

NOTICE OF PUBLICATION BAN

In the matter of College of Early Childhood Educators and Sheila Franco, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of, or any information that could identify, any person who is under 18 years old and is a witness in the hearing, or the subject of evidence in the hearing or under subsection 35.1(3) of the *Early Childhood Educators Act, 2007*.

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

PANEL: Barney Savage, Chairperson
Kathleen Gradwell, RECE
Ce Cil Kim, RECE

BETWEEN:)
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COLLEGE OF EARLY) Vered Beylin
CHILDHOOD EDUCATORS) for the College of Early Childhood Educators
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- and -)
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SHEILA FRANCO) Self-Represented
REGISTRATION # 52549)
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)
) Elyse Sunshine
) Independent Legal Counsel
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)
) Heard: January 28, 2020

DECISION AND REASONS

This matter was heard by a panel of the Discipline Committee of the College of Early Childhood Educators (the “Panel”) on January 28, 2020.

PUBLICATION BAN

The Panel ordered a publication ban following a motion by College Counsel, on consent of the Member, pursuant to section 35.1(3) of the *Early Childhood Educators Act, 2007* (the “Act”). The order bans the public disclosure, publication and broadcasting outside of the hearing room, any names or identifying information of any minor children who may be the subject of evidence in the hearing.

THE ALLEGATIONS

The allegations against the Member as stated in the Notice of Hearing dated December 6, 2019, (Exhibit 1) were as follows:

1. At all material times, Sheila Franco (the “**Member**”) was a member of the College of Early Childhood Educators and was employed as an Early Childhood Educator (“**ECE**”) at Holland Landing Children’s Academy (the “**Centre**”) in Holland Landing, Ontario. The Centre is located on the premises of Holland Landing Public School (the “**School**”).
2. On or about August 4, 2017 the Member and two other RECEs, J.K. and S.D., (collectively the “**Staff**”) were supervising a blended group of toddlers and preschool aged children. At approximately 9:30 a.m. eight children were present and the Staff took them outside. The Member was supervising children who were riding bicycles on the School’s outdoor paved play area (the “**School’s Play Area**”). The School’s Play area was located close to the Centre’s fenced playground (the “**Centre’s Playground**”).

3. A few minutes later, the Member took one of the children she was supervising into the Centre to change his diaper. The Member failed to communicate with J.K. and S.D. that she was doing so prior to leaving the rest of the children in the School's Play Area alone and unsupervised. As a result, five to seven children left the School's Play Area.
4. Up to four of the children were located by J.K. and S.D. in various points along a pathway leading from the School's Play Area to the residential street in front of the School. Three of the children were located by S.D. further from the School – one child on a sidewalk by an intersection of two residential streets and two other children on the roadway at that intersection. Two drivers got out of their cars to assist the children and one of them prevented the children from going further into the intersection. One of the drivers then escorted the two children back onto the sidewalk and towards the school, where S.D. met them.
5. In total, the children were alone and unsupervised for approximately 5 – 10 minutes.
6. 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 *Early Childhood Educators Act, 2007*, S.O. 2007, c. 7, Sch. 8 (the "**Act**"), in that:
 - a) The Member failed to supervise adequately a person who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(2);
 - b) The Member failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8), in that:
 - i. The Member failed to observe and monitor the learning environment and take responsibility to avoid exposing children to harmful or unsafe situations, contrary to Standard III.C.2 of the College's Standards of Practice;
 - ii. The Member failed to provide safe and appropriate supervision of children based on age, development and environment, contrary to Standard III.C.5 of the College's Standards of Practice;
 - iii. The Member failed to implement strategies to ensure sufficient time for safe and supportive transitions while maintaining supervision at all times, contrary to Standard III.C.8 of the College's Standards of Practice;

- iv. The Member failed to know the current legislation, policies and procedures that are relevant to her professional practice and to the care and education of children, contrary to Standard IV.B.1 of the College's Standards of Practice;
 - v. The Member failed to model professional values, beliefs and behaviours with children, families and colleagues, and/or failed to understand that her conduct reflects on her as a professional and on her profession at all times, contrary to Standard IV.C.4 of the College's Standards of Practice;
 - vi. The Member failed to support and collaborate with colleagues, contrary to Standard IV.C.6 of the College's Standards of Practice;
- c) The Member acted or failed to act in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 223/08, subsection 2(10); and/or
- d) The Member acted in a manner that is unbecoming a Member, contrary to Ontario Regulation 223/08, subsection 2(22).

EVIDENCE

Counsel for the College and the Member advised the Panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts (Exhibit 2), which read as follows:

AGREED STATEMENT OF FACTS

The parties hereby agree that the following facts may be accepted as true by the Discipline Committee:

The Member

1. Sheila Franco (the "**Member**") has had a certificate of registration with the College of Early Childhood Educators (the "**College**") for approximately 5 years. She is in good standing with the College and does not have a prior discipline history with the College.

2. At all material times, the Member was employed as an RECE at Holland Landing Children's Academy (the "**Centre**") in Holland Landing, Ontario. The Centre is located on the premises of Holland Landing Public School (the "**School**").

The Incident

3. On or about August 4, 2017 the Member and two other RECEs, J.K. and S.D., (collectively the "**Staff**") were supervising a blended group of toddlers and preschool aged children. At approximately 9:30am eight children were present and the Staff took them outside. The Member was supervising children who were riding bicycles on the School's outdoor paved play area (the "**School's Play Area**"). The School's Play area was located close to the Centre's fenced playground (the "**Centre's Playground**").
4. A few minutes later, the Member took one of the children she was supervising into the Centre to change his diaper. The Member failed to communicate with J.K. and S.D. that she was doing so prior to leaving the rest of the children in the School's Play Area alone and unsupervised. As a result, five to seven children left the School's Play Area.
5. Up to four of the children were located by J.K and S.D. in various points along a pathway leading from the School's Play Area to the residential street in front of the School. Three of the children were located by S.D. further from the School – one child on a sidewalk by an intersection of two residential streets and two other children on the roadway at that intersection. Two drivers got out of their cars to assist the children and one of them prevented the children from going further into the intersection. One of the drivers then escorted the two children back onto the sidewalk and towards the school, where S.D. met them.
6. In total, the children were alone and unsupervised for approximately 5 – 10 minutes.

Additional Information

7. There is no evidence of injury or trauma to any of the children as a result of the incident.
8. The Member was terminated from her position as an RECE at the Centre on the day of the incident.

9. Approximately 3½ months prior to the incident a report by the Centre’s management noted that on that day the Member was “repeatedly with her back to the classroom and was not consistently scanning the room”. The Member signed the report, which emphasized that an ECE must never have their back to the children and continuously ensure that they are positioned to see all the children under their supervision.
10. If the Member were to testify, she would advise that she is remorseful for her actions on the day of the incident. After the incident she reflected on what happened, and in particular her failure to properly communicate with the other ECEs prior to leaving the children unsupervised.

Admissions of Professional Misconduct

11. The Member admits that she engaged in and is guilty of professional misconduct as described in paragraphs 3 to 6 above, and as defined in subsection 33(2) of *the Early Childhood Educators Act, 2007*, S.O. 2007, c. 7, Sch. 8, in that:
 - a. The Member failed to supervise adequately a person who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(2);
 - b. The Member failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8), in that:
 - i. The Member failed to observe and monitor the learning environment and take responsibility to avoid exposing children to harmful or unsafe situations, contrary to Standard III.C.2 of the College’s Standards of Practice;
 - ii. The Member failed to provide safe and appropriate supervision of children based on age, development and environment, contrary to Standard III.C.5 of the College’s Standards of Practice;
 - iii. The Member failed to implement strategies to ensure sufficient time for safe and supportive transitions while maintaining supervision at all times, contrary to Standard III.C.8 of the College’s Standards of Practice;
 - iv. The Member failed to know the current legislation, policies and procedures that are relevant to her professional practice and to the care

and education of children, contrary to Standard IV.B.1 of the College's Standards of Practice;

- v. The Member failed to model professional values, beliefs and behaviours with children, families and colleagues, and/or failed to understand that her conduct reflects on her as a professional and on her profession at all times, contrary to Standard IV.C.4 of the College's Standards of Practice;
 - vi. The Member failed to support and collaborate with colleagues, contrary to Standard IV.C.6 of the College's Standards of Practice;
- c. The Member acted or failed to act in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 223/08, subsection 2(10); and/or
- d. The Member acted in a manner that is unbecoming a Member, contrary to Ontario Regulation 223/08, subsection 2(22).

THE MEMBER'S PLEA

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

The Panel received a written plea inquiry (Exhibit 3) which was signed by the Member. The Panel also conducted a verbal plea inquiry and was satisfied that the Member's admission was voluntary, informed and unequivocal.

DECISION ON THE ALLEGATIONS

Having regard to the facts set out in the Agreed Statement of Facts, the Committee accepted the Member's admission and found that she committed all of the acts of professional misconduct set out in the Notice of Hearing as outlined above.

REASONS FOR DECISION

The Panel considered the Agreed Statement of Facts and the Member's plea and found that the evidence supported findings of professional misconduct as alleged.

The allegations of misconduct contained in section six of the Notice of Hearing are supported by the facts set out in the Agreed Statement of Facts. The evidence shows, and the Member admitted, that she contravened the standards of practice when she failed to communicate with her peers that she would be occupied with one child. This lack of collaboration resulted in the children being left completely unsupervised. She contravened the standards of practice when she neglected to follow policies and procedures. She failed to properly observe and monitor the learning environment. By engaging in such conduct, the Member admitted, and the Panel finds, that the Member's conduct would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional. The risk of lost children reflects negatively on the profession and is conduct unbecoming a member of the profession. The Member did not comply with the Act, and thereby failed to meet her obligations as an RECE.

POSITION OF THE PARTIES ON PENALTY

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

JOINT SUBMISSION ON PENALTY AND COSTS

The College of Early Childhood Educators and Sheila Franco (the "**Member**") agree and jointly submit that the Discipline Committee make an Order:

1. Requiring the Member to appear before a Panel of the Discipline Committee to be reprimanded immediately following the hearing of this matter.
2. Directing the Registrar to suspend the Member's certificate of registration for a period of 7 months. The suspension will take effect from the date of this Order and will run without interruption as long as the College has not otherwise prohibited the Member from practising or suspended the Member for any other reason.

3. Directing the Registrar to impose the following terms, conditions and limitations on the Member's certificate of registration:

Mentorship

- 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 *Early Childhood Educators Act, 2007*, 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,
 - ii. the Agreed Statement of Facts,
 - iii. the Joint Submission on Penalty and Costs, and
 - iv. 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.
 - g. The College may require proof of compliance with any of the terms in this Order at any time.
4. Requiring the Member to pay the College's costs fixed in the amount of \$1,000, to be paid within 4 months of the date of this Order and in accordance with the following payment schedule:
- a. \$250 on the date of this Order;
 - b. \$250 within 30 days of the date of this Order;
 - c. \$250 within 60 days of the date of this Order; and
 - d. \$250 within 90 days of the date of this Order.

Submissions of the Parties

Counsel for the College submitted that the proposed order was appropriate and reasonable in light of the facts agreed upon.

Counsel for the College provided three cases in support of the proposed penalty and submitted that these cases represented conduct of a similar nature and established that the proposed penalty was reasonable and would not bring the administration of justice into disrepute. These cases were:

- *College of Early Childhood Educators v. Virginia Wai-Yee Me*, , 2019 ONCECE 8 (CanLII)
- *College of Early Childhood Educators v. Dominika Maria Walczak*, 2018 ONCECE 10 (CanLII)
- *College of Early Childhood Educators v. Rebecca Ann Wardhaugh*, 2019 ONCECE 19 (CanLii)

The College further submitted that the prime aggravating factors in this case were:

- 1) The number of children unsupervised was high – up to seven children;
- 2) The young age of the children – toddlers and preschool;
- 3) The environment in which the incident occurred – the children were riding bicycles in an outdoor, unfenced area;
- 4) The Member did not realize the children were missing’ m
- 5) Three children were in a high-risk situation, one was located on a sidewalk near the road and two were found in the road; and
- 6) The length of time before the children were back in supervision (5 – 10 minutes);
- 7) The Member left the children completely alone and without a staff member to supervise them – this was the first time in the College’s history that there has been a case of this nature; and
- 8) Months prior to the incident in question, the Member had been warned that an ECE must be in a position to see all of the children under her care. She had an opportunity following the earlier incident to adjust her behaviour, and failed to do so

The parties agreed that the mitigating factors in this case were:

- 1) The Member acknowledged her wrongdoing and took responsibility for her actions;
- 2) The Member entered into a plea and saved the College the time and expense of a contested hearing; and
- 3) The Member has been registered as a member of the College for five years without incident.

The College also submitted that another consideration in determining penalty was that while the children were placed at high risk, there was no evidence that any child was injured or experienced psychological distress.

PENALTY DECISION

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

1. Requiring the Member to appear before a Panel of the Discipline Committee to be reprimanded immediately following the hearing of this matter.
2. Directing the Registrar to suspend the Member's certificate of registration for a period of 7 months. The suspension will take effect from the date of this Order and will run without interruption as long as the College has not otherwise prohibited the Member from practising or suspended the Member for any other reason.
3. Directing the Registrar to impose the following terms, conditions and limitations on the Member's certificate of registration:

Mentorship

- 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 *Early Childhood Educators Act, 2007*, 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,
 - ii. the Agreed Statement of Facts,
 - iii. the Joint Submission on Penalty and Costs, and
 - iv. 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.
 - g. The College may require proof of compliance with any of the terms in this Order at any time.
4. Requiring the Member to pay the College's costs fixed in the amount of \$1,000, to be paid within 4 months of the date of this Order and in accordance with the following payment schedule:
- h. \$250 on the date of this Order;
 - i. \$250 within 30 days of the date of this Order;
 - j. \$250 within 60 days of the date of this Order; and
 - k. \$250 within 90 days of the date of this Order.

REASONS FOR PENALTY

The Panel understands that the penalty ordered should protect the public and enhance public confidence in the ability of the College to regulate registered early childhood educators. This is achieved through a penalty that addresses specific deterrence, general deterrence and, where appropriate, rehabilitation and remediation. The penalty should be proportionate to the misconduct.

In considering the joint submission, the Panel was mindful that a jointly proposed penalty should be accepted unless its acceptance would bring the administration of justice into disrepute or it is otherwise not in the public interest.

The Panel is aware that no two cases are exactly alike. However, reviewing earlier cases can help determine the level of appropriate penalty. The Panel therefore considered the previous cases that were presented by the College and found them to be of assistance.

- In the *Me* decision (June 2019), inadequate supervision was also a factor. A penalty of five months suspension was awarded in that case, which is somewhat less than the penalty in this case, but was appropriate because:
 - There was one child involved;
 - The period of time the child was missing was shorter (only five minutes); and
 - This was an isolated incident, with no previous issue with supervision identified.

- In the *Walczak* decision (October 2018), supervision was also an issue. The penalty was somewhat lighter than the case at hand because:
 - There were two pre-school children involved;
 - While the incident involved inadequate supervision, there was an element of supervision in place, albeit below required staff/child ratios; and
 - There were no prior supervision issues identified.

- In the *Wardhaugh* decision (December 2019), a similar penalty was imposed which was appropriate because:
 - Although the case involved only one child in a secure area, the child was left unsupervised for a longer period of time (30 minutes);
 -

- The RECE did not take immediate and appropriate steps to remedy the situation after learning that the child was unsupervised;
- The child in this case was emotionally affected, and required the assistance of a passerby.

The Panel also considered that the Member cooperated with the College and, by agreeing to the facts and proposed penalty, has accepted responsibility for the misconduct.

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

The Panel found that the suspension is generally consistent with the range of suspensions that were imposed in the previous cases that were put before the Panel. This suspension is appropriate given the aggravating factors in this case. The suspension, along with the reprimand, will act as specific deterrent to the Member, and a general deterrent to other members of the profession, from engaging in such conduct. The terms, conditions and limitations imposed will help to protect the public. Mentoring sessions will support the Member's rehabilitation.

ORDER AS TO COSTS

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

The parties are in agreement with respect to costs and the amount of costs to be ordered. The Panel agrees that that this is an appropriate case for costs to be awarded and the amount proposed by the parties is reasonable.

The Panel orders that the Member pay the College its costs, fixed in the amount of \$1000, to be paid in accordance with the payment schedule noted above.

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

A handwritten signature in blue ink, appearing to read "Barney Savage", written over a light blue grid background.

Barney Savage, Chairperson

February 5, 2020

Date