COMMUNITY CARE AND ASSISTED LIVING APPEAL BOARD

Community Care and Assisted Living Act,
SBC 2002, c.75

APPELLANT: JC, Licensee
(operating Just Kidz Play Family Daycare)

RESPONDENT: Dr. William Osei, Medical Health Officer, Northern Health Authority

PANEL: Susan E. Ross, Chair

Decision on Application to Dismiss Appeal

[1] On June 13, 2008, the appellant filed a notice of appeal to the Community Care and Assisted Living Appeal Board (the "Board") of the cancellation of her licence under the *Community Care and Assisted Living Act*, SBC 2002, c. 75 (the "CCALA") to operate a family day care, Just Kidz Play Family Daycare ("Just Kidz"), in Prince George, British Columbia. The decision in question is a reconsideration decision dated March 25, 2008, of Dr. William Osei, a Medical Health Officer with the Northern Health Authority ("Licensing"), which the notice of appeal states that the appellant did not receive until April 26, 2008.

[2] The reconsideration decision is less than two pages long. It refers to a December 14, 2007, letter from Licensing, a meeting between the parties on January 18, 2008, and Dr. Osei's assessment of the appellant's response to evidence against her. It concludes as follows;

> I am of the opinion that your lack of compliance with and understanding of the objectives of the act and its regulations pose an unacceptable risk to the health and safety of the children under your care.
>
> Under the authority of section 14 of the Community Care and Assisted Living Act, I am canceling the facility license issued to you as of March 31, 2008. You may consult your licensing officer to coordinate your response to this action in a smooth manner and with minimum inconvenience to parents and guardians of the children affected.

> If you have questions, you may contact me or your licensing officer at 250 565-2150. You may also appeal this decision to the Community Care and Assisted Living Appeal Board as stipulated under section 29 of this Act. The address of the Community Care & Assisted Living Appeal Board is P.O. Box 9425 Stn. Prov. Govt., Victoria, BC V8W 9V1. Telephone 250-387-3464, Fax 250-356-9923.

[3] Section 29(2) of the CCALA required the appellant to file her appeal within 30 days of receiving notification of the March 25, 2008, reconsideration decision.

[4] On June 27, 2008, Licensing applied to the Board for summary dismissal of the appeal on the ground that it was filed out of time. The application was supported by an affidavit of Sharlene Lively, Regional Manager of Community Care Licensing, attesting to the fact that she mailed and emailed the reconsideration decision to the appellant on March 28, 2008, and ten minutes after the email was sent she received a telephone call from the appellant who had received the decision and wanted to discuss her options. Licensing also correctly points out that the 30-day time limit in s. 29(2) of the CCALA was exceeded whether the time for filing the appeal was calculated from March 28 (when Licensing says she was notified) or April 26 (when the notice of appeal said the appellant received the decision).

[5] Section 31(b) of the *Administrative Tribunals Act*, SBC 2004, c. 45 (the "ATA") and Board Rule 15(1)(b) permit the Board to summarily dismiss an appeal that was not filed within an applicable time limit, so long as the parties are first given an opportunity to be heard. Section 24(2) of the ATA and Board Rule 6(2) authorize the Board to extend a time limit to file a notice of appeal if satisfied that special circumstances exist. The Board invited submissions from the parties respecting Licensing's application for summary dismissal of the appeal, and specifically asked them to address: (a) whether there are special circumstances warranting an extension of time; and (b) the relevance for the purposes of the application for summary dismissal of the fact that the decision under appeal purports to cancel the licence to operate the day care under s. 14 of the CCALA when that provision relates to summary suspension of a licence and not to cancellation.

[6] Both parties provided written submissions. Licensing provided documentation to establish that there was a reconsideration process under s. 17 of the CCALA and the authority for the cancellation decision, while indicated in the decision to be under s. 14, was not summary action under s. 14 at all but rather it was action under s. 13(1) that was reconsidered under s. 17(3)(b). The Board is satisfied on the basis of the documentation provided and the authority of *British Columbia (Milk Board) v. Grisnich*, [1995] 2 S.C.R. 895, that ss. 13(1) and 17(3)(b), not s. 14, were the relevant empowering provisions and there is no requirement for a statutory decision-maker to specify the exact source of its jurisdiction to act so long as it does have the necessary jurisdiction. Dr. Osei was in error in citing s. 14, but he had the necessary jurisdiction under s. 17(3)(b) of the CCALA to make the reconsideration decision that he did.

[7] The appellant's submission, made through counsel, argues that an extension of time to file the notice of appeal should be granted because:

- There is no prejudice to Licensing in the appeal being able to proceed.
- The departure from the 30-day time limit was small, whether calculated from March 28 or April 26, 2008.
- The appellant's financial well-being and livelihood and her personal well-being and sense of self-worth depend on the licence that was cancelled.
- The following personal circumstances of the appellant are relevant:
    - She did not believe that her licence would be cancelled because she thought only facilities where children were neglected or abused were closed. She contacted Licensing on April 26, 2008, to discuss options other than cancellation.
    - Upon receiving the reconsideration decision, the appellant became clinically depressed. This made her unable to pursue an appeal and she has since consulted a doctor and received treatment for clinical depression.
    - The appellant was socially stigmatized when her licence was cancelled and became too embarrassed and ashamed to pursue an appeal.
    - The appellant has other stress-related health concerns for which she is scheduled for medical treatment.
    - The appellant's decision to appeal was influenced by support she received from a group of parents of children who attended Just Kidz and others that the group and the appellant consulted.
- Licensing mailed the reconsideration decision to the appellant's old address even though she had communicated a change of address. The appellant believes that the new occupants, who were parents of children that attended Just Kidz, read the decision to cancel her licence.
- The reconsideration decision did not state that there was a 30-day time limit to commence an appeal.
- Licensing did not consider, and should have, less drastic measures than cancellation, such as a suspension or licence conditions.
- The appellant is critical of the thoroughness and fairness of Licensing's investigation and review of her operation.

[8] Licensing submits that the circumstances do not warrant an extension of time. In support of this, it provides a June 3, 2008, letter from Sharlene Lively to the appellant concerning a complaint that she was providing unlicensed care under the CCALA. This letter indicates that when the appellant's licence to operate Just Kidz was cancelled, Licensing agreed to permit the appellant to work assisting her mother-in-law who would re-open and operate her own licensed family day care to serve children who had previously attended Just Kidz. However, when the mother-in-law commenced a five-week vacation in mid-May the appellant took charge of the day care, child drop off and pick up was allowed at the appellant's home, two parents provided cheques for care made payable to the appellant and records, registrations and caregiver agreements for the children attending the mother-in-law's facility remained in the name of Just Kidz. Licensing considered these activities to be a breach of the arrangement for the appellant to work under the

supervision of her mother-in-law, in the mother-in-law's licensed facility, and that they constituted the appellant delivering unlicensed care under the CCALA. Ms. Lively's June 3, 2008, letter informed the appellant that she could not re-apply for a license for one year and, if she did re-apply after that time, she would have to provide evidence that she had taken steps to address the concerns of Licensing about her ability to comply with the CCALA and its regulations. Although not cited in the letter, s. 13(2) of the CCALA provides that if a medical health officer cancels a licence, the licensee is prohibited from applying for a new licence with respect to any premises that the licensee proposes to use as a community care facility for one year from the date of the decision to cancel the licence.

[9] Licensing says that the circumstances revealed in the June 3, 2008, letter to the appellant are at odds with her assertion that she was impeded in filing her appeal by depression, social stigmatization or health problems of any other kind. It says that the appellant's focus on whether the reconsideration decision was mailed to her old address ignores the sworn evidence that the appellant was notified by email on March 28, 2008, causing her to contact Ms. Lively by telephone within 10 minutes of the sending of the email. It says there was sufficient information in the reconsideration decision to alert the appellant about her right of appeal and where she could make further inquiries in that regard.

[10] The appellant provided a reply submission that, without denying the activities Licensing alleges she engaged in at her mother-in-law's day care, contends that they did not constitute the appellant providing unlicensed care under the CCALA. This submission concludes with the following paragraph:

> Both the Appellant and [her mother-in-law] felt that the Appellant's contact with children would benefit all parties. The children would have continuity as the Appellant had been their primary child care provider and the Appellant's depression would be minimized by remaining productive and interacting with the children. Physically working with children requires a different skill set than embarking on an appeal, which to the Appellant amounted to confronting the very regulatory body that was at the root of her depression.

[11] The Board has discretion to extend the time limit to commence an appeal if satisfied that special circumstances exist. The appellant's notice of appeal, stating as it did that she did not receive the March 25, 2008, reconsideration decision until April 26, 2008, left the impression that she was not aware of the decision until that time. However, in its application for the appeal to be summarily dismissed because it was filed out of time, Licensing provided sworn evidence that on March 28, 2008, the appellant acknowledged by telephone that she had received the reconsideration decision by email. The appellant's submissions in response do not deny the truth of this. I agree with Licensing that the appellant's focus on when she received the reconsideration decision by surface postal mail and whether it was delivered to her old mailing address is not to the point and cannot deflect from the significance of her earlier receipt of the reconsideration decision.

[12] The appellant says that when she received the reconsideration decision – which I find happened on March 28, 2008 – she was not able to bring an appeal immediately because she became clinically depressed, suffered social stigmatization and experienced other stress-related health problems. She apparently consulted a doctor and received medical treatment, but she has provided no independent evidence of her medical problems or their impact on her ability to commence an appeal. The appellant's July 17, 2008, response to the application for summary dismissal was silent about the fact that, despite the circumstances she claims impeded her ability to commence an appeal, she went to work at her mother-in-law's licensed day care and, had Licensing not intervened, she was going to be attending to the operation of that day care for five weeks while her mother-in-law took vacation. On June 3, 2008, Licensing informed the appellant that, in its view, rather than working to assist her mother-in-law as a licensed operator, the appellant was engaging in the delivery of unlicensed care under the CCALA, which would have to stop and that the appellant was not eligible to re-apply for licensing for one year. The appellant then filed her notice of appeal on June 13, 2008.

[13] Whether the appellant engaged in the unlicensed delivery of care under the CCALA after her own licence was cancelled is a matter of contention between the parties that the Board need not determine. What the Board must decide, and the appellant's activities after the cancellation of her licence are relevant to this, is whether special circumstances exist to warrant an extension of time to file the notice of appeal.

[14] The Board concludes that the appellant has not provided a credible or convincing case for an extension of time. She has presented facts selectively and she has ignored or failed to persuasively address unfavourable facts. The evidence as a whole supports the inference that the appellant decided to pursue an appeal when she did because of the breakdown of relations with Licensing around the appellant's activities at her mother-in-law's day care, and not because of special circumstances that interfered with her ability to commence an appeal of the reconsideration decision on a timely basis.

[15] The Board denies an extension of time for the appellant to file her notice of appeal under s. 24(2) of the ATA and grants the application of Licensing for summary dismissal of the appeal under s. 31(1)(b) of the ATA because it was not filed within the applicable time limit.

September 5, 2008

Susan E. Ross, Chair