping in the rocker.

Ms. Ethiraju testified that when she was going to pick up Child X from the rocker, additional parents arrived with infants and she began answering questions, accepting diapers and bottles from parents, writing the names on the supplies and putting them away. She admitted that she should have removed Child X from the rocker and placed him in a stroller, but forgot due to everything that was happening. Ms. Ethiraju then joined the Member in the hallway, without Child X, and they left the Centre with the remaining two strollers.

Ms. Ethiraju testified that once all three Staff were outside, they began their walk. She did not count the infants prior to going for the walk and did not know if Ms. Gacaj or the Member did either. There was no discussion of a headcount. Ms. Ethiraju admitted that they should have counted the Children prior to beginning their walk and in fact, they are required to conduct a headcount when outside. Ms. Ethiraju did not recall if the sunshade covers were up on the strollers but admitted that it was possible. She further noted that the covers don't necessarily obstruct the view of the Children as they are just on top of the stroller.

Ms. Ethiraju stated that approximately 35-40 minutes into their walk, the Manager called on Ms. Gacaj's cell phone to let them know that Child X had been left behind. When the Staff returned to the Centre, the Manager spoke with all of them. Ms. Ethiraju received a discipline letter and subsequently, a 10-day suspension which was jointly grieved and lowered to a 7-day suspension. She further confirmed that she plead guilty in a disciplinary hearing before the College with respect to this incident.

When asked which of the Staff were responsible for counting the Children, Ms. Ethiraju testified that all three Staff were responsible, not just one person. She further noted that they were not assigned specific Children but that everyone was responsible for all the Children's health and safety and that this was pursuant to Centre policy. Ms. Ethiraju admitted that she forgot Child X in the rocker and left him unsupervised in the room, but noted that all three Staff reminded each other about Child X being in the stroller and that they were all responsible for all of the Children. Similarly, with the Form, it was not one particular RECE that was "supposed" to fill it out,

rather, once the Children were loaded into the strollers, whoever had the Form would usually fill it out.

Ms. Ethiraju testified that this incident did not impact her relationship with the Member or Ms. Gacaj. She explained that all three staff worked together afterward, with no issues.

### **Evidence of the College's Third Witness: Tina Vlahos-Bachoumis**

Tina Vlahos-Bachoumis testified that she is employed by the College as an investigator and that on July 7, 2017, she received three Mandatory Employer Reports from Karen Hipson with respect to the incident, for each of Member, Ms. Gacaj and Ms. Ethiraju (Exhibits 22, 23 and 24). She was assigned to investigate all three of the Staff.

Ms. Vlahos-Bachoumis testified that as part of her investigation, she obtained the Centre Manager's, Karen Hipson, typed and handwritten notes. Ms. Vlahos-Bachoumis also interviewed Ms. Hipson, the Staff and the staff member at the Centre who found Child X in the infant room.

As part of her investigation, Ms. Vlahos-Bachoumis sent the Member a notification package (Exhibit 9) which contained the Mandatory Report and all the initiating documents. The Member responded by email dated August 15, 2017 (Exhibit 10). Ms. Vlahos-Bachoumis testified that she then interviewed the Member on August 24, 2017 and prepared summary notes of her interview immediately after the interview (Exhibit 11). Ms. Vlahos-Bachoumis referred to her summary during her testimony. She testified that during the interview, the Member stated that all of the Staff shared responsibility for leaving Child X at the Centre and that the Member did not want to put the blame on anyone in particular.

In cross-examination, Ms. Vlahos-Bachoumis admitted that she had corresponded with Ms. Hipson about the Form and that Ms. Hipson could not find the attendance record and did not provide it to the College. Ms. Vlahos-Bachoumis further testified that she did not review the video footage that was referred to in the Mandatory Employer Report as this was also not provided to the College.

### **Evidence of the College's Fourth Witness: Karen Hipson**

Karen Hipson, RECE, has been employed at the Centre as a Manager since 2007. She testified that the Member began working at the Centre in March 2008 as an RECE and that they had a good and open relationship. Ms. Hipson stated that the Member communicates well with parents and is open and up-front.

Ms. Hipson testified that Ms. Gacaj began working in the Centre in June 2015 as an RECE/Assistant Supervisor and would split her day in the two roles. The job description was provided as Exhibit 16. As assistant supervisor, in the absence of the Manager, Ms. Gacaj would



work in the office, but did not have the ability to hire, fire or discipline staff, particularly union staff. Ms. Hipson further explained that Ms. Gacaj's role as an RECE is the same as the other RECEs with the same duties and responsibilities. When Ms. Gacaj worked in the infant room with the other RECEs, she was an equal and not a supervisor.

Ms. Hipson reviewed the YWCA Ethical Obligations and Code of Conduct (Exhibit 17) and noted that the central and primary obligation for all staff was the safety and well-being of the program participants. She explained that supervision is one of the basic skills that an RECE is expected to have. Ms. Hipson further reviewed the Centre's Playground Policy (Exhibit 18) (the "Playground Policy") and noted that staff are required to do a headcount of the group upon leaving the building. She testified that all staff are required to know the Playground Policy and that the Member would have been required to review this policy upon returning from maternity leave.

With respect to the supervision of children, Ms. Hipson stated that staff must constantly communicate who they have in their care and that this is especially important during transitions. Staff must ensure that they are all working as a team and that all children are accounted for. She further explained that during a transition, if one RECE is in the hall and the other is in the room, the RECE in the hallway still needs to be aware of all of the children and communicating with the RECE in the room.

When describing the events of June 3, 2016, Ms. Hipson referenced her notes (Exhibit 20), which she explained were written concurrently with her investigation. She stated that she learned about Child X being left behind, when the Centre's cook informed her that a Child was left alone in the infant room. Ms. Hipson testified that she called the Staff at approximately 9:40 a.m. with no answer, and again at 9:50 a.m. when she spoke with Ms. Gacaj. Once the Staff returned to the Centre, Ms. Hipson met with each Staff member separately to discuss the incident.

Ms. Hipson stated that when she interviewed the Member about the incident, the Member stated that immediately prior to leaving for the walk, the Member had seen Ms. Ethiraju go into the bathroom. The Member said that she did not check to see if Child X had been placed in the stroller, but she had assumed that he had. The Member further stated that she should not have assumed. Ms. Hipson testified that she reviewed the Centre's video footage and noted the Staff leaving for their walk. Ms. Hipson acknowledged that her notes contained two different times for this event. There was a slight time difference between her cell phone and the time stamp on the video so Ms. Hipson recorded both. Ms. Hipson further admitted that she could not provide the video to the College, as video is saved centrally at the YWCA for only two to three months and then deleted. Ms. Hipson admitted that she did not save the video. As part of her investigation, she also reviewed the Form. However, Ms. Hipson did not provide the Form to the College as she could not locate it. Ms. Hipson explained that while the Form had been used in the Staff's grievance proceedings, it has since been misplaced and may have been lost when the offices moved.

Ms. Hipson testified that she submitted a Serious Occurrence Report with the Ministry of Education and a Mandatory Employer Report for each of the Staff. After the investigation and the investigatory meeting, all three Staff were suspended for 10 days. The Discipline Letter (the “Discipline Letter”) sent to the Member was entered as Exhibit 25. Ms. Hipson noted that the Discipline Letter described the meeting with the Member and how the Member had expressed remorse and understood the seriousness and took responsibility for her actions. Ms. Hipson explained that the Staff were disciplined with a 10-day suspension, which she felt was quite severe, as the Child was left alone for a long time. The Staff grieved the suspension and it was reduced to seven days pursuant to Minutes of Settlement (Exhibit 26).

Ms. Hipson noted that leaving a child unattended in a rocker posed a safety risk. Although children do fall asleep in rockers, as they are used sometimes to soothe the infants, it is only safe for them to sleep in a rocker for a short amount of time under supervision. If a child can walk or stand up, they could tip the rocker on themselves and not be able to get up. Ms. Hipson further testified that all three Staff remained employed at the Centre and that she still had 100% faith in them.

### **Evidence of the College’s Fifth Witness: Karen Chandler – Expert Witness**

Karen Chandler was called as an expert witness by the College. Ms. Chandler, RECE has been a professor at George Brown College since 1986 and has worked in the field of early childhood education for 50 years. Ms. Chandler contributed to the development of the College of Early Childhood Education’s Code of Ethics and Standards of Practice. The Panel qualified Ms. Chandler as an expert in the application of legislation relevant to the profession of early childhood education, regulations, the College’s Code of Ethics and Standards of Practice and Guidelines to the supervision of children. She prepared an expert witness report which was entered as Exhibit 31, and referenced this report throughout her testimony.

Ms. Chandler testified as to the proper elements for the supervision of children. These elements include consistently providing vigilant supervision and that each staff demonstrate awareness of the whereabouts of the children at all times. This vigilant supervision must be continual, to ensure that children are never left unattended. Ms. Chandler explained that this involves using a broadcasting strategy, where staff are working as a team and verbalizing what each member is doing as a way to facilitate teamwork, particularly during transitions. The staff are working as a group to ensure, for instance, that all children are getting into the stroller. She noted that there is an expectation that the team is aware of where every child is.

Ms. Chandler gave evidence that regular counting of the children (from name to face) would alert the staff if a child is not with the group. With respect to transitions, certain strategies are expected, including (but not limited to) conducting regular environmental scans, attendance checks and head counts and confirming attendance before, during and after transition. She noted that these strategies would have been known in 2016, and were consistent with the College’s *Code of Ethics and Standards of Practice*, 2011 and the *Occupational Standards for Early Childhood Educators*, 2010. She also gave evidence that an RECE has an obligation not to let

anything take precedence over ensuring the well-being and safety of the children under her care. If an RECE has concerns about another RECE's conduct regarding the safety of children, they have an obligation to raise it right then and there. Ms. Chandler later noted that this would apply if an RECE observed another staff member filling out an attendance form before all children were placed in the strollers. She would have to say something about this conduct based on the College's Standards of Practice.

Ms. Chandler testified that RECEs working as a team must be working collectively and collaboratively. She explained that it cannot be that a team member says that "I have my three kids and you have yours", rather all of the children are the ongoing, collective responsibility of the entire team. When addressing a hypothetical situation, she noted that if one RECE is in the room and the other two are in the hallway dividing the children among strollers, all three RECEs still collectively have responsibility for the larger group. This obligation stems from the College's Standards of Practice. The RECEs in the hallway cannot relinquish responsibility for the whole group. Ms. Chandler testified that this is why broadcasting is so important and that just a reminder that a child is still in the room is not enough, the RECE must follow through on their reminder.

Ms. Chandler was questioned in cross-examination as to whether an RECE in the hallway can reasonably rely on her colleague to have brought a child out of the room. Ms. Chandler agreed with the assertion up to the point that the RECE in room should have brought out the child, but did not accept that this was true from that point on. Ms. Chandler explained that once the RECE in the room exited into the hallway, then both RECEs are responsible for the child in the room. Once those two RECEs met the third RECE outside the building, all three of them became responsible for the child.

### **Witness Evidence of the Member**

The Member testified on her own behalf.

### **Evidence of the Member**

The Member testified that she has been a Member of the College since 2009, with no prior disciplinary history. She has worked in the early childhood education field since she graduated in 1998. She has been employed at the Centre since 2008, working in the infant and preschool rooms.

The Member testified that she had returned to the Centre from maternity leave, two weeks prior to the incident on June 3, 2016.

She explained that the morning routine in the infant room typically involved taking the Children for a walk at 9:00 a.m. On June 3, 2016, the Member began her shift at 8:15 a.m. and was working in the infant room with Ms. Ethiraju and Ms. Gacaj. She testified that her relationship with her co-workers was professional, respectful and that they got along. When she arrived at

8:15 a.m., after checking attendance and doing a headcount, the Member and Ms. Ethiraju prepared and fed the infants a snack. The Member testified that Child X was cranky and tired. Ms. Ethiraju tried to soothe him but he would not eat, so she cleaned him up, rocked him and put him in a rocker facing the window.

The Member stated that more Children arrived between 8:30-9:00 a.m., so that when Ms. Gacaj arrived for her shift at 9:00 a.m., there were six infants. Soon after, twin infants arrived and Ms. Gacaj signed them in, and at the same time filled out the Form while she was in the room. The Member stated that she did not think Ms. Gacaj's filling out the Form early was a good idea, but that she did not feel that this was an appropriate time to raise this with her co-worker as it was busy. She further testified that it was difficult for her to say something as she was newly back from maternity leave and previously when she had spoken with Ms. Ethiraju about putting a child to bed wet, Ms. Ethiraju had retorted that the Member had just come back and to "be quiet".

The Member testified that while preparing the Children for a walk, Ms. Ethiraju was in the room passing the Children to the Member and Ms. Gacaj in the hallway. Ms. Gacaj was soothing the three Children in the first stroller and before exiting, said to Ms. Ethiraju "*you're bringing [Child X]*", to which Ms. Ethiraju replied "*yes*". The Member remained in the hallway with the other two strollers and noted that she also reminded Ms. Ethiraju to bring Child X. She testified that while she was near the doorway, she could see Child X in the rocker. However, the Member began to push the strollers back and forth to entertain and soothe the infants and moved the strollers further down the hall closer to the washroom, where she could no longer see Child X in the rocker.

The Member testified that while she was in the hallway with the strollers, one infant's shoe fell off and she was trying to carefully put it back on. While she was bent down, she saw Ms. Ethiraju going to the washroom, which was located down the hallway from the infant room.

The Member was asked about and testified that with respect to the Mandatory Employer Report (the "MER") (Exhibit 22), she had not had an opportunity to review it until she received a copy of it from her union. The Member further noted that she did not think that the MER was accurate, particularly as it simply said "Staff" rather than differentiating between the RECEs. The Member also testified that Ms. Ethiraju had apologized to her for leaving Child X and she had offered to pay for her legal fees. However, the Member wanted to have her own counsel to ensure that her voice was heard.

In cross-examination, the Member agreed that she was aware in the moment that Ms. Gacaj filling out the Form prematurely, was a violation of policy and a failure of a safety mechanism. However, she explained that she was focussing on the safety and needs of the other Children at that time and had been planning on raising the issue when they got back from the walk. The Member further testified that she reminded Ms. Ethiraju to bring Child X, since even though the Member was in the hallway, she was still thinking of Child X and the "big picture", but that she had no doubt that Ms. Ethiraju would bring him out. The Member noted that she should be able to rely on her colleagues.

During cross-examination, the Member agreed that doing a headcount of the Children once outside was required by the Playground Policy. The Member further admitted under questioning that when they were outside, she had a personal responsibility to ensure that all the Children were present. With respect to Ms. Vlahos-Bachoumis' interview notes and the Discipline Letter sent to the Member, which stated that the Member had acknowledged that all of the Staff were responsible for Child X, the Member testified that she did not believe that she had said this in her interviews and that the interview summaries were inaccurate in this regard. When questioned why, after receiving the College's Book of Documents with the statements, she did not reply to the College to contradict these statements and assert that the incident was not her fault, the Member stated she had mixed emotions as a union representative.

## **SUBMISSIONS OF THE PARTIES ON LIABILITY**

### **College Submissions**

Counsel for the College submitted that the evidence established on a balance of probabilities the factual findings consistent with the Statement of Allegations in the Notice of Hearing. The evidence established that the Member engaged in professional misconduct.

The College submitted that it had met its burden of proof and had established that all three Staff were jointly responsible for all of the Children on the morning of June 3, 2016. It was uncontested that the Staff had left Child X unattended in the infant room in a rocker while they went for a walk and that they only realized Child X was not present when they received a call from the Centre. The College argued that an RECE's responsibility for supervision is an ongoing, continuous and team responsibility.

The College submitted that the Member:

- (i) had worked in the infant room continuously that morning;
- (ii) was present in the hallway when Ms. Ethiraju exited the infant room empty-handed and had mistakenly assumed that Child X was placed in the stroller;
- (iii) walked out of the Centre without ensuring that Child X was in the stroller;
- (iv) did not do a headcount of the group of Children (this requirement applied to each of the RECEs); and
- (v) did not notice that Child X was missing for 40 minutes.

The College argued that all of the prosecution witnesses testified that supervision is a team responsibility and further, that the Member was aware of this responsibility. The College argued that the Member's awareness of her responsibility was evident from the Member's interview with the investigator and in her response to the College after the incident. The College further

submitted that the Member was aware that Child X was still in the room, as she herself testified that she had reminded Ms. Ethiraju to bring Child X.

The College noted that there was no doubt that the other two Staff, namely Ms. Ethiraju and Ms. Gacaj failed to adequately supervise Child X. However, the other RECEs' conduct does not diminish the Member's personal responsibility as a professional. The College submitted that the Member had engaged in misconduct by, among other things:

- (i) failing to speak up when Ms. Gacaj filled out the Form prematurely;
- (ii) despite knowing and being concerned that Ms. Gacaj had filled out the Form incorrectly, the Member did not take any additional measures to compensate for this. She could have checked the room, or looked at the strollers to ensure Child X was there; and
- (iii) the Member did not do a headcount when outside, even though she acknowledged that she was aware of the need to conduct a headcount.

The College made submissions on a range of legal issues relating to the case, which are outlined below:

*Standard of Proof* – The College is required to prove its case, and must do so on a balance of probabilities, rather than a criminal standard of proof beyond a reasonable doubt.

*Assessing Credibility and Reliability* – The College argued that the College's witnesses were credible and reliable and that there were issues with the Member's credibility and reliability. The Panel was provided with detailed guidance on how they should consider credibility and reliability.

College counsel also provided the Panel with nine decisions by the Discipline Committee which established that similar conduct relating to inadequate supervision has been found to be professional misconduct.

The College submitted that there was overwhelming evidence that the Member had engaged in the acts of professional misconduct as alleged and that the Panel should make findings on all of the allegations.

### **Member Submissions**

The Member submitted through counsel, that the College has not met its burden of proof and has failed to show on a balance of probabilities that the Member had engaged in professional misconduct. The Member did not dispute that Child X had been left unattended. However, she submitted that this was the responsibility of the other two Staff.

The Member submitted that she was not jointly responsible for the supervision of Child X when he was left in the infant room. She asserted that she reasonably trusted and relied on her colleagues to fulfill their tasks during the transition, while she cared for four of the other Children. The Member noted that both Ms. Gacaj and Ms. Ethiraju have admitted to misconduct and have taken ownership of the incident by pleading guilty. Namely, Ms. Ethiraju was the RECE that placed Child X in the rocker and had direct supervision of him that morning. Ms. Ethiraju admitted that she failed to take him from the classroom. Ms. Gacaj admitted to completing the Form prematurely and incorrectly. The Member further submitted that co-workers must be able to rely on each other, and they cannot be policing each other.

The Member submitted that she was not contesting the credibility of the College's witnesses. Rather, she asserted that based on what the other RECEs had said, it is evident that they were responsible for Child X, and not the Member. The Member submitted that the College had failed to establish that she was responsible for the supervision of Child X. The Member further noted that key evidence, such as the video referenced by the College and the Form used on June 3, 2016, were unavailable for the proceedings and as such, the Panel should give them no weight.

Counsel for the Member made submissions on a range of legal issues relating to the case, which are outlined below:

*Standard of Proof* – The Member agreed that the College must meet standard of proof on the balance of probabilities with clear, convincing and cogent evidence. Counsel for the Member provided the Panel with the decision *F.H. v. McDougall*, 2008 SCC 53 (CanLII) which established that evidence must be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test.

*Assessing Credibility and Reliability* – Counsel for the Member provided detailed guidance on how the Panel should consider credibility and reliability, including the following decisions:

- *Karkanis v College of Physicians and Surgeons*, 2014 ONSSC 7018
- *Re Pitts and Director of Family Benefits Branch of the Ministry of Community & Social Services*, 1985 CanLII 2053 (ON SC)

Counsel for the Member argued that the Member was a credible and reliable witness. She argued that some of the College's evidence, including, the notes of Karen Hipson and the notes of the College's investigator, were not reliable.

Counsel for the Member submitted that the cases provided by the College can be distinguished from the present case because most of the cases proceeded by way of a joint submission, which was not the case here, and as such, the College did not have to prove the case in those cases. Counsel for the Member also argued that these cases all involved more serious allegations, such as those involving a child running on to a road.

## DECISION ON THE ALLEGATIONS

After having considered and weighed the evidence presented by the College and the Member, the Panel finds the Member guilty of professional misconduct as alleged in the Notice of Hearing. Specifically, the Panel finds that the Member is guilty of professional misconduct as defined in subsection 33(2) of the ECE Act in that:

- (a) She failed to supervise adequately a person who was under her professional supervision, contrary to *Ontario Regulation 223/08*, subsection 2(2);
- (b) She failed to maintain the standards of the profession contrary to *Ontario Regulation 223/08*, subsection 2(8) in that:
  - (i) she failed to maintain a safe and healthy learning environment, contrary to Standard III.A.1 of the College's Standards of Practice;
  - (ii) she failed to know, understand and abide by the legislation, policies and procedures that are relevant to the Member's professional practice and to the care and learning of children under her professional supervision, contrary to Standard IV.A.2 of the College's Standards of Practice;
  - (iii) she failed to observe and monitor the learning environment and anticipate when support or intervention was required, contrary to Standard IV.B.3 of the College's Standards of Practice;
  - (iv) she failed to work collaboratively with colleagues in the workplace in order to provide a safe, secure, healthy and inviting environment for children and families, contrary to Standard IV.C.1 of the College's Standards of Practice; and/or
  - (v) She conducted herself in a manner that could reasonably be perceived as reflecting negatively on the profession of early childhood education, contrary to Standard IMs. Ethiraju2 of the College's Standards of Practice;
- (c) she acted or failed to act in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to *Ontario Regulation 223/08*, subsection 2(10);
- (d) she 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 Regulation 223/08*, subsection 2(21); and/or
- (e) she conducted herself in a manner that is unbecoming a member, contrary to *Ontario Regulation 223/08*, subsection 2(22).

## REASONS FOR DECISION

### Credibility of the Witnesses



The Panel received submissions from the parties as to how to consider evidence, including with respect to assessing the credibility and reliability of each witness. Clearly, this is particularly important in cases such as this in which there is conflicting testimony from witnesses. The Panel received advice from its independent legal counsel outlining the factors that courts and tribunals are to consider in assessing witnesses' credibility. These factors are as follows:

- a. The extent of the witness's opportunity to observe that to which he or she testified;
- b. Common sense and the probability or improbability of the witness' version of events;
- c. Whether the witness' statements were consistent or inconsistent with any other evidence in the case (i.e. that of other witnesses or documents), noting that in cases of inconsistency the significance of the inconsistency should be assessed;
- d. Whether the witness was forthright in his or her evidence;
- e. Whether the witness has an interest in the outcome of the case;
- f. The appearance or demeanour of the witness;
- g. Whether the witness's evidence was contradicted by that of another witness; and
- h. Whether the witness previously gave a statement that was inconsistent with what he or she said in evidence.

The Panel considered the oral testimony of the witnesses and made the following assessments as to their credibility:

#### **Credibility of College Witness 1: Edlinda Gacaj**

*The Witness' Ability to Observe and Recall* – Ms. Gacaj was present and able to observe most of the events in question. However, she was not in the Centre when the Member and Ms. Ethiraju were completing the loading of the Children into strollers and could not provide evidence on this. Ms. Gacaj was able to recall most of the details of the incident, but given the passage of time, she admitted that she could not recall everything. The Panel found that the details Ms. Gacaj could not recall were not material.

*Whether the Witness's Evidence Accords with Common Sense and is Plausible/Reasonable* - Ms. Gacaj provided no testimony that the Panel assessed to be implausible or unreasonable.

*Whether the Witness's Evidence was Internally Consistent and Consistent with Other Evidence* - Ms. Gacaj's testimony was internally consistent. Her testimony was substantially externally consistent. It was consistent with the testimony of Ms. Ethiraju and Ms. Hipson. Where Ms. Gacaj's testimony was inconsistent with the Member's testimony, the Panel found that they related to non-material matters such as the timing of the walk or the number of the Children in the strollers.

*Whether the Witness was Forthright in their Evidence* – the Panel found Ms. Gacaj to be forthright and clear in her evidence. She presented as a hard-working professional and her testimony was consistent and delivered in an unwavering manner.

*Whether the Witness had an Interest in the Outcome* – Ms. Gacaj’s case has already been heard by a Discipline Panel and a decision has been rendered, with Ms. Gacaj having completed the penalty ordered at that hearing. Further, Ms. Gacaj testified that she still had a good working relationship with the Member. Therefore, the Panel found that Ms. Gacaj did not have an interest in the outcome of the hearing.

*The Appearance and Demeanour of the Witness* – The Panel was cautioned that this criterion is unreliable on its own, and therefore did not put much emphasis on this factor for any of the witnesses. The Panel did not find any aspects of Ms. Gacaj’s demeanor as a witness that called her credibility into question.

*The Panel’s Conclusion on the Witness’s Credibility* - The Panel found Ms. Gacaj to be a credible, strong witness, and accepted her evidence with respect to the details of incident that she was able to observe. She presented herself as a dedicated RECE who expressed regret for her role in the incident and takes her responsibilities seriously.

## **Credibility of College Witness 2: Vijayalakshmi Ethiraju**

*The Witness’ Ability to Observe and Recall* – Ms. Ethiraju was present and able to observe most of the events in question, since Ms. Ethiraju was the last individual to have left the classroom and left the building at the same time as the Member. Ms. Ethiraju was able to recall most of the details of the incident but admitted that she could not recall everything. The Panel found that the details Ms. Ethiraju could not recall were not material and understandable given the passage of time.

*Whether the Witness’s Evidence Accords with Common Sense and is Plausible/Reasonable* - Ms. Ethiraju provided no testimony that the Panel assessed to be implausible or unreasonable.

*Whether the Witness’s Evidence was Internally Consistent and Consistent with Other Evidence* - Ms. Ethiraju’s testimony was internally consistent. Her testimony was substantially externally consistent. It was consistent with the testimony of Ms. Gacaj and Ms. Hipson. Where Ms. Ethiraju’s testimony was inconsistent with the Member’s testimony, the Panel found that it related to non-material matters such as the number of the Children in the strollers, the timing of the walk, and the exact placement of the rocker.

*Whether the Witness was Forthright in their Evidence* – the Panel found Ms. Ethiraju to be forthright and clear in her testimony. She presented herself as an experienced RECE who takes her responsibilities seriously.

*Whether the Witness had an Interest in the Outcome* – Ms. Ethiraju’s case has already been heard by a Discipline Panel and a decision has been rendered with Ms. Ethiraju having completed the penalty ordered at that hearing. Further, Ms. Ethiraju testified that she still had a good working

relationship with the Member. Therefore, the Panel found that Ms. Ethiraju did not have an interest in the outcome of the hearing.

*The Panel's Conclusion on the Witness's Credibility* - The Panel found Ms. Ethiraju to be a credible, strong witness, and accepted her evidence with respect to the details of incident that she was able to observe. She presented herself as a hard-working professional and appeared genuine in her regret for her role in the incident. Where she could not recall details (as would be expected after five years), she was honest about that.

### **Credibility of College Witness 3: Karen Hipson**

*The Witnesses Ability to Observe and Recall* – Ms. Hipson did not have the opportunity to directly observe the events leading up to Child X's lack of supervision, as she was not present in the classroom or hallway. However, once Child X was discovered alone in the classroom Ms. Hipson became involved in the ongoing investigation and reviewed the Centre's video and conducted interviews with the three Staff. Ms. Hipson was able to recall the investigation without aid.

*Whether the Witness's Evidence Accords with Common Sense and is Plausible/Reasonable* - Ms. Hipson provided no testimony that the Panel assessed to be implausible or unreasonable. The Panel found her testimony regarding the missing Form and the lack of preservation of video footage, to be reasonable and plausible

*Whether the Witness's Evidence was Internally Consistent and Consistent with Other Evidence* - Ms. Hipson's testimony was internally consistent, particularly with her notes, which she made contemporaneously with events. Her testimony was mostly externally consistent in that it substantially matched the testimony of Ms. Gacaj, Ms. Ethiraju and Ms. Valhos-Bachoumis. For the most part, it was consistent with the Member's. However, Ms. Hipson's testimony differed from the Member's statements regarding the issue of whether the Member expressed remorse and took responsibility for the incident in her interview. Ms. Hipson recorded in her interview notes (Exhibit 20) that the Member had stated that she saw Ms. Ethiraju going in to the washroom but that the Member did not check if the Child was still in the room, that she assumed he must be in the seat and that she admitted that she should not have assumed and should have checked. Further, in the Discipline Letter sent to the Member regarding the incident (Exhibit 25), it was expressly noted that the Member had expressed remorse and took responsibility for her actions. However, in her oral testimony, the Member disputed that she had made these statements in the interview and stated that she did not say that she should not have "assumed".

On this issue, the Panel preferred the testimony of Ms. Hipson, given that it was supported by her contemporaneous notes and the subsequent Discipline Letter. Further, Ms. Hipson's testimony was consistent with the Member's email to the College (Exhibit 13) where she stated that: although the Staff all played a different role in the incident, "*we all share the responsibility of ensuring we have the correct amount of children in our care*". And further, "*I assumed the child was placed into the stroller*". In cross-examination when the Member was questioned about this

email, she subsequently admitted that it was “possible” that she had used the term “assume” in her interview. However, despite this inconsistent testimony, the Panel did not put substantial weight on this issue, since whether or not the Member stated in an interview that she assumed the child was present or took responsibility, was not a material issue as to whether she had actually engaged in the misconduct alleged.

*Whether the Witness was Forthright in their Evidence* – the Panel found Ms. Hipson to be forthright and clear in her testimony.

*Whether the Witness had an Interest in the Outcome* – Ms. Hipson has some professional interest in the outcome of the hearing. She determined that the incident warranted an investigation and made complaints to the College about the Staff. Her handling of the investigation and the complaint process could reflect on her professional judgment. As a professional who appears to take her responsibilities seriously, she would likely have a strong preference to not have her handling of the investigation called into question. However, Ms. Hipson testified that she still has a good relationship with all three Staff and they all continue to be employed at the Centre.

*The Panel’s Conclusion on the Witness’s Credibility* - The Panel found Ms. Hipson’s testimony to be both credible and reliable and found that it could rely on her recollection of the events that she was involved in. She appeared to be genuine in her description of the discrepancy in the time stamp on the Centre’s video, and the Panel concluded that the difference in time noted for the video footage clips was immaterial to the Member’s case. Further, she was forthcoming in her reasons for her inability to produce the video and attendance record. With respect to the discrepancy between her testimony and that of the Member, the Panel found that it did not relate to material matters. Although Ms. Hipson may have some interest in the outcome of the case, the Panel did not ultimately find that it hampered the credibility or reliability of her as a witness.

#### **Credibility of College Witness 4: Tina Vlahos-Bachoumis**

Ms. Tina Vlahos-Bachoumis testified that she was the Investigator from the College assigned to the Member’s case. She was responsible for investigating the mandatory reports made in respect of all three Staff. Although Ms. Vlahos-Bachoumis was not present for and did not observe the incident, she subsequently investigated the events and conducted an interview with the Member. The witness asked to use the aid of her notes to assist her in recalling the details of the case. The Panel found that although she was an employee of the College, Ms. Vlahos-Bachoumis had no particular stake in the outcome of this proceeding given that her role as an investigator required her to be neutral and impartial. Her evidence was delivered in a forthright and direct manner. Ms. Vlahos-Bachoumis’ testimony was internally consistent and generally externally consistent, other than some minor discrepancies with the Member’s testimony, most notably whether the Member had stated in her interview that all three Staff shared the responsibility for the incident. However, the Panel found whether or not the Member stated this was not a material issue as to whether she engaged in the misconduct alleged. The Panel found Ms. Vlahos-Bachoumis to be credible, and accepted her evidence with respect to the details of her investigation.

## **Credibility of College Witness 5: Karen Chandler**

Ms. Chandler testified as an expert in these proceedings. As an expert, Ms. Chandler owed a duty to the Panel to be impartial and indeed signed an Acknowledgement of this duty. Ms. Chandler had no involvement in the incident whatsoever. However, the Panel found Ms. Chandler to be a credible expert witness in the application of legislation relevant to the profession of early childhood education, regulations, the College's Code of Ethics and Standards of Practice and Guidelines to the supervision of children.

## **Credibility of Member: Fatima Sidibe**

*The Witnesses Ability to Observe and Recall* – Ms. Sidibe was present and able to observe all of the events in question. She was able to recall the incident without any assistance. When she could not recall a detail given the passage of time, she was honest about her inability to recollect. The Panel found that the details Ms. Sidibe could not recall were not material and understandable given the passage of time.

*Whether the Witness's Evidence Accords with Common Sense and is Plausible/Reasonable* -

Ms. Sidibe provided no testimony about the incident that the Panel assessed to be implausible or unreasonable.

*Whether the Witness's Evidence was Internally Consistent and Consistent with Other Evidence* –

The Panel found that Ms. Sidibe's testimony was internally consistent for the most part. However, her oral testimony in this proceeding - that she had not accepted responsibility for the incident when speaking with other parties - differed somewhat from her statements in her email to the College (Exhibit 13). In this email she had stated "***although we all share the responsibility of ensuring we have the correct amount of children in our care at all times, I believe each one of us played a different part in this unfortunate incident.***" Ms. Sidibe's testimony was substantially externally consistent. It was generally consistent with the testimony of Ms. Ethiraju, Ms. Gacaj and Ms. Hipson with respect to the main factual details of the incident. Where Ms. Sidibe's testimony was inconsistent with other witnesses testimony, the Panel found that the discrepancies either related to peripheral matters or with respect to her statements after the incident, accepting responsibility.

*Whether the Witness was Forthright in their Evidence* – Ms. Sidibe was found to be a forthcoming witness and clear in her evidence. Her testimony was thoughtful and delivered in a confident and unwavering manner. Her dedication to the profession and the Children was evident.

*Whether the Witness had an Interest in the Outcome* – The fact that the Member has an interest in the outcome of this hearing does not undermine her credibility.

*The Panel's Conclusion on the Witness's Credibility* - The Panel found Ms. Sidibe to be a credible, strong witness. She presented herself as an experienced, dedicated RECE and testified about the emotional toll this incident has had on her. Although there are some minor discrepancies between her testimony and that of the other two RECEs the Panel notes that these relate to non-material matters and accepts her evidence with respect to the details of incident that she was able to observe.

### **Findings on the Facts**

The Panel found that the witnesses who were present for the incident, namely Ms. Gacaj and Ms. Ethiraju, and the Member had substantially consistent descriptions of the events of June 3, 2016. Having regard to the evidence presented by College counsel and counsel for the Member, the Panel makes the following factual findings:

On June 3, 2016, the Member, Ms. Ethiraju and Ms. Gacaj were preparing the Children to go for a walk. Before all of the Children were loaded into the strollers, Ms. Gacaj prematurely completed the Form and marked off all of the Children, including Child X who was asleep in a rocker. The Centre's policies and procedures require this Form to be completed only when the Children are placed in the strollers. The Member observed Ms. Gacaj incorrectly filling out the Form but did not raise the issue with her co-worker.

The Staff completed loading the Children into the strollers. Ms. Ethiraju was in the infant classroom passing the infants to the Member and Ms. Gacaj who were in the hallway, placing the Children into three strollers. Ms. Gacaj left the Centre with one of the strollers to wait outside, while the Member and Ms. Ethiraju completed the loading of the Children.

The Member was in the hallway with two of the strollers when she saw Ms. Ethiraju enter the washroom. The Member and Ms. Ethiraju then left the Centre together with the remaining two strollers. None of the Staff conducted a visual check of the room before departing. Once outside, the Member and Ms. Ethiraju rejoined Ms. Gacaj. While outside the Centre, none of the Staff conducted a headcount of the Children prior to departing, as required by the Playground Policy. The Playground Policy stipulates that *staff will do a head count of group upon leaving the building and before entering the playground, during play and upon exiting the area*. The Staff left the Centre for a walk, not realizing that Child X was still asleep in the rocker in the infant room. They did not notice that Child X was not in one of the strollers until Ms. Hipson called Ms. Gacaj on her cell phone approximately 40 minutes later.

An investigation of the incident followed.

Although the witnesses' testimony was in substantial agreement as to the factual details of the incident, there was a discrepancy with respect to what happened after the incident. Specifically, between the testimony of the Member and that of Ms. Hipson, Ms. Vlahos-Bachoumis and Ms. Gacaj on the issue of whether the Member took personal responsibility for the incident after the fact. In her oral testimony, the Member disputed that she had admitted to being jointly

responsible for the supervision of Child X, in conversation or subsequent interviews. The Panel found that whether the Member admitted the conduct or not was not a material issue and did not go to the issue of whether the Member had committed an act of professional misconduct and as such, we did not need to make a factual finding. The Panel finds that the obligation to adequately supervise a child is an objective, professional standard. Whether an RECE admitted at the time, or personally felt that they had a responsibility to supervise a child is not necessary to the determination of whether such a professional obligation existed. Therefore, the Panel did not make a factual finding as to the Member's statements of responsibility after the fact.

### **Findings on the Allegations**

#### **Allegation 1: failure to supervise adequately a person under professional supervision**

The Panel found that the Member failed to adequately supervise a child in her care, when she did not address Ms. Gacaj's premature and inaccurate completion of the Form, or compensate for this error by checking the infant room or ensuring that Child X was placed in the stroller. Further, the Member failed to do a headcount of the Children when outside the Centre, which is a standard practice to ensure proper supervision and required by the Playground Policy. These actions led to Child X being left behind in the Centre, unsupervised. The Panel notes that the duty to adequately and effectively supervise children is fundamental to the profession. This is why the Panel places a very high priority on respecting and adhering to the policies, procedures and practices that guide effective transitions in early learning settings.

The Panel found that all the Staff were jointly responsible for the supervision of all of the infants on the morning of June 3, 2016. The Member's position was that an RECE should be able to reasonably rely on her colleagues to fulfill their tasks during a transition, and as such, she had relied on Ms. Gacaj to correctly fill out the Form, and Ms. Ethiraju to properly put Child X in the stroller. However, the Member testified that she had observed that Ms. Gacaj had filled out the Form prematurely, before Child X had been loaded into the stroller and did not address the breach of Centre policy with her colleague. As such, the Member was aware that the Form would not be an accurate safety check to ensure that all infants were accounted for.

Further, the Member testified that she was aware that Child X was asleep in the rocker and had reminded Ms. Ethiraju to bring him. The Member was still in the hallway when Ms. Ethiraju left the infant room to use the washroom and both of them exited the Centre together without ensuring Child X was in the stroller or checking the room. Finally, the Member acknowledged in her testimony that she was aware that the Playground Policy required that RECEs conduct a headcount of the Children when outside, but she did not conduct such a headcount. The Staff had worked together throughout the morning to prepare the Children for a walk. The Panel found that the supervision of Child X during this transition was an ongoing, team responsibility and that the misconduct of the other two RECEs does not diminish the Member's professional responsibilities and that the Member, along with her colleagues, did not adequately supervise a person under her professional supervision.

## Allegation 2: Failure to Maintain the Standards of the Profession

Pursuant to Standard III: A.1 of the College's Standards of Practice, the Member is required to provide a safe and healthy learning environment. By leaving Child X alone in the infant room strapped into a light rocker, the Member exposed him to physical risk. Although the Panel heard evidence that he was found unharmed by another staff member approximately 10-12 minutes after the Staff departed, the three Staff were not aware of his absence until they received a telephone call approximately 40 minutes later. Leaving a 14-month infant unattended, strapped into a rocker is behaviour that falls short of maintaining a safe environment.

Further, pursuant to Standard IV.A.2 of the College's Standards of Practice the Member must know, understand and abide by the legislation, policies and procedures that are relevant to the profession. In 2016, the *Child Care and Early Years Act, 2014* was the governing legislation and stipulated that every child "is supervised by an adult at all times". In addition, the College's *Code of Ethics and Standards of Practice, 2011* required that RECEs ensure that the well-being of children under their care be their foremost responsibility. By leaving an infant unattended, strapped into a rocker that could have tipped over, the Member failed to adequately supervise the Child in contravention of the *Child Care and Early Years Act*, the professional misconduct regulation made under the Act (being Ontario Regulation 137/15) and the College's Code of Ethics.

Standard IV.B.3 of the College's Standards of Practice requires that a member observe and monitor the learning environment and anticipate when support or intervention is required. As such an RECE must be aware where all of the children under her care are. The need to observe and monitor the learning environment is especially heightened during transitions. The Panel heard testimony from the expert witness Karen Chandler and reviewed the expert witness report (Exhibit 31) with respect to this issue. Specifically, the evidence is that transitions can be complicated, especially when several RECEs are working together as a team. As such, RECEs are expected to employ strategies during transitions, such as conducting regular environment scans, attendance checks and head counts. Attendance should be confirmed before, during and after transition. In the case at hand, the Member failed to observe the increased need for supervision of children during a transition. Knowing that Child X was asleep in the infant room, the Member had an obligation to intervene and ensure his placement in the stroller. The Member failed to scan the infant room or check the stroller to ensure Child X's placement, or conduct a headcount of the Children when outside the Centre.

Pursuant to Standard IV.C1 of the College's Standards of Practice, an RECE is obliged to work collaboratively with colleagues in the workplace in order to provide a safe, secure, healthy and inviting environment for children and families. The expert witness provided evidence that this teamwork is especially important during transitions. RECEs must work together as a group, employing communication strategies, such as broadcasting, to ensure that all children are getting into a stroller. This communication must be continual and ongoing, with RECEs verbalizing their observations with each other on matters such as the number and location of children. The Staff all had roles collectively and independently during the transition. However, they had an



obligation to work together, despite their titular responsibilities and to support each other. The Member failed to work collaboratively with her colleagues when she failed to effectively communicate with her team members during the transition. None of the Staff effectively broadcasted or verbalized to each other the placement of Child X throughout the transition, resulting in him being left behind and unattended. Although the Member asserted that she had reminded her colleague that Child X was sleeping in the rocker, she did not follow through on her observation to ensure that the infant was accounted for.

Parents and the community expect early childhood educators to keep their children healthy and safe. When a child is left unattended at risk of physical harm, this calls into question the public trust and integrity of the profession. This behaviour reflects negatively on the profession, contrary to Standard IV.E.2 of the College's Standards of Practice.

### Allegation 3: Contravening a Law

The *Child Care and Early Years Act, 2014*, required that “*every child is supervised by an adult at all times*”. The Panel found that the Member failed to adequately supervise Child X, when she did not address Ms. Gacaj’s inaccurate completion of the Form or compensate for this error by checking the infant room or ensuring that Child X was properly placed in the stroller. In addition, the Member failed to conduct the required headcount of the Children prior to leaving for the walk. The Member’s failure to adequately supervise Child X resulted in Child X being left unattended, strapped into a rocker that could have tipped over, for a significant amount of time. As such, the Member 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 Regulation 223/08, subsection 2(21).

### Allegation 4: Engaging in conduct that would be regarded as disgraceful, dishonourable or unprofessional

Ensuring proper supervision of a child under the Member’s professional supervision is fundamental to the practice of the profession and to public confidence in RECEs.

However, RECEs must also demonstrate professionalism at work. This would include the obligation to follow their employer’s policies and procedures. The Member failed to follow the Centre’s policies, when she did not conduct a headcount as mandated by the Playground Policy. In addition, RECEs must demonstrate professionalism in their interactions with colleagues. This means that in situations where an RECE witnesses a co-worker committing an infraction, especially if such infraction could affect the safety of children, there is an obligation to raise this concern with the co-worker and report it if needed. In the case at hand, the Member did not speak up when she saw her colleague prematurely and incorrectly fill out the Form. Despite being aware that the Form would not then be an accurate safety check, the Member did not take any additional measures to ensure that all of the Children were accounted for. As such, the

Panel finds that the Member’s conduct would reasonably be regarded by members of the profession as unprofessional.

Allegation 5: Conducting herself in a manner that is unbecoming a member

The allegation of “conduct unbecoming” is viewed as including behaviour that reflects on one’s integrity or competence to the point where public protection is required. Keeping children healthy and safe is the paramount responsibility of all early childhood educators. Maintaining a safe environment by ensuring the proper supervision of all children under an RECE’s care is fundamental to the trust placed in early childhood educators by parents and the community. When a child is left unattended at risk of physical harm, this calls into question the public trust and integrity of the profession. This behaviour also falls short of meeting the professional standards required of the professional of early childhood educators. As such, the Member’s failure to adequately supervise Child X constitutes misconduct that is unbecoming a Member contrary to Ontario Regulation 223/08, subsection 2(22).

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

**I, Kristine Parsons, sign this decision and reasons for the decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel.**



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Kristine Parsons, RECE, Chairperson

May 18, 2021

Date

**NOTICE OF PUBLICATION BAN**

In the matter of College of Early Childhood Educators and Fatima Sahara Sidibe 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. The Discipline Committee also ordered that no person shall publish or broadcast any information relating to the specific personal financial disclosure provided by the Member.

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

IN THE MATTER OF the *Early Childhood Educators Act, 2007*, S.O. 2007, c. 7, Sched. 8 and Ontario Regulation 223/08 thereunder;

AND IN THE MATTER OF discipline proceedings against Fatima Sahara Sidibe, a current member of the College of Early Childhood Educators.

**PANEL:** Kristine Parsons , RECE, Chairperson  
Melissa Downey, RECE  
Ulana Pahuta, Public Member

**BETWEEN:**

	)	
	)	
COLLEGE OF EARLY	)	Vered Beylin
CHILDHOOD EDUCATORS	)	For the College of Early Childhood
	)	Educators
	)	
and	)	
	)	
FATIMA SAHARA SIDIBE	)	Zoë Hountalas,
REGISTRATION # 07350	)	Koziebrocki Law
	)	For the Member
	)	
	)	
	)	Elyse Sunshine,
	)	Rosen Sunshine LLP
	)	Independent Legal Counsel

Heard: July 8, 2021

## DECISION AND REASONS ON PENALTY AND COSTS

In a decision dated May 18, 2021 following a contested hearing held on March 3, 4 and 5, 2021, a Panel of the Discipline Committee (the "Panel") found that the Member, Fatima Sahara Sidibe (the "Member") was guilty of acts of professional misconduct in that:

- (a) she failed to supervise adequately a person who was under her professional supervision, contrary to *Ontario Regulation 223/08*, subsection 2(2);
- (b) she failed to maintain the standards of the profession contrary to *Ontario Regulation 223/08*, subsection 2(8) in that:
  - (i) she failed to maintain a safe and healthy learning environment, contrary to Standard III.A.1 of the College's Standards of Practice;
  - (ii) she failed to know, understand and abide by the legislation, policies and procedures that are relevant to the Member's professional practice and to the care and learning of children under her professional supervision, contrary to Standard IV.A.2 of the College's Standards of Practice;
  - (iii) she failed to observe and monitor the learning environment and anticipate when support or intervention was required, contrary to Standard IV.B.3 of the College's Standards of Practice;
  - (iv) she failed to work collaboratively with colleagues in the workplace in order to provide a safe, secure, healthy and inviting environment for children and families, contrary to Standard IV.C.1 of the College's Standards of Practice; and/or
  - (v) she conducted herself in a manner that could reasonably be perceived as reflecting negatively on the profession of early childhood education, contrary to Standard IV.E.2 of the College's Standards of Practice;
- (c) she acted or failed to act in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to *Ontario Regulation 223/08*, subsection 2(10);

(d) she 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 Regulation 223/08*, subsection 2(21); and/or

(e) she conducted herself in a manner that is unbecoming a member, contrary to *Ontario Regulation 223/08*, subsection 2(22).

On July 8, 2021, the Panel heard evidence and submissions on penalty and costs.

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 Practice 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.

## **PUBLICATION BAN**

The Panel ordered a publication ban following a motion by counsel for the Member, on consent of counsel for the College. The order bans the public disclosure, publication and broadcasting outside of the hearing room, of any information relating to the specific numerical values of the personal financial disclosure provided by the Member.

## **EVIDENCE AND SUBMISSIONS OF THE PARTIES ON PENALTY AND COSTS**

### **Documentary Evidence:**

The following documents were entered into evidence at the hearing:

<b>Exhibit #:</b>	<b>Description:</b>
Exhibit 1	Affidavit of DG
Exhibit 2	January 28, 2021 Letter from College Counsel to Member's Counsel without prejudice (redacted)
Exhibit 3	Supplementary Affidavit of DG
Exhibit 4	Email from WeirFoulds re Statement of Accounts
Exhibit 5	Proposed Penalty Order
Exhibit 6	Affidavit of Fatima Sidibe – sworn June 18, 2021

### **Submissions of the College**

The Penalty and Costs Order sought by the College, was:

1. The Member is required to appear before the Panel to be reprimanded immediately following the hearing of this Order.
2. The Registrar is directed to suspend the Member's certificate of registration for a period of six (6) months. The suspension will take effect from the date of this Order and will run without interruption as long as the Member remains in good standing with the College.
3. The Registrar is directed to impose the following terms, conditions and limitations on the Member's certificate of registration:
  - a. Prior to the Member commencing or resuming employment as a Registered Early Childhood Educator ("RECE") or engaging in the practice of early childhood education, as defined in section 2 of the Act, the Member, at her own expense, will arrange a mentoring relationship with a Mentor, who:
    - i. is an RECE in good standing with the College,
    - ii. is employed in a supervisory position,
    - iii. has never been found guilty of professional misconduct and/or incompetence by the Discipline Committee of the College,
    - iv. is not currently found to be incapacitated by the Fitness to Practise Committee of the College,

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

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

- b. Within 14 days of commencing or resuming employment as an RECE, the Member will ensure that the Director is notified of the name, address and telephone number of all employers.
- c. The Member will provide the Mentor with a copy of the following documents within 14 days of being notified that the Mentor has been approved by the Director, or within 14 days after the release of such documents, whichever is earliest:
  - i. the Panel’s Order, and
  - ii. the Panel’s Decision and Reasons.
- d. The Member will meet with the Mentor at least every 2 weeks after the Mentor has been approved by the Director to discuss the following subjects:
  - i. review of the College’s Code of Ethics and Standards of Practice,
  - ii. the acts or omissions by the Member, which resulted in the Discipline Committee finding the Member guilty of professional misconduct,
  - iii. the potential consequences of the misconduct to the parents/children affected, and to the Member’s colleagues, profession and self,
  - iv. strategies for preventing the misconduct from recurring, and
  - v. the Member’s daily practice and any issues that arise, to ensure that she is meeting the College’s Standards of Practice (without disclosing personal or identifying information about any of the children under the Member’s care, or clients of her employer(s)).

- e. After a minimum of 5 sessions, the Member can seek the Director's permission to stop participating in the mentorship sessions by providing the Director with a report by the Mentor that sets out the following:
    - i. the dates the Member attended the sessions with the Mentor,
    - ii. that the Mentor received a copy of the documents referred to in paragraph 3(c),
    - iii. that the Mentor reviewed the documents set out in paragraph 3(c) and discussed the subjects set out in paragraph 3(d) with the Member, and
    - iv. the Mentor's assessment of the Member's insight into her behaviour.
  - f. All documents delivered by the Member to the College or the Mentor will be delivered by email, registered mail or courier, and the Member will retain proof of delivery.
4. The Member is required to pay the College's costs fixed in the amount of \$41,000, to be paid within five (5) years of the date of this Order. The Member is required to pay the College \$8,200 annually, unless the Director approves, in writing, a different payment schedule

Counsel for the College submitted that the Panel's Order must send a message to the College membership that the Member's conduct is not acceptable. It should deter other RECEs from engaging in such conduct and deter the Member from engaging in such professional misconduct again. The penalty ordered should also assist in the Member's rehabilitation by providing her with remediation so that when she returns to the profession, she does so with a renewed sense of her professional obligations. The penalty should also be consistent with the range of penalties from prior decisions, while taking into account aggravating and mitigating circumstances.

College counsel noted that the Member's misconduct was equally serious to the conduct of the other two RECEs involved in the incident which had been the subject of these proceedings<sup>1</sup>, both of whom had received a four month suspension as part of their own disciplinary

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<sup>1</sup> College of Early Childhood Educators vs Vijayalakshmi Ethiraju, 2020 ONCECE 5 (CanLII); College of Early Childhood Educators vs Edlinda Gacaj, 2020 ONCECE 6 (CanLII)



proceedings. However, counsel noted that the Member's colleagues had accepted responsibility for their roles in the incident, cooperated with the College and admitted their guilt at a hearing with an agreed statement of facts and joint submission on penalty, thereby saving the College substantial cost and resources of a contested hearing. These were mitigating factors which warranted their reduced penalty of four months. While the Member could not be punished for exercising her right to defend herself at a hearing, in the absence of any acceptance of responsibility, College counsel asserted that the Member was not entitled to the same mitigation considerations as her colleagues and a six-month suspension was warranted.

Counsel also submitted that there were a number of aggravating factors for the Panel to consider in its deliberations. These were:

- a) the age of the Child – he was only 14 months at the time of the incident;
- b) the Child was completely unsupervised for 12-14 minutes;
- c) the time lag in realizing that the Child was left alone – it took 40 minutes for the Member to realize that the Child was left behind; and
- d) the failure to follow established procedures – the Member did not follow the Centre's policies of conducting a headcount or failing to speak up when a colleague incorrectly filled out the outdoor transition record.

Counsel for the College noted that there have been 25 decisions since July 2018 for failure to supervise children and in all but one case, the members have pled guilty. It was submitted that the established range for the suspension component of the penalty for failure to supervise cases is 4-7-months. College counsel cited five cases in support of this submission – *College of Early Childhood Educators v Vijayalakshmi Ethiraju*, 2020 ONCECE 5; *College of Early Childhood Educators v Edlinda Gacaj*, 2020 ONCECE 6; *College of Early Childhood Educators v Ban Al Azawi*, 2021 ONCECE 9; *College of Early Childhood Educators v Xin Yu (Sophia) Liu*, 2019 ONCECE 16; *College of Early Childhood Educators v Jenny Ng-Nakatani*, 2019 ONCECE 17.

With respect to the \$41,000 cost award being sought by the College, counsel submitted that pursuant to s.33(5)(4) of the Act, the Panel has the authority to fix costs. Such costs are not meant to be punitive, but compensatory. College counsel noted that an award of costs is appropriate where members are found guilty of professional misconduct, as it is unfair to have the dues of all members of the College exclusively pay for the cost of such hearings. As such,

the guilty member must be at least partially responsible for the cost of the hearing and the corresponding time and use of College resources. College counsel cited seven cases to support this submission.<sup>2</sup>

Counsel for the College noted the factors for the Panel to consider in calculating costs, namely

- a) the relative success of the parties;
- b) the length of the hearing and its complexity;
- c) the member's conduct in the litigation;
- d) the member's financial circumstances and ability to pay; and
- e) whether the College was seeking a reasonable amount.

Counsel for the College noted that the College was successful in proving all of the allegations of professional misconduct in the Notice of Hearing. Further, unlike some of the prior decisions which had been referenced, this matter was fully contested by the Member. As such, the College had to call five witnesses, including an expert, resulting in a complex, three-day hearing. Counsel for the College did concede that the Member's conduct throughout the hearing was efficient and did not suggest any bad faith or unreasonable conduct.

With respect to the Member's financial circumstances, College counsel noted that the Panel may consider such evidence when awarding costs, but asserted that the Member's financial circumstances may improve over time. Moreover, in light of the Member's financial circumstances, the College was willing to agree to a longer period for payment of the costs. While most previous decisions have required payment of costs awards within a relative short time-frame (of 30/60/90 days), the College was willing to agree to payment of costs over a five year period unless the Director approves, in writing, a different schedule. College counsel noted that such wording was unique, in an effort to work with the Member and be flexible as to the payment term.

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<sup>2</sup> *College of Early Childhood Educators vs Bryan Edward Robinson, (penalty decision), 2017 ONCECE 6; College of Early Childhood Educators vs Sophia McKenzie (penalty decision), 2017 ONCECE 9; College of Early Childhood Educators vs Tara-Leigh Rachel George, 2019 ONCECE 1; College of Early Childhood Educators vs Amal Ali, 2019 ONCECE 2; College of Early Childhood Educators vs Carrie Chunjuan Tan, 2021 ONCECE 1; College of Early Childhood Educators vs Rehana Islam, 2019 ONCECE 12; and College of Early Childhood Educators vs Daniel Robert Harker, 2020 ONCECE 4.*

In terms of the reasonableness of the proposed amount, counsel for the College noted that the costs award should balance the concern that the College should not bear the whole burden of the proceedings versus the Member's right to defend themselves.

College counsel explained that the College was not asking for the whole amount of the costs actually incurred by the College, but that the Panel should consider all of the resources spent in preparation for and participating in the hearing. The College submitted that the basis for the amount being claimed (\$41,000) was that this was a three-day contested hearing, which when applying the tariff of \$10,000 per day, would total \$30,000. An additional half day penalty hearing amounted to \$5,000 and the College's expenses in retaining an expert were \$8,200, although this sum was reduced to \$6,000. Counsel for the College submitted that the Member was informed of the College's position that it would be seeking costs of \$10,000 per day, by way of four separate letters. The College had also communicated to the Member that they would be seeking reimbursement for the expert's fees. Therefore, the Member knew in advance what the costs of the proceedings would be.

College counsel cited 14 cases, seven cases from this College and seven from other professional regulators, where costs awards were explicitly addressed. The prevalence and extensive use of the tariff approach was noted by counsel for the College.

### **Submissions of the Member**

Counsel for the Member challenged the penalty proposed by the College and submitted that an appropriate suspension would be three months. Counsel noted that a member has a right to contest the allegations placed before them with a vigorous defense. Although the failure of a member to plead guilty may be an absence of a mitigating factor, it should not be an aggravating factor. It was submitted that the Member's case was brought in good faith and had a significant emotional impact on her. As mitigating factors, counsel for the Member submitted that the Member had no prior disciplinary history, this was an isolated incident with no malicious intent, the Child was unharmed and did not appear to suffer any emotional or physical harm and the Member was a single mother of three children.

Counsel for the Member cited two cases in support of the proposed length of suspension – *College of Early Childhood Educators v Isabella Belfiore*, 2012 ONCECE 4 (Canlii) and *College*

*of Early Childhood Educators v. Sivamini Srikrishnarajah*, 2012 ONCECE 7 (Canlii). Further, counsel for the Member referenced cases submitted by College counsel, *College of Early Childhood Educators v Rehana Islam*, 2019 ONCECE 12, *College of Early Childhood Educators v Xin Yu (Sophia) Liu*, 2019 ONCECE 16 and *College of Early Childhood Educators v Jenny Ng-Nakatani*, 2019 ONCECE 17, and noted that these decisions involved more serious misconduct than that committed by the Member.

Further, counsel for the Member submitted that the other two RECEs involved in the incident at hand had both received four-month suspensions. This was despite the fact that they had more direct roles in the Child being left behind – namely Ms. Gacaj had prematurely completed the outdoor transition form, and Ms. Ethiraju was the last RECE with the Child in the room. As such, counsel for the Member argued that the Member should receive a lesser suspension of only three months.

With respect to the issue of costs, counsel for the Member submitted that no costs should be awarded or if awarded, such costs should be minimal. It was submitted that the Panel had discretion whether to award costs and there was no requirement to make such an award. Counsel noted that a costs award would have a serious financial impact on the Member. The Member is a single mother of three children and financial information was submitted as evidence asserting that a \$41,000 costs award may cause undue hardship to her. Due to the pandemic and her children's homeschooling, the Member had been unable to work from April to end of June 2021. Evidence was also submitted by way of a signed affidavit (Exhibit 6) detailing the Member's expenses and financial situation. Counsel for the Member argued that even if it was not intended to be punitive, a costs award would cause the Member undue hardship and that the Member's financial circumstances must be considered.

Further, counsel for the Member submitted that a costs award could have a chilling effect and discourage other members from pursuing legitimate claims. It was noted that in this case, the Member had a genuine legal issue to be considered and brought her case forward in good faith. She was efficient and responsive with the College and did not escalate costs. Moreover, counsel for the Member submitted that the College must be mindful that our members are RECEs and not other professionals, such as doctors or dentists, who have significantly higher

incomes. As such counsel for the Member argued that cases dealing with costs awards in other professions could be distinguished.

## **DECISION ON PENALTY AND COSTS**

Having considered the evidence and submissions of the parties, the Panel makes the following Order:

1. The Member is required to appear before a panel of the Discipline Committee to be reprimanded within 60 days of the date of this Order.
2. The Registrar is directed to suspend the Member's certificate of registration for a period of 4 months. The suspension will take effect from August 23, 2021 and will run without interruption as long as the Member remains in good standing with the College.
3. The Registrar is directed to impose the following terms, conditions and limitations on the Member's certificate of registration:
  - a. Prior to the Member commencing or resuming employment as a RECE or engaging in the practice of early childhood education, as defined in section 2 of the Act, the Member, at her own expense, will arrange a mentoring relationship with a Mentor, who:
    - (i) is an RECE in good standing with the College,
    - (ii) is employed in a supervisory position,
    - (iii) has never been found guilty of professional misconduct and/or incompetence by the Discipline Committee of the College,
    - (iv) is not currently found to be incapacitated by the Fitness to Practise Committee of the College,
    - (v) is not currently the subject of allegations referred to the Discipline Committee or the Fitness to Practise Committee of the College, and

(vi) is pre-approved by the Director. In order to pre-approve the Mentor, the Member will provide the Director with all requested information, including (but not limited to) the name, registration number, telephone number, address and résumé of the Mentor.

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

- b. Within 14 days of commencing or resuming employment as an RECE, the Member will ensure that the Director is notified of the name, address and telephone number of all employers.
- c. The Member will provide the Mentor with a copy of the following documents within 14 days of being notified that the Mentor has been approved by the Director, or within 14 days after the release of such documents, whichever is earliest:
  - (i) the Panel's Order, and
  - (ii) the Panel's Decision and Reasons.
- d. The Member will meet with the Mentor at least every 2 weeks after the Mentor has been approved by the Director to discuss the following subjects:
  - (i) review of the College's Code of Ethics and Standards of Practice,
  - (ii) the acts or omissions by the Member, which resulted in the Discipline Committee finding the Member guilty of professional misconduct,
  - (iii) the potential consequences of the misconduct to the parents/children affected, and to the Member's colleagues, profession and self,
  - (iv) strategies for preventing the misconduct from recurring, and
  - (v) the Member's daily practice and any issues that arise, to ensure that she is meeting the College's Standards of Practice (without disclosing personal or identifying information about any of the children under the Member's care, or clients of her employer(s)).

- e. After a minimum of 5 sessions, the Member can seek the Director's permission to stop participating in the mentorship sessions by providing the Director with a report by the Mentor that sets out the following:
    - (i) the dates the Member attended the sessions with the Mentor,
    - (ii) that the Mentor received a copy of the documents referred to in paragraph 3(c),
    - (iii) that the Mentor reviewed the documents set out in paragraph 3(c) and discussed the subjects set out in paragraph 3(d) with the Member, and
    - (iv) the Mentor's assessment of the Member's insight into her behaviour.
  - f. All documents delivered by the Member to the College or the Mentor will be delivered by email, registered mail or courier, and the Member will retain proof of delivery.
4. The Member is required to pay the College's costs fixed in the amount of \$21,000, to be paid within six (6) years of the date of this Order. The Member is required to pay the College \$3,500 annually, unless the Director approves, in writing, a different payment schedule.

## **REASONS FOR DECISION ON PENALTY AND COSTS**

### **Reasons for Penalty**

In determining the appropriate penalty, the Panel carefully considered the submissions of both counsel for the College and counsel for the Member in reaching its decision. The Panel further considered a number of sentencing principles. This included the College's overarching public protection mandate as well as the principles of general and specific deterrence, rehabilitation and remediation. The Panel must weigh these principles in light of the specific facts and circumstances of the case, including both aggravating and mitigating factors. Further, the Panel considered that the penalty should be proportionate to the misconduct.

When determining the appropriate penalty in this case, the Panel reviewed the decisions cited by both counsel and determined that the four-month suspension fell within the established range for comparable failure to supervise cases. While this case law was not binding on the Panel, many of the principles outlined in these cases provided guidance to the Panel with respect to the appropriate penalty and in particular, the appropriate length of suspension. Although the College submitted that a longer suspension was appropriate because in the other cases the members had entered a guilty plea, the Panel determined that a four month suspension was appropriate in this case as well. The Panel considered the mitigating factors that this was an isolated incident, the Member had no prior disciplinary history and that the Child did not appear to suffer any emotional or physical harm as a result of the incident. In addition, the Panel noted that while all three RECEs involved in the incident were jointly responsible for the failure to supervise the Child, each of the RECEs had a different role in the incident. Ms. Gacaj had prematurely completed the outdoor transition form and Ms. Ethiraju was the last RECE with the Child in the room. While the Member still had a joint responsibility to ensure the Child had been placed in the stroller and to conduct a headcount, the Panel noted that her involvement in leaving the Child behind was less direct than that of the other two RECEs. As such the Panel felt that an increased penalty of six months was not warranted, despite the fact that the other two RECEs had pleaded guilty.

The Panel was satisfied that a four-month suspension achieved public protection by temporarily removing the Member from practice so that she could reflect on the consequences of her misconduct and refine her understanding of the College's expectations. Further, this aspect of the penalty fulfills the need for specific deterrence, as it sends the appropriate message to the Member that her conduct was unacceptable.

The Panel believes that a suspension, in combination with a reprimand and the mentoring will not only achieve the goals of specific deterrence, but also remediation and rehabilitation by allowing the Member an opportunity to improve her understanding of the College's professionalism, ethics and professional standards and by discouraging similar acts of misconduct when the Member returns to practice. The Panel was also hopeful that the Member's participation in the stipulated mentorship would promote public confidence in the profession. By requiring the Member to take additional steps to improve her practice, under the guidance of a mentor, the College is communicating to the public its ability to regulate the



profession and to ensure that members adhere to established standards of practice. Reprimands are a standard component of orders from Discipline Committees because they allow for the Panel to communicate to the Member their disapproval of the Member's conduct, as well as how other members of the profession may regard the Member's conduct. This opportunity to convey directly to the Member the Panel's views as to her conduct has an important deterrent effect.

In considering the principle of general deterrence the Panel was satisfied that this goal will be met, as the suspension communicates clearly to the profession that there are significant consequences for committing acts of professional misconduct involving the failure to supervise young children, up to and including temporary removal from practice.

### **Reasons for Costs**

On the matter of costs, subsection 33(5)(4) of the Act provides that in the appropriate case, a panel may make an order requiring a member, who the panel finds has committed an act of professional misconduct, to pay all or part of the College's legal costs and expenses, investigation costs and hearing costs. The award of costs is not to be a punishment of the Member. However, the Panel supports the principle that the costs of prosecuting cases that result in professional misconduct should not be borne exclusively by the membership fees of all members. While it is her right to do so, the Member contested all allegations and this resulted in significant hearing expenses for the College. The Member knew of the potential costs exposure of proceeding with a contested hearing.

However, the Panel felt that it was also appropriate to consider the Member's financial circumstances when determining costs. Although the Panel reviewed and considered the cases presented where costs orders were imposed on other members, the Panel decided this case on the facts and evidence before it. The Panel heard evidence of the Member's financial situation and expenses and of her personal family circumstances as a single mother to three children. Moreover, the Panel is aware that the financial resources available to most members of the profession is modest. This is especially true during this unprecedented period of the COVID pandemic. The Panel heard evidence that the Member had been unable to work for a period of time, due to the pandemic-related need to support her children's education at home.

Given these considerations, the Panel determined that the costs award of \$41,000 proposed by counsel for the College, would cause the Member undue hardship. While the Panel recognizes that it has an obligation to its members to obtain costs from members who are found guilty of professional misconduct, the Panel felt it was appropriate to balance these considerations not only with an assessment of the Member's financial circumstances, but also with an assessment of whether a significant cost award would represent a barrier to the Member's rehabilitation and return to the profession.

As such, the Panel has determined that the Member should be required to pay costs in the amount of \$21,000. In arriving at this figure and in reducing the costs award from that sought by the College, the Panel has taken into consideration the financial situation of the Member as presented and the extenuating circumstances of the past year of the COVID pandemic. The Panel further considered that pursuant to this Order, the Member will be suspended for a period of four (4) months and potentially unable to earn income for that period of time.

The Panel agrees with the College's proposal that the Member be granted an extended period in which to pay this substantial cost award. Accordingly, the Member is required to pay the College \$21,000 in costs, within six (6) years of the date of this Order, in annual installments of \$3,500, unless the Director approves, in writing, a different payment schedule

**I, Kristine Parsons, sign this decision and reasons for the decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel.**

 RECE

\_\_\_\_\_  
Kristine Parsons, RECE, Chairperson

\_\_\_\_\_  
August 19, 2021

Date