BRITISH COLUMBIA

Community Care and Assisted Living Appeal Board

Fourth Floor, 747 Fort Street
Victoria BC V8W 3E9
Telephone: (250) 387-3464
Facsimile: (250) 356-9923

Mailing Address:
PO Box 9425 Stn Prov Govt
Victoria BC V8W 9V1

Website:
www.ccalab.gov.bc.ca
Email: ccalab@gov.bc.ca

DECISION NO. 2019-CCA-001(a)

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

BETWEEN:	Society of Richmond Children's Centres	**APPELLANT**
AND:	Vancouver Coastal Health Authority	**RESPONDENT**
BEFORE:	A panel of the Community Care and Assisted Living Appeal Board Lynn McBride, Panel Chair	
DATE:	Conducted by way of written submissions concluding on May 21, 2019	
APPEARING:	For the Appellant: Kevin Lim-Kong For the Respondent: Robert P. Hrabinsky	

Preliminary Decision on Jurisdiction

INTRODUCTION

[1] The Appellant, Society of Richmond Children's Centres ("SRCC"), is a Licensee under the *Community Care and Assisted Living Act,* SBC 2002, c 75 (the "Act").

[2] The Appellant filed a Notice of Appeal regarding a March 29, 2019 investigation report (the "Investigation Report") by two Licensing Officers of the Vancouver Coastal Health Authority ("VCHA"). VCHA is a party to the appeal and is considered the Respondent in this matter.

[3] The Investigation Report is in relation to a child care centre (the "Centre") operated by the Appellant.

[4] In the Notice of Appeal, the Appellant requested "a stay of the release and/or publication of the Investigation Report pending our appeal".

[5] Prior to accepting the Notice of Appeal, the Community Care and Assisted Living Appeal Board (the "Board") requested written submissions from the parties on the following two preliminary issues:

1. whether the Board has jurisdiction to consider the appeal under section 29 of the Act; and
2. whether the Board has jurisdiction to grant the stay of the publication of the Investigation Report.

BACKGROUND

[6] The Centre operated by the Appellant is licensed as a Group Child Care facility for children aged 30 months to school age, with a capacity of 25 children.

[7] On January 3, 2019, an incident (the "Incident") occurred at the Centre involving a staff member and a child aged 4 years 5 months. As a result of the Incident, the child sustained a scratch on the neck. The staff member notified the child's parent about the scratch that same day, and prepared an Incident Report on January 4, 2019. In the notes attached to the Incident Report, the staff member indicated that the child was very upset and was attempting to throw his outdoor clothing in the vicinity of another child, and she stopped him by holding onto his arm. She also indicated that shortly after that, the child was running towards a gate and she was concerned that he might trip and run into the gate so she had her hand out to stop him and scratched him on the neck by accident.

[8] Following the Incident, the child's parent (the "Complainant") made an allegation of assault to the RCMP and to the VCHA Community Care Facilities Licensing ("Licensing"). The Complainant alleged that in addition to the scratch on the neck, the child also had scratches and bruising in the armpit and bruising on the upper arm, and that the child had been grabbed by the staff member.

[9] On January 4, 2019, Licensing received the following documents from the Centre:

- the Incident Report with attached notes by the staff member; and
- a Health and Safety Plan stating that SRCC has "suspended the staff member from work pending the outcome of the investigations by the RCMP, Licensing and ourselves."

[10] Licensing approved the Health and Safety Plan on January 4, 2019 and started conducting its investigation.

[11] On January 8, 2019, an RCMP Constable contacted Licensing and advised that the RCMP was concluding their investigation and that no charges would be laid against the staff member.

[12] On January 23, 2019, Licensing received a letter from the ECE Registry advising that the staff member's ECE Certificate was suspended pending the conclusion of Licensing's investigation.

[13] On February 8, 2019, Licensing met with the Executive Director of SRCC and the HR Representative from SRCC to provide Licensing's analysis and findings (the "Preliminary Report") from its investigation. The Preliminary Report analysed four specific allegations made by the Complainant, and found that all four allegations were substantiated and that sections 51, 52 and 56 of the *Child Care Licensing Regulation,* BC Reg 332/2007 (the "Regulation"), had been contravened.

[14] On February 14, 2019, SRCC sent a letter to the Licensing Officers in response to the Preliminary Report which stated:

> Thank you for providing us the opportunity to comment on Licensing's preliminary Analysis and Findings relating to the incident at [the Centre] on January 3rd, 2019. We understand that your office seeks the SRCC's comments and potential action plan in response to the preliminary report.
>
> It is noteworthy that since the incident on January 3rd and subsequent RCMP investigation, which we have been informed has concluded, as Licensing's investigation is still ongoing, the SRCC has not yet been able to conduct our own fact-finding investigation and are currently limited to only the select quotes you have provided in your preliminary report to guide our response.
>
> Based on our limited information but informed by our conversations with the RCMP, the SRCC is surprised by Licensing's findings but recognizes the serious nature of the allegations and would like to provide a more fulsome response. In order to do so, we require that you provide further information, and specifically the complete, unedited evidence upon which you relied, in order to clarify the rationale for how the information gathered during your investigation has led to the conclusions set forth in the preliminary report. The provision of the evidence upon which you relied and which we request for our response is necessary and its provision is consistent with the legal principals of fairness and natural justice, which among other principals, govern the conduct of the investigation.
>
> Without a better understanding of the rationale, we are unable to see the connection between the information gathered and the conclusions drawn. This leaves the SRCC prejudiced and unable to formulate an appropriate response to this preliminary report or to develop a meaningful action plan.

[15] The SRCC's February 14, 2019 letter then set out comments and questions regarding each of the four allegations in the Preliminary Report.

[16] On March 8, 2019, SRCC's Executive Director e-mailed the Licensing Officers requesting a response to the February 14, 2019 letter, stating that the requested information was required "to respond to your preliminary findings with which we disagreed." One of the Licensing Officers responded by e-mail that same day, stating "There is a process we follow and are currently gathering the information requested. When it is completed we will forward to you."

[17] Based on the written submissions and associated documents provided by the parties, it appears that SRCC did not receive any further information or communications from Licensing until April 3, 2019, when SRCC received a copy of the Investigation Report which was dated and titled as follows: "Date of Report: February 7, 2019 Final: March 29, 2019"

[18] The Investigation Report found that allegations #1, #3 and #4 were substantiated, but that allegation #2 was not substantiated, whereas the

Preliminary Report had found all four allegations to be substantiated. The Investigation Report found that sections 51, 52 and 56 of the Regulation had been contravened (as did the Preliminary Report) and contained a conclusion stating that "Licensing requires that [the staff member] not to be left alone with children during operating hours of [the Centre]." The Investigation Report did not address the comments and questions in the February 14, 2019 letter from SRCC to Licensing.

[19] The Investigation Report notified SRCC that "Licensing will be submitting a copy of the final report to the Early Childhood Educator (ECE) Registry" and also notified SRCC that "the substantiated allegations will be posted on the Vancouver Coastal Health website" under s. 15.2(1) of the Act. The Investigation Report did not contain language advising SRCC that it could seek reconsideration of the decision.

[20] On April 5, 2019, two days after receiving the Investigation Report, SRCC received a hand-delivered letter from the Freedom of Information Coordinator, Legal Services, VCHA. The letter was dated March 29, 2019 (the same date as the Investigation Report) and was in response to SRCC's February 14, 2019 letter to Licensing requesting further information. The letter stated that VCHA had "withheld 34 pages of interview notes" pursuant to section 22 of the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165 ("FIPPA"), and that SRCC was entitled to request a review of the decision to withhold information within 30 days.

[21] Shortly after SRCC filed its Notice of Appeal with the Board, the Respondent advised the Appellant, by letter dated April 24, 2019, that Licensing "has decided to re-open its investigation in order to provide SRCC with more comprehensive written reasons." The Appellant responded by letter dated April 29, 2019, disputing the Respondent's authority to re-open its investigation in this situation and advising that the Appellant intended to proceed with the appeal to the Board.

[22] The Appellant filed its written submissions on the jurisdictional issue on April 30, 2019, the Respondent filed its written response on May 9, 2019, and the Appellant filed its final reply on May 21, 2019.

[23] In its submissions, the Appellant states that it has recently received VCHA's "revised" final investigation report and that all 34 pages of interview notes (previously withheld) have now been released to the Appellant. The revised report and the interview notes were not appended to the Appellant's reply comments.

ISSUE

[24] The issue to be decided in this preliminary matter is whether the Appellant can appeal the March 29, 2019 "final" Investigation Report and resultant attachment of a condition to the Appellant's licence to the Board.

RELEVANT LEGISLATION

[25] The Board's jurisdiction is set out generally in subsections 29(2) and (3) of the Act as follows:

> **Appeals 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.
>
> (3) Within 30 days after a decision is made under section 16 to grant an exemption from this Act and the regulations, the decision may be appealed to the board under this section by
>
> (a) a person in care or the agent or personal representative of a person in care, or
>
> (b) a spouse, relative or friend of a person in care.

[26] Section 17 of the Act outlines the process for a MHO to reconsider a decision as follows:

> **Reconsideration**
>
> **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;
>
> **"written response"** means a written response referred to in subsection (2) (b).
>
> (2) Thirty days before taking an action or as soon as practicable after taking a summary action, a medical health officer must give the licensee or applicant for the licence
>
> (a) written reasons for the action or summary action, and

> (b) written notice that the licensee or applicant for the licence may give a written response to the medical health officer setting out reasons why the medical health officer should act under subsection (3) (a) or (b) respecting the action or summary action.
>
> (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,
>
> (a) delay or suspend the implementation of an action or a summary action until the medical health officer makes a decision under paragraph (b), or
>
> (b) confirm, rescind, vary, or substitute for the action or summary action.
>
> (4) A medical health officer must not act under subsection (3) (a) unless the medical health officer is satisfied that
>
> (a) further time is needed to consider the written response,
>
> (b) the written response sets out facts or arguments that, if confirmed, would establish reasonable grounds for the medical health officer to act under subsection (3) (b), and
>
> (c) it is reasonable to conclude that
>
> (i) if the delay or suspension is granted, the health or safety of no person in care will be placed at risk, and
>
> (ii) the licensee or applicant for the licence will suffer a significant loss during the proposed delay or suspension, if the delay or suspension is not granted.
>
> (5) A medical health officer must give written reasons to the licensee or applicant for the licence on acting or declining to act under subsection (3).
>
> (6) A licensee or applicant for the licence may not give a medical health officer a further written response concerning an action or summary action on or after receipt of written reasons under subsection (5) concerning the action or summary action.

[27] Section 13(1) of the Act outlines the circumstances under which a MHO can attach terms or conditions to a license as follows:

> 13 (1) A medical health officer may suspend or cancel a licence, attach terms or conditions to a licence or vary the existing terms and conditions of a licence if, in the opinion of the medical health officer, the licensee
> (a) no longer complies with this Act or the regulations,
> (b) has contravened a relevant enactment of British Columbia or of Canada, or
> (c) has contravened a term or condition of the licence.

[28] Section 14 of the Act outlines the circumstances under which a MHO can attach terms and conditions to a license without giving notice as follows:

> **14** A medical health officer may suspend a licence, attach terms or conditions to the licence, or vary terms or conditions of that licence, without notice if the medical health officer has reasonable grounds to believe that there is an immediate risk to the health or safety of a person in care.

ANALYSIS

Introduction

[29] The jurisdiction of the Board is limited by the language of section 29, such that only specific kinds of decisions can be appealed to the Board. Because the present appeal is not in relation to a Ministerial appointment of an administrator, an action of the Registrar of Assisted Living, an action taken against an individual's ECE certificate, or the decision of a MHO to grant an exemption from the Act, only section 29(2)(b) is potentially engaged on the facts of this case.

[30] Section 29(2)(b) provides that a licensee may appeal the decision of a MHO to act under section 17(3)(b) of the Act, or the decision of a MHO not to act under section 17(3)(b) of the Act.

[31] Section 17(2) of the Act provides that a MHO must give written notice to a licensee that the licensee can request reconsideration of an action or summary action. Section 17(3)(b) of the Act provides that upon receipt of a licensee's written response requesting reconsideration, a MHO can either "confirm, rescind, vary, or substitute for the action or summary action". Therefore, if a MHO decides to uphold, rescind, vary or substitute for an action or summary action, s/he has "acted" under section 17(3)(b) as contemplated by section 29(2)(b). On the other hand, where a MHO does not uphold, rescind, vary or substitute for an action or summary action, s/he has "declined to act" under section 17(3)(b) as contemplated by section 29(2)(b).

[32] Section 17 of the Act is itself limited to certain types of "actions" and "summary actions".

[33] In the present appeal the parties appear to agree that the attachment of the following condition on the licence of the Appellant amounted to either an "action" or a "summary action" as contemplated by section 17:

> [Staff Member] not to be left alone with children during the operating hours of [the Childcare Centre]

[34] In its April 24, 2019 letter to the Appellant, which was sent after the appeal to this Board was filed, the Respondent characterizes the above condition as a "summary action" stating that:

> In the interim, CCFL has taken "summary action" to impose a term and condition on the licence that "[staff member] not to be left alone with children during the operating hours of [the childcare centre]", pending the taking of any further "action" with respect to the licence following the completion of the re-opened investigation.

[35] In its submissions on the jurisdictional issues, however, the Respondent seems to have changed its position and now states that it considers the attachment of the condition to the Appellant's licence to be an "action":

> Also on March 29, 2019, CCFL issued its Investigation Report. Among other things, the Investigation Report reflects the decision to take "action" pursuant to section 13(1) of the Act, by way of imposing the following condition on the licence:
>
> [staff member] not to be left alone with children during the operating hours of [the childcare centre]

> At no time subsequent to the delivery of the Investigation Report did the Appellant ever seek a reconsideration decision by a medical health officer pursuant to section 17 of the Act, and no medical health officer has ever had an opportunity to "reconsider" the decision to take "action" pursuant to section 13(1) of the Act.

[36] The Appellant characterizes the attachment of the condition to its licence as a "summary action".

[37] The shifting position of the Respondent in its characterization of the attachment of the condition is troubling, especially considering, as I have found below, that the process by which the Respondent handled this matter prior to the appeal to this Board was already marked by a significant lack of clarity.

Positions of the Parties

[38] With respect to the procedural history of this file, the Respondent appears to concede that it has made some procedural errors. In particular, the Respondent states that "the original Investigation Report did not provide 'written notice that the licensee…may give a written response' as to why the medical health officer should make a 'reconsideration' decision, as required by paragraph 17(2)(b) of the *Act*".

[39] The Respondent, however, does not appear to take the view that its failure to provide the notice required by section 17(2)(b) of the Act should be remedied by providing that notice now and allowing the Appellant to request a reconsideration of the "action" or "summary action" (attachment of the condition) in the Investigation Report, but instead submits that the Respondent should be entitled to "re-open its investigation in order to provide SRCC with more comprehensive written reasons" for the decision to impose a condition on the Appellant's license.

[40] The Appellant disputes that the Respondent had any authority to re-open the investigation after the Notice of Appeal had been filed and the Board had requested written submissions on the two jurisdictional issues that are the subject of this decision. The Appellant asserts that the Respondent "wants nothing more than a second kick at the can in terms of delivering its final report after being advised of the SRCC's notice of appeal." There is some merit to that assertion.

[41] The Respondent's main argument is that the Board does not have jurisdiction on this appeal because the Appellant did not request a reconsideration of the Investigation Report, and no reconsideration has taken place pursuant to subsection 17(3)(b) of the Act.

[42] In support of its submissions that a reconsideration decision has not yet been made, the Respondent disputes the Appellant's characterization of the Investigation Report as a final report. Subsequent to the filing of written submissions by the parties regarding the preliminary issues raised by the Board, counsel for the Respondent took the position (in a letter to the Appellant dated July 9, 2019 and copied to the Board) that the Appellant's "continued reference to a 'final investigation report of March 29, 2019' is potentially misleading" and "whether the Investigation Report is properly characterized as being 'final' should be assessed in the circumstances."

[43] The Investigation Report is dated as the final report ("Date of Report: February 7, 2019 Final: March 29, 2019") and is expressly referred to in the body

of the Investigation Report as "the final report" which "Licensing will be submitting to the … ECE Registry". In my view, it is properly characterized as the final report.

[44] The Appellant's main argument is that it shouldn't be deprived of its ability to file an appeal in a timely way because of the Respondent's procedural errors in failing to notify it of its ability to request reconsideration.

[45] The Appellant characterizes its February 14, 2019 letter as specifically disagreeing with the preliminary investigation report, and points out that the February 14 letter contained a specific request for information. The Appellant argues that its February 14, 2019 letter amounted to a request for reconsideration, and that the Respondent's failure to respond to the substance of the February 14, 2019 letter in combination with the Respondent's refusal to provide document disclosure amounted, in substance, to a denial to act under section 17(3)(b) of the Act:

> Despite the SRCC not being specifically made aware of the reconsideration provisions as set out in section 17 of the Act, the SRCC's letter of February 14, 2019 articulated the SRCC's position regarding licensing's finding and failure to substantiate same, explicitly disagreed with how licensing applied the Child Care Licensing Regulations and made further requests. In refusing to provide document disclosure and failing to respond to specific questions as set out in the letter of February 14, 2019 VCHA declined to act under section 17(3)(b) of the Act which the SRCC appeals.

Findings - Reconsideration Decision

[46] It is not surprising that the Appellant is dissatisfied with the Respondent's conduct in this matter. The Respondent did not follow proper procedures and failed to comply with subsection 17(2)(b) of the Act, and is now relying on that failure to argue that the Board has no jurisdiction to consider the appeal because the Appellant didn't request a reconsideration and thus a reconsideration decision has not been made.

[47] Further, despite taking the position that the Appellant had a right to request reconsideration of the March 29, 2019 Investigation Report and that the Respondent was in error by failing to advise the Appellant of this right, the Respondent appears now to be taking the view that it is entitled to "re-do" the Investigation Report, and that the Appellant is limited to applying for reconsideration of the new report.

[48] The Appellant perceives that the Respondent has acted unfairly and with a lack of transparency and has deliberately attempted to frustrate the Appellant's ability to request reconsideration.

[49] In its initial written submissions on the jurisdictional issues, the Appellant submitted that the Preliminary Report (February 7, 2019) "constitutes written reasons for the action" within the meaning of subsection 17(2)(a) of the Act. However, "action" and "summary action" are specifically defined in section 17 and I am unable to find that the Preliminary Report constitutes or contains any "action" or "summary action". I do not agree that the Preliminary Report constitutes "written reasons for the action" as it does not impose, reference, or contemplate any potential action. The Preliminary Report found that there had been violations of the Act, the Regulations, and SRCC policies, but did not suspend or cancel the

Appellant's licence, attach terms or conditions to the licence, or vary existing terms or conditions of the licence. Further, the Preliminary Report did not provide notice that one of these "actions" was going to be taken.

[50] Although the Appellant submits that its February 14, 2019 letter to the Respondent was a request for reconsideration, the Appellant was not at that time entitled to request reconsideration because the Respondent had not yet proposed to take any "action", and had not yet taken any "summary action" in relation to the Appellant's licence.

[51] According to the definitions in section 17(1) of the Act as they apply in the context of this particular case, an "action" would be "an attachment of terms or conditions" to the Appellant's licence "under section 13(1)" because the Appellant was no longer in compliance with the Act or the regulations. Further, a "summary action" would be "an attachment of terms or conditions" to the Appellant's licence "under section 14" without notice to the Appellant.

[52] Section 17(2) provides that a MHO must provide written reasons for an action "[t]hirty days before taking an action", and must provide written reasons for a summary action "as soon as practicable after taking a summary action".

[53] The Investigation Report of March 29, 2019 attached a condition to the Appellant's licence and provided the reasons for attaching the condition. It did not state that the condition would be attached in thirty days. Prior to receiving the March 29 Investigation Report, the Appellant had received no notice that a condition would be attached to its licence; the Preliminary Report (February 7, 2019) did not mention anything about attaching a term or condition to the Appellant's licence.

[54] The attachment of a condition to the Appellant's licence was a "summary action" within the meaning of section 17, and the March 29 Investigation Report constitutes the written reasons for that summary action.

[55] The March 29 Investigation Report was the first point in time when the Appellant could request reconsideration. Because of the Respondent's failure to notify the Appellant that it could make such a request, the Appellant did not request reconsideration of the March 29 Investigation Report, and there was no formal reconsideration decision by a MHO under section 17 of the Act at the time the Notice of Appeal was filed (April 10, 2019). Therefore, I am compelled to find that the Board has no jurisdiction to consider the appeal pursuant to section 29(2)(b) of the Act.

[56] In its May 21, 2019 reply to the Respondent's submissions, the Appellant indicates that it has received VCHA's "revised" final investigation report and that all 34 pages of interview notes that the Respondent previously refused to disclose have now been released to the Appellant. In other words, the Respondent has finally, extremely belatedly, done what it should have done in a prompt and timely fashion in response to the Appellant's February 14, 2019 letter requesting more fulsome reasons for the findings in the Preliminary Report and disclosure of information that led it to those findings.

[57] The Board has not seen the "revised" final investigation report or the interview notes, and does not know the precise date when the Appellant received them both, but it appears that it must have occurred at some point after the Respondent filed its reply submissions on May 9, 2019 because the Respondent states in those reply submissions that Licensing "will be providing [the Appellant] with more comprehensive written reasons in due course, which should facilitate [the Appellant's] ability to give a written response to the [MHO] setting out reasons why the [MHO] should act under subsection 17(3)(a) or (b) respecting any action or summary action."

[58] The Board does not know if the Appellant, since filing its Notice of Appeal in this matter, has requested a reconsideration either in relation to the March 29 Investigation Report or in relation to the "revised" final investigation report, and if it has, whether, in either case, the MHO has acted or declined to act under section 17(3)(b) of the Act. It is the view of the Board that the Respondent should provide the Appellant with a clear and fair process for seeking reconsideration going forward.

[59] The Respondent's behavior in relation to this matter gives the Board cause for concern. The process by which the Respondent handled this matter prior to the appeal to this Board was marked by a significant lack of clarity and transparency, and a resulting appearance of unfairness. It did not respond promptly to the Appellant's request for additional information and disclosure of documents, and when the Appellant followed up by e-mail requesting a response so it could "respond to your preliminary findings with which we disagreed", the Respondent told the Appellant that it was "gathering the information requested" and that the Respondent would forward that information to the Appellant. However, almost a month later the Appellant had still not received that information. Instead, it received the March 29, 2019 Investigation Report and a couple of days after that, a letter (also dated March 29, 2019) from the Respondent refusing disclosure of the requested documents. This afforded the Appellant no opportunity to respond to the findings in either the Preliminary Report or the Investigation Report. On top of all that, the Respondent failed to notify the Appellant that it could request reconsideration of the decision as it was required to do by subsection 17(2)(b) of the Act.

[60] After the notice of appeal was filed, the Respondent continued to conduct itself in a manner that is very troubling by, for example:

- acknowledging its failure to provide the notice required by section 17(2)(b) of the Act, but deciding to re-open the investigation and re-do the whole investigation report rather than remedying its failure to comply with the Act by facilitating the Appellant in requesting a reconsideration of the attachment of the condition contained in the March 29, 2019 Investigation Report; and
- suggesting that the Appellant's "continued reference to a 'final investigation report of March 29, 2019' is potentially misleading" when that report is dated and titled as the "Final" report and is expressly referred to in the report as "the final report" which "Licensing will be submitting to the … ECE Registry".

[61] The Respondent's conduct in this matter is worthy of censure. It has added undue delay and complication to the process for the Appellant, which, as the Appellant points out, "now has to contend with two alleged final reports, each with their own prescribed time limitations to consider for the purposes of appeals."

[62] Although the Board is troubled by and critical of the Respondent's conduct in this matter, it does not change the fact that there was no formal reconsideration decision by a MHO pursuant to section 17 of the Act.

Findings - Stay of Publication

[63] In its Notice of Appeal, the Appellant requested "a stay of the release and/or publication of the [March 29, 2019 Investigation Report] pending our appeal".

[64] The Appellant submits that the Board "is empowered to make interim orders and to attach terms or conditions on such orders by section 29(6) of the Act and sections 15, 26(9) and 50 of the *Administrative Tribunals Act*" and thus has jurisdiction to grant the stay of publication requested by the Appellant.

[65] Section 29(6) of the Act provides:

> 29(6) The board may not stay or suspend a decision unless it is satisfied, on summary application, that a stay or suspension would not risk the health or safety of a person in care.

[66] Sections 15, 26(9) and 50(2) of the *Administrative Tribunals Act*, SBC 2004, c 45 ("ATA") provide:

> 15 The tribunal may make an interim order in an application.
>
> …
>
> 26(9) The chair or the chair's delegate may hear and decide any interim or preliminary matter in an application, and for that purpose may exercise any of the powers of the tribunal necessary to decide the matter.
>
> …
>
> 50(2) The tribunal may attach terms or conditions to a decision.

[67] The Respondent submits that the Board "would have jurisdiction to make an incidental order in the nature of a stay on a summary application" by virtue of subsection 29(6) of the Act, but that "the decision which may be stayed or suspended is the 'reconsideration' decision of the medical health officer to act or to decline to act under section 17(3)(b)." The Respondent's submissions do not mention the sections of the ATA relied upon by the Appellant.

[68] Both the Appellant's and Respondent's submissions on the stay issue are predicated on the premise that the Board would have to have jurisdiction over the subject matter of an appeal before it could exercise any kind of jurisdiction to order a stay. As a result of my finding that the Board does not have jurisdiction to consider the appeal, it necessarily follows that the Board has no incidental jurisdiction to grant a stay of publication as requested by the Appellant.

DECISION

[69] For the reasons set out above, I have determined that the Board does not have jurisdiction to consider the appeal under section 29 of the Act, or to grant a stay of publication as requested by the Appellant. Accordingly, the Board does not accept the Appellant's Notice of Appeal filed April 10, 2019, and declines to grant a stay of publication.

[70] This decision is without prejudice to the ability of the Appellant to file an appeal of any reconsideration decision that has been or may in future be made by a MHO in relation to either the March 29, 2019 Investigation Report, or the "more comprehensive written reasons" that the Respondent provided to the Appellant after this appeal process was started.

"Lynn McBride"

Lynn McBride
Vice Chair,
Community Care and Assisted Living Appeal Board

September 20, 2019