

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

Citation: College of Early Childhood Educators vs XINAI (“CICI”) QIN,
2018 ONCECE 5
Date: 2018-07-10

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

AND IN THE MATTER OF discipline proceedings against XINAI (“CICI”) QIN, a current member
of the College of Early Childhood Educators.

PANEL: Larry O’Connor, Chairperson
Kristine Parsons, RECE
Diane Laframboise, RECE

BETWEEN:)	
)	
COLLEGE OF EARLY)	Jordan Stone,
CHILDHOOD EDUCATORS)	WeirFoulds LLP,
)	for the College of Early Childhood Educators
)	
- and -)	
)	
XINAI (“CICI”) QIN)	Peter Tierney,
REGISTRATION # 50338)	for Xinai Qin
)	
)	
)	
)	Elyse Sunshine,
)	Rosen Sunshine LLP
)	Independent Legal Counsel
)	
)	Heard: June 25, 2018

DECISION AND REASONS

This matter came on for a hearing before a panel of the Discipline Committee of the College of Early Childhood Educators (the “Panel”) on June 25, 2018.

THE ALLEGATIONS

The allegations against Xinai Qin (the “Member”) as stated in the Notice of Hearing dated June 7, 2018 (Exhibit 1), are as follows:

- a. she failed to supervise adequately a person who was under her professional supervision, contrary to *Ontario Regulation 223/08*, subsection 2(2);
- b. she failed to maintain the standards of the profession, contrary to *Ontario Regulation 223/08*, subsection 2(8) in that:
 - i. she failed to maintain a safe and healthy learning environment, contrary to Standard III.A.1 of the College’s Standards of Practice;
 - ii. she failed to know, understand and abide by the legislation, policies and procedures that are relevant to her professional practice and to the care and learning of children under her professional supervision, contrary to Standard IV.A.2 of the College’s Standards of Practice;
 - iii. she failed to observe and monitor the learning environment and anticipate when support or intervention was required, contrary to Standard IV.B.3 of the College’s Standards of Practice;
 - iv. she failed to work collaboratively with colleagues in her workplace in order to provide safe, secure, healthy and inviting environments for children and families and failed to build effective relationships with colleagues and other professionals by using clear verbal and written communication, contrary to Standard IV.C.1 of the College’s Standards of Practice; and
 - 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 failed to comply with the Act and/or the professional misconduct regulation made under the Act (being *Ontario Regulation 223/08*), contrary to *Ontario Regulation 223/08*, subsection 2(19);

- e. 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
- f. 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 admitted to the allegations in the Notice of Hearing as set out above. The Panel received a written plea inquiry (Exhibit 4) 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.

EVIDENCE

Counsel for the College of Early Childhood Educators (the "College") and representation for the Member advised the Panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts, which read as follows.

The Member

1. The Member initially registered with the College as a Registered Early Childhood Educator ("RECE") in July 2014 and remains in good standing with the College.
2. At all material times, the Member was employed as an RECE at Fenside Children's Centre in North York, Ontario (the "Centre").
3. On September 29, 2015, the Member was terminated from her position at the Centre as a result of the incidents described below.

Incident on July 15, 2015

4. On or about July 15, 2015, the Member and an early childhood assistant were supervising a group of kindergarten-aged children in the Centre's outdoor playground.
5. That morning, a few children needed to use the washroom, and the Member brought them inside to do so. The last child to use the washroom (Child A) had an accident. The Member left Child A alone inside, unsupervised, to clean herself up and brought the remaining children outside.
6. Later that morning, Child A was found alone in the classroom that adjoined the washroom by a caretaker. Child A said to the caretaker words to the effect of, "my teacher left me, they're outside." The caretaker brought Child A back outside to the playground. Child A was left unattended from anywhere between five minutes, at the least, and an hour.

7. The Centre's policies required staff to escort kindergarten-aged children to the washroom from the playground and remain to supervise them until they were finished before escorting them back to the playground. The Member failed to abide by this policy.

Incident on August 24, 2015

8. On or about the morning of August 24, 2015, the Member and a supply RECE were supervising a group of children in the outdoor playground at the Centre. The Member went inside the Centre to use the washroom and then returned to the playground.
9. As the Member came outside, the supply RECE brought a child over who had been stung by an insect. The Member brought the injured child inside for treatment, along with two other children.
10. The Member did not perform a headcount before taking the children inside, nor did she verbally confirm the number of children who were present with the supply RECE.
11. After treating the child with the insect sting, the Member brought the children who were with her back outside. When she returned to the playground, the Member did not perform a headcount and did not verbally confirm the number of children who were present with the supply RECE.
12. Later that morning, the parent of Child B arrived at the Centre with two children from the Member's class (Child B and Child C), who had shown up at his house unsupervised. Both children were five years old.
13. The children left the Centre at approximately 10:10 a.m. or 10:15 a.m. It would have taken between 15 and 20 minutes for the children to walk to Child B's house, and the children had also stopped to play in a park. They had to cross two roads in order to reach Child B's house. Child B and Child C arrived at Child B's home at approximately 10:35 a.m. or 10:40 a.m. The Member was unaware that Child B and Child C had been missing until the children were returned to the Centre by the parent of Child B at approximately 10:50 a.m. or 10:55 a.m.
14. The Centre's policies required staff to perform headcounts before, during, and after all transitions, as well as at regular intervals during the day. The Centre's policies also required staff to verbally confirm the number of children present when leaving for and returning from the washroom, and to verify the head counts against the daily attendance records. The Member did not abide by these policies.

College Standards of Practice

15. The Member agrees that the following are standards of the profession, as set out in the College's *Code of Ethics and Standards of Practice*:
 - a. Standard III.A.1 requires RECEs to maintain a safe and healthy learning environment.

- b. Standard IV.A.2 requires RECEs 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.
- c. Standard IV.B.3 requires RECEs to observe and monitor the learning environment and anticipate when support or intervention is required.
- d. Standard IV.C.1 requires RECEs to work collaboratively with colleagues in the workplace in order to provide a safe, secure, healthy and inviting environment for children and families and to build effective relationships with colleagues and other professionals by using clear verbal and written communication.
- e. Standard IV.E.2 requires RECEs to avoid conduct that could reasonably be perceived as reflecting negatively on the profession of early childhood education.

Admissions of Professional Misconduct

16. The Member admits that she engaged in and is guilty of professional misconduct as described in paragraphs 4-14 above, and as defined in section 33(2) of the *Early Childhood Educators Act, 2007*, in that:
- a. she failed to supervise adequately a person who was under her professional supervision, contrary to *Ontario Regulation 223/08*, subsection 2(2);
 - b. she failed to maintain the standards of the profession, contrary to *Ontario Regulation 223/08*, subsection 2(8) in that:
 - i. she failed to maintain a safe and healthy learning environment, contrary to Standard III.A.1 of the College's Standards of Practice;
 - ii. she failed to know, understand and abide by the legislation, policies and procedures that are relevant to her professional practice and to the care and learning of children under her professional supervision, contrary to Standard IV.A.2 of the College's Standards of Practice;
 - iii. she failed to observe and monitor the learning environment and anticipate when support or intervention was required, contrary to Standard IV.B.3 of the College's Standards of Practice;
 - iv. she failed to work collaboratively with colleagues in her workplace in order to provide safe, secure, healthy and inviting environments for children and families and failed to build effective relationships with colleagues and other professionals by using clear verbal and written communication, contrary to Standard IV.C.1 of the College's Standards of Practice; and

- 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 failed to comply with the Act and/or the professional misconduct regulation made under the Act (being *Ontario Regulation 223/08*), contrary to *Ontario Regulation 223/08*, subsection 2(19);
- e. 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
- f. she conducted herself in a manner that is unbecoming a member, contrary to *Ontario Regulation 223/08*, subsection 2(22).

DECISION ON THE ALLEGATIONS

Having regard to the facts set out in the Agreed Statement of Facts and the Member's plea, the Panel accepted the Member's admissions 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 in the Notice of Hearing.

The allegations of professional misconduct in the Notice of Hearing are supported by paragraphs four through fourteen in the Agreed Statement of Facts. The evidence shows that the Member contravened the standards of practice when she left a child in the child care centre unsupervised and in a separate incident, she was not aware that two children, under her supervision, had left the child care centre unattended.

With respect to the allegations, the Panel finds that the Member's conduct would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional. The evidence established that the Member contravened the standards of practice in connection with two incidents. On July 15, 2015, she left a child unattended in the child care centre for extended period of time. On August 24, 2015, she was unaware that two children had left the premises and were gone for a significant period of time. She only became aware that two children were no longer in the Centre, when a parent returned with the two children. Had the Member adhered to the policies of the Centre and conducted required head counts, she would have been aware of the missing children. The Panel found that the Member's conduct in connection with these incidents constituted professional misconduct pursuant to subsection 33(2) of Early Childhood

Educators Act 2007. This conduct also constituted a failure by the Member to maintain each of the standards of the profession as set out in paragraphs four through fourteen of the Agreed Statement of Facts in that the evidence and facts as admitted by the Member make out the findings of misconduct as alleged.

Ms. Qin's voluntary admission to each of the allegations of professional misconduct and the facts set out in the Agreed Statement of Facts led the panel to find the Member guilty of professional misconduct in respect of all of the allegations set out in the Notice of Hearing.

POSITION OF THE PARTIES ON PENALTY

Counsel for the College and representation for the Member made a joint submission as to an appropriate penalty (Exhibit 6). The joint submission as to penalty proposed that the Panel make an order as follows:

1. Requiring the Member to appear before the Panel to be reprimanded on the date of an Order being made by the Panel.
2. Directing the Registrar to suspend the Member's certificate of registration for a period of seven (7) months. The suspension would take effect from the date of an Order being made by the Panel and would run without interruption as long as the Member remains in good standing with the College.
3. Directing the Registrar 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 an 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 for a mentoring relationship with a Mentor, who:
 - i. is an RECE in good standing with the College,
 - ii. is employed in a supervisory position,
 - iii. has never been found guilty of professional misconduct 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, the Member will ensure that the Director is notified of the name, address, and telephone number of all employer(s).
- 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. a copy of the Panel’s Decision and Reasons.
- d. The Member will meet with the Mentor every two weeks after the Mentor has been approved by the Director to discuss the following subjects:
 - i. 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 five 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.
4. Requiring the Member to pay the College's costs fixed in the amount of \$1,000, to be paid on the date of an Order being made by the Panel
5. All documents delivered by the Member to the College or the Mentor will be delivered by registered mail or courier, and the Member will retain proof of delivery.

DECISION ON PENALTY AND COSTS

The Panel accepted the joint submission on penalty and made the following Order as to penalty and costs:

1. Requiring the Member to appear before the Panel to be reprimanded on the date of this Order.
2. Directing the Registrar to suspend the Member's certificate of registration for a period of seven (7) 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. Directing the Registrar 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 an 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 for a mentoring relationship with a Mentor, who:
 - i. is an RECE in good standing with the College,
 - ii. is employed in a supervisory position,
 - iii. has never been found guilty of professional misconduct 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.

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- b. Within 14 days of commencing or resuming Employment, the Member will ensure that the Director is notified of the name, address, and telephone number of all employer(s).
- 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. a copy of the Panel's Decision and Reasons.
- d. The Member will meet with the Mentor every two weeks after the Mentor has been approved by the Director to discuss the following subjects:
 - i. 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 five 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.

4. Requiring the Member to pay the College's costs fixed in the amount of \$1,000, to be paid on the date of this Order.
5. All documents delivered by the Member to the College or the Mentor will be delivered by registered mail or courier, and the Member will retain proof of delivery.

REASONS FOR PENALTY

The Panel understands that the penalty ordered in respect of findings of professional misconduct should protect the public and enhance public confidence in the ability of the College to regulate registered early childhood educators. This is achieved through a penalty that addresses public protection, specific deterrence, general deterrence and, where appropriate, rehabilitation 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 recognized that the Member cooperated with the College by agreeing to the facts and proposed penalty. The Panel found that the penalty proposed satisfies the principles of specific and general deterrence and public protection. Specifically, the suspension of the Member, along with the reprimand, will act as specific deterrents to the Member, and general deterrents to other members of the profession, preventing them from engaging in such conduct.

The Panel was satisfied that the proposed penalty protects the public interest and acts as a deterrent to other RECEs.

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 counsel for the College, including *College of Early Childhood Educators v. McKenzie* 2017 ONCECE 9, *College of Early Childhood Educators v. Lealess* 2018 ONCECE 2. These cases established a range of penalties in circumstances where a member was responsible for unsupervised or missing children, including suspensions in the range of three (4) to six (6) months, as well as the imposition of terms, conditions and limitations on the members' certificates of registration. The College submitted that this case warranted a suspension of seven (7) months, which was slightly above this range, because there were two separate incidents and because this reflected the College's and the public's expectations that such conduct warrants a harsher penalty than what had been ordered in the past. The Panel agreed that the public and the profession expected that such conduct would be addressed with more stringent penalties than those awarded previously. The Panel finds this is a reasonable and measured response to what appears to be a continuing and escalating problem within the profession.

REASONS REGARDING ORDER AS TO COSTS

Subsection 33(5)(4) of the ECE 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.

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

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

I, Larry O'Connor, sign this decision and reasons for the decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel.



Larry O'Connor, Chairperson

July 10, 2018

Date