

NOTICE OF PUBLICATION BAN

In the matter of College of Early Childhood Educators and Jenny Ng-Nakatani, 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, Chairperson
Lori Huston, RECE
Julie Benoit, RECE

BETWEEN:)
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COLLEGE OF EARLY) Vered Beylin
CHILDHOOD EDUCATORS) for the College of Early Childhood Educators
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- and -)
)
Jenny Ng-Nakatani) Self-Represented
REGISTRATION # 16895)
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)
)
) Elyse Sunshine
) Independent Legal Counsel
)
)
) Heard: November 14, 2019

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 November 14, 2019.

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 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 October 17, 2019, (Exhibit 1) were as follows:

1. At all material times, Jenny Ng-Nakatani (the "Member") was a member of the College of Early Childhood Educators and was employed as an Early Childhood Educator ("ECE") at the Chester Le Early Learning and Child Care Centre (the "Centre") in Toronto, Ontario.
2. On or about July 6, 2016, the Member was responsible for supervising a group of toddlers at the Centre. At approximately 10:30am, the Member was outside with the group at the Centre's playground. M.L., a Child Care Aide ("CCA"), arrived to replace the Member. The Member left the playground without advising M.L. of how many children were under her supervision.
3. Approximately 25 minutes later, at 10:55am, M.L. brought the toddler group into the Centre, without realizing that the Child was left behind on the playground. The Member, who met the group in the hallway, did not conduct a headcount and did not check the attendance sheet to ensure that all the children were present.
4. Approximately 30 minutes later, at 11:25am, one of the toddlers from the Member's group (the "Child") was found alone on the playground by two members of the public. They attempted to get into the fenced playground to assist the Child and were noticed by another staff member, J.S. J.S. brought the Child into the Centre. The Member did not notice that the Child was missing until the Child was returned.

5. While the Child was alone on the playground, the Member falsely signed an attendance form indicating that all of the children from the group were present.
6. 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 Early Childhood Educators Act, 2007, S.O. 2007, c. 7, Sch. 8 (the "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);

- d) The Member signed or issued, in her professional capacity, a document she knew or ought to have known contained false, improper, or misleading statements, contrary to Ontario Regulation 223/08, subsection 2(16);
- e) The Member falsified a record relating to her professional responsibilities, contrary to Ontario Regulation 223/08, subsection 2(17); and/or
- f) The Member acted in a manner that is unbecoming a Member, contrary to Ontario Regulation 223/08, subsection 2(22)..

WITHDRAWAL OF ALLEGATIONS

Counsel for the College advised the Panel that the College was requesting leave to withdraw the allegation set out in paragraph 6 (e) of the Notice of Hearing on consent of the Member. The Panel granted this request.

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 read as follows:

The Member

1. The Member has had a certificate of registration with the College for approximately 10 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 in Toronto, Ontario.

The Incident

3. On July 6, 2016, the Member was responsible for supervising a group of toddlers at the Centre. At approximately 10:30 a.m., while the Member was outside with the group at the Centre's playground, a child care aide, M.L., arrived to temporarily relieve the Member.
4. Approximately 25 minutes later, at 10:55 a.m., M.L. brought the group into the Centre without realizing that the Child remained outside on the playground. The Member met the group in the hallway, and brought them to the toddler room.
5. Approximately 30 minutes later, at 11:25 a.m., the Child was found outside and alone on the playground by two members of the public. They attempted to get into the fenced

playground to assist the Child and were noticed by J.S., another staff member at the Centre. J.S. brought the Child into the Centre. The Child appeared to be fine and was not in distress.

6. The Member did not notice that the Child was missing until J.S. returned the Child to the classroom.
7. There was a heat warning in effect for the Toronto area on the day of the incident, with the temperature being approximately 32 degrees Celsius, although it felt closer to 38 degrees Celsius with the humidity.
8. The Member breached the Centre's Child Supervision Policy and Attendance Policy in the following ways:
 - a. When the Member left the playground, at 10:30 a.m., she did not advise M.L. how many children were under her supervision.
 - b. When the Member met the group in the hallway, at 10:55 a.m., she did not communicate with M.L. to verify the number of children in her care.
 - c. Between 10:55 a.m. and 11:25 a.m., prior to bringing the children back into the toddler room, the Member did not conduct a headcount and did not check the attendance sheet to ensure that all of the children were present.
9. While the Child was outside and alone on the playground, the Member signed an attendance form indicating that all of the children from the group were present, even though that was not true.
10. As a result of the incident, the Centre suspended the Member for three days.

Admissions of Professional Misconduct

11. The Member admits that she engaged in and is guilty of professional misconduct as described in paragraphs 3 to 6, 8 and 9 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) She failed to supervise adequately a person who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(2);
 - b) She failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8), in that:
 - i. She failed to maintain a safe and healthy learning environment, contrary to Standard III.A.1 of the College's Standards of Practice;
 - ii. She failed to know, understand and abide by the legislation, policies and procedures that 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.

c) She acted or failed to act in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 223/08, subsection 2(10);

d) She signed or issued, in her professional capacity, a document she knew or ought to have known contained false, improper, or misleading statements, contrary to Ontario Regulation 223/08, subsection 2(16);e) 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 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.

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.

The evidence shows that the Member contravened the standards of practice when she failed to communicate to her colleague the number of children in her group in the playground. As a result, this one child was left outside for 30 minutes with an extreme heat warning in effect. In addition, when returning from break and encountering her group, she failed to conduct a head count and did not notice that a child was missing from the group. The Member signed an attendance sheet indicating that all of the children from the group were present, even though that was false.

With respect to all allegations, the Panel finds that the Member's conduct would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional. The Member failed to maintain a safe and healthy learning environment for children, which is fundamental in the profession.

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 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 an RECE or engaging in the practice of early childhood education, as defined in section 2 of the ECE 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, 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 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 this Order and in accordance with the following payment schedule:
- a. \$200 on the date of this Order;
 - b. \$200 thirty (30) days following the date of the Order;
 - c. \$200 sixty (60) days following the date of the Order;
 - d. \$200 ninety (90) days following the date of the Order; and
 - e. \$200 one hundred and twenty (120) days following the date of the Order.

Submissions of the Parties

Counsel for the College submitted that the proposed order was appropriate and reasonable in light of the facts agreed upon. The College submitted that the proposed penalty sent a strong message to the public and would enhance public confidence in the profession. It also addresses the principles of general deterrence, specific deterrence and rehabilitation and remediation. The College submitted that this kind of case is not unique and poses a real problem for the profession.

The College submitted that a proposed penalty must be consistent with the range of penalties in similar cases and in this regard provided two cases in support of the proposed penalty *College of Early Childhood Educators v Sarah Ashley Walton*, 2019 ONCECE 10 (CanLII) and *College*

of Early Childhood Educators v Sarah Louise Cameron, 2019 ONCECE 7 (CanLII). The College submitted that these cases, where the members had engaged in similar conduct, established that the proposed penalty was reasonable and would not bring the administration of justice into disrepute.

The College submitted that the prime aggravating factors in this case were:

- The incident involved a toddler;
- The Child was left outside for 30 minutes
- The Child was at greater risk due to the extremely hot weather;
- The Member did not realize the Child was missing;
- The Child was located by two members of the public;
- The incident occurred because of the Member's failure to take action and follow procedures; and
- The member signed an inaccurate attendance record.

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

- The Member took immediate responsibility and fully cooperated with the College;
- The Member pled guilty and agreed to a joint submission; and
- The Member has been registered with the College for ten years and has had no prior incidents of misconduct.

Other considerations in determining penalty were brought to the attention of the Panel:

- The Child was not injured or harmed;
- The Child did not appear to be emotionally affected; and
- This is an isolated incident

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 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 an RECE or engaging in the practice of early childhood education, as defined in section 2 of the ECE 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, 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 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 this Order and in accordance with the following payment schedule:
- a. \$200 on the date of this Order;
 - b. \$200 thirty (30) days following the date of the Order;
 - c. \$200 sixty (60) days following the date of the Order;
 - d. \$200 ninety (90) days following the date of the Order; and
 - a. \$200 one hundred and twenty (120) days following the date of the 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 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 for her actions.

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 penalty is in keeping with the range of suspensions that were imposed in the previous cases that were put before the Panel. The suspension is appropriate given the aggravating factors in this case. The suspension, along with the reprimand, will act as a specific deterrent to the Member, and general deterrents to other members of the profession, from engaging in such conduct.

The terms, conditions and limitations imposed on the Member's certificate will help to protect the public. The Member will be rehabilitated through mentoring sessions.

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 \$1,000, to be paid in accordance with the payment schedule noted above.

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, Chairperson

December 4, 2019

Date