

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 January 27, 2022. 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.

THE ALLEGATIONS

The allegations against the Member were contained in the Notice of Hearing dated November 23, 2021 (**Exhibit 1**) which provided as follows:

1. At all material times, Alexandra Louise Forrestall (the “**Member**”) was a member of the College.

Incident

2. On or about the morning of June 15, 2020, the Member was driving along a roadway in Stouffville, Ontario. At approximately 8:22 a.m., she struck S.T., a 54 year old cyclist, from behind, causing fatal injuries.
3. Despite knowing that she had struck a person with her vehicle, the Member did not stop and remain at the scene, or offer any assistance. Instead, she drove away.
4. Approximately 20 minutes later, the Member called a collision reporting centre and falsely reported that someone had collided with her vehicle and damaged it in a parking lot.
5. Later that day, the Member repeated the same fabricated story to a police officer who responded to her collision report and to her insurance company.

6. The Member was arrested by police the next day, and criminal charges were laid against her.

Criminal Court Proceedings

7. On January 27, 2021, the Member pleaded guilty to and was found guilty of the criminal offence of *Fail to Stop at Accident Causing Death*, pursuant to sections 320.16(1) and (3) of the *Criminal Code*.

8. On March 4, 2021, the Member was sentenced to a one-year conditional sentence. Additionally the judge imposed a two years' probation, a three-year driving prohibition and a DNA order.

Professional Misconduct Alleged

9. By engaging in the conduct set out in paragraphs 3 – 8 above, the Member engaged in professional misconduct as defined in subsection 33(2) of the Act, in that:

- a) 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);
- b) she contravened a law, which contravention is relevant to her suitability to hold a certificate of registration, contrary to Ontario Regulation 223/08, subsection 2(20);
- c) 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 agreement had been reached on the facts and introduced an Agreed Statement of Facts (**Exhibit 2**), which provided as follows:

The Member

1. The Member has had a certificate of registration with the College for 4½ years. She is in good standing with the College and does not have a prior discipline history with the College.

The Incident

2. On the morning of June 15, 2020, the Member was driving along a roadway in Unionville, Ontario. At approximately 8:22 a.m., she struck S.T., a 54-year-old cyclist, from behind, causing fatal injuries. Medical evidence suggested that S.T. was mortally wounded from the collision and beyond the help of medical assistance almost immediately.
3. The Member's vehicle sustained significant damage as a result of the collision. Despite knowing that she had struck a person with her vehicle, the Member did not stop and remain at the scene, or offer any assistance. Instead, the Member panicked and drove away.
4. The Member continued driving to Tim Hortons approximately 25 minutes away. If she were to testify, she would advise that she was "shaking considerably and had difficulty focusing" and experienced herself "in a dream-like state, as though watching herself from above."
5. From there, the Member drove to her place of employment, where she called her mother and concocted a story that her car had been hit by a truck in the Tim Hortons parking lot. Her mother inquired about possible video surveillance of the accident and the Member lied, saying that she had been informed by Tim Hortons staff that the restaurant's video cameras were not working.
6. The Member repeated these lies to her employer and then retreated to her vehicle where she called a collision reporting centre and disclosed the fabricated story.
7. Around 9:30 a.m., the Member's mother texted her the news that there had been a hit-and-run accident that morning in Unionville, which resulted in a fatality. The Member expressed surprise to her mother that someone could have left the scene of that accident even though she knew that it was she herself who had fled that scene.

8. The Member then met a police officer who responded to her collision report where she repeated the lies about being struck in the Tim Hortons parking lot and that the surveillance cameras there were not functioning. She completed her workday and drove home where she again disclosed the phony story - this time to her insurance company.
9. The next day the Member attended at an autobody shop to retrieve her car where she was met by police and arrested for several criminal offences.

Additional Information

10. An expert accident reconstructionist concluded that environmental factors were at play in the collision. The point on the roadway where the collision occurred has a curve and on that specific day and time, the sun would have been shining in the Member's face obscuring the windshield.
11. There was no evidence of intoxication, impairment, excessive speed, bad driving or distracted driving on the Member's part at the time of the collision.
12. On January 27, 2021, the Member pleaded guilty to and was found guilty of the criminal offence of *Fail to Stop at Accident Causing Death*, pursuant to sections 320.16(1) and (3) of the *Criminal Code*.
13. On March 4, 2021, the Member was sentenced to a one-year conditional sentence. Additionally the judge imposed a two years' probation, a three-year driving prohibition and a DNA order.
14. If the Member were to testify, she would advise that she is remorseful of the incident and has experienced deep regret for her actions on that day.

Admissions of Professional Misconduct

15. The Member admits that she engaged in and is guilty of professional misconduct as described in paragraphs 2 to 9 above, and as defined in subsection 33(2) of the Act in that:

- a) 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);
- b) she contravened a law, which contravention is relevant to her suitability to hold a certificate of registration, contrary to Ontario Regulation 223/08, subsection 2(20);
- c) 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.

EVIDENCE

The following documents were entered into evidence at the hearing:

Exhibit #	Description
Exhibit 1	Notice of Hearing with Affidavit of Service
Exhibit 2	Agreed Statement of Facts
Exhibit 3	Plea Inquiry
Exhibit 4	Reasons for Sentence
Exhibit 5	Conditional Sentence Order
Exhibit 6	Adult Probation Order
Exhibit 7	Criminal Undertaking
Exhibit 8	College Undertaking
Exhibit 9	Letter of College Counsel re position on order
Exhibit 10	Member Character Letters

SUBMISSIONS OF THE PARTIES ON LIABILITY

The College submitted that after hitting a member of the public with her car, the Member fled the scene. While there was no evidence that the Member's driving caused the accident, she did not check on the victim's well-being, offer assistance or call emergency services. The Member then repeatedly lied about what had happened, including to the police and to her insurance company. The College submitted that these facts, contained in the Agreed Statement of Facts, clearly establish the allegations of professional misconduct set out in the Notice of Hearing. The Member admitted to the conduct and acknowledged the facts as set out in the Agreed Statement of Facts. The College argued that any reasonable member of the profession would consider this conduct to be dishonest, immoral and unprofessional. Even though the allegations did not arise directly as part of the Member's employment, this type of conduct reflects negatively on the profession of early childhood educators as a whole and erodes public trust in the profession.

The College further submitted that the Member was found guilty of a serious criminal offence. This criminal conviction, along with the Member's conduct as a whole, establishes that in a critical situation, the Member chose to repeatedly cover up her wrongdoing rather than meet her legal obligations. Therefore, the criminal finding of guilt against her is relevant to her suitability to hold a certificate of registration.

The Member's counsel acknowledged that the Member had pled guilty and admitted to the allegations of professional misconduct. Member's counsel further noted that they would address the College's submissions with respect to the circumstances giving rise to the misconduct and the mitigating circumstances surrounding it, during the penalty portion of the hearing.

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 Panel accepted that the incident occurred as described in the Agreed Statement of Facts, and that the Member's admission was informed and voluntary. The Panel found that all of the allegations set out in the Notice of Hearing were supported by the facts contained in the Agreed Statement of

Facts. The evidence established that the Member struck a cyclist with her vehicle and the cyclist did not survive the accident. She did not stop, remain at the scene or offer any help. The Member instead drove away and concocted a false story to explain the damage caused to her vehicle. The Member repeated these lies to her mother, employer, the police and her insurer.

The Panel found that such conduct would reasonably be regarded by members of the profession as disgraceful, dishonourable and unprofessional. Generally speaking, conduct that demonstrates dishonesty, a lack of integrity, or disregard for the welfare and safety of members of the public, is conduct that will not be tolerated and would be viewed as disgraceful, dishonourable or unprofessional conduct. Although the Member's actions were outside the practice of her profession, the seriousness of the behaviour reflects on the Member's integrity, showed a lack of judgment and a lack of responsibility such that it runs the risk of reflecting negatively on the profession. The conduct exhibited by the Member is not conduct that the public or parents would expect from a professional in a position of trust, caring for their child. This conduct undermines public confidence in the profession and is conduct unbecoming a Member.

The Member's subsequent criminal conviction for failing to stop at the accident, is a contravention of law relevant to her suitability to hold a certificate of registration. The Member was convicted of a serious criminal offence. The Member's conduct included repeated attempts to conceal her misconduct, rather than meet her ethical and legal obligations. As a result, this criminal conviction is relevant to the Member's suitability to hold a certificate of registration.

POSITION OF THE PARTIES ON PENALTY

The penalty phase of the hearing proceeded on a contested basis.

Submissions of the College on Penalty

Counsel for the College requested that the Panel revoke the Member's Certificate of Registration. The College also requested that the Panel make an order for costs in the amount of \$5,000.

Counsel for the College submitted that the matter before the Panel involves one of the most serious acts of professional misconduct of a non-sexual nature that has ever come before the Discipline Committee. It is the first time that the Discipline Committee has been faced with a situation where

the misconduct the Member engaged in involves the death of a person. Counsel noted that the overarching mandate of the College is to protect the public interest. This means both protecting the young and vulnerable children whose safety are entrusted to our early childhood educators, but also maintaining the public's confidence in the College's willingness to regulate the conduct of its members. Counsel for the College provided the Panel with two cases supporting the importance of the principle of protection of the public and the fact that orders of a discipline committee are intended to protect the public (*Pharmascience Inc. v. Binet*, 2006 SCC 48 and *College of Physicians and Surgeons of Ontario v. Peirovy*, 2018 ONCA 420).

The College submitted that there are four objectives a penalty must achieve. It must send a strong message to the community of early childhood educators and the public that this type of misconduct is unacceptable and will not be tolerated by the College. The penalty must deter other early childhood educators from engaging in similar misconduct. It also must send a message to this specific Member that the behaviour is unacceptable. Finally, if the Member's certificate of registration were not revoked, the penalty must also address the principles of remediation and rehabilitation

Counsel for the College noted that revocation is not reserved only for the worst cases of misconduct, rather, it is the appropriate penalty for any misconduct that crosses a certain threshold. Moreover, while a judge in a criminal proceeding is obligated to consider the principle of imposing the least restrictive sanction, this principle does not apply in the context of professional regulation. Instead, a discipline panel is guided first and foremost by its duty to protect the public. Two cases were provided in support of this submission:

1. *Iacovelli v. College of Nurses of Ontario*, 2014 ONSC 7267, 331 O.A.C. 201 (Div. Ct.)
2. *College of Physicians and Surgeons of Ontario v McIntyre*, 2017 ONSC 116 (Div. Ct.)

College counsel submitted that the penalty must take into account the aggravating and mitigating factors in this case. Five aggravating factors were presented, namely:

1. The gravity of the misconduct and specifically, that the Member chose to drive away from an accident that proved to be fatal. Although it was agreed that the victim was beyond medical assistance at that point, the Member had no way of knowing that when she drove away.
2. The Member's actions caused immeasurable harm to the victim and his loved ones.

3. The Member's actions were not a simple momentary lapse in judgement, but a pattern of behaviour as she engaged in repeated lies throughout the day, which obstructed a police investigation.
4. The Member did not voluntarily take responsibility for her actions, but rather, waited until she was confronted by police.
5. The Member's conduct has a significant negative impact on the reputation of early childhood educators and public confidence in the profession will be eroded if she is permitted to keep practicing. In support of this principle, College counsel cited the case of *Adams v. Law Society (Alberta)*, 2000 ABCA 240, 82 A.R. 15

The mitigating factors in this case were that:

1. After being confronted by the police and arrested, the Member cooperated with the police investigation. The Member also cooperated fully with the College's investigation.
2. The Member pled guilty both in the criminal matter and to the allegations of professional misconduct (thereby saving the College time and expense of a contested hearing).
3. The Member has no prior discipline history.

Counsel for the College submitted that the Member's emotional state at the time of the incident is neither an aggravating nor mitigating factor, but something the Panel should consider. In the Reasons for Sentence (**Exhibit 4**), the judge references a psychiatric report detailing the Member's emotional state as an explanation for her behaviour. The report describes the Member as a "*young woman who is easily overwhelmed*" and that when she is overwhelmed she "*disconnects from the events around her*". College counsel noted that this assessment is concerning, given the fact that the profession of early childhood education can be stressful at times. In addition, counsel for the College noted that the Member has not provided any evidence to the Panel about any steps the Member has taken to address the mental health and emotional concerns raised at the criminal trial.

It was further submitted by the College that the character letters filed on consent by the Member were also of limited assistance because the majority of the letters had been drafted for the prior criminal proceedings and only the last four were with respect to this disciplinary matter. It was submitted that these last four letters, while very complimentary about the Member's abilities as an early childhood educator ("**ECE**"), do not in any way mention the incident giving rise to the criminal conviction and it is not clear if the writers of the letters were even aware of the facts of the case.

Counsel for the College submitted that given the gravity of the misconduct, the only appropriate penalty is revocation. Counsel noted that in fact, the judge in the criminal proceedings had accepted that the Member's Certificate of Registration would be revoked and expressly considered her loss of employment and registration with the College when granting a more lenient penalty.

In support of the submission that revocation is the appropriate penalty, Counsel for the College provided eight cases. Counsel noted that the facts of this case are unique and that neither College counsel, nor Member's counsel, could find any cases that were identical to the matter at hand, namely, a case involving both serious harm and deceit, dishonesty and/or harm. The College submitted that the Panel could consider cases which involved serious bodily or emotional harm and where revocation was ordered including:

1. *Ontario College of Teachers v. Corry*, 2008 ONOCT 13
2. *Ontario College of Teachers v. Oliphant* 2019 ONOCT 72
3. *Ontario College of Teachers v Tollett*, 2010 LNONCTD 32

The College also provided cases that involved deceit, dishonesty and/or fraud, with no bodily or emotional harm. The College submitted that revocation was ordered in almost all of these cases and where it was not, it was because those cases involved much less serious conduct or there were significant mitigating factors which did not exist here. These cases included:

1. *Law Society of Ontario v Zopf*, [2019] LSDD No 231
2. *Ontario College of Teachers v Saundercook-Menard*, 2009 LNONCTD 51
3. *Ontario College of Teachers v Newburgh*, 2007 LNONCTD 24
4. *McArthur (Re)*, [2018] OCPD No 57
5. *Attallah (Re)*, [2020] OCPD No 38

Submissions of the Member on Penalty

Counsel for the Member requested that the Panel impose an order that included that:

1. the Member's certificate of registration be suspended for a period of six months (which he submitted would be in addition to the six months that the Member had previously undertaken to not practice, effectively being a 12 month suspension);
2. the Member be required to appear before the Panel to be reprimanded; and
3. costs.

It was submitted that such an order would be more than sufficient to meet the principles of sanction, including protecting members of the public, denunciation of the conduct, deterring other members from engaging in this type of conduct and maintaining public confidence in the College and the profession.

Counsel for the Member submitted that College counsel had mischaracterized the misconduct that was before the Panel, as misconduct “stemming from the death of a person”. Member’s counsel submitted that this was not the crime that the Member had been sentenced for, but in fact, she was sentenced solely for her decision to leave the scene of the accident and not rendering aid or calling 911, along with her conduct afterwards with not being truthful about the accident. As such, Member’s counsel submitted that this is the conduct that it is in issue when determining an appropriate penalty.

Member’s counsel further asserted that it was very telling that there is no case law from this College where there is a criminal conviction including dishonesty, fraud or integrity that has resulted in revocation. He asserted that revocation is not appropriate in the case at hand. Counsel for the Member noted that when considering the general principles of sanction, while protection of the public, enhancing public confidence, denunciation and deterrence are important, they are not mutually exclusive. Rather, they must be balanced against the principles of rehabilitation and proportionality. With respect to proportionality, counsel for the Member noted that suspensions (and not revocation) are consistently imposed by discipline panels in situations where the conduct has been even more egregious than the case at hand. As a result, it was submitted that it is well-recognized that penalties such as suspension can meet all of the principles of sanction.

In addressing the College’s arguments that there could be mental health or emotional concerns that had not been addressed by the Member which could impact on her present practice, counsel for the Member noted that the psychiatrist in the criminal matter had opined that if the Member continued to comply fully with her recommended medication and therapy, the prognosis for her future was very optimistic. Counsel for the Member further submitted that contrary to the suggestion of the College, there is no suggestion that the Member has ever been “overwhelmed” while she has been caring for children. If, however, the Panel had any concerns in this regard, counsel submitted that they could be addressed by imposing a requirement in the order that the Member continue with counselling.

Counsel for the Member disputed the College’s assertions that the criminal court judge knew that the Member was going to lose her Certificate of Registration. Rather, counsel submitted that it was understood in the criminal proceedings that the loss of the Member’s Certificate of Registration was

a *potential* consequence. Counsel for the Member further disputed that the Member's conduct was a breach of trust, submitting that breach of trust is when a party uses their position to take advantage and exploit this position for personal benefit. In the matter at hand, while the Member made terrible decisions, this was not a breach of trust.

Counsel for the Member reviewed the cases submitted by the College and noted that not one of the revocation cases were from the College. Moreover, the cases that had been submitted from other professional bodies involved much more serious incidents of violence/harm or patterns of dishonesty and/or breaches of trust over a prolonged period of time.

Counsel for the Member submitted that it must be recognized that this was a terrible, tragic accident, but that the Member stopping to render assistance would not have made a difference. Any aggravating factors must be balanced against the mitigating factors, namely that:

1. immediately after her arrest, the Member took full responsibility and instructed counsel to plead guilty. This was done at the earliest opportunity and spared the victim's family a trial;
2. the Member always approached this case respectfully – she cooperated with the College's undertaking not to practice, agreed with the Agreed Statement of Facts, agreed to plead guilty to professional misconduct; and
3. the Member's remorse was genuine. It was noted in the Reasons for Sentencing that it was readily apparent that the Member was experiencing deep regret over the enormity of her actions.

Counsel submitted character letters in support of the Member (**Exhibit 10**). Counsel for the Member noted that the first 31 letters spoke to the Member's character, her level of remorse and her full acceptance of responsibility for her actions. The final four letters were from parents of children the Member had cared for and a co-worker at a daycare the Member had been employed at previously. Counsel for the Member noted that these letters were overwhelmingly enthusiastic about the Member and describe her commitment to the children and her profession. Although these final letters do not reference the misconduct, counsel for the Member noted that they were provided for these proceedings, so obviously the writers would have been aware of the Member's misconduct.

Counsel for the Member submitted five cases from this College where there was conduct of a similar or more significant nature and revocation had not been ordered, specifically:

1. *College of Early Childhood Educators and Malgorzata Lulek, 2020 ONCECE 3*

2. *College of Early Childhood Educators and Diba Hashimi*, 2018 ONCECE 3
3. *College of Early Childhood Educators and Sherrel Pucci*, 2012 ONCECE 2
4. *College of Early Childhood Educators and Tabatha Antone*, 2012 ONCECE 3
5. *College of Early Childhood Educators and Smits*, 2015 ONCECE 4

These cases involved incidents of members assaulting children while under their care (by pushing, grabbing and/or slapping), impaired driving and breach of trust involving fraud. In all of these cases, counsel noted that 6 to 7 month suspensions were ordered. Counsel for the Member submitted that the Member's misconduct (which occurred outside of her professional practice) was much less serious than the misconduct in these cases and should not be equated with cases where an ECE assaulted a child under his/her care.

Counsel for the Member further provided cases from other professional regulators¹, submitting that in those cases, even more egregious conduct (such as: impaired driving and failure to stop, dangerous driving causing death, fraud in significant amounts, assault and uttering threats) was given a penalty of a suspension rather than revocation.

Counsel for the Member submitted that the Panel should ensure that the penalty ordered is proportionate to the misconduct and that it adequately protects the public. Counsel argued that all the necessary principles of sanction can be served with a suspension and reprimand.

Reply Submissions of College

In reply submissions, counsel for the College noted that prior decisions of the College are not binding on this Panel. College counsel also noted that it was never suggested that the Member's mental health was a reason for revocation, rather, it was asserted that it was simply not a mitigating factor. With respect to the cases submitted by the Member, College counsel noted that they were either some of the College's oldest cases (before the College's penalty ranges were established), or newer cases where the misconduct at issue was much less serious.

¹ College of Nurses of Ontario and Backstrom, 2017 CanLII 50754, Ontario College of Massage Therapists of Ontario and Pitts, 2019 ONCMTO 15, Ontario College of Teachers and Laforge, 2019 ONOCT 43, Ontario College of Teachers and Paik, 2019 ONOCT 83, Ontario College of Teachers and Elliott, 2021 ONOCT 23, Ontario College of Teachers and Vasta, 2016 ONOCT 95, Ontario College of Teachers and Steele, 2018 ONOCT 2, Ontario College of Teachers and Kurczak, 2003 ONOCT 30, Ontario College of Teachers and Michaud, 2016 ONOCT 36, Ontario College of Physicians and Surgeons of Ontario and Dr. Anthony Michael Galea, 2017 ONCPSD 50

Submissions of the College on Costs

With respect to costs, counsel for the College submitted that the Panel has the authority to award costs pursuant to s.33(5).4 of the Act. The College was seeking the tariff amount for a half day hearing - \$5000 in costs. Counsel submitted that this was despite the fact that the penalty portion of the hearing was almost a full day. When considering the amount of costs, counsel for the College noted that the factors to consider are: the success of the parties, the length of the hearing and the level of complexity, the Member's conduct in the course of the litigation, the financial circumstances of the Member (ability to pay and any financial hardship), and whether the College was seeking a reasonable amount.

College counsel cited six cases in support of the request for a costs award, noting the prevalence and extensive use of the tariff approach².

Submissions of the Member on Costs

With respect to costs, counsel for the Member submitted that if the Member is successful and revocation is not ordered, this should be reflected in a reduction of costs awarded to half of what the College was proposing. In addition, counsel noted that due to her conditional sentence, the Member had not worked for a period of time.

DECISION ON PENALTY AND COSTS

Having considered the submissions of the parties, the Panel makes the following order on penalty and costs:

² College of Early Childhood Educators and Rehana Islam (2019); College of Early Childhood Educators and Daniel Robert Harker (2020); College of Early Childhood Educators and Stephanie Alexandra Todd (2021); College of Early Childhood Educators and Carrie Chunjuan Tan (2021); Margaliot (Re), [2016] O.C.P.S.D. No. 556; Doodnaught (Re), [2018] O.C.P.S.D. No. 35

1. The Member is required to appear before the Panel to be reprimanded at a date to be scheduled.
2. The Registrar is directed to suspend the Member's certificate of registration for a period of 24 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. During the 24-month suspension period, the Member shall continue her current course of counselling and shall provide a report confirming the Member's participation in counselling to the Registrar on a quarterly basis.
 - b. Prior to the Member commencing or resuming employment as a RECE or engaging in the practice of early childhood education, the Member must, at her own expense, enroll in and successfully complete a course in professional ethics, pre-approved by the Director of Professional Regulation (the "**Director**"). The Member must provide the Director with proof of enrollment and successful completion of the course.
 - c. Prior to the Member commencing or resuming employment as a RECE or engaging in the practice of early childhood education, 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, the Member can commence or resume employment as an RECE after arranging a mentorship relationship with a pre-approved Mentor.

- d. 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.
- e. 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, and
 - ii. the Panel's Decision and Reasons.
- f. 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)).
 - g. 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(e),
 - (iii) that the Mentor reviewed the documents set out in paragraph 3 (e) and discussed the subjects set out in paragraph 3(f) with the Member, and
 - (iv) the Mentor's assessment of the Member's insight into her behaviour.
 - h. 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.
1. The Member is required to pay the College's costs fixed in the amount of \$3,000, to be paid within two (2) years of the date of this Order. The Member is required to pay the College \$1,500 annually, unless the Director approves, in writing, a different payment schedule.

REASONS FOR PENALTY

The Panel was mindful that the penalty ordered should protect the public interest 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. The Panel must weigh these principles in light of the specific facts and circumstances of this case, including both aggravating and mitigating factors.

In determining the appropriate penalty, the Panel carefully considered the submissions of both counsel for the College and counsel for the Member in reaching its decision. When determining

whether a revocation or suspension was warranted, the Panel considered the misconduct in question, the aggravating and mitigating factors, the findings made and the caselaw submitted by both counsel.

Neither counsel could provide the Panel with a case that was directly analogous to this case. Counsel for the College submitted a number of cases in support of its submission that the Member's certificate of registration should be revoked. When characterizing the Member's misconduct, College counsel submitted that this matter was one of the most serious acts of professional misconduct ever before the Discipline Committee (of a non-sexual nature), as this was misconduct which involved the death of a person, along with the subsequent deceit and dishonesty. Counsel for the Member strongly disagreed with this characterization, arguing that the misconduct did not stem from the death of a person, but solely from the Member's decision to leave the scene of the accident.

The Panel considered both counsel's submissions, the Agreed Statement of Facts and the Reasons for Sentencing in the criminal matter, and determined that the Member's misconduct stems from the failure to remain at the scene of the fatal accident (and her subsequent conduct in not being truthful about the accident) and not from the death of the victim. Therefore, it would not be appropriate to say that the Member's conduct must be subject to the severest of penalties – revocation - because it “involves the death” of a person. In his Reasons for Sentencing in the criminal proceedings, Justice Prutschi explicitly stated that,

...“it is important to remain cognizant of what precisely Ms. Forrestall is being sentenced for, and what she is not being sentenced for. In the face of such obvious and overpowering tragedy, there is the risk of losing sight of the scope of this sentencing.

Ms. Forrestal is not being sentenced for causing Mr. Tairoski's death. Nor is she being sentenced for denying Mr. Tairoski life-saving aid. The accepted evidence is that Mr. Tairoski was mortally wounded immediately upon impact and no amount of intervention would have changed that. There was no evidence of intoxication, impairment, excessive speed, bad driving or distracted driving.”

Justice Prutschi was clear that the Member was not guilty of causing the victim's death. Given that the main elements of the misconduct stemmed from the failure to remain at the accident and the subsequent deceitful behaviour (and not the death of the victim), the Panel determined that some of the cases where revocation was ordered put forward by the College as comparable, in fact involved much more serious conduct than the present case. In *Olipphant*, where revocation was ordered by the College of Teachers, the member had been incarcerated for 12 months for harassing, stalking and intimidating three women over a prolonged period of four years. In *Tollett*, revocation was

viewed to be an appropriate penalty because the member had been imprisoned for almost two years for attempted murder and two counts of assault with a weapon. The Member's conviction for the failure to remain at the scene of the accident and subsequent attempts to cover up her crime, while deplorable, do not rise to the same level of seriousness as some of these cases presented by the College which involved the member engaging in violence or causing serious harm.

In addition, some of the cases of fraud and/or deceitful behaviour submitted by the College also involved more egregious and prolonged behaviour and/or were in the course of the member's professional employment, rather than outside the scope of the profession. In *Newburgh*, the member assisted in defrauding the school board over five years of approximately \$600,000 and as such, revocation was determined to be an appropriate penalty. In *Bishop*, a lawyer knowingly assisted in fraudulent and dishonest conduct in 14 real estate transactions. In *Sandercook-Menard*, a teacher accepted a secret commission of \$30,000 during the course of her employment. In contrast, in the case at hand, the Member's misconduct does not stem from her role in the profession of early childhood education. In fact, both counsel acknowledged that the Member appeared to be an exemplary ECE. The Member's misconduct was also not over a prolonged period over years, but was a series of bad decisions over a day. This further distinguishes her conduct from some of the decisions before us.

However, it must be stated that the Member's misconduct – the conviction for failure to remain at the scene of an accident after fatally hitting a member of the public with her car and the subsequent deceitful behavior – is egregious criminal and dishonest conduct which warrants a very serious penalty. When addressing the sentencing of the Member as part of the criminal trial, while Justice Prutschi did note that the Member was not being sentenced for the death of the victim, the judge still stressed the gravity of the crime, stating,

The criminal conduct that attracts punishment here is the depravity of knowing Mr. Tairoski was injured or dead at her accidental hand, yet not remaining on scene to provide aid if necessary or participate in the investigation.

The Member was convicted in a criminal trial and sentenced to a one-year conditional sentence, with two years' probation, a three-year driving prohibition and a DNA order. It is serious criminal conduct resulting in a conviction and as such, must be distinguished from some of the cases presented by counsel for the Member. Member's counsel submitted a number of cases as support for the assertion that only a six-month suspension was warranted. He provided five cases from this

College in this regard and argued that the Member's misconduct was less serious than the submitted cases where an ECE had assaulted a child in their care.

The Panel disagrees with this assertion. Although it is difficult to compare the cases from this College relied on by the Member to the case at hand as the facts are very different, we find that some of the examples provided by Member's counsel describe much less serious conduct and criminal convictions. In *Lulek*, the ECE pushed a child, but the child was not physically hurt. Although the member was charged with assault, they were granted a conditional discharge and probation. Similarly, in two additional cases submitted on behalf of the Member, *Hashimi* and *Smitts*, the ECEs had grabbed, shoved or struck children and were charged with assault, but the charges were withdrawn and peace bonds were granted instead. While this is extremely serious conduct which occurred in the course of practising the profession, these must be distinguished from the case at hand. Fleeing the scene of an accident where a victim was fatally injured, lying and obstructing a police investigation is a serious criminal offense which resulted in a criminal conviction.

In determining the appropriate penalty, the Panel did take note of the *Antone* case, submitted by Member's counsel. In this case, the ECE had been convicted of driving while impaired with two children in the car and following findings of misconduct, the member was ordered by the Discipline Panel to serve a six month suspension from the College. While this case was helpful in terms of the conduct at issue itself, the Panel agreed with College counsel's assertion that it was an older case (2012) that was decided before the Discipline Committee's penalty ranges were well developed. The College is a relatively new regulatory body and since being established in 2009, the length of penalties has appropriately increased to reflect the gravity of conduct. The remainder of the Member's cases were from other regulatory colleges (College of Nurses, College of Massage Therapists, College of Teachers and College of Physicians) and provided examples of cases where serious behavior resulted in suspensions of varying degrees. While the Panel reviewed and considered decisions from other regulatory colleges, it is not bound by such cases.

The Panel reviewed the character letters provided by the Member and found them of limited assistance in determining an appropriate penalty. The vast majority of letters were prepared for the criminal proceedings and discussed the Member's remorse. The final four letters were helpful in describing the Member as a dedicated and passionate educator, but did not acknowledge the misconduct in any way. As the Panel is tasked with determining the Member's suitability to remain in the profession in light of her grave misconduct, it would have been helpful to have these character

letters speak to (or at a minimum acknowledge) the incident in question. As such, the Panel considered, but assigned limited evidentiary weight to the letters.

The Panel considered the mitigating factors that this was an isolated incident, the Member had no prior disciplinary history, the Member was genuinely remorseful for her misconduct and plead guilty (both at the criminal trial and in the present disciplinary proceedings). The aggravating factors were: the severity of the misconduct which caused immeasurable harm, and that this was not a single lapse in judgment, but a series of decisions and lies throughout the day. Further, the Member's behaviour on the day in question reflects on the Member's integrity, and showed a lack of judgment and responsibility. As such, there is a serious risk that it could have a negative impact on the reputation of the profession of early childhood educators and erode public confidence in the profession.

Therefore, any penalty imposed must maintain the integrity of the profession and maintain public confidence in the College's ability to regulate the profession in the public interest, sending a strong message to the profession and the public that this type of misconduct will not be tolerated. This is in addition to the other penalty objectives of specific and general deterrence, protection of the public, remediation and proportionality.

The Panel determined that a suspension of twenty-four months is reasonable and proportionate in the circumstances of this case. This is the maximum allowable suspension available to the Panel and as such, reflects the gravity of the Member's actions. Such a lengthy suspension will clearly signal to the public and the profession that this type of serious misconduct will not be tolerated and will help to maintain public confidence in the profession. The suspension further holds the Member accountable for her actions and communicates to her the severity of her misconduct. In addition to the suspension, a reprimand to the Member similarly provides the Panel with the opportunity to express its disapproval of the Member's conduct and reinforce the message it wishes to convey through the penalty. As the reprimand will be recorded on the College's Public Register, this will also serve to reassure the public that the Panel recognizes the seriousness of the Member's actions and responds to acts of professional misconduct fairly and transparently.

With respect to the protection of the public, College counsel further submitted that this principle should be considered in the context of the Member's mental health and emotional concerns that had been raised during the criminal proceedings – specifically, the psychiatric report describing the fact that the Member is “easily overwhelmed” in stressful situations and that she “disconnects” from

events around her when overwhelmed, which led to her fleeing the scene of the accident. Although College counsel did not claim the emotional and mental health concerns were a justification for revocation, concerns were raised by the College about whether the Member could have similar incidents of being “overwhelmed” while working in the stressful profession of childcare.

The Panel notes that there has never been any indication that the Member has been anything other than a caring and committed educator and there is no evidence that she has ever been overwhelmed while caring for children. The Panel further notes that the 24-month suspension not only removes the Member from practice for a significant amount of time, but also permits the Member to continue with her current course of counselling, ensuring that she will return to the profession in a safe and effective manner. In addition, by requiring the Member to complete a course in ethics, the Member will be encouraged to reflect on her decision-making and practices and refocus on the ethical and practice standards to which an early childhood educator is held. The course is to serve a remedial purpose and is designed to correct errors in the Member’s practice of the profession, reducing the likelihood of any reoccurrence of professional misconduct.

In addition to the coursework and counselling, the Member’s remediation and rehabilitation will be assisted by the requirement that she undergo a mentorship program. All of these measures are intended to assist the Member in her personal rehabilitation by providing the Member with an opportunity to improve her understanding of the College’s professionalism, ethics and professional responsibilities. Over the 24-month suspension period and beyond, the Member will have an opportunity to learn from her mistakes, reflect on her conduct and refocus on her professional responsibilities.

REASONS FOR 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 Panel considered the submissions of the parties on costs and concluded that it is appropriate for costs in the amount of \$3,000 to be awarded in this case. The award of costs is not to be a punishment of the Member. However, the Panel supports the principle that the costs of prosecuting cases that result in professional misconduct should not be borne exclusively by the membership

fees of all members. The Panel considered the relative success of the parties and noted that neither the College nor the Member were entirely successful with respect to their proposed penalty. The College had been seeking the revocation of the Member's Certificate of Registration, while the Member was seeking a six-month suspension. As the Panel did not order revocation, somewhat reduced costs are warranted. However, given that the suspension ordered was significantly longer than that requested by the Member, a full reduction of costs is not appropriate.

The Panel notes that the penalty hearing almost took a full day to complete, but the College was only seeking a half-day tariff amount of \$5,000 rather than the full-day \$10,000 amount. Further, the Member did not submit any evidence of her financial situation to argue that the costs award would cause her hardship. However, the Panel does acknowledge that the Member will not be working as an ECE for a prolonged period of time due to her 24-month suspension. As such, the Panel agrees that the Member be granted an extended period in which to pay this cost award. Accordingly, the Member is required to pay the College \$3,000 in costs, within two years of the date of this Order, in annual installments of \$1,500, unless the Director approves, in writing, a different payment schedule.

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



Ulana Pahuta, Chairperson

March 24, 2022
Date