



## 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 May 24, 2019.

### PUBLICATION BAN

The Panel ordered a publication ban following a motion by College Counsel pursuant to section 35.1(3) of the *Early Childhood Educators Act, 2007* (the "ECE 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 April 22, 2019 (Exhibit 1), were as follows:

1. At all material times, Sarah Ashley Walton (the "**Member**") was a member of the College of Early Childhood Educators and was employed as an Early Childhood Educator at the Bizzy Bees Day Care Center (the "**Centre**") in Ilderton, Ontario.
2. On or about November 24, 2016, the Member and two other ECEs (collectively "**Staff**") were supervising a group of preschool aged children, including B.M., a 2½ year old boy (the "**Child**"). Prior to leaving the Centre to visit the local post office, the Staff organized the children at the Centre's yard. The Member did not conduct a headcount to ensure all of the children were present. The Member also did not do a physical walk around the yard.
3. The Staff left the yard with the children, but the Member failed to notice that the Child was not with the group. As a result, the Child remained at the Centre's yard unsupervised.
4. Shortly after the Child remained alone, he exited the Centre's yard and walked a short distance away from the Centre. A passerby observed the Child alone and crying, two houses away from the Centre.
5. The passerby saw the Staff with the rest of the children further down the street and called out to them. The Staff did not hear her, so she walked the Child over to the group and caught up with them approximately 10-12 minutes later after the group arrived at the post office. Until that point, the Member did not notice that the Child was missing.

6. As a result of the incident, the Member's employment at the Centre was terminated.
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 ECE Act, in that:
  - a) The Member failed to adequately supervise 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 maintain a safe and healthy learning environment, contrary to Standard III.A.1 of the College's Standards of Practice;
    - ii. The Member failed to know, understand and abide by the legislation, policies and procedures that were 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. The Member 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. The Member failed to work collaboratively with colleagues in her workplace in order to provide safe, secure, healthy and inviting environments for children and families, and/or 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/or
    - v. The Member 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) 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 Notice of Hearing.

The Panel received a written plea inquiry which was signed by the Member (Exhibit 3). 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 and 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. Sarah Ashley Walton (the "Member") has had a certificate of registration with the College of Early Childhood Educators (the "College") for approximately 3 years. She is suspended for non-payment of fees or penalties as of May 16, 2018 and does not have a prior discipline history with the College.
2. At all material times, the Member was employed as a Registered Early Childhood Educator ("RECE") at the Bizzy Bees Daycare (the "Centre") in Ilderton, Ontario.

### **Overview**

3. On or about November 24, 2016, the Member and two other RECEs, M.M. and X.Y.L. (collectively the "**Staff**") were supervising a group of preschool aged children, including B.M., a 2½ year old boy (the "**Child**").
4. Shortly after 10:00am, the Staff decided to take the children to visit a local post office. And organized the children at the Centre's yard. The Member and M.M. were gathering the children and lining them up along a walking rope, while X.Y.L. was tidying the yard. The Member and M.M. told X.Y.L. that the group was ready to go. The Staff did not conduct a headcount to ensure all of the children were present and did not do a physical walk around the yard prior to leaving the Centre.

5. After leaving the Centre, the Staff failed to notice that the Child was not with the group. As a result, the Child remained unsupervised in the Centre's yard.
6. Shortly after, the Child left the Centre's yard and walked a short distance away from the Centre. A passerby observed the Child alone and crying, two houses away from the Centre. She approached the Child to calm him down.
7. The passerby and the Child caught up with the rest of the group 10 to 12 minutes later, at the post office. Until that point, for approximately 15 minutes, the Staff did not notice that the Child was missing.
8. The Staff immediately brought the children back to the Centre and informed the Centre's Director of the incident.
9. The Member's employment with the Centre was terminated as a result of the incident.

#### **Admissions of Professional Misconduct**

10. The Member admits that she engaged in and is guilty of professional misconduct as described in paragraphs 3 to 7 above, and as defined in subsection 33(2) of *the Early Childhood Educators Act, 2007*, S.O. 2007, c. 7, Sch. 8, in that:
  - e) She failed to adequately supervise a person who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(2);
  - f) 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 were 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/or 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/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;
- g) 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); and/or
- h) She acted 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, 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 in the Notice of Hearing.

Specifically, the allegations of professional misconduct set out in paragraph 7 of the Notice of Hearing were all supported by the admissions of professional misconduct set out in paragraph 10 of the Agreed Statement of Facts. This evidence established that the Member failed to conduct a headcount to ensure all of the children were present and did not do a physical walk around the yard prior to leaving the Centre. She then left the Centre with her class but failed to notice that the Child was not with the group, resulting in the Child remaining unsupervised in the Centre's yard. In so doing, the Member failed to adequately supervise the Child, who was under her professional supervision. She contravened the standards of practice when she neglected to properly follow established procedures for transition off the Centre property, as described in paragraphs two through five of the Statement of Allegations. 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. In addition, the Member did not comply with the ECE Act, and thereby failed to meet her obligations as an RECE by not complying with the ECE Act. Finally, the Member engaged in conduct unbecoming a member. The Panel noted that the Member was one of three RECEs supervising the group on the day in question. The RECEs failed to work together to ensure supervision of and a safe environment for the children under their care. The lack of cooperation among staff members

neither excused nor diminished the Member's responsibility to ensure the Child, and all children under her care, were accounted for.

## **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:

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 5 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:
  - 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 "ECE Act"), 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 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. a copy of the Panel's Decision and Reasons.
- d. The Member will meet with the Mentor at least 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 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 6 months of the date of this Order and in accordance with the following payment schedule:
  - a. \$200 on the date of this Order;
  - b. \$200 by August 1, 2019;
  - c. \$200 by September 1, 2019;
  - d. \$200 by October 1, 2019; and
  - e. \$200 by November 1, 2019.

Counsel for the College submitted that the proposed order was appropriate and reasonable in light of the facts agreed upon. There were several aggravating factors in this case, including that the Child was only 2½ years old, was found outside of the Centre, and was emotionally impacted by these events (as he was found crying). The Child was missing for a significant time period (15 minutes), and the Member did not realize the Child was missing until he was brought back. There were, however, several mitigating factors: the Member reported her conduct to the Director of the Centre immediately; she pleaded guilty, saving resources for the College and avoiding the need for witnesses to attend to give evidence; and she had not previously engaged in misconduct during her three years as an RECE. Additionally, there was an absence of aggravating factors, which was fortunate: the Child did not suffer harm; the Child was found only a short distance away; and this incident was isolated and not reflective of a pattern.

Counsel further submitted that the proposed penalty was appropriate and protected the public interest by meeting the principles of general and specific deterrence, as well as rehabilitation of the Member. Counsel noted that issues regarding inadequate supervision are a significant concern for the College, with such cases increasing in frequency. Further, the proposed penalty was proportionate to the misconduct and was consistent with penalties in analogous cases. In this regard, College Counsel provided two other cases from this College in support of the proposed penalty: *College of Early Childhood Educators v. Qin* (2018) and *College of Early Childhood Educators v. Li*, (2018). Counsel for the College submitted that these cases illustrate the range of penalties available, and that the penalty proposed was within this range. In *Qin*, the Discipline Committee ordered a penalty which included a suspension of seven (7) months, where there were two separate incidents in which children were not supervised. In *Li*, the RECE followed procedures but was distracted by a parent and a child wandered outside and into a parking lot. In that case a suspension of four (4) months was imposed as part of a penalty order, which also included a mentorship program.

Counsel for the College further submitted that a joint submission should be accepted by the Panel unless it was so harsh or lenient, or otherwise contrary to the public interest, such that it would bring the administration of justice into disrepute.

## **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 5 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:
  - 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 "ECE Act"), 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 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. a copy of the Panel's Decision and Reasons.
  - d. The Member will meet with the Mentor at least 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 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 6 months of the date of this Order and in accordance with the following payment schedule:
  - a. \$200 on the date of this Order;

- b. \$200 by August 1, 2019;
- c. \$200 by September 1, 2019;
- d. \$200 by October 1, 2019; and
- e. \$200 by November 1, 2019.

## **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.

The Member cooperated with the College and, by agreeing to the facts and proposed penalty has accepted responsibility.

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

- The Member took immediate responsibility and reported the incident as soon as she returned to the Centre.
- The Member pled guilty.
- The Member has been registered with the College for three years and has had no prior incidents of misconduct.

The prime aggravating factors in this case were the nature of the professional misconduct involved and:

- The incident involved a 2.5 year-old child.
- The child was found away from the Centre's premises.
- The child was emotionally impacted, as evidenced by crying.
- The Member did not realize the Child was missing.
- The Child was missing for 15 minutes.
- The incident occurred because of the Member's failure to take appropriate steps during transition time.

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

The Panel found that the penalty satisfies the principles of general deterrence and public protection. The proposed suspension is in keeping 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 deterrents to the Member, and general deterrents to other members of the profession. The terms, conditions and limitations will help to protect the public. The Member's capacity and accountability will be strengthened by the mentoring process.

### **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.

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 \$1000.00 within six months of the date of this Order.

**I, Karen Damley 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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Karen Damley, Chairperson

July 4, 2019

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Date: