



Community Care and Assisted Living Appeal Board

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DECISION NO. 2018-CCA-002(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:	Joanne Hodgins	APPELLANT
AND:	Director, Early Childhood Educator Registry	RESPONDENT
BEFORE:	A panel of the Community Care and Assisted Living Appeal Board Helen Ray del Val, Board Chair	
DATE:	Conducted by way of written submissions concluding on April 24, 2018	
APPEARING:	For the Appellant: Aman Oberoi For the Respondent: Darcie Suntjens	

OVERVIEW

[1] The Respondent's application for a six month stay of proceedings is denied because the Respondent has failed to provide a compelling reason to justify the grant. Granting the stay under the circumstances of this case would effectively sanction the delay of an already inexplicably protracted investigation process. Furthermore, to grant the stay under the present circumstances would be unfair to the Appellant who has had her certification to work as an early childhood educator suspended for over a year pending the conclusion of the investigation.

BACKGROUND

[2] The Appellant held an Early Childhood Educator ("ECE") certificate until February 10, 2017, when it was suspended by the Director of the ECE Registry (the "Director"), pending investigation, pursuant to section 33(5) of the *Child Care Licensing Regulation*¹ (the "Regulation"). At this time, the Appellant was directed to contact the assigned investigator.

¹ *Child Care Licensing Regulation*, BC Reg 332/2007.

[3] On March 1, 2017, the Appellant requested, pursuant to section 33(3) of the Regulation, that the decision to immediately suspend her certificate be reconsidered.

[4] Between March and September 2017, the Appellant repeatedly attempted to contact the ECE Registry to ascertain the status of the investigation and her request for reconsideration. The Registry did not respond to the Appellant until the Appellant retained counsel in September 2017 to assist her in obtaining a response.

[5] From September 20 to 24, 2017, the Appellant's counsel contacted the Registry, provided proof of authorization to act on behalf of the Appellant as requested by the Registry, and requested reinstatement of the Appellant's certificate. No response was received from the Registry.

[6] On September 28, 2017, the Registry made a Freedom of Information ("FOI") request to the Fraser Health Authority for additional information regarding a separate but related investigation that Fraser Health had conducted.

[7] On October 3, 2017, the Registry received documents in response to its FOI request; however, it appears from the evidence and submissions in the present application that no action was taken on the investigation following the receipt of these documents.

[8] On January 10, 2018, the Appellant's counsel again called the Registry to follow up but received no response.

[9] On January 31, 2018, the Appellant's counsel wrote to the Registry proposing a resolution. The letter indicated that the Appellant was considering litigation.

[10] On February 2, 2018, the Director issued her reconsideration decision which upheld the suspension of the Appellant's ECE certificate pending conclusion of the investigation. The Appellant was notified of the reconsideration decision as of February 7, 2018.

[11] On March 7, 2018, the Appellant filed a notice of appeal of the Director's reconsideration decision with this Board.

[12] Following the filing of the notice of appeal, the Director assigned a different investigator to the investigation. On March 16, 2018, the new investigator contacted the Appellant by email to advise that she would continue with the investigation, but made no commitments as to how the investigation would proceed or when it would conclude.

[13] As of April 17, 2018, the Appellant had not heard further from the investigator or the Registry.

[14] The Director has admitted delay in the investigation, but has not provided any explanation for the delay.

[15] The Respondent seeks a six-month stay of proceedings stating in paragraph 13 of the application that the stay "should provide the Director and her investigators appropriate time to investigate the matter, and make a decision about possible actions regarding the appellant's ECE certificate."

ANALYSIS

No compelling reason to grant the stay

[16] The Respondent has failed to provide any compelling reason that would justify a grant of a stay of the present appeal.

[17] In this case, delay in the investigation appears to have been caused solely by the Respondent, with no evidence pointing to any part of the delay being attributable to the Appellant. Furthermore, there is no evidence of any exceptional circumstances that would warrant the long delay that has already occurred, or explain why more time is needed for the investigation.

[18] Aside from assigning the file to investigators and making a FOI request, there is no evidence that the Respondent has taken any meaningful steps which demonstrate any sustained or significant effort to advance the investigation. In fact, the lack of action and failure to communicate with the Appellant or her legal counsel evidences that the file has been neglected to the detriment of the Appellant.

[19] Despite the long delay that has already occurred, the language of paragraph 13 of the Respondent's submissions shows that the Director remains noncommittal on when the investigation will conclude, and when the Appellant can expect finality to this dispute. This would understandably be distressing to the Appellant as it demonstrates a lack of consideration for the Appellant who, for the past year, has had to live with the penalty for a wrong that has yet to be proved against her. Without investigation results, she cannot even know with certainty what the case is that she has to meet.

[20] Given the lack of effort in the investigation, the year-long wait for a decision on the Appellant's request for reconsideration, the unresponsiveness over the past year and the apparent lack of appreciation for the difficult situation the Appellant has been put in, I find the Appellant's concern about a further delay is justified.

Prejudice to Appellant

[21] The Appellant has not been able to work as an early childhood educator for over a year. During this period, the Registry has effectively left her in the dark by not responding to her inquiries about the status of the investigation or the

reconsideration process. This would have added significantly and unnecessarily to the stress of the immediate suspension of her certificate.

[22] The immediate suspension of a person's certification to practice her profession is a very serious enforcement action to take and a severe penalty to impose. The use of such a powerful enforcement tool carries with it a higher duty to act fairly and reasonably; which means working at a level of diligence and dispatch that is commensurate with the immediacy and severity of the action taken. A further delay in the investigation under these circumstances would be very unfair and unreasonable.

[23] Accordingly, this application is denied.

"Helen Ray del Val"

Helen Ray del Val, Board Chair

May 4, 2018