

COMMUNITY CARE AND ASSISTED LIVING APPEAL BOARD

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

APPELLANT: PB (Certificate Applicant)

RESPONDENT: Director, Early Childhood Educator Registry

PANEL: Susan E. Ross, Chair

DECISION

Introduction

[1] The appellant appeals a decision of the respondent Director of the Early Childhood Educator Registry ("ECE Director") refusing to grant her application dated June 16, 2008, for an early childhood educator ("ECE") assistant certificate under the *Community Care and Assisted Living Act* ("CCALA").

Background

[2] Section 8(1) of the *CCALA* and sections 27 and 28 of the *Child Care Licensing Regulation*, BC Reg. 332/2007, govern the issuance of early childhood educator assistant certificates. They read as follows:

CCALA

8 (1) A certificate may be issued to a person in accordance with the regulations stating that the person has the qualifications required by the regulations for certification as an educator of children, or as an educator in the manner specified in the certificate respecting children, at a community care facility.

Child Care Licensing Regulation

27 The director may issue an early childhood educator assistant certificate to an applicant who does all of the following:

- (a) submits an application to the director;
- (b) has successfully completed at least one course of a basic early childhood educator training program in child development, guidance, health and

safety, or nutrition, through an educational institution in item 1 of Schedule D;

- (c) demonstrates to the satisfaction of the director that the applicant
 - (i) is of good character,
 - (ii) has the personality, ability and temperament necessary to manage or work with children, and
 - (iii) has the training and experience and demonstrates the skills necessary to be an early childhood educator assistant.

28 (1) Despite section 25 to 27 [requirements for certificates], the director may exempt an applicant for a certificate from a requirement under any of those sections to complete a program or course if

- (a) the applicant has completed a program or course
 - (i) in qualifying for another profession, or
 - (ii) through an educational institution that is not listed in the applicable provision of Schedule D, and
- (b) the director considers the completed program or course to be at least equivalent to the required program or course.

(2) For the purposes of subsection (1), the director may determine that a program or course is not equivalent to a required program or course solely on the basis that the institution through which the applicant completed the program or course is not approved by a provincial, state, national or other government body.

[3] The ECE Director's decision to refuse the appellant's application is dated August 11, 2008. The reason given was that the course work the appellant completed at two colleges, although valuable, was not equivalent to a child development, guidance or health, safety and nutrition course under section 27(b) and it was, therefore, not eligible for consideration towards meeting the academic requirement for licensure as an ECE assistant. The ECE Director's decision invited the appellant to consider pursuing training that did qualify at a training institution in her area.

Issues and Arguments

[4] The appellant's notice of appeal dated August 26, 2008, said that her course work was sufficient for previous jobs she had and she believed it was sufficient to qualify for an ECE assistant certificate. Her statement of points dated November 12, 2008, said that she has been discriminated against because two co-workers (who did not want to be named out of concern about putting their own licence

status at risk) had had the same course work at a particular college accepted toward their ECE assistant certificates.

[5] The ECE Director's statement of points dated November 28, 2008, explained that the appellant's course work relied on in her statement of points is not part of an approved ECE training program and an equivalency assessment under section 28 of the *Child Care Licensing Regulation* was therefore completed. The ECE Director's requirements for equivalency under section 28 are:

- the program or course completed has equivalent admission requirements, course content and instructional hours in comparison to an approved institution; and
- the training institution is approved by the relevant province, state, country or other government body.

[6] The ECE Director's statement of points explained in some detail how the college course work relied on in the appellant's statement of points was completed at a post-secondary level and at an approved training institution, but the course content was not equivalent to that of one course in child development.

[7] The ECE Director's statement of points addressed the appellant's allegations that her unnamed colleagues have been granted ECE assistant certificates on the basis of the same course work as the appellant, in the following way:

The circumstances in which the two other colleagues were granted their Assistant Status is unknown. Additional factors may have influenced the decisions including whether or not the approvals were granted prior to the Regulation change in November 8, 2007. Before this date, an Assistant Letter was issued if an applicant submitted an applicant form and provided a transcript indicating they had completed at least one course in an early childhood education training program. These requirements are markedly different from the current legislative requirements. Other factors may have influenced the decisions including additional courses taken, that when combined with this course, met the requirements.

[8] Finally, the ECE Director's statement of points maintained that it was not discrimination to apply sections 27 and 28 of the *Child Care Licensing Regulation*, including the required equivalency assessment. The following statement is made about how the ECE Director is apparently handling the registrations of persons who were granted assistant certification before the November 2007 amendments to the *Child Care Licensing Regulation*:

The Early Childhood Educator Registry has made a commitment to grandfather all those individuals who were granted an Assistant Letter and make them eligible for an Assistant Licence to Practice.

[9] By memorandum to the parties dated December 16, 2008, the Board requested clarification from the ECE Director about whether there had been

consideration of whether the appellant's professional development course work was equivalent (reference sections 28(1)(a)(ii), (b) and (2) of the *Child Care Licensing Regulation*) to the course requirement in section 27(b) of the *Child Care Licensing Regulation*.

[10] On January 13, 2009, the ECE Director replied that although the appellant completed a number of professional development courses, none were equivalent to a basic early childhood educator training program under section 27 of the *Child Care Licensing Regulation*. Factors considered in assessing training are described. The absence of an admission requirement of completion of secondary education or school leaving certificate alone made the appellant's professional development course work ineligible for equivalency. The appellant was given an opportunity to respond to this additional information from the ECE Director. She did not do so.

Analysis

[11] Section 29(2) of the *CCALA* provides for a right of appeal to the Board by an applicant for a certificate under section 8 from a refusal to issue the certificate, in this case an ECE assistant certificate. Sections 29(11) and (12) govern the hearing of the appeal and the Board's decision-making powers:

29(11) The board must receive evidence and argument as if a proceeding before the board were a decision of first instance but the applicant bears the burden of proving that the decision under appeal was not justified.

(12) The board may confirm, reverse or vary a decision under appeal, or may send the matter back for reconsideration, with or without directions, to the person whose decision is under appeal.

[12] Section 36 of the *Administrative Tribunals Act*, SBC 2004, c. 45, applies to the Board and is significant because it permits the Board to hear appeals by any combination of written, electronic and oral hearings. The Board informed the parties that, subject to any objections they made, it intended to hear and decide this appeal without an oral hearing, on the basis of the material filed including any further reply from the appellant. No objections were received. The Board is satisfied that there are no questions of credibility or other circumstances favouring an oral hearing, and this appeal is appropriately determined by a written hearing.

[13] It is readily apparent from the appeal record that the college courses completed by the appellant do not qualify under section 27(b) of the *Child Care Licensing Regulation* as, although one of the colleges is a qualifying educational institution, the course, Contemporary Psychology, was not a basic early childhood educator training program in child development, guidance, health and safety, or nutrition.

[14] Section 28 gives the ECE Director discretion to exempt an applicant from a course requirement in section 27(b), if the applicant has completed a program or course to qualify for another profession or through an educational institution not

listed in Schedule D, that the ECE Director considers at least equivalent to the required program or course. The appellant has not established that the ECE Director was unjustified in concluding that her course work was not equivalent to the requirement in section 27(b), at least one course of a basic early childhood educator training program in child development, guidance, health and safety, or nutrition, through an educational institution in item 1 of Schedule D. On the evidence, the ECE Director's decision was reasonable, indeed it was the only reasonable conclusion (under section 27) and the only reasonable exercise of discretion (under section 28) that could have been reached in the circumstances.

[15] The appellant's childcare resumé and employment record are impressive. She also has excellent references. She clearly wants to work with children in a capacity that requires her to be licensed under the *CCALA*. There is no indication or suggestion of any kind that she does not have the good character, personality, ability and temperament necessary to manage or work with children. She has completed course work at two colleges and relevant professional development courses. Her course work, however commendable, does not meet the course requirement of section 27(b) or the course equivalency requirement in section 28.

[16] There was no verifiable evidence before the Board to establish whether the licensing circumstances of the appellant and her two unnamed colleague were the same or different. Therefore, the Board cannot determine whether ECE assistant certificates have been granted to others on the basis of the same course work on which the ECE Director refused to grant the appellant's application.

[17] The Board's finding that the ECE Director was reasonable, indeed correct, to decide that the appellant's college course work and her professional development course work do not meet the course requirement in section 27(b) or the equivalency requirement in section 28 disposes of this appeal, and the Board confirms the ECE Director's refusal to grant her application for an ECE assistant certificate.

[18] The Board adds the following non-binding observation regarding the statement in the ECE Director's statement of points that the ECE Registry "has made a commitment to grandfather all those individuals who were granted an Assistant Letter and make them eligible for an Assistant Licence to Practice". The statement of points did not elaborate on the source of the authority to grandfather pre-November 2007 registrations. However, if the ECE Director relies on section 28 of the *Child Care Licensing Regulation* in that regard, this appears to the Board to provide a limited authority to exempt within the terms of that provision. In short, section 28 is not a wide-ranging discretionary authority for the ECE Director to grandfather registrants who became non-compliant when the *Child Care Licensing Regulation* was amended, by assessing the same course work as non-equivalent for a new applicant yet equivalent for a pre-November 2007 registrant. The use of discretionary language (i.e. the word "may") in the first part of section 28(1) goes to the decision to exempt, but the terms that follow the word "if" (i.e. those listed in paragraphs (a) and (b)) are specific and do not refer to any form of

grandfathering. The discretion provided in section 28(1) or (2) would not authorize the ECE Director to reach inconsistent conclusions about whether the same course work is equivalent under section 28(1)(b) as between new applicants and existing registrants.

Conclusion

[19] For the reasons provided above, the Board confirms the ECE Director's decision. Accordingly, the appeal is dismissed.

February 12, 2009

Susan E. Ross, Chair