

## COMMUNITY CARE AND ASSISTED LIVING APPEAL BOARD

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

**APPELLANT:** GS and CAS, Registrants  
(operating Saint Francis Manor by the Sea)

**RESPONDENT:** Susan Adams, Assisted Living Registrar  
(represented by J. Penner, Counsel)

**PANEL:** Marcia McNeil, Vice Chair

### DECISION

#### Introduction

[1] The Appellants operate Saint Francis Manor by the Sea (the "Facility"), an assisted living facility in Victoria, British Columbia. On December 24, 2008, they appealed from a decision by the Assisted Living Registrar (the "Registrar") to cancel the Appellants' licence to operate the Facility, effective immediately. In their notice of appeal, the Appellants applied for an interim stay of the Registrar's decision. The stay was granted, pending the Board's decision on the merits of the appeal.

[2] In order to consider an appeal, the Community Care and Assisted Living Appeal Board (the "Board") requires an appellant to prepare a document called a Statement of Points, setting out the reasons it argues that the Registrar's decision is wrong and identifying the evidence which supports its argument. In this case, the Appellants originally submitted their Statement of Points on February 9, 2009. However, on February 24, 2009, the Chair of the Board issued a Memorandum and Direction to the parties in which she found that the Appellants' Statement of Points was deficient because it did not state their specific objections to the Registrar's decision. Furthermore, she required the Appellants to submit a further Statement of Points which more specifically described:

"...why the Registrar's decision under appeal was wrong, point by point, with each point specifically outlining error(s) in the Registrar's decision and referring to the evidence (in the appeal record or the additional documents the Appellant has provided) that is relevant to proving that point."

[3] The Appellants did provide a further Statement of Points on March 10, 2009.

[4] In a letter dated March 20, 2009, counsel for the Registrar requested that the Board dismiss the appeal brought by the Appellants on the basis that there is no reasonable prospect that the appeal will succeed. Section 31(f) of the *Administrative Tribunals Act* confirms that the Board may dismiss an appeal where the Appellants have not demonstrated that there is a reasonable prospect that their appeal will succeed.

[5] In order for an appeal to this Board to succeed, section 29 (11) of the *Community Care and Assisted Living Act* (the "*Act*") requires that an Appellant demonstrate that the decision being appealed, in this case the decision of the Registrar to cancel the Appellants' licence, was not justified.

[6] The question that the Board must answer in this decision is whether the Appellants have demonstrated in the material they have submitted, that the Registrar's decision to cancel their license was unjustified. In order to answer this question, the Board does not make any determination about whether the facts and arguments made by the Appellants are correct. Instead, the Board asks the question: Assuming that all of the facts and arguments made by the Appellants in their appeal are correct, would those facts and arguments support a finding by the Board that the Registrar's decision was unjustified?

[7] After considering the March 10, 2009 Statement of Points filed by the Appellant, as well as the parties' subsequent submissions, for the reasons I have set out below, I have decided that the Appellants have not provided any information that would establish that the Registrar's decision was unjustified. The Appellants have not argued in this case that any of the Registrar's findings of fact were in error, or that the Registrar did not give the Appellants a fair opportunity to respond to her concerns. Instead, the Appellants main arguments are intended to persuade the Board that they will be able to take steps to address the Registrar's concerns and should be given another opportunity to do so. The Appellants have not tried to persuade the Board that the Registrar's decision was not justified.

### **Reasons & Analysis**

[8] I will review each of the points raised by the Appellants in their Statement of Points, and provide my reasons why I find that the Appellants have not raised an issue which could demonstrate that the Registrar's decision was not justified.

#### Point 1

[9] I understand the Appellants assert that they can make corrections to the Facility's Policy and Procedures Manual and the Application for Registration they filed with the Registrar, so that they can demonstrate an ability to meet the requirements of the Health and Safety Standards, established under the *Act*.

[10] With respect to this point, the Registrar submits that the Appellants are not challenging that the Registrar's decision was not justified at the time it was made, but instead are saying that they can make changes to their policies which will allow the Facility, in future, to comply with the requirements of the *Act* and the Health and Safety Standards. I agree. The Appellants have not demonstrated that the Registrar's concerns about their Policy and Procedures Manual were not justified. Instead, the Appellants have filed extensive material to persuade the Board that they can make improvements to their policy documents which will answer the Registrar's concerns.

[11] The Appellants' response to the Registrar's submission suggests that the Appellants may have intended in Point #1 that the Board consider whether the penalty imposed by the Registrar (cancelling their licence) was too severe, and whether some other measure short of cancellation of its licence was appropriate. Although the Board may, under section 50(2) of the *Administrative Tribunals Act*, attach terms or conditions to the Appellants' licence, the Appellants have not suggested any specific conditions on their licence that would address the Registrar's concerns about their policies and procedures, nor have the Appellants submitted any information supporting why they say the Registrar's decision was not justified.

[12] I am satisfied that the Registrar provided the Appellants with ample opportunity to prepare policy documents that would demonstrate the Appellants' understanding of and compliance with the Health and Safety Standards. The Appellants acknowledge that the documents they prepared were not satisfactory to the Registrar and that additional modifications are needed. I find that the Appellants have not demonstrated that the Registrar's concerns with the documents they submitted were not justified.

## Point 2

[13] Under this point, the Appellants assert that they were unable to comply with the Registrar's requirements because of other obligations and commitments they had in the summer of 2008. Further, the Appellants assert that they had a contract to operate the Facility with the Vancouver Island Health Authority (VIHA) and that the requirements established by VIHA under the contract were different than the Registrar's requirements. However, the Appellants have not suggested that the requirements established by the Registrar were in error or contrary to the *Act*.

[14] While the Appellants have provided information to this Board showing that they had many demands on their time through the summer of 2008, they also acknowledge that, as a result of the Appellants' concerns about the volume of material they wished to produce to the Registrar, the Registrar extended their deadline for responding until November 2008. The Appellants have not argued that the Registrar's time limitations were unreasonable.

### Point 3

[15] Under this point, the Appellants again raise a concern that there were inconsistencies between the requirements of VIHA under its contract and the Registrar's requirements with respect to the policies and procedures established by the Appellants. However, for the purpose of this appeal, the Board must review the decision of the Registrar, and this Board has no authority to review the requirements of VIHA under its contract with the Appellants.

[16] The Appellants' request that the Registrar establish a satellite office to assist facilities on Vancouver Island to understand the requirements of the Registrar's policies and procedures is not a recommendation or condition that this Board has the authority to impose on the Registrar's office, and does not establish that the Registrar's decision was unjustified.

### Point 4

[17] Under this point, the Appellants assert that they can produce witnesses who will provide evidence of their capabilities and experience in managing the Facility. The Appellants have not challenged the information relied upon by the Registrar in her decision to cancel their licence, and therefore, the evidence the Appellants wish to introduce in their appeal does not demonstrate that the Registrar's decision was not justified.

### Point 5

[18] My understanding of the Appellants' point is that they are asking that the Registrar provide sample documents that would assist parties in filling out application forms and complying with the Registrar's requirements under the *Act*. This request does not identify any error with the Registrar's original decision or demonstrate how the Registrar's original decision was not justified.

### Point 6

[19] In her decision to cancel the Appellants' licence, the Registrar identified her concern with the ability of one of the owners of the Facility to demonstrate a healthy awareness of the importance of good personal and professional boundaries. In point 6, the Appellants name two references who provide their opinion as to the owner's ability to respect professional boundaries. The Appellants have identified evidence that is intended to demonstrate that they are capable of respecting appropriate professional boundaries. The evidence does not address the specific circumstances which caused the Registrar to be concerned, and therefore, is not sufficient to show that the Registrar's concerns were not justified.

## **Conclusion**

[20] Having considered each of the points raised by the Appellants in their Statement of Points, I find that the Appellants have not raised any issues which could establish that the Registrar's decision was not justified. Therefore, I find that there is no reasonable prospect this appeal will succeed. Accordingly, I dismiss the appeal pursuant to section 31(1)(f) of the *Administrative Tribunals Act*. As a result, the Board's interim stay of the Registrar's decision is also cancelled effective immediately.

June 1, 2009

Marcia McNeil, Vice Chair