

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 July 27, 2020. 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 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.

THE ALLEGATIONS

The allegations against the Member were contained in the Notice of Hearing dated July 8, 2020 (Exhibit 1) which provided as follows:

1. At all material times, Marlène Michel (the "Member") was a member of the College of Early Childhood Educators and was employed as an Early Childhood Educator ("ECE") at Pinocchio Educational Centre (the "Centre") in Ottawa, Ontario.
2. On or about June 8, 2016, the Member and three non-ECE staff members (collectively the "Staff") were supervising a group of 12 toddlers in the Centre's yard, including L., a 2½ year old girl (the "Child"). At approximately 3:45 p.m., the Staff brought 11 of the toddlers back into the Centre's locker area, located near the door to the yard. The Member, who was the last staff member to come inside, noticed that the Child was still in the yard.
3. While the Member was inside assisting other children to take off their outdoor clothes and shoes, she called out to the Child several times, asking her to come in. The Member then counted the children, and, believing that all the children were present, proceeded to take the children into the toddler classroom 10 minutes after coming in from the yard, at 3:55 p.m.
4. Approximately 20 minutes later, at 4:15 p.m., a parent who passed by the Centre's yard noticed that the Child was in the yard, alone and unsupervised. The Centre's Supervisor was notified. The Supervisor returned the Child to the toddler classroom. Until that point

the Member did not notice that the Child was missing.

5. In total, the Child was alone and unsupervised at the Centre's yard for approximately 20 – 30 minutes.
6. Between 3:45 p.m. and 4:15 p.m. the Member failed to do the following:
 - a. She did not go back to the yard to bring the Child into the Centre, after calling out to the Child a few times.
 - b. Upon returning to the Centre, she did not use the attendance sheet to conduct an attendance check.
 - c. After returning to the toddler classroom, she did not re-count the children to ensure that all of them were present.
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, Sch. 8, in that:
 - a. The Member failed to supervise adequately a person who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(2);
 - b. The Member failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8), in that:
 - i. The Member failed to 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).

EVIDENCE

Counsel for the College advised the Panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts (Exhibit 3), which provided as follows:

The Member

1. Marlène Michel (the "Member") has had a certificate of registration with the College of Early Childhood Educators (the "College") for approximately 11 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 Pinocchio Educational Centre (the "Centre") in Ottawa, Ontario.

The Incident

3. Approximately four years ago, on June 8, 2016, the Member and three non-ECE staff members (collectively the "Staff") were supervising a group of 12 toddlers in the Centre's yard, including L., a 2½ year old girl (the "Child"). At approximately 3:45 p.m., the Staff

brought 11 of the toddlers back into the Centre's locker area, located near the door to the yard. The Member, who was the last of the Staff to come inside, noticed that the Child was still in the yard.

4. While the Member was inside assisting other children to take off their outdoor clothes and shoes, she called out to the Child several times, asking her to come in. The Member then counted the children and, believing that all the children were present, proceeded to take the children into the toddler classroom 10 minutes after coming in from the yard, at 3:55 p.m.
5. Approximately 20 minutes later, at 4:15 p.m., a parent who passed by the Centre's yard noticed that the Child was in the yard, alone and unsupervised. The Centre's Supervisor was notified. The Supervisor returned the Child to the toddler classroom. Until that point the Member did not notice that the Child was missing.
6. In total, the Child was alone and unsupervised at the Centre's yard for approximately 20 – 30 minutes.
7. Between 3:45 p.m. and 4:15 p.m.:
 - a. The Member did not go back to the yard to bring the Child into the Centre, after calling out to the Child a few times.
 - b. Upon returning to the Centre, she did not use the attendance sheet to conduct an attendance check.
 - c. After returning to the toddler classroom, she did not re-count the children to ensure that all of them were present.

Additional Information

8. When the Supervisor approached the Child in the yard, the Child was lying on the grass, near the fence. The Child was calm and appeared to be unharmed.
9. The yard was fully fenced, and there were no hazards on its premises.
10. If the Member were to testify, she would advise that she is deeply remorseful for the incident.

Admissions of Professional Misconduct

11. 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:
 - 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 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 of professional misconduct set out in the Notice of Hearing and further particularized 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 of professional misconduct was voluntary, informed and unequivocal.

SUBMISSIONS OF THE PARTIES ON LIABILITY

The College submitted that the facts as presented support a finding of professional misconduct under each of the allegations in the Notice of Hearing. The College submitted that the evidence established that the Member failed to adequately supervise a toddler age child under her care. The College submitted that this was a serious breach of the standards of the profession. The Member failed to maintain a safe and healthy learning environment for the Child. She was a very experienced RECE and was aware that the attendance sheet should have been used to conduct an appropriate head count. That a member failed to supervise a young child reflects negatively on the profession and this is especially true when the member was unaware that the child was outdoors alone and unsupervised for 20 to 30 minutes. This behaviour is clearly unbecoming conduct for a member of the profession. The College further submitted that this was unprofessional conduct, and while the wording of the legislation includes conduct that would be viewed as disgraceful or dishonourable, in this case, there was no evidence of it being anything other than unprofessional.

The Member submitted that she admitted to the conduct and as such, a finding of guilt to the allegations of professional misconduct should be made.

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 Notice of Hearing.

The Panel considered the Agreed Statement of Facts and the Member's guilty plea and found that the evidence, particularly paragraphs 3 through 10 of the Agreed Statement of Facts, supported the findings of professional misconduct as alleged in the Notice of Hearing. The evidence shows that the Member contravened the standards of practice when she failed to use the attendance sheet to complete a proper head count and failed to recount the children to ensure they were all present. Such conduct would reasonably be perceived as reflecting negatively on the profession. This is a prevailing problem in the profession and members have an obligation to carefully supervise the children for whom they are responsible. The evidence further supports findings that the Member conducted herself in a manner that is unbecoming and acted in an unprofessional manner.

POSITION OF THE PARTIES ON PENALTY

Counsel for the College and the Member made a joint submission as to an appropriate penalty and costs order (the "Proposed Order"). The parties asked that the Panel accept their joint submission and make an order:

1. Requiring the Member to appear before a Panel of the Discipline Committee to be reprimanded immediately following the hearing of this matter.
2. Directing the Registrar to suspend the Member's certificate of registration for a period of 3 months. The suspension will take effect from the date of the Order of the Discipline

Committee and will run without interruption as long as the College has not otherwise prohibited the Member from practising or suspended the Member for any other reason.

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

Mentorship

- a. Prior to the Member commencing or resuming employment as a Registered Early Childhood Educator ("RECE") or engaging in the practice of early childhood education, as defined in section 2 of the *Early Childhood Educators Act, 2007*, the Member, at her own expense, will arrange a mentoring relationship with a Mentor, who:
 - i. is an RECE in good standing with the College,
 - ii. is employed in a supervisory position,
 - iii. has never been found guilty of professional misconduct and/or incompetence by the Discipline Committee of the College,
 - iv. is not currently found to be incapacitated by the Fitness to Practise Committee of the College,
 - v. is not currently the subject of allegations referred to the Discipline Committee or the Fitness to Practise Committee of the College, and
 - vi. is pre-approved by the Director of Professional Regulation (the "Director"). In order to pre-approve the Mentor, the Member will provide the Director with all requested information, including (but not limited to) the name, registration number, telephone number, address and résumé of the Mentor.

For clarity, the Member can commence or resume employment as an RECE after arranging a mentorship relationship with a pre-approved Mentor.

- b. Within 14 days of commencing or resuming employment as an RECE, the Member will ensure that the Director is notified of the name, address and telephone number of all employers.

- c. The Member will provide the Mentor with a copy of the following documents within 14 days of being notified that the Mentor has been approved by the Director, or within 14 days after the release of such documents, whichever is earliest:
 - i. the Panel's Order,
 - ii. the Agreed Statement of Facts,
 - iii. the Joint Submission on Penalty and Costs, and
 - iv. the Panel's Decision and Reasons.

- d. The Member will meet with the Mentor at least every 2 weeks after the Mentor has been approved by the Director to discuss the following subjects:
 - i. review of the College's Code of Ethics and Standards of Practice,
 - ii. the acts or omissions by the Member, which resulted in the Discipline Committee finding the Member guilty of professional misconduct,
 - iii. the potential consequences of the misconduct to the parents/children affected, and to the Member's colleagues, profession and self,
 - iv. strategies for preventing the misconduct from recurring, and
 - v. the Member's daily practice and any issues that arise, to ensure that she is meeting the College's Standards of Practice (without disclosing personal or identifying information about any of the children under the Member's care, or clients of her employer(s)).

- e. After a minimum of 5 sessions, the Member can seek the Director's permission to stop participating in the mentorship sessions by providing the Director with a report by the Mentor that sets out the following:
 - i. the dates the Member attended the sessions with the Mentor,
 - ii. that the Mentor received a copy of the documents referred to in paragraph 3(c),

- iii. that the Mentor reviewed the documents set out in paragraph 3(c) and discussed the subjects set out in paragraph 3(d) with the Member, and
 - iv. the Mentor's assessment of the Member's insight into her behaviour.
- f. All documents delivered by the Member to the College or the Mentor will be delivered by email, registered mail or courier, and the Member will retain proof of delivery.
 - g. The College may require proof of compliance with any of the terms in this Order at any time.
4. Requiring the Member to pay the College's costs fixed in the amount of \$1,000, to be paid in accordance with the following payment schedule:
- a. \$200 on the date of the Order;
 - b. \$200 within 30 days of the Order;
 - c. \$200 within 60 days of the Order;
 - d. \$200 within 90 days of the Order; and
 - e. \$200 within 120 days of the Order.

Submissions of the College on Penalty and Costs

Counsel for the College submitted that the proposed sanction/penalty was appropriate and reasonable in light of the facts agreed upon. Counsel indicated that the Panel should consider a number of different factors in determining the reasonableness of the proposed penalty. The College submitted that the Panel should consider that a message needs to be sent broadly to members of the profession and to the public that professional misconduct of this nature will carry significant consequences. The penalty should also send a message to this particular Member that such conduct is unacceptable. The penalty proposed will offer an opportunity for reflection and rehabilitation for the Member. The penalty is also generally proportionate to other similar decisions keeping in mind the unique facts of this case. Counsel noted that failure to adequately supervise children has been an issue that has been addressed in multiple previous

decisions of the Discipline Committee. College Counsel provided three cases where there was similar conduct at issue:

- *College of Early Childhood Educators vs Jenny Kar Yun Li*, 2018 ONCECE 7
- *College of Early Childhood Educators vs Sarah Louise Cameron*, 2019 ONCECE 7
- *College of Early Childhood Educators vs Sarah Ashley Walton*, 2019 ONCECE 10

Counsel noted that while no two cases are precisely the same, these cases contained some factual circumstances where there were both greater and lesser risks to children, based on the length of time children were unsupervised and the risk of harm of them. College Counsel submitted that on balance, the range of penalties imposed in these cases supports the penalty agreed to by the parties in the Proposed Order. Counsel for the College identified the aggravating factors that the Panel should consider in determining the reasonableness of the proposed penalty:

- The Child was vulnerable, primarily because of her young age of 2 1/2 years.
- There was a significant risk of harm because the Child was left outdoors unsupervised.
- The member failed to go outside and escort the Child back inside the premises.
- The member did not take appropriate action in order to prevent such an incident, such as using the attendance sheet to complete a head count.

College counsel also identified a number of mitigating factors in this case, including:

- The Member acknowledged her error and cooperated with the investigation.
- The Member pled guilty and agreed to proceed by way of an Agreed Statement of Facts and Joint Submission on Penalty and Costs.
- The Member has a long history in the profession and there have been no other incidents or complaints.

Counsel also directed the Panel's attention to four other considerations:

- The Child was unsupervised for a short period of time.
- The Child was unharmed.
- The Child does not appear to have experienced any emotional harm.

- It appears to be an isolated incident, and there is no evidence of a repeated pattern of conduct on the part of the Member.

College Counsel also submitted that the costs contained in the proposed Order were reflective of the agreement reached and were a symbolic amount in the circumstances.

Submissions of the Member on Penalty and Costs

The Member confirmed that she had agreed to the joint submission on penalty and costs as presented by College counsel.

PENALTY DECISION

The Panel accepted the parties' joint submission on penalty and made the following order as to penalty when releasing its oral decision on July 27, 2020:

1. The Member is required to appear before a Panel of the Discipline Committee to be reprimanded immediately following the hearing of this matter.
2. The Registrar is directed to suspend the Member's certificate of registration for a period of 3 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:
 - a. Prior to the Member commencing or resuming employment as a Registered Early Childhood Educator ("**RECE**") or engaging in the practice of early childhood education, as defined in section 2 of the *Early Childhood Educators Act, 2007*, the Member, at her own expense, will arrange a mentoring relationship with a Mentor, who:
 - i. is an RECE in good standing with the College,
 - ii. is employed in a supervisory position,

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

For clarity, the Member can commence or resume employment as an RECE after arranging a mentorship relationship with a pre-approved Mentor.

- b. Within 14 days of commencing or resuming employment as an RECE, the Member will ensure that the Director is notified of the name, address and telephone number of all employers.
- c. The Member will provide the Mentor with a copy of the following documents within 14 days of being notified that the Mentor has been approved by the Director, or within 14 days after the release of such documents, whichever is earliest:
 - i. the Panel’s Order,
 - ii. the Agreed Statement of Facts,
 - iii. the Joint Submission on Penalty and Costs, and
 - iv. the Panel’s Decision and Reasons.
- d. The Member will meet with the Mentor at least every 2 weeks after the Mentor has been approved by the Director to discuss the following subjects:
 - i. review of the College’s Code of Ethics and Standards of Practice,
 - ii. the acts or omissions by the Member, which resulted in the Discipline

- Committee finding the Member guilty of professional misconduct,
- iii. the potential consequences of the misconduct to the parents/children affected, and to the Member's colleagues, profession and self,
 - iv. strategies for preventing the misconduct from recurring, and
 - v. the Member's daily practice and any issues that arise, to ensure that she is meeting the College's Standards of Practice (without disclosing personal or identifying information about any of the children under the Member's care, or clients of her employer(s)).
- e. After a minimum of 5 sessions, the Member can seek the Director's permission to stop participating in the mentorship sessions by providing the Director with a report by the Mentor that sets out the following:
- i. the dates the Member attended the sessions with the Mentor,
 - ii. that the Mentor received a copy of the documents referred to in paragraph 3(c),
 - iii. that the Mentor reviewed the documents set out in paragraph 3(c) and discussed the subjects set out in paragraph 3(d) with the Member, and
 - iv. the Mentor's assessment of the Member's insight into her behaviour.
- f. All documents delivered by the Member to the College or the Mentor will be delivered by email, registered mail or courier, and the Member will retain proof of delivery.
- g. The College may require proof of compliance with any of the terms in this Order at any time.

As the hearing concluded later than anticipated and the Member was not able to remain in attendance in order to receive her reprimand, College counsel filed the Member's signed Waiver of Appeal (Exhibit 6) and with the consent of the parties, the Panel advised that the College would contact the Member to re-schedule the reprimand on a date to be scheduled as soon as possible following the conclusion of the hearing.

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. It is the Panel's conclusion that the joint penalty reached by the parties is well within the range of appropriate penalties for similar conduct.

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 therefore orders that the Member is required to pay the College's costs fixed in the amount of \$1,000, to be paid in accordance with the following payment schedule:

- a. \$200 on the date of the Order;
- b. \$200 within 30 days of the Order;
- c. \$200 within 60 days of the Order;
- d. \$200 within 90 days of the Order; and
- e. \$200 within 120 days 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.

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

Barney Savage, Chairperson

September 14, 2020

Date: