

DECISION AND REASONS

This matter was heard via videoconference by a panel of the Discipline Committee of the College of Early Childhood Educators (the "Panel") on April 19, 2021.

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 *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 were contained in the Notice of Hearing dated March 9, 2021, (Exhibit 1) which provided as follows.

1. At all material times, Mvidi Helene Batulapuka (the "**Member**") was a member of the College of Early Childhood Educators and employed as an early childhood educator ("**ECE**") by la Garderie Les Petites Mains (the "**Centre**") in Windsor, Ontario.
2. On or around May 29, 2017, the Member was supervising a group of toddlers on the Centre's fenced playground. Three of the toddlers were a two-year-old boy and 20-month-old twins (collectively, the "**Children**"). At around 10:45 a.m., a parent dropped off a fifth toddler at the playground. The Member did not make sure to verify that the gate to the playground was closed after the parent left. As a result, the Children left the playground through the gate.
3. They walked along a path leading to a nearby residential street. As they approached the

street, one of the boys crossed and another began to cross but stopped in the middle of the road, crying. Three members of the public stopped their cars and rushed to help the Children, just as the third boy was about to enter the road. More cars continued to pass as these members of the public escorted the children to the Centre's playground. The Member did not notice that the Children were missing for about 3-15 minutes, until they were brought back to the Centre.

4. Two staff members became aware of the incident when they saw the Children returning to the Centre with members of the public. The Member asked them not to tell anyone about the incident.
5. The Member did not report the incident to the Centre's management or to the Children's parents.
6. The Member violated the Centre's Outdoor Supervision Policy (the "**Policy**") in that she:
 - a) allowed a parent to drop off their child at the playground, knowing that the Policy required that all children be dropped off inside the Centre.
 - b) failed to ensure that the playground gate was closed.
7. By engaging in the conduct set out in paragraphs 2-6 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, Sched. 8 (the "**Act**"), in that:
 - a) She failed to adequately supervise 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 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 Standards;
- c) She acted 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 conducted herself 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 an agreement had been reached on the facts and introduced an Agreed Statement of Facts (Exhibit 3(b)), which read as follows.

The Member

1. Mvidi Helene Batulapuka (the "Member") has held a certificate of registration with the College of Early Childhood Educators (the "College") for approximately 4 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 a registered early childhood educator by la Garderie Les Petites Mains (the "Centre") located in Windsor, Ontario.

The Incident

3. On May 29, 2017, the Member was supervising a group of four toddlers on the Centre's fenced playground. Three of the toddlers were a two-year-old boy and 20-month-old twins (collectively, the "Children").
4. At around 10:45 a.m., a parent opened the playground gate and dropped off a fifth toddler at the playground. The Member did not make sure to verify that the gate was closed after the parent left. As a result, the Children left the playground through the gate without the Member seeing them.
5. If the Member were to testify, she would say that when the parent dropped off the fifth toddler, she was about to go on break and the person who was going to replace her during her break had arrived and was with the group. The Member would also say that when the parent left the toddler group, the Member and her replacement began to prepare for the transfer of the group from the Member to the replacement.
6. The Children walked along a path leading to a nearby residential street. As they approached the street, one of the boys crossed the street and another started to cross but stopped in the middle of the road, crying. Three members of the public stopped their cars and rushed to help the Children, just as the third boy was about to enter the road. Other cars continued to pass as these members of the public escorted the Children to the Centre's playground.
7. The Member did not see what happened outside the Centre playground and on the street. She did not notice that the Children were missing for up to five minutes. If the Member were to testify, she would say the following:
 - a) She realized that the Children were missing as she prepared to transfer the group of toddlers to her replacement;
 - b) Shortly after realizing that the Children were missing, she saw them outside the Centre's playground with a man. She went to pick them up and brought them back to the playground.
8. After the Children returned to the Centre, the Member asked two staff members in the Centre not to report the incident to the Centre's management. If the Member were to testify, she would say that she was in a state of emotional stress at the time.
9. The Member did not report the incident to the Centre's management or to the Children's

parents and left the Centre to go to an appointment. The incident was reported to the Centre's management by another staff member in the Centre. When the Member returned to the Centre, she went to the director's office in the Centre at her request and met with the Centre director and a representative from the children's aid society.

10. The Member did not comply with the Centre's policy entitled "Outdoor Supervision" in that she:

- a) Allowed a parent to drop off their child in the playground, instead of asking the parent to drop off their child inside the Centre;
- b) Failed to ensure that the playground gate was closed after the arrival of the fifth toddler.

Additional Information

11. Three weeks prior to the incident, the Centre director issued a warning letter to the Member. The letter mentions 5 incidents that took place in March and April 2017 where the Member did not follow accident reporting procedures. In all these incidents, the Member did not give a copy of the accident report to the parents and in three of these incidents, the reports were not given to the Centre director.

12. In addition, prior to the incident, the Centre management informed the member on several occasions, both verbally and in writing, of her obligation to respect the health and safety of the children under her responsibility.

13. Due to the incident described above, in addition to the Centre's previous concerns about the Member, the Centre terminated the Member's employment.

Admissions of Professional Misconduct

14. The Member admits that she engaged in and is guilty of professional misconduct as described in paragraphs 3 – 10 above, and as defined in subsection 33(2) of the *Early Childhood Educators Act, 2007*, S.O. 2007, c. 7, Sched. 8, in that:

- a) She failed to adequately supervise 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 their professional practice and to the care and learning of children under their 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 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 Standards of Practice;
- c) She acted 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
- d) 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 Agreed Statement of Facts. The Panel received a written plea inquiry (Exhibit 4) which was signed by the Member.

The Panel also conducted an oral plea inquiry and was satisfied that the Member's admission was voluntary, informed and unequivocal.

DECISION

The Panel considered the Agreed Statement of Facts, the Member's guilty plea and the observations made by the parties and found that the evidence supported findings of professional misconduct in respect of each of the allegations set out in the Notice of Hearing, in violation of subsections 2(2), 2(8), 2(10) and 2(22) of Ontario Regulation 223/08.

REASONS FOR DECISION

The Member admitted to the allegations in the Agreed Statement of Facts. The Member acknowledged, and the Panel has accepted, that the facts herein constitute professional misconduct as previously 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 showed, and the member admitted, that she did not abide by the College's standards of practice when she neglected to communicate and to follow the Centre's procedures regarding the arrival of children, that she did not check that the gate was locked, that she did not realize that the children were no longer in the yard, that she did not report the incident and that she asked colleagues not to report the incident. As a result of these breaches, children were left unattended and the situation could have posed a significant risk to their safety. The Member 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.

PENALTY DECISION

The parties presented the Panel with a Joint Submission on Penalty (Exhibit 5). In a verbal decision made on April 19, 2020, the Panel accepted the joint submission on penalty and made the following order as to penalty:

1. The Member is required to appear before a Panel of the Discipline Committee 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 nine (9) 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. The Registrar is directed 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 RECE or engaging in the practice of early childhood education, as defined in section 2 of the Act ("Employment"), 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. 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 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 Standards (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 7 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 its costs, fixed in the amount of \$1000 to be paid in accordance with the following schedule:
- a. \$200 within 60 days of this Order;
 - b. \$200 within 90 days of this Order;
 - c. \$200 within 120 days of this Order;
 - d. \$200 within 150 days of this Order;
 - e. \$200 within 180 days 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, 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. It is the Panel's conclusion that the Order would not offend these principles.

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. *College of Early Childhood Educators v. Sheila Franco*, 2020 ONOEP 2 (CanLII), *College of Early Childhood Educators v. Jessica Lealess*, 2018 ONOEP 2 (CanLII), and *College of Early Childhood Educators v. Malgorzata*, 2020 ONCECE 3 (CanLII)

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 concludes that the Member deserves the reprimand of her peers for her misconduct. The profession and the public expect members of the profession to act according to the standards of the profession, with integrity. The Panel found that the nine months suspension is reasonable and generally consistent with the range of suspensions that were imposed in the previous cases that were put before the Panel and given the aggravating factors in this case. The suspension and the reprimand will act as a 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. The Panel was satisfied that the proposed penalty is proportionate to the circumstances and protects the public interest.

ORDER AS TO COSTS

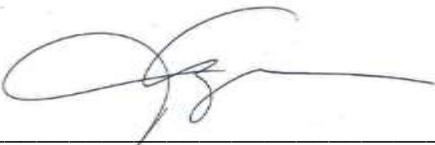
Subsection 33(5)(4) of the Act provides that in an appropriate case, a panel may make an order requiring a member who the panel finds has committed an act of professional misconduct to pay all or part of the College's legal costs and expenses, investigation costs and hearing costs.

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 following schedule:

- f. \$200 within 60 days of this Order;
- g. \$200 within 90 days of this Order;
- h. \$200 within 120 days of this Order;
- i. \$200 within 150 days of this Order;
- j. \$200 within 180 days of this Order.

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



Julie Cyr, RECE, Chairperson

May 20, 2021

Date