

NOTICE OF PUBLICATION BAN

In the matter of College of Early Childhood Educators and Lay Tu 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: Yalin Gorica, RECE, Chair
Richard Filion, DDS
Ann Hutchings, RECE

BETWEEN:

COLLEGE OF EARLY CHILDHOOD EDUCATORS)	Matthew Paik For the College of Early Childhood Educators
and)	
LAY TU REGISTRATION # 66234)	Lay Tu Self-represented
)	
)	Elyse Sunshine, Rosen Sunshine LLP Independent Legal Counsel
)	
)	Heard: October 21, 2022

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 October 21, 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.

PUBLICATION BAN

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

THE ALLEGATIONS

The allegations against the Member were contained in the Notice of Hearing dated September 6, 2022, (Exhibit 1) which provided as follows:

1. At all material times, Lay Tu (the “Member”) was a member of the College and was employed as an Early Childhood Educator (“ECE”) at City View Centre For Child and Family Services, in Nepean (Ottawa), Ontario (the “Centre”).
2. On or about November 6, 2020, the Member and S.D.K.B. (RECE) (collectively, the “Staff”) were supervising a group of toddlers at the Centre’s fenced outdoor play area, including a 2½ year old boy (the “Child”). At approximately 11 a.m., the Staff failed to properly count the children or verify attendance when they transitioned the children from the play area back into the building. As a result, the Child remained alone and unsupervised in the play area for approximately 22 minutes.

3. A member of the public noticed the Child alone in the play area and notified the Centre's management. The Member failed to realize that the Child was missing, until shortly before the Centre's manager brought him back inside.
4. By engaging in the conduct set out in paragraphs 2 – 3 above, the Member engaged in professional misconduct as defined in subsection 33(2) of the Act, in that:
 - a) The Member failed to supervise adequately a person who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(2);
 - b) The Member failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8), in that:
 - i. The Member failed to observe and monitor the learning environment and take responsibility to avoid exposing children to harmful or unsafe situations, contrary to Standard III.C.2 of the College's Standards of Practice;
 - ii. The Member failed to provide safe and appropriate supervision of children based on age, development, and environment, contrary to Standard III.C.5 of the College's Standards of Practice;
 - iii. The Member failed to know the current legislation, policies and procedures that are relevant to her professional practice and to the care and education of children, contrary to Standard IV.B.1 of the College's Standards of Practice;
 - iv. The Member failed to model professional values, beliefs and behaviours with children, families, and colleagues, and/or failed to understand that her conduct reflects on her as a professional and on her profession at all times, contrary to Standard IV.C.4 of the College's Standards of Practice; and/or
 - v. The Member failed to support and collaborate with colleagues, contrary to Standard IV.C.6 of the College's Standards of Practice.
 - c) The Member acted or failed to act in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional, contrary to Ontario Regulation 223/08, subsection 2(10); and/or
 - d) The Member acted in a manner that is unbecoming a Member, contrary to Ontario Regulation 223/08, subsection 2(22).

EVIDENCE

Counsel for the College and the Member advised the Panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts (Exhibit 2), which provided as follows:

The Member

1. The Member has had a certificate of registration with the College for approximately 5 years. She is in good standing with the College and does not have a prior discipline history with the College.
2. At all material times, the Member was employed as an RECE at the Centre.

The Incident

3. On the morning of November 6, 2020, the Member and S.D.K.B. (RECE) (collectively, the "Staff") were responsible for supervising a group of toddlers at the Centre's fenced outdoor play area, including the Child.
4. At approximately 11:04 a.m., the Staff began transitioning the toddlers back into the building. J., a non-RECE staff member, brought 4 of the toddlers inside. The Staff failed to properly count these children, verify attendance or perform a "Ratio Tag" safety procedure, as required by the Centre's policies, before the children went inside.
5. After the first group of toddlers left the play area, the Member took the Child out of his stroller, while S.D.K.B. disinfected the strollers. The Member placed the remaining children near the entrance doors and began singing and dancing with them. The Staff did not notice that the Child walked behind a screen shade and remained there playing with toys. At approximately 11:13 a.m., the Staff failed to count the children, verify attendance or perform the Ratio Tag procedure before transitioning into the Centre. As a result, the Child remained alone and unsupervised in the play area.
6. Approximately 10 minutes later, the Child went towards the Centre's doors and unsuccessfully attempted to open them. He then approached the Centre's windows and looked through them for approximately 5 minutes. The Child then again attempted to open the Centre's doors, prior

to moving away from the building to the play area's sand box.

7. A member of the public noticed the Child alone in the play area and notified the Centre's management. The Member failed to realize that the Child was missing, until shortly before the Centre's manager brought him back inside. In total, the Child remained alone and unsupervised in the play area for approximately 22 minutes.

Additional Information

8. The Centre's Ratio Tag procedure, in effect at the time of the Incident, required staff to carry laminated tags with the child's name and photo displayed on each tag, for each of the children under their direct supervision. Staff were required to use the tags during transitions to ensure that all the children under their supervision are accounted for, among other things by transferring the tags from one staff to another when children transition from one location to another in smaller groups.
9. If the Member were to testify, she would advise that she takes responsibility for the Incident and acknowledges her failure to follow procedures. Following the Incident, she sought guidance from the Centre's management on improving her supervision strategies and now ensures to independently conduct all required headcounts and attendance checks.

Admissions of Professional Misconduct

10. 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 Act in that:
 - a. The Member failed to supervise adequately a person who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(2);
 - b. The Member failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8), in that:
 - i. The Member failed to observe and monitor the learning environment and take responsibility to avoid exposing children to harmful or unsafe situations, contrary to Standard III.C.2 of the College's Standards of Practice;
 - ii. The Member failed to provide safe and appropriate supervision of children based on age, development, and environment, contrary to Standard

III.C.5 of the College's Standards of Practice;

- iii. The Member failed to know the current legislation, policies and procedures that are relevant to her professional practice and to the care and education of children, contrary to Standard IV.B.1 of the College's Standards of Practice;
 - iv. The Member failed to model professional values, beliefs and behaviours with children, families, and colleagues, and/or failed to understand that her conduct reflects on her as a professional and on her profession at all times, contrary to Standard IV.C.4 of the College's Standards of Practice; and/or
 - v. The Member failed to support and collaborate with colleagues, contrary to Standard IV.C.6 of the College's Standards of Practice.
- c. The Member acted or failed to act in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional, contrary to Ontario Regulation 223/08, subsection 2(10); and/or
- d. The Member acted in a manner that is unbecoming a member, contrary to Ontario Regulation 223/08, subsection 2(22).

THE MEMBER'S PLEA

The Member admitted to the allegations in the Agreed Statement of Facts.

The Panel received a written plea inquiry (Exhibit 3) which was signed by the Member. The Panel also conducted a verbal plea inquiry and was satisfied that the Member's admission was voluntary, informed and unequivocal.

SUBMISSIONS OF THE PARTIES ON LIABILITY

The College submitted that all the allegations set out in the Notice of Hearing were admitted to by the Member and were supported by the evidence in Agreed Statement of Facts (Exhibit 2).

The College further submitted that the Member was responsible for supervising a group of toddlers in the fenced outdoor play area. Upon transitioning the children back into the building, the Member failed to properly count the children, verify attendance, or perform a Ratio Tag safety procedure as required by the Centre's policies and procedures. As a result of the Member's actions, the Child remained on the playground, alone and unsupervised for 22 minutes. The Child was found by a member of the public who notified the Centre's management. The Member failed to notice that the Child was missing until the Child was brought back inside.

The College submitted that the Member's actions support the findings of professional misconduct as alleged. The Member failed to adequately supervise a group of toddler children, which is contrary to the College's Standards of Practice. The Member failed to conduct a headcount and follow the procedures established at the Centre, which could have helped prevent the incident or significantly reduced the length of time that the Child was left unsupervised. The Member failed to provide the children under her care with a safe environment by failing to properly monitor the outside area. Through her conduct, the Member failed to be a role model to her colleagues. The Member disregarded her professional obligations and such conduct was unprofessional.

Although the Member was in attendance, the Member did not make any oral submissions.

FINDINGS AND REASONS FOR DECISION

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

The Panel found that the Member failed to adequately supervise a group of toddlers in her care which contravened the Standards of Practice. The Member failed to follow the Centre's established policies and procedures required for transition. She failed to properly conduct a headcount, verify the attendance or perform the Ratio Tag procedure when exiting the playground and re-entering the

building. As a result, the Child was left unsupervised in the Centre's fenced playground for 22 minutes.

In this regard, the Member breached several of the College's Standards of Practice. She failed to comply with Standard III.C.2, by failing to observe and monitor the learning environment and take responsibility to ensure the safety and well-being of the children under her professional care. By failing to appropriately supervise the Child, she breached Standard III.C.5. By not complying with the Centre's policy and procedures, she contravened Standard IV.B.1. Her conduct was contrary to Standard IV.C.4 in that she failed to model professional values, beliefs and behaviours with children, families and colleagues, and/or failed to understand that her conduct reflects on her as a professional and on her profession at all times. The facts also establish that she breached Standard IV.C.6, by failing to support and collaborate with colleagues.

By engaging in such conduct, the Member admitted, and the Panel found, that the Member's conduct would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional and as conduct unbecoming an RECE.

POSITION OF THE PARTIES ON PENALTY

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

1. Requiring the Member to appear before a Panel of the Discipline Committee to be reprimanded immediately following the hearing of this matter.
2. Directing the Registrar to suspend the Member's certificate of registration for a period of 6 months. The suspension will take effect from the date of this Order and will run without interruption as long as the College has not otherwise prohibited the Member from practising or suspended the Member for any other reason.

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

Mentorship

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

For clarity, once the suspension in section 2 above ends, the Member can commence or resume employment as an RECE after arranging a mentorship relationship with a pre-approved Mentor.

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

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

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

- e. After a minimum of 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, within 30 days of the date of this Order.

Submissions of the College on Penalty and Costs

Counsel for the College submitted that failing to properly supervise children is the most common type of complaint brought against RECEs and the type of misconduct that is most frequently brought before the Discipline Committee. Therefore, the Proposed Order was appropriate and reasonable in light of the facts agreed upon.

College counsel also submitted that the Joint Submission on Penalty and Costs (Exhibit 4) met the principles that a penalty order was required to meet. Specifically, the Proposed Order would send a message broadly to members of the profession and to the public that the conduct at issue is unacceptable and will not be tolerated by the College. The Proposed Order would act as a deterrent to other members from engaging in similar misconduct and it also deters the Member from engaging in similar misconduct in the future. College Counsel submitted that the Proposed Order was also appropriate because it would help to rehabilitate and support the Member in her return to practice. Further, the Proposed Order was consistent with other similar cases and proportionate to the conduct at issue.

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

1. The age of the Child (2.5 years old at the time of the incident);
2. The length of time for which the Child was unsupervised (22 minutes);
3. The Member did not realize the Child was missing until it was brought to her attention;
4. The Member failed to take specific measures to follow policies and procedures, such as the Ratio Tag procedure which would have prevented or decreased the length of time that the Child was unsupervised.

College counsel also presented four mitigating factors in this case that were:

1. The Member acknowledged her wrongdoing and fully cooperated with the College.
2. The Member pled guilty, which saved time and resources for the College.
3. The Member completed rigorous work prior to the hearing to learn from this incident.
4. The Member was registered as a RECE for 5 years with no prior history of any misconduct.

The College also submitted that the Panel could consider that the Child had not been physically injured or harmed as a result of the incident. College counsel also noted that this was an isolated incident and was not a pattern of behaviour.

Counsel for the College provided three cases in support of the Proposed Order and submitted that these cases represented conduct of a similar nature and established that the Proposed Order was reasonable and that accepting the parties' joint submission as to penalty would not bring the administration of justice into disrepute. These cases were:

1. *College of Early Childhood Educators v Sonia Deep Kaur Basi*, 2022 ONCECE 14
2. *College of Early Childhood Educators v Ban Al Azawi*, 2021 ONCECE 9
3. *College of Early Childhood Educators vs Kayla Jane King*, 2022 ONCECE 10

Submissions of the Member on Penalty and Costs

The Member did not make any additional submissions on penalty and costs

PENALTY DECISION

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

1. The Member is required to appear before the Panel to be reprimanded immediately following the hearing of this Order.
2. The Registrar is directed to suspend the Member's certificate of registration for a period of 6 months. The suspension will take effect from the date of this Order and will run without interruption as long as the College has not otherwise prohibited the Member from practising or suspended the Member for any other reason.
3. 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 Act, the Member, at her own expense, will arrange a mentoring relationship with a Mentor, who:
 - i. is an RECE in good standing with the College,
 - ii. is employed in a supervisory position,
 - iii. has never been found guilty of professional misconduct and/or incompetence by the Discipline Committee of the College,

- iv. is not currently found to be incapacitated by the Fitness to Practise Committee of the College,
- v. is not currently the subject of allegations referred to the Discipline Committee or the Fitness to Practise Committee of the College, and
- vi. is pre-approved by the Director. In order to pre-approve the Mentor, the Member will provide the Director with all requested information, including (but not limited to) the name, registration number, telephone number, address and résumé of the Mentor.

For clarity, once the suspension in section 2 above ends, the Member can commence or resume employment as an RECE after arranging a mentorship relationship with a pre-approved Mentor.

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

- iii. the potential consequences of the misconduct to the parents/children affected, and to the Member's colleagues, profession and self,
 - iv. strategies for preventing the misconduct from recurring, and
 - v. the Member's daily practice and any issues that arise, to ensure that she is meeting the College's Standards of Practice (without disclosing personal or identifying information about any of the children under the Member's care, or clients of her employer(s)).
- e. After a minimum of 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.

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.

The Panel considered 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 Proposed Order met the principles mentioned above, therefore, the Panel accepts the joint submission.

The Panel is aware that no two cases are exactly alike. However, reviewing the earlier cases that were presented by the College demonstrated a range of penalty orders for similar conduct, which supported the submission that the Proposed Order was appropriate. The Panel took note that the Member failed to realize that the Child was not accounted for a lengthy period of time (approximately 22 minutes). Had the Member taken appropriate action and followed policies and procedures, the incident likely could have been prevented. The Panel considered that the Member engaged in proactive remediation, cooperated with the College and, by agreeing to the facts and proposed penalty, has accepted responsibility for the misconduct. Having considered all of these factors, the Panel was satisfied that the proposed penalty in this case is appropriate and in the public interest.

The Panel agrees that the suspension in this case is appropriate and generally consistent with the range of suspensions that were imposed in the previous cases that were put before the Panel. The suspension, along with the reprimand, will act as a specific deterrent to the Member, and a general deterrent to other members of the profession, from engaging in similar misconduct. The terms, conditions and limitations imposed will help to protect the public. The Member will also be rehabilitated through the mentoring sessions when returning to practice in the future.

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 agreed that this is an appropriate case for costs to be awarded and the amount proposed by the parties is reasonable.

The Panel orders that the Member pay the College its costs, fixed in the amount of \$1,000 to be paid within 30 days of the date of the Order.

I, Yalin Gorica, sign this decision and reasons for the decision as Chair of this Discipline panel and on behalf of the members of the Discipline panel.



Yalin Gorica, RECE, Chair

November 1, 2022
Date