NOTICE OF PUBLICATION BAN

In the matter of College of Early Childhood Educators and Thi Thuy An Tran 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: Krista Johnson, RECE, Chair

Tricia Doyle, RECE Richard Filion, DDS

BEIWEEN:)
COLLEGE OF EARLY CHILDHOOD EDUCATORS) Vered Beylin) For the College of Early Childhood Educators
)
and)
THI THUY AN TRAN)
) Junkang Yang
REGISTRATION # 131385) The Hum Law Firm
) For the Member
)
)
) Elyse Sunshine,
) Rosen Sunshine LLP
) Independent Legal Counsel
)
) Heard: November 27, 2023

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 November 27, 2023. The hearing proceeded electronically (by videoconference) pursuant to the *Early Childhood Educators Act, 2007*, S.O. 2007, c. 7, Sch. 8 (the "ECE Act"), 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 ECE 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 October 30, 2023, (Exhibit 1) which provided as follows:

- At all material times, Thi Thuy An Tran (the "Member") was a member of the College and was employed as an Early Childhood Educator ("ECE") at Graydon Hall Nursery Schools - Avenue Road Child Care (the "Centre") in Toronto, Ontario.
- 2. On or about June 2, 2022, at approximately 1:30 p.m., during nap time, the Member bit the upper left arm of an almost two-year-old child (the "Child"), as she attempted to stop the Child from disturbing other sleeping children.

- 3. As a result of the Member's actions, the Child sustained an injury on their eft arm, which included visible teeth impressions.
- 4. By engaging in the conduct set out in paragraphs 2 to 3 above, the Member engaged in professional misconduct as defined in subsection 33(2) of the ECE Act, in that:
 - a. The Member physically abused a child who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(3.1);
 - b. The Member psychologically or emotionally abused a child who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(3.2);
 - c. The Member failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8), in that:
 - The Member failed to be knowledgeable about a range of strategies that support ongoing positive interactions with children and families, contrary to Standard I.B.2 of the College's Standards of Practice;
 - ii. The Member failed to engage in supportive and respectful interactions with children to ensure they feel a sense of security and belonging, contrary to Standard I.C.2 of the College's Standards of Practice;
 - iii. The Member failed to work in partnership with children, families and colleagues to create a safe, healthy and inviting environment that promotes a sense of belonging, well-being and inclusion, contrary to Standard III.C.1 of the College's Standards of Practice;
 - iv. 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; and/or
 - v. The Member failed to model professional values, beliefs and behaviours with children, families and colleagues, and/or she 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.

- d. 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
- e. The Member acted in a manner that is unbecoming a Member, contrary to Ontario Regulation 223/08, subsection 2(22).

WITHDRAWAL OF ALLEGATIONS

The College brought a motion to withdraw allegations 4(a) and 4(b) in the Notice of Hearing as outlined above. The Member consented to the withdrawal of these allegations. On this basis, the Panel withdrew these allegations and the hearing proceeded on the basis of the remaining allegations in the Notice of Hearing.

EVIDENCE

Counsel for the College 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

- The Member has had a certificate of registration with the College for approximately two 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 a Registered Early Childhood Educator ("RECE") at the Centre.

The Incident

3. On the afternoon of June 2, 2022, the Member was responsible for supervising a group of toddlers during nap time. At approximately 1:30 p.m., the Child woke up. The Member attempted to prevent the Child from waking up other children, who were still sleeping, by pretending to be a dinosaur that bites children. However, when the Child made an unexpected motion, the

Member's mouth, which was in close proximity to the Child's body, made contact with the Child's left arm, leaving a mark.

Additional Information

- 4. There is no evidence to suggest that the Child was emotionally impacted as a result of the Incident.
- 5. A staff member at the Centre discovered the mark on the Child's arm approximately three hours after the Incident.
- 6. The Ministry of Education determined that the Member engaged in a prohibited practice during the Incident and issued a Compliance Order against her.
- 7. The Member was terminated from her position as an RECE at the Centre as a result of the Incident.
- 8. If the Member were to testify, she would advise the following:
 - a. She acknowledges that the manner in which she intervened to guide the Child's behaviour was inappropriate and unprofessional.
 - She did not intend to cause any harm to the Child, and regrets that the Child sustained a
 mark as a result of her conduct.

Admissions of Professional Misconduct

- 9. The Member admits that she engaged in and is guilty of professional misconduct as described in paragraph 3 above, and as defined in subsection 33(2) of the ECE Act, in that:
 - a. The Member failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8), in that:
 - The Member failed to be knowledgeable about a range of strategies that support ongoing positive interactions with children and families, contrary to Standard I.B.2 of the College's Standards of Practice;

- ii. The Member failed to engage in supportive and respectful interactions with children to ensure they feel a sense of security and belonging, contrary to Standard I.C.2 of the College's Standards of Practice;
- iii. The Member failed to work in partnership with children, families and colleagues to create a safe, healthy and inviting environment that promotes a sense of belonging, well-being and inclusion, contrary to Standard III.C.1 of the College's Standards of Practice;
- iv. 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; and/or
- v. The Member failed to model professional values, beliefs and behaviours with children, families and colleagues, and/or she 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.
- b. 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
- c. 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 a finding of professional misconduct should be made against the Member on the basis of the facts outlined in the Agreed Statement of Facts and the Member's admission of misconduct.

The College submitted that, other than the two allegations that were withdrawn, all the remaining allegations of professional misconduct are supported by the facts as set out in the Agreed Statement of Facts.

Further, the College submitted that the Member's conduct during this incident fell below the standard of practice that all RECEs are required to adhere to.

The Member failed to be knowledgeable about a range of strategies that would have supported the Child in a positive and respectful manner after the Child woke up. Although it was clear that the Member did not intend to harm the Child, the interaction was not appropriate and did not centre around the best interests of the Child.

The College submitted that there were many other age and developmentally appropriate strategies the Member could have used to support the Child without pretending to bite them. By deciding that this was how she was going to guide the Child's behaviour, the Member created a risk of physical injury, which indeed materialized when the Member's mouth made contact with the Child's arm and left a mark.

The College submitted that, through her conduct, the Member engaged in a prohibited practice. It is evident that the Member failed to know, abide by and fully understand the legislation, policies and procedures that are relevant to her professional practice, especially in the area of guiding children's behaviour.

The Member's conduct failed to model professional values to other staff and she failed to understand that her conduct reflected negatively on her as a professional and on the profession as a whole. The College submitted that RECEs are expected to be caring, empathetic and professional in all interactions with children. Conduct that jeopardizes a child's physical well-being erodes the public's trust in the profession as a whole.

Additionally, the College submitted that the Member's conduct was unprofessional and is unbecoming of a Member.

The Member, through her counsel, submitted that she admits to the misconduct, and the plea and written plea inquiry demonstrate that the Member's admission is informed and unequivocal.

The Member made a heartfelt apology and took full responsibility for her mistake. The Member submitted that she has a clear understanding of the areas that require improvement. The Member sees this experience as an opportunity to grow, both personally and professionally in her role as an RECE. The Member's counsel submitted that the Member has made a significant concession by waiving her right to a full hearing which shows the Member's sincerity in addressing the matter at hand.

The Member's counsel submitted that the events happened during a game between the Member and the Child. The Member's counsel submitted that the Member had a positive and caring relationship with the Child and that the Member's concern for the Child's well-being has been consistent throughout their interactions.

The Member submitted that the Agreed Statement of Facts provides a fair and accurate account of the events in question and urged the Panel to consider the agreed facts to be a sound basis for a finding of misconduct.

FINDINGS AND REASONS FOR DECISION

Having regard to the facts and the Member's admission of guilt, as set out in the Agreed Statement of Facts, the Panel found the Member guilty of professional misconduct as alleged in paragraphs 4(c), 4(d) and 4(e) of the Notice of Hearing.

The Panel found that the Member did engage in professional misconduct by way of inadvertently harming a child while taking a game too far. Specifically, the Member failed to engage in supportive interactions that promote a sense of trust and security in the early learning environment. The Member did not work in partnership with her colleagues to create a safe, healthy and inviting environment for the children in her care. The Panel considered that there are many other ways to interact with children and to keep them engaged while others are resting. The Panel feels strongly

that the Member had no intention to physically harm the Child, however, her inappropriate actions led to consequences, which included a mark on the Child's skin. The Member's behaviour was not Child centred or consistent with professional standards. Such conduct reflects negatively on the profession. The Member acted in a way that would be regarded as unprofessional and unbecoming to the standards of the profession.

POSITION OF THE PARTIES ON PENALTY

The parties were in agreement on a penalty and 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:

- Requiring the Member to appear before a Panel of the Discipline Committee to be reprimanded within 60 days from the date of the Order.
- 2. Directing the Registrar to suspend the Member's certificate of registration for a period of
 - a. five months; or
 - b. the period of time required to comply with terms, conditions and limitations set out in paragraphs 3(a) to 3(f) below,

Whichever is greater.

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:

Coursework

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 must successfully complete, with a minimum passing grade of 70% (or to the satisfaction of the Director of Professional Regulation (the "Director") if a grade is not assigned) and at her own expense, the following courses (subject to the Director's preapproval):

- i. Building positive and responsive relationships with children; and
- ii. Positive intervention strategies.
- b. The Member must provide the Director with proof of enrollment and successful completion of the courses.

Mentorship

- c. 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. 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.
- d. 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.
- e. The Member will meet with the Mentor at least every two 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)).
- f. The Member will complete a minimum of two mentorship sessions to the satisfaction of the Director prior to 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.
- g. After a minimum of seven 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(d),

- iii. that the Mentor reviewed the documents set out in paragraph 3(d) and discussed the subjects set out in paragraph 3(e) 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.

Other

- 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.
- j. 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

The College submitted that a penalty order must first and foremost protect young and vulnerable children whose safety and well-being is entrusted to RECEs. It must also maintain the public's confidence in the College's ability and willingness to regulate the conduct of its members.

The College submitted that the Proposed Penalty sends a message to the Member, the community of RECEs as a whole and the public that conduct that breaches the standards of the profession and intervenes with the physical integrity of a Child is unacceptable and will not be tolerated.

The College submitted that the Proposed Penalty is serious enough to deter the Member and other RECEs from engaging in similar conduct in the future.

College Counsel submitted that there were two aggravating factors that the Panel should consider when assessing the Proposed Penalty:

- 1. The Member's conduct caused a mark on the Child's arm.
- 2. The Child was a two-year-old toddler who would not have been able to report the incident or explain what caused the mark on the Child's arm.

The College also submitted that there are significant mitigating factors which she urged the Panel to consider. These included:

- The Member pleaded guilty to the misconduct and agreed to the Proposed Penalty which shows that she has accepted responsibility for her actions, is remorseful and has gained insight into her conduct since the incident. It also shows she is committed to enhancing her practice as she moves forward.
- 2. The Member has no prior record of misconduct with the College.

The College provided two other considerations, which were characterized as the absence of an aggravating factor, and which were not mitigating but should be considered in the overall assessment of the incident:

- 1. This was a single brief incident and not a pattern of behaviour.
- 2. There is no evidence that the Child in this case was emotionally impacted. This makes this case different from other cases where the children cried or were negatively impacted by the Member's conduct.

College Counsel submitted that the Proposed Penalty contains requirements that will correct and enhance the Member's skills and abilities through coursework and mentoring. The Member will be required to successfully complete two courses on behaviour management strategies and behaviour guidance and at least two of the seven mentoring sessions before the Member can return to practice. This provides a significant measure of rehabilitation for the Member and protects the children who will be in her care when she returns to practice.

College Counsel provided the Panel with three cases which could be distinguished from this case, and considered to reassure the Panel that the Proposed Penalty in this case was appropriate and would not bring the administration of justice into disrepute:

1. College of Early Childhood Educators v. Yujie Chen, 2022 ONCECE 15

- 2. College of Early Childhood Educators v. Rosie Jameak Black, 2023 ONCECE 1
- 3. College of Early Childhood Educators v. Amanda Grace Patterson, 2023 ONCECE 7

College Counsel also submitted that costs in the amount of \$1,000 were agreed to by the parties and are routinely ordered in discipline proceedings to reimburse the College for a portion of the expenses incurred by the College in prosecuting the matter.

Submissions of the Member on Penalty and Costs

The Member's counsel submitted that the Proposed Penalty satisfies the College's duty to protect the public and would enhance the public's confidence in the College's ability to regulate the profession. The Proposed Penalty also meets the sentencing principles relating to deterrence and rehabilitation by providing the opportunity to support the Member's return to the profession through coursework and mentorship.

The Member's counsel submitted that the Proposed Penalty is proportional to the conduct of the Member and agreed that the cases provided by the College Counsel were distinguishable from this case but could guide the Panel when considering the appropriateness of the Proposed Penalty.

The Member's counsel also submitted that the Member's cooperation and remorse were mitigating factors which should be considered by the Panel in assessing the Proposed Penalty.

PENALTY DECISION

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

- The Member is required to appear before the Panel to be reprimanded within 60 days from the date of the Order.
- 2. The Registrar is directed to suspend the Member's certificate of registration for a period of
 - a. five months; or

b. the period of time required to comply with terms, conditions and limitations set out in paragraphs 3(a) to 3(f) below,

Whichever is greater.

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:

Coursework

- 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 | the Member must successfully complete, with a minimum passing grade of 70% (or to the satisfaction of the Director if a grade is not assigned) and at her own expense, the following courses (subject to the Director's pre-approval):
 - i. Building positive and responsive relationships with children; and
 - ii. Positive intervention strategies.
- b. The Member must provide the Director with proof of enrollment and successful completion of the courses.

Mentorship

- c. 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. 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.
- d. 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.
- e. The Member will meet with the Mentor at least every two 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)).

- f. The Member will complete a minimum of two mentorship sessions to the satisfaction of the Director prior to 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.
- g. After a minimum of seven 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(d),
 - iii. that the Mentor reviewed the documents set out in paragraph 3(d) and discussed the subjects set out in paragraph 3(e) 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.

Other

- 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.
- j. The College may require proof of compliance with any of the terms in this Order at any time.

REASONS FOR PENALTY

The Panel understands that the penalty ordered should protect the public and enhance public confidence in the ability of the College to regulate registered early childhood educators. This is

achieved through a penalty that addresses specific deterrence, general deterrence and, where appropriate, rehabilitation and remediation. The penalty should be proportionate to the misconduct.

In considering the joint submission, the Panel was mindful that a jointly proposed penalty should be accepted unless its acceptance would bring the administration of justice into disrepute or it is otherwise not in the public interest. In this regard, we accept the Proposed Order. The suspension will serve as a deterrent to the Member and other members of the profession from engaging in similar conduct.

The Member will benefit from taking College courses and reviewing best practices for interacting with children and guiding their behaviour. The Member will also benefit from extra coursework to help her learn about building positive and trusting relationships with children, families and colleagues. Mentoring will provide her with an opportunity to seek knowledge and guidance from an experienced RECE in a supervisory position. Having access to such guidance should help to build upon the Member's skills and previous training. Participating in coursework and mentorship will be paramount in the Member's rehabilitation before re-entering the sector. In our opinion, the Member would not be a public safety risk once she completes the required training and mentorship. We accept the Member's remorse as genuine and anticipate that with the training and mentorship, we will not see the Member again before the Discipline Committee.

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 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.

panel and on behalf of the members of the	ne Discipline panel.
Johnson	<u>December 12, 2023</u>
Krista Johnson, RECE, Chair	Date

I, Krista Johnson, sign this decision and reasons for the decision as Chair of this Discipline