

NOTICE OF PUBLICATION BAN

In the matter of College of Early Childhood Educators and Jennifer Mesaric 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, Chair
Melissa Downey, RECE
Yalin Gorica, RECE

BETWEEN:)	
)	
COLLEGE OF EARLY)	Vered Beylin
CHILDHOOD EDUCATORS)	For the College of Early Childhood Educators
)	
and)	
)	
JENNIFER MESARIC)	Self-represented,
REGISTRATION # 64012)	
)	
)	
)	Elyse Sunshine,
)	Rosen Sunshine LLP
)	Independent Legal Counsel
)	
)	Heard: August 10, 2021

DECISION AND REASONS

This matter was heard by a panel of the Discipline Committee (the "Panel") of the College of Early Childhood Educators (the "College") on August 10, 2021. The hearing proceeded electronically (by videoconference) pursuant to the *Early Childhood Educators Act, 2007* (the "Act"), the *Hearings in Tribunal Proceedings (Temporary Measures) Act, 2020* and the College's Rules of Procedure of the Discipline Committee and of the Fitness to Practise Committee.

At the outset, the Panel noted that the hearing was being recorded in the Zoom platform at the direction of the Panel for the hearing record, and ordered that no person shall make any audio or video recording of these proceedings by any other means.

PUBLICATION BAN

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

THE ALLEGATIONS

The allegations against the Member were contained in the Notice of Hearing dated July 27, 2021, (Exhibit 1) which provided as follows:

1. At all material times, Jennifer Mesaric (the "Member") was a member of the College and was employed as an Early Childhood Educator ("ECE") at St. Jude Early Learning Child Care Centre, in Mississauga, Ontario (the "Centre").
2. On or about the late afternoon of December 20, 2019, the Member and B.A.A. a Registered Early Childhood Educator or "RECE" (collectively, the "Staff") were supervising a group of preschool aged children at the Centre's fenced playground, including an almost 3½ year old girl (the "Child"). At approximately 5:10 p.m. the Staff brought the children inside, without

realizing that the Child was left behind on the playground. The Member did not conduct a head count and did not check the attendance sheet to ensure that all the children were present.

3. The Child remained in the playground alone and unsupervised. It was already getting dark and the temperature at the time was -5 degrees Celsius.
4. Approximately 15 minutes later, at 5:25 p.m., a member of the public found the Child crying, cold and scared. He immediately escorted the Child back to the Centre and loudly banged on the Centre's door. Until that point, the Member did not notice that the Child was missing.
5. By engaging in the conduct set out in paragraphs 2 – 4 above, the Member engaged in professional misconduct as defined in subsection 33(2) of 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 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;
 - iv. 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;
 - v. 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 provided as follows:

1. The Member has had a certificate of registration with 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 an RECE at the Centre.

The Incident

3. During the late afternoon of December 20, 2019, the Member and B.A.A. (were supervising a group of 7 preschool aged children at the Centre's fenced playground, including the Child. At approximately 5:10 p.m., the Staff brought the children inside, without realizing that the Child was left behind on the playground. The Member and B.A.A. did not conduct a head count and did not check the attendance sheet to ensure that all the children were present.
4. The Child remained in the playground alone and unsupervised. It was already getting dark and the temperature at the time was -5 degrees Celsius.
5. The Member left the group to take a break. B.A.A. brought the preschool aged children into the toddler room, where the Centre's Assistant Director was supervising three other children. B.A.A. did not conduct a headcount or an attendance check upon combining her group with the toddler group.

6. Approximately 15 minutes later, at 5:25 p.m., a member of the public found the Child crying, cold and scared. He immediately escorted the Child back to the Centre and loudly banged on the Centre's door. The Member was still in the break room at that time. Until that point, the Member and B.A.A did not notice that the Child was missing.

Additional Information

7. The Child's mother advised that, after the incident:
 - a. the Child did not want to continue attending the Centre and her attendance was withdrawn; and
 - b. the Child became anxious about the possibility of being left alone again.
8. Two weeks prior to this incident, the Member failed to conduct a headcount, resulting in two children remaining outside unsupervised. Following this incident, there was a reminder conversation with the Member about the importance of headcounts. Additionally, on another occasion, the Member turned away from a child she was supervising on the playground and propped the door to the Centre open to bring something from the Centre. She was not supervising the Child for a short period of time and was reminded she could not do that.
9. If the Member were to testify, she would advise that she was devastated about 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, 4 and 6 above, and as defined in subsection 33(2) of 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 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;
 - iv. 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;
 - v. 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.

SUBMISSIONS OF THE PARTIES ON LIABILITY

The College submitted that all the allegations set out in the Notice of Hearing were admitted to by the Member and were supported by the evidence. The College submitted further that the only evidence before the Panel consisted of the Agreed Statement of Facts (Exhibit 2) and that this contained the facts which established each of the allegations. College counsel summarized these as follows:

The Member failed to do a headcount on returning from the outdoor play area which resulted in a 3 and a half year old pre-school child being left on the playground on a -5 degree Celsius day. The Child remained in the playground unsupervised for 15 minutes. The Child was found cold, crying and scared by a member of the public, and brought back into the Centre. Until then, the Member had not realized the Child was missing.

The Member did not provide the children under her care with a safe environment. She failed to model appropriate behaviour required by legislation and regulation, and by the College's Code of Ethics and Standards of Practice. Her conduct negatively reflected on the profession as a whole and could erode public confidence.

The College submitted that failing to properly supervise children is the most common type of misconduct before this Discipline Committee.

The Member did not make any relevant submissions.

FINDINGS AND REASONS FOR DECISION

Having regard to the facts set out in the Agreed Statement of Facts, the Panel accepted the Member's admission and found her guilty of professional misconduct as alleged in the Agreed Statement of Facts and the Notice of Hearing.

The allegations of misconduct contained in the Notice of Hearing are supported by the facts set out in the Agreed Statement of Facts. The evidence shows that the Member contravened the Standards of Practice when she failed to conduct a headcount after exiting the Centre's playground. She went inside the Centre with her class but failed to notice the Child was not with

the group, resulting in the Child remaining unsupervised in the Centre's fenced playground for 15 minutes.

In so doing, the Member failed to adequately supervise the Child, who was under her professional responsibility. She contravened the standards of practice when she neglected to properly follow established procedures for transitions, as described in paragraphs three, four and six of the Agreed Statement of Facts. 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 Act, and thereby failed to meet her obligations as an RECE. Finally, the Member engaged in conduct unbecoming of a member.

The Panel noted that the Member was one of two employees supervising the group on the day in question. Both the Member and the other staff failed to communicate and work together to ensure supervision of, and a safe environment for, the children under their care.

POSITION OF THE PARTIES ON PENALTY

Counsel for the College and Counsel for the Member made a joint submission as to an appropriate penalty and costs order (the "Proposed Order"). The parties submitted that the Panel should 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 6 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 RECE or engaging in the practice of early childhood education, as defined in section 2 of the Act, the

Member, at her own expense, will arrange a mentoring relationship with a Mentor, who:

- i. is an RECE in good standing with the College,
- ii. is employed in a supervisory position,
- iii. has never been found guilty of professional misconduct and/or incompetence by the Discipline Committee of the College,
- iv. is not currently found to be incapacitated by the Fitness to Practise Committee of the College,
- v. is not currently the subject of allegations referred to the Discipline Committee or the Fitness to Practise Committee of the College, and
- vi. is pre-approved by the Director of Professional Regulation (the "Director"). In order to pre-approve the Mentor, the Member will provide the Director with all requested information, including (but not limited to) the name, registration number, telephone number, address and résumé of the Mentor.

For clarity, once the suspension in section 2 above ends, 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 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's costs fixed in the amount of \$1,000, to be paid within 6 months of the date of the Order.

Submissions of the College on Penalty and Costs

Counsel for the College submitted that the Proposed Order was appropriate and reasonable in light of the facts agreed upon. College counsel submitted that the Proposed Order met the principles that a penalty order was required to meet, in that it would send a message broadly to members of the profession and the public that the conduct at issue is unacceptable and will not be tolerated by the College. The Proposed Order would also deter other members from engaging in this conduct and it would deter the Member from engaging in misconduct in the future. Counsel also submitted that the Proposed Order, which contains an extensive program of mentorship, would help to rehabilitate and support the Member in her return to practice.

Counsel for the College provided four cases in support of the Proposed Order and submitted that these cases represented conduct of a similar nature and established that the Proposed Order was reasonable and would not bring the administration of justice into disrepute. These cases were: *College of Early Childhood Educators v. Ban Al Azawi*, 2021 ONCECE 9 (CanLII); *College of Early Childhood Educators v. Sarah Louise Cameron*, 2019 ONCECE 7 (CanLII); *College of Early Childhood Educators v. Jenny Ng-Nakatani*, 2019 ONCECE 17 (CanLII); and *College of Early Childhood Educators v. Rebecca Ann Wardaugh*, 2019 ONCECE 19 (CanLII)

College counsel also submitted that the penalty should take into account the aggravating and mitigating factors in this case, and presented the following aggravating factors for the Panel's consideration:

- The very young age of the Child (3 ½ half years old);
- The length of time the Child was left alone (15 minutes);
- The fact that the Member did not realize the Child was missing;
- The Member did not follow procedures and failed to take specific action which could have prevented the situation (i.e. failing to do a headcount and not reviewing attendance);

- The Child was significantly emotionally impacted. Following the incident, the mother observed anxiety in the Child being left alone. The Child was withdrawn by the parents from the Centre;
- The Child was exposed to dangerous weather elements. She was crying, cold and scared when she was found by a member of the public; and
- There were previous incidents in which the Member failed to adequately follow procedures regarding head counts. These were brought to her attention by her supervisor. She was given reminders to comply with the procedures and cautioned about the potential risks.

The College also identified the mitigating factors in this case, including the following:

- The Member acknowledged her wrongdoing, accepted responsibility, and cooperated with the investigation;
- She pleaded guilty to the misconduct charges, which saved time and resources for the College. She also agreed to a joint submission on penalty which showed insight into her conduct; and
- She has been a member in good standing with the College and has a clear record.

The College noted that the facts that the Child was not injured or physically harmed was one additional consideration that was described as the absence of aggravating factors.

Counsel for the College submitted that this was also an appropriate case to award costs and while costs were separate from penalty, the costs included in the Proposed Order represented a symbolic amount.

Submissions of the Member on Penalty and Costs

The Member made no submission on the Proposed Order.

PENALTY DECISION

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

1. The Member is required to appear before the Panel to be reprimanded immediately following the hearing of this Order.
2. The Registrar is directed to suspend the Member's certificate of registration for a period of 6 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 an RECE or engaging in the practice of early childhood education, as defined in section 2 of the Act, the Member, at her own expense, will arrange a mentoring relationship with a Mentor, who:
 - i. is an RECE in good standing with the College,
 - ii. is employed in a supervisory position,
 - iii. has never been found guilty of professional misconduct and/or incompetence by the Discipline Committee of the College,
 - iv. is not currently found to be incapacitated by the Fitness to Practise Committee of the College,
 - v. is not currently the subject of allegations referred to the Discipline Committee or the Fitness to Practise Committee of the College, and
 - vi. is pre-approved by the Director. In order to pre-approve the Mentor, the Member will provide the Director with all requested information, including (but not limited to) the name, registration number, telephone number, address and résumé of the Mentor.

For clarity, once the suspension in section 2 above ends, 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 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.

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 found that the Proposed Order was appropriate and in the public interest, and therefore accepted the joint submission.

The Panel is aware that no 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, each of which involved similar facts to those of this case and a similar penalty to that proposed. The Panel took note that the Member failed to realize that the Child was not accounted for. Had the Member taken appropriate action and followed procedures,

the situation could have been prevented. Similarly, if the Member had communicated more effectively with her colleague, the length of the time that the Child was left alone unsupervised might have been significantly reduced. The Panel also was concerned that the Child, who was left alone in the playground, was reported to be emotionally upset and crying. The Child was exposed to minus 5-degree weather conditions. The Child was left in the vulnerable position of having a caring stranger return them to the Centre, which may not have otherwise been the case. These were all factors the Panel considered in determining the penalty.

The Panel considered that the Member cooperated with the College and, by agreeing to the facts and Proposed Order, has accepted responsibility for the misconduct. Having considered all of these factors, the Panel was satisfied that the Proposed Order 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 deterrents 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. The Member will also be rehabilitated through the professional mentoring sessions.

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 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 \$1,000 to be paid within six months of the date of the Order.

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.



Barney Savage, Chair

August 17, 2021

Date