



## Community Care and Assisted Living Appeal Board

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### DECISION NO. 2010-CCA-009(a)

In the matter of an appeal under section 29 of the *Community Care and Assisted Living Act*, S.B.C. 2002, c.75.

**BETWEEN:** AC , Licensee **APPELLANT**  
(operating Grandview Heights Child Care)

**AND:** Licensing Officer, Fraser Health Authority **RESPONDENT**

**BEFORE:** Paula Barnsley, Member

**DATE:** Conducted by way of written submissions  
concluding on January 25, 2011

**APPEARING:** For the Appellant: Paul E. Briggs, Counsel  
For the Respondent: Guy McDannold, Counsel

### PRELIMINARY ISSUE OF JURISDICTION

[1] The Respondent cancelled the Appellant's licence to operate Grandview Heights Child Care ("Facility") effective December 6, 2010. The Respondent notified the Appellant of this decision, and the reasons for it, by letter dated October 20, 2010 and received by the Appellant on October 26, 2010 ("Decision"). By letter dated December 15, 2010 ("Notice of Appeal"), the Appellant appealed the Decision, seeking to overturn certain findings in the Decision, and requesting an extension of time for bringing the appeal.

[2] After receiving the Notice of Appeal, the Community Care and Assisted Living Appeal Board ("Board") requested submissions from the parties on the question of whether the Board has jurisdiction to consider the appeal, and if so, whether special circumstances exist to justify granting an extension of time to file the Notice of Appeal.

[3] This preliminary issue of jurisdiction was conducted by way of written submissions.

[4] For the reasons that follow, I have concluded that the Board does not have jurisdiction to hear the appeal. The Board is a tribunal created by statute and its jurisdiction is limited to those powers that are conferred on it in the *Community Care and Assisted Living Act* ("Act"). Section 31.1 of the Act empowers the Board to hear appeals of matters identified in section 29 of the Act. The decision that the Appellant seeks to appeal is simply not among the appealable matters set out in section 29.

**BACKGROUND**

[5] The Appellant was licensed to provide care to seven children in her home.

[6] The Respondent suspended the Appellant's licence to operate the Facility on September 21, 2010, pending completion of an investigation into allegations that more than seven children were in care at the Facility and that parents do not have access to the daycare area. The Respondent's October 20, 2010 licensing investigation/decision report letter notified the Appellant that the Respondent intended to cancel the Appellant's licence at the end of the suspension period, December 6, 2010. The letter set out detailed reasons for the decision and informed the Appellant that she had a right to request a reconsideration of the intended decision to cancel her licence. She was advised that the request had to be made in writing within 30 days of the notice of the intended action.

[7] The Appellant did not request a reconsideration.

[8] In a letter dated November 24, 2010, the Respondent notified the Appellant that the Licence was cancelled effective December 6, 2010.

[9] In addition to advising the Appellant that her licence would be cancelled as of December 6, 2010, the Respondent's November 24, 2010 letter informed the Appellant that "[t]he Community Care Licensing Branch (CCFL) has established a system whereby licensees who have had action taken against their licence, and pose a risk to health and safety of vulnerable people in care, are placed on an alert list." The letter notified the Appellant that her name would be placed on the alert list, effectively allowing information pertaining to her licensing history to be shared with other health authorities.

[10] The Appellant's Notice of Appeal stated that "[a]lthough she is not seeking a re-instatement of her child care license, she is seeking to overturn the finding that she is not a trustworthy and suitable manager of a child care facility and therefore that she should not be the subject of such an alert."

**ISSUES**

[11] The preliminary issues I have considered are as follows:

- (1) Whether the Board has jurisdiction to accept an appeal where no reconsideration under section 17 of the Act was requested or undertaken;
- (2) If so, whether the grounds identified in the Notice of Appeal constitute one or more appealable decisions, actions or refusals to act as set out in sections 29 and 17 of the Act; and
- (3) If the Notice of Appeal does contain appealable grounds, whether special circumstances exist that would justify the Board extending the time for filing the appeal.

**RELEVANT LEGISLATION**

[12] Section 29(2) of the Act sets out the matters that a licensee may appeal to the Board:

**29(2)** A licensee, an applicant for a licence, a holder of a certificate under section 8, an applicant for a certificate under section 8, a registrant or an applicant for registration may appeal to the board in the prescribed manner within 30 days of receiving notification that

- (a) the minister has appointed an administrator under section 23,
- (b) a medical health officer has acted or declined to act under section 17 (3)(b),
- (c) the registrar has acted or declined to act under section 28 (3) (b), or
- (d) a person has refused to issue a certificate, suspended or cancelled a certificate or attached terms or conditions to a certificate under section 8.

[13] Sections 29(2)(a), (c) and (d) are not relevant to this appeal.

[14] Section 17 of the Act provides for reconsideration of a decision, and section 17(3)(b) sets out the actions that a medical health officer may take on a reconsideration.

**17(3)** If a medical health officer considers that this would be appropriate to give proper effect to section 11, 13, 14 or 16 in the circumstances, the medical health officer may, on receipt of a written response,

...

(b) confirm, rescind, vary, or substitute for the action or summary action.

[15] "Action" and "summary action" do not mean any type of action by a medical health officer. These terms have specific definitions within section 17 of the Act:

**17 (1)** In this section:

**"action"**, in relation to a licence, means

- (a) a refusal to issue a licence under section 11 (1),
- (b) an attachment, under section 11 (3), of terms or conditions,
- (c) a suspension or cancellation, an attachment of terms or conditions, or a variation of terms or conditions under section 13 (1), or
- (d) a suspension or cancellation of an exemption or an attachment or variation of terms or conditions under section 16 (2);

**"summary action"** means a suspension or cancellation of a licence, an attachment of terms or conditions to the licence, or a variation of those terms or conditions under section 14;

## DISCUSSION AND ANALYSIS

### Parties Positions

[16] The Respondent says that the Board lacks jurisdiction to hear this appeal for two reasons. First, the Decision the Appellant seeks to appeal was not made on a reconsideration under section 17 of the Act. Second, the findings set out in the Decision that the Appellant seeks to overturn do not fall within the appealable decisions, actions or refusals to act as set out in sections 29 and 17 of the Act. Alternatively, the Respondent submits that there are no special circumstances in this case that would justify an extension of the 30 day time limit for filing an appeal.

[17] The Appellant raises the concern that the Respondent did not fully advise her of the consequences of allowing the time limit for requesting a reconsideration to expire until it was too late to do so, effectively "leaving her without a procedurally fair means of contesting the decision of the Medical Health Officer to place her on the Alert List."

### **Reconsideration**

[18] Cancellation of the Appellant's licence is an "action" as defined in section 17(1) of the Act. However, it was an action taken after the Appellant had decided not to contest the cancellation Decision and the 30 day period for requesting a reconsideration had expired, not an action taken by the Medical Health Officer on reconsideration under section 17(3)(b). A right to appeal under section 29(2)(b) arises only when a medical health officer has acted or declined to act under section 17(3)(b).

[19] The Appellant is not entitled to bring an appeal under section 29(2)(b) because she did not take the first step of requesting a reconsideration of the October 20, 2010 intended decision.

### **Subject matter of the appeal**

[20] The Notice of Appeal identifies the outcome that the Appellant hopes to achieve on the appeal – to overturn the Respondent's findings in the October 20, 2010 letter "that she is not a person of good character in relation to managing a child care facility" and "that she put children at risk by failing to adhere to the provisions of the Act." These findings provide the foundation for the Respondent's placement of the Appellant's name on the alert list.

[21] According to the Notice of Appeal, the Appellant is not appealing the cancellation of her licence. The Notice of Appeal states that the Appellant is not seeking to re-instate her child care licence. The Appellant admitted that she did operate a child care facility with more than seven children in her care and that she did not advise the Respondent that she had added additional child care space in her home.

[22] In essence, the Appellant is seeking to appeal the Respondent's decision to place her name on the alert list.

[23] In my view, the Respondent's decision to place the Appellant's name on the alert list is not a matter that can be appealed to this Board under section 29(2)(b) of the Act. An appeal under section 29(2)(b) arises from a medical health officer taking, or declining to take, in relation to a licence, the types of actions set out in the legislated definitions of "action" and "summary action" in section 17(1) of the

Act. This Board has no jurisdiction over the matter of placement of names on the alert list. Nor does the Board have jurisdiction to re-visit the findings of fact on which the decision to place the Appellant's name on the alert list was based in the absence of an appeal of the Respondent's action in cancelling the licence.

**Procedural fairness**

[24] The Appellant's submission on the preliminary issue of the Board's jurisdiction to hear the appeal acknowledged the Board's lack of jurisdiction to hear this appeal, but asked this Board to consider the procedural unfairness to the Appellant as a consequence of the Respondent's failure to advise the Appellant of the alert system prior to the expiry of the 30 day period for requesting a reconsideration and the absence of a mechanism for extending the time limit for requesting a consideration. I will not comment on whether or not procedural unfairness exists in this case as the Appellant submits. However, this Board's lack of jurisdiction over this appeal does not preclude the Appellant from accessing other avenues of administrative justice, for example the office of the B.C. Ombudsperson.

**Extension of time**

[25] Having decided that the Board has no jurisdiction to hear the appeal, it is unnecessary to decide whether or not special circumstances exist in this case to justify an extension of time to file the Notice of Appeal under section 24(2) of the *Administrative Tribunals Act*, SBC 2004, c. 45.

**DECISION**

[26] For the reasons provided above, I find that the Board does not have jurisdiction to consider the matter as it is not a decision of a medical health officer to act or decline to act under section 17(3)(b) of the Act.

[27] Accordingly the appeal is rejected for lack of jurisdiction.

"Paula Barnsley"

Paula Barnsley, Member  
Community Care and Assisted Living Appeal Board

February 1, 2011