

NOTICE OF PUBLICATION BAN

In the matter of College of Early Childhood Educators and Gabrielle Simone Fischer-Aubé 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
Richard Fillion, DDS
Purvi Manek, RECE

BETWEEN:)	
)	
COLLEGE OF EARLY)	Vered Beylin
CHILDHOOD EDUCATORS)	For the College of Early Childhood Educators
)	
and)	
)	
GABRIELLE SIMONE FISCHER-AUBÉ)	Self-represented
REGISTRATION # 40896)	
)	
)	
)	Elyse Sunshine,
)	Rosen Sunshine LLP
)	Independent Legal Counsel
)	
)	Heard: February 20, 2024

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 February 20, 2024. 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 January 24, 2024, (Exhibit 1) which provided as follows:

1. At all material times, Gabrielle Simone Fischer-Aubé (the “Member”) was a member of the College and was employed as an Early Childhood Educator (“ECE”) at Westminster Public School, in Brockville, Ontario (the “School”).
2. Over the course of approximately a month and a half, between approximately September 2019 and October 2019, the Member engaged in the following conduct:
 - a) On or about September 11, 2019, at approximately 2:45 p.m., the Member failed to conduct a headcount or check attendance during dismissal from the School. As a result,

- a 4-year-old child ("Child 1"), boarded the wrong bus and was dropped off at the YMCA – located approximately 900 metres away from the School.
- b) On or about September 19, 2019, at approximately 2:40 p.m., the Member permitted a child from the junior kindergarten class ("Child 2"), to go to the washroom alone, despite the School's procedures which prohibited kindergarten-aged children to be alone when moving through the School. The Child was unable to open the doors in the School's vestibule on their way back from the washroom, and remained in the vestibule, alone and unsupervised, until the School's Office Administrator found them. The School's Principal (the "Principal") spoke with the Member about the importance of ensuring children are supervised at all times.
 - c) Four days later, on or about September 23, 2019, at approximately 10:20 a.m., the Member again permitted a child from the junior kindergarten class ("Child 3") to go to the washroom alone, despite the School's procedures and her conversation with the Principal, as described in paragraph (b) above. The Member then failed to conduct a headcount to ensure all of the children were present while transitioning the junior kindergarten class inside the School. As a result, Child 3 remained alone and unsupervised. Child 3 then walked through the hallway to a section of the School they were unfamiliar with. Child 3 wandered there until they were noticed by the School's staff, who brought Child 3 to their kindergarten teacher. The Principal then spoke with the Member again about the importance of ensuring children are supervised at all times, and reminded the Member that kindergarten-aged children are not permitted to move through the School alone.
 - d) On or about September 26, 2019, at approximately 2:35 p.m., the Member failed to supervise a child from the junior kindergarten class ("Child 4") during the School's dismissal period. As a result, Child 4 followed another child to the wrong bus line. The Member did not notice that Child 4 was missing until another RECE noticed Child 4 was in the wrong place and notified the Member.
 - e) On or about October 22, 2019, at approximately 10:15 a.m., the Member again allowed a 4-year-old child ("Child 5"), to go to the washroom alone, despite the School's procedures and her conversations with the Principal, as described in paragraphs (b) and

(c) above. As a result, Child 5 was alone and unsupervised, until the School's staff found them wandering in the hallway.

- f) On or about October 28, 2019, during the School's dismissal period, the Member failed to ensure that all the children were present while she led a group of approximately 20 children towards the bus. The Member failed to notice that the School's door closed before all the children exited the building. As a result, 12 children remained inside the School and began yelling "we're on the bus", or words to that effect. The Member returned after another staff noticed the remaining children and notified the Member by walkie-talkie.
 - g) On four occasions, on or about September 26, October 1, 7 and 28, 2019, the Member failed to follow the School's safety and supervision procedures by failing to use the dismissal template to guide children to the correct buses.
3. By engaging in the conduct set out in paragraph 2 above, the Member engaged in professional misconduct as defined in subsection 33(2) of the ECE 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).

WITHDRAWAL OF ALLEGATIONS

The College requested permission to withdraw allegations 2(d) 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 between the parties 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 held a certificate of registration with the College since October 2012. 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 School.

The Incidents

3. Over the course of approximately a month and a half, between approximately September 2019 and October 2019, the Member engaged in the following conduct:
 - a) On September 11, 2019, at approximately 2:45 p.m., the Member and other school staff were responsible for supervising Child 1. Child 1 boarded the wrong bus and was dropped off at the YMCA – located approximately 900 metres away from the School. YMCA staff then contacted the Principal. Child 1's parents were upset when they learned of this incident. That afternoon, the Principal spoke with the Member regarding this incident, and then emailed her highlighting, among other things, the importance of minimizing the "possibility of students ending up in the wrong place and maximiz(ing) student safety".
 - b) On September 19, 2019, at approximately 2:40 p.m., the Member permitted Child 2 to go to the washroom alone, despite the School's procedures which prohibited kindergarten-aged children to be alone when moving through the School. The Child was unable to open the doors in the School's vestibule on their way back from the washroom, and remained in the vestibule, alone and unsupervised, until the School's Office Administrator found them. The Principal then spoke with the Member about the importance of ensuring children are supervised at all times.
 - c) Four days later, on September 23, 2019, at approximately 10:20 a.m., the Member again permitted Child 3 to go to the washroom alone, despite the School's procedures and her conversation with the Principal, as described in paragraph (b) above. The Member then failed to conduct a headcount to ensure all of the children were present while transitioning the junior kindergarten class inside the School. As a result, Child 3 remained alone and unsupervised. Child 3 then walked through the hallway to a section of the School they were unfamiliar with. Child 3 wandered there until they were noticed by the School's staff, who brought Child 3 to their kindergarten teacher. The Principal then spoke with the Member again about the importance of ensuring children are supervised at all times, and reminded the Member that kindergarten-aged children are not permitted to move through the School alone.

- d) On October 22, 2019, at approximately 10:15 a.m., the Member again allowed Child 5 to go to the washroom alone, despite the School's procedures and her conversations with the Principal, as described in paragraphs (b) and (c) above. As a result, Child 5 was alone and unsupervised until the School's staff found them wandering in the hallway.
- e) On October 28, 2019, during the School's dismissal period, the Member led a group of approximately 20 children towards the bus. The Member failed to notice that the School's door closed before all the children exited the building. As a result, 12 children remained inside the School and began yelling "we're on the bus", or words to that effect. The Member realized that the children were left behind and quickly returned, just as another staff noticed the remaining children and notified the Member by walkie-talkie.
- f) On four occasions, on September 26, October 1, 7 and 28, 2019, the Member failed to follow the School's safety and supervision procedures by failing to use the dismissal template to guide children to the correct buses.

Additional Information

- 4. In addition to the Principal's conversations with the Member, as detailed in paragraphs 3(b) and 3(c) above, in September – October, 2019, the School took various steps to address the Member's conduct, including the following:
 - a. On September 30, 2019 and October 7, 2019, the School's administrators met with the Member, and discussed the concerns related to the failure to use the dismissal template on September 26, 2019, October 1, 2019, and October 7, 2019, as described in paragraph 3(g) above.
 - b. On October 10, 2019, the Principal met with the Member and asked her how she was doing. The Member became tearful and advised that she was dealing with "stresses at home" but did not elaborate. The Principal suggested that the Member take the rest of the day off, advised her of supports available at the School and let her know that if she needed time that was always a possibility. After speaking with the Principal, the Member took the afternoon off.
 - c. On October 11, 2019, the Principal issued a Letter of Expectations to the Member.

- d. On October 25, 2019, the Member signed a formal resolution agreement, where among another things, she agreed to abide by specified practices to ensure the safety and supervision of children. This included the Member's commitment to ensure that all children under her care are accounted for and supervised, and that kindergarten students move in pairs, as well as to update dismissal templates and attendance lists as required.
- 5. On October 30, 2019, the Member was reassigned to work from home until the completion of the School Board's investigation.
- 6. If the Member were to testify, she would state that:
 - a. Prior to the Incidents, she was diagnosed with mild depression and anxiety, generally well-controlled with prescribed medication.
 - b. At the time of the Incidents, she was dealing with challenging personal circumstances, which included, among other things, taking care of her parents who had significant physical and/or mental health illnesses. Additionally, the Member felt her teaching partner was difficult to collaborate and communicate with, which in turn increased the Member's stress.
 - c. Following the Incidents, and after the Member's father passed away in early December 2019, she sought treatment and counselling.
 - d. She regrets her conduct during the Incidents. She is committed to ensuring the safety of children and enhancing her supervision practices.

Admissions of Professional Misconduct

- 7. 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 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 the parties jointly agree that the allegations of professional misconduct, apart from the withdrawn allegation of 2(d) in the Notice of Hearing, are supported by the facts set out in the Agreed Statement of Facts. The College submitted that these facts were sufficient to make a finding of misconduct against the Member.

The College submitted that the facts establish that on multiple occasions over the course of a month and a half, the Member failed to adequately supervise kindergarten-aged children and failed to follow the School's policies and procedures. This exposed children to a risk of physical harm. The College submitted that the Member breached the standards of the profession and failed to monitor the learning environment to provide safe and appropriate supervision of the children based on their development and the environment. The children were in junior kindergarten and still acclimating to the School. Additionally, the College submitted that despite the Member's difficult personal circumstances, she was still responsible for collaborating and communicating with her colleagues to ensure the safety of young and vulnerable children. The College submitted that the Member's failures reflected negatively on her and were unprofessional and unbecoming a member of the profession.

The Member did not make any 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 on several occasions, the Member failed to supervise children in her care and failed to maintain standards relating to supervision. Even after guidance and direction from the Principal, the Member continued to act irresponsibly and unprofessionally by not ensuring the whereabouts of the children and by failing to adequately supervise them on multiple occasions. As the children were new to the School and its routines, they relied on the Member to guide them. The Member's repeated failure to supervise the children and follow the School's procedures put the

children at risk and jeopardized the development of positive and trusting relationships with the children and their families. This was borne out by the example of Child 1's parent who was concerned that their child was placed on the wrong bus. This kind of conduct not only affects one family but harms public confidence in the profession more broadly. While the Member was dealing with some difficult personal circumstances, this did not negate her obligation to ensure that the children under her care were appropriately supervised and safe. The children, their families and the public reasonably relied on the Member to fulfill her professional responsibilities and she did not do so. For the above reasons, the Panel found the Member's conduct to be unprofessional and unbecoming an RECE.

POSITION OF THE PARTIES ON PENALTY

Counsel for the College provided the Panel with a joint submission from the parties 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 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. three months; or
 - b. the period of time required to comply with terms, conditions and limitations set out in paragraphs 3(a) to 3(d) and 3(g) to 3(j) 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 practicing or suspended the Member for any other reason.

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

Mentorship

- a. Prior to the Member commencing or resuming employment as an RECE or engaging in the practice of early childhood education, as defined in section 2 of the ECE Act, the Member, at her own expense, will arrange a mentoring relationship with a Mentor, who:
 - i. is an RECE in good standing with the College,
 - ii. is employed in a supervisory position,
 - iii. has never been found guilty of professional misconduct and/or incompetence by the Discipline Committee of the College,
 - iv. is not currently found to be incapacitated by the Fitness to Practise Committee of the College,
 - v. is not currently the subject of allegations referred to the Discipline Committee or the Fitness to Practise Committee of the College, and
 - vi. is pre-approved by the Director of Professional Regulation (the “Director”). In order to pre-approve the Mentor, the Member will provide the Director with all requested information, including (but not limited to) the name, registration number, telephone number, address and résumé of the Mentor.
- b. 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.
- c. 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)).
- d. 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.
- e. After a minimum of five 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(b),
 - iii. that the Mentor reviewed the documents set out in paragraph 3(b) and discussed the subjects set out in paragraph 3(c) 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.

Treatment and/or Counselling

- g. The Member will continue receiving treatment and/or counselling regularly from a family physician, psychotherapist, psychologist or psychiatrist of her choice (the “mental health practitioner”) at the frequency considered necessary by the mental health practitioner, but in any event not less than twice in the first three months, and then once every three months, for a period of at least nine months from the date of this Order.
- h. The Member will provide the mental health practitioner referred to in paragraph 3(g) a copy of the documents set out in paragraph 3(b), within 14 days of this Order, or within 14 days after the release of such documents, whichever is earliest.
- i. After a period of three months, the Member will provide the Director with a report from the mental health practitioner, setting out:
 - i. the dates of the Member’s treatment and/or counselling;
 - ii. the treatment and/or counselling provided to the Member;
 - iii. any recommendations regarding future treatment and/or counselling;
 - iv. whether the Member has been complying with all the treatment and/or counseling recommendations made by the mental health practitioner; and
 - v. any other information the mental health practitioner considers relevant.
- j. The Member is prohibited from returning to practice as an RECE until the Director has received a report, satisfactory to the Director, from the mental health practitioner that the Member has attended treatment and/or counselling with them for at least three months and that in their opinion the Member can practise safely and ethically return to practice as an RECE.

Workplace Monitoring

- k. After the suspension in section 2 above ends, for a period of six months, the Member will only practise as an RECE in a setting or settings, approved by the Director in writing and where a workplace monitor(s) (the “Monitor”) approved by the Director is available to monitor the Member’s practice.

- I. The Member will only practise within the scope of an RECE, as defined by section 2 of the ECE Act, after arranging a monitoring relationship with a Monitor, who:
 - i. is an RECE in good standing with the College or a Member of another regulated profession in good standing with their regulatory body;
 - 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 or their regulatory body;
 - iv. is not currently found to be incapacitated by the Fitness to Practise Committee of the College or their regulatory body;
 - v. is not currently the subject of allegations referred to the Discipline Committee or the Fitness to Practise Committee of the College or their regulatory body; and
 - vi. is pre-approved by the Director. In order to pre-approve the Monitor, the Member will provide the Director with:
 1. all requested information, including (but not limited to) the name, registration number, telephone number, address and résumé of the Monitor;
 2. a written confirmation by the Monitor that the Monitor received a copy of this Order;
 3. the Monitor's written agreement that:
 - a. the Monitor will, for the duration of the monitoring relationship, be physically present at the workplace when the Member is practising as an RECE. On days that the Monitor is not physically present at the workplace, the Monitor will designate a suitable substitute to monitor the Member.
 - b. the Monitor will co-operate with the College, including by providing the College with any information that it requires to ensure that the Member is complying with the workplace monitoring sections of this Order and agreeing to notify the Director immediately, in writing, if

the Monitor believes that the Member may have committed an act or omission which may constitute professional misconduct.

- m. The Member will advise the Director, in writing, if:
 - i. the monitoring relationship between the Member and the pre-approved Monitor has ended;
 - ii. the Monitor is unable to personally monitor the Member for a consecutive period of over 30 days;
 - iii. the Monitor wishes to end the monitoring relationship; and/or
 - iv. the Member wishes to end the monitoring relationship with the pre-approved Monitor and enter into a monitoring relationship with a new Monitor.
- n. If one of the conditions of the monitoring relationship with the Monitor is not met, the Monitor's agreement will no longer be in effect and the Member must cease practising until another Monitor is approved by the Director.

Other

- o. 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.
 - p. 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 12 months of the date of this Order.

Submissions of the College on Penalty and Costs

College Counsel submitted that an appropriate penalty should first and foremost protect young, vulnerable children whose safety is entrusted to RECEs. The penalty ordered must also maintain the public's confidence in the College's ability to regulate the conduct of its members. In addition, the penalty must denounce the misconduct and send a message to the Member, the wider

community of RECEs, and the public, that multiple failures to supervise children and monitor the learning environment adequately will not be tolerated. In addition, the Proposed Order must deter the Member and other members of the College from engaging in this type of misconduct.

Counsel for the College submitted that while the College often sees cases where members fail to supervise and adhere to policies, this case was the first where there were multiple instances. As such, the Proposed Order in this case is tailored to the Member. The combination of suspension, mentoring, mental health treatment and workplace monitoring were carefully crafted by the parties to ensure that the above-mentioned sentencing principles are achieved.

In determining penalty, Counsel for the College asked the Panel to consider four aggravating factors:

- 1) There were repeated incidents of failing to follow procedures which occurred over one and a half months, so this was not a single lapse of judgment.
- 2) The conduct involved junior kindergarten children who were new to the School environment. This increased the Member's responsibility to supervise those children in the circumstances.
- 3) As a result of the Member's failure to supervise the children, Child 1 ended up on the wrong bus and was transported to the wrong location.
- 4) The Member's concerning behaviour occurred despite ongoing guidance and direction from the School about expected conduct.

The College submitted there were four mitigating factors:

- 1) The Member pleaded guilty and agreed to the Proposed Order, which indicates that she is remorseful and has insight into the need to enhance her professionalism. This saved the College the time and resources of a contested hearing.
- 2) The Member has no record of prior misconduct.
- 3) The Member's anxiety and depression contributed to her failure to exercise professional judgment. While not an excuse or defence, the College acknowledged that this was a contributing factor.
- 4) The Member was dealing with extremely difficult personal circumstances when the Incidents occurred.

The College also submitted that the children were not harmed and there was no evidence to suggest there was an emotional impact on them.

The College provided the Panel with five prior discipline cases that, while not identical, could be considered analogous in some respects to the case under consideration.

1. *College of Early Childhood Educators v. Ariana Belen Ontaneda*, 2022 ONCECE 18
2. *College of Early Childhood Educators v. Rehana Islam*, 2019 ONCECE 12
3. *Law Society of Ontario v. Zopf* 2019 ONLSTH 144
4. *College of Early Childhood Educators v. Christine Elizabeth Sbardella*, 2019 ONCECE 3
5. *College of Early Childhood Educators v. Charmaine Louise Lindsay*, 2022 ONCECE 13

The College submitted that the Panel had limited discretion to reject the Proposed Order and could do so only if it considered the penalty so lenient or harsh as to be outrageous. The College submitted that the *Ontaneda* and *Islam* cases involved failure to supervise that carried penalties in the range of a four to nine month suspension, along with remediation measures and a reprimand. The *Zopf*, *Sbardella* and *Lindsay* cases were instances where a panel considered challenging personal circumstances to be mitigating factors when determining an appropriate penalty. The College submitted that the Panel could consider these past cases along with the aggravating and mitigating factors in this case, and the extensive remediation measures provided for in the Proposed Order, for reassurance that the Proposed Order would not bring the administration of justice into disrepute, and that it should not be rejected.

The College also submitted that the costs in the Proposed Order were jointly agreed to by the parties, and that they were reasonable. Therefore, they should be ordered by the Panel.

Submissions of the Member on Penalty and Costs

The Member did not make any submissions.

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 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. three months; or
 - b. the period of time required to comply with terms, conditions and limitations set out in paragraphs 3(a) to 3(d) and 3(g) to 3(i) 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 practicing 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:

Mentorship

- a. Prior to the Member commencing or resuming employment as an RECE or engaging in the practice of early childhood education, as defined in section 2 of the ECE Act, the Member, at her own expense, will arrange a mentoring relationship with a Mentor, who:
 - i. is an RECE in good standing with the College,
 - ii. is employed in a supervisory position,
 - iii. has never been found guilty of professional misconduct and/or incompetence by the Discipline Committee of the College,
 - iv. is not currently found to be incapacitated by the Fitness to Practise Committee of the College,
 - v. is not currently the subject of allegations referred to the Discipline Committee or the Fitness to Practise Committee of the College, and
 - vi. is pre-approved by the Director. 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.

- b. 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.
- c. 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)).
- d. 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.

- e. After a minimum of five 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(b),
 - iii. that the Mentor reviewed the documents set out in paragraph 3(b) and discussed the subjects set out in paragraph 3(c) 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.

Treatment and/or Counselling

- g. The Member will continue receiving treatment and/or counselling regularly from the mental health practitioner at the frequency considered necessary by the mental health practitioner, but in any event not less than twice in the first three months, and then once every three months, for a period of at least nine months from the date of this Order.
- h. The Member will provide the mental health practitioner referred to in paragraph 3(g) a copy of the documents set out in paragraph 3(b), within 14 days of this Order, or within 14 days after the release of such documents, whichever is earliest.
- i. After a period of three months, the Member will provide the Director with a report from the mental health practitioner, setting out:
 - i. the dates of the Member's treatment and/or counselling;
 - ii. the treatment and/or counselling provided to the Member;
 - iii. any recommendations regarding future treatment and/or counselling;

- iv. whether the Member has been complying with all the treatment and/or counseling recommendations made by the mental health practitioner; and
 - v. any other information the mental health practitioner considers relevant.
- j. The Member is prohibited from returning to practice as an RECE until the Director has received a report, satisfactory to the Director, from the mental health practitioner that the Member has attended treatment and/or counselling with them for at least three months and that in their opinion the Member can practise safely and ethically return to practice as an RECE.

Workplace Monitoring

- k. After the suspension in section 2 above ends, for a period of six months, the Member will only practise as an RECE in a setting or settings, approved by the Director in writing and where the Monitor approved by the Director is available to monitor the Member's practice.
- l. The Member will only practise within the scope of an RECE, as defined by section 2 of the ECE Act, after arranging a monitoring relationship with a Monitor, who:
 - i. is an RECE in good standing with the College or a Member of another regulated profession in good standing with their regulatory body;
 - 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 or their regulatory body;
 - iv. is not currently found to be incapacitated by the Fitness to Practise Committee of the College or their regulatory body;
 - v. is not currently the subject of allegations referred to the Discipline Committee or the Fitness to Practise Committee of the College or their regulatory body; and

- vi. is pre-approved by the Director. In order to pre-approve the Monitor, the Member will provide the Director with:
 - 1. all requested information, including (but not limited to) the name, registration number, telephone number, address and résumé of the Monitor;
 - 2. a written confirmation by the Monitor that the Monitor received a copy of this Order;
 - 3. the Monitor's written agreement that:
 - a. the Monitor will, for the duration of the monitoring relationship, be physically present at the workplace when the Member is practising as an RECE. On days that the Monitor is not physically present at the workplace, the Monitor will designate a suitable substitute to monitor the Member.
 - b. the Monitor will co-operate with the College, including by providing the College with any information that it requires to ensure that the Member is complying with the workplace monitoring sections of this Order and agreeing to notify the Director immediately, in writing, if the Monitor believes that the Member may have committed an act or omission which may constitute professional misconduct.
- m. The Member will advise the Director, in writing, if:
 - i. the monitoring relationship between the Member and the pre-approved Monitor has ended;
 - ii. the Monitor is unable to personally monitor the Member for a consecutive period of over 30 days;
 - iii. the Monitor wishes to end the monitoring relationship; and/or

- iv. the Member wishes to end the monitoring relationship with the pre-approved Monitor and enter into a monitoring relationship with a new Monitor.
- n. If one of the conditions of the monitoring relationship with the Monitor is not met, the Monitor's agreement will no longer be in effect and the Member must cease practising until another Monitor is approved by the Director.

Other

- o. 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.
- p. 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 RECEs. This is achieved through a penalty that addresses specific deterrence, general deterrence and, where appropriate, rehabilitation and remediation. Further, the penalty should be proportionate to the misconduct.

In considering the joint submission, the Panel was mindful that a jointly proposed penalty should be accepted unless its acceptance would bring the administration of justice into disrepute or it is otherwise not in the public interest. It is the Panel's conclusion that the Member will have the chance to fully rehabilitate and be able to be reinstated into the profession once she completes the penalty ordered. The Member is also required to address her mental health and work with a supervising mentor and a workplace monitor.

The Panel believes that this type of remediation will allow the Member to relearn and reinforce specific procedures relating to safety and well-being of children to a satisfactory level before returning to practice. The Panel is confident that once the Member's workplace monitor deems her

to be ready to practice safely on her own using the necessary skills, knowledge and judgment, there will be no further risk to the public.

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 12 months of the date of this Order.

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


Krista Johnson, RECE, Chair

February 29, 2024
Date