



# 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](http://www.ccalab.gov.bc.ca)  
Email: [ccalab@gov.bc.ca](mailto:ccalab@gov.bc.ca)

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## DECISION NO. 2019-CCA-004(a)

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

**BETWEEN:** Ofra Sixto (Operating as ICARE Childcare Inc.) **APPELLANT**

**AND:** Dr. Meena Dawar, Medical Health Officer, Vancouver Coastal Health Authority **RESPONDENT**

**BEFORE:** A panel of the Community Care and Assisted Living Appeal Board  
M. Lynn McBride, Vice Chair

**DATE:** Conducted by way of written submissions concluding on February 24, 2020

**APPEARING:** For the Appellant: Self-represented  
For the Respondent: Robert P. Hrabinsky

## APPLICATION FOR SUMMARY DISMISSAL

[1] The Respondent has applied for summary dismissal of the Appellant's appeal, relying specifically on Rule 15(1)(f) of the *Rules for Appeals under the Community Care and Assisted Living Act*. Under this Rule the Respondent argues that there is no reasonable prospect the appeal will succeed.

[2] In considering an application for summary dismissal, the Board must decide the matter on the basis of a "summary application", which means that "the application must not be turned into a full review of the case on the merits" (*ZHH v Interior Health*, 2014-CCA-005(a), at para 5).

[3] I have reviewed all the materials submitted by the parties to date, and I want to emphasize that this decision is limited to the matter of whether the appeal

should be summarily dismissed. This decision is not meant to be a “determination of the full merits of the appeal” (*ZHH v Interior Health* at para 6) and should not be construed as making findings on the merits of the appeal.

[4] For the reasons set out below, the Respondent’s application for summary dismissal is dismissed.

## BACKGROUND

[5] The Appellant was licensed to operate two types of group child care at a single site in the lower mainland (the “Facility”):

- a. group child care for children 30 months to school age (capacity 16); and
- b. group child care for children under 36 months (capacity 12).

[6] Although there were two separate licences issued for the two types of group child care offered at the Facility, I will refer to them collectively as the “Licence” throughout this decision.

[7] The Appellant was both the Licensee Contact and the Manager of the Facility.

[8] On June 5, 2019, pursuant to section 14 of the *Community Care and Assisted Living Act*, SBC 2002 c 75 (the “Act”), Licensing Officers placed an interim condition on the Licence that the Appellant not be allowed on the premises during the operational hours of the child care program operated at the Facility.

[9] In its June 5, 2019 Reasons for Decision, Licensing stated that the interim condition was “imposed as a summary action” that “will persist pending a final determination of whether, pursuant to section 13 of the [Act], a condition should be placed on the licence that Ms. Sixto not be allowed on the premises of the facility during the operational hours of the program, for a period of 12 months commencing from the date of any final determination, and subject to further review prior to the expiry of that 12 month period.”

[10] The June 5, 2019 Reasons for Decision subsequently referred to the “summary action” and the “proposed action” when it gave the Appellant notice of her right to request a reconsideration pursuant to section 17 of the Act:

In accordance with the [Act] this report provides you with written reasons for the summary action and proposed action, as well as written notice that the licensee may give a written response to the medical health officer setting out reasons why the medical health officer should delay or suspend the implementation of an action or a summary action, or confirm, rescind, vary, or substitute for the action or summary action.

[11] On July 4, 2019, the Appellant requested a reconsideration of the summary action, that is, of the interim condition imposed on the Licence pursuant to section 14 of the Act. The Appellant, among other things, asserted that the process which resulted in that summary action was procedurally unfair.

[12] During July, August and September 2019, a series of letters were exchanged between (1) the Regional Manager, Community Care Facilities Licensing, Vancouver Coastal Health, (2) the Appellant, and (3) Dr. Meena Dawar, Medical Health Officer,

Richmond, Vancouver Coastal Health, which culminated in a September 11, 2019 letter from the Regional Manager to the Appellant advising:

that the following “action” has been implemented: Effective immediately, a condition has been placed on the licence that Ms. Sixto not be allowed on the premises of the facility during operational hours of the program, for a period of 12 months commencing from the date of any final determination, and subject to further review prior to the expiry of that 12 month period.

This action implemented on September 11, 2019 is identical to the “proposed action” that was referenced in the June 5, 2019 Reasons for Decision.

[13] On September 20, 2019, the Regional Manager sent another letter to the Appellant notifying her that:

- a. pursuant to section 14 of the Act, the Licence has been suspended effective immediately (the “Summary Action”);
- b. pursuant to section 13 of the Act, the Licence will be cancelled effective October 21, 2019 (the “Action”); and
- c. in accordance with section 17 of the Act, the Appellant may request a reconsideration of the Summary Action, the Action, or both.

[14] With that September 20, 2019 letter, the Regional Manager enclosed Licensing’s Reasons for Decision (in relation to the suspension and cancellation of the Licence), which were dated September 19, 2019.

[15] On the same day (September 20, 2019), the Medical Health Officer (“MHO”) also sent the Appellant a letter which dealt with the outstanding reconsideration application in relation to the decision to place a condition on the Licence. In this letter the MHO provided the Appellant with a set amount of time to provide further written submissions on the matter.

[16] On September 24, 2019, the Appellant requested a reconsideration of the Summary Action and the Action (in relation to the suspension and cancellation of her Licence).

[17] On October 18, 2019, the MHO issued her Decision and Reasons in response to the Appellant’s September 24<sup>th</sup> request for reconsideration. The MHO confirmed the Summary Action and the Action taken by Licensing as set out in the September 19, 2019 Reasons for Decision. In the covering letter to this reconsideration decision, the MHO asked the Appellant to confirm whether she wished to continue with the reconsideration of the decision to place a condition on the Licence.

### **NOTICE OF APPEAL AND THE PARTIES’ SUBMISSIONS**

[18] On November 12, 2019, the Appellant filed a Notice of Appeal in which she asked the Community Care and Assisted Living Appeal Board (the “Board”) to “look at *all the materials, the way the VCH handled it all*, and what they based their decision on” and submitted that she was “sure that you will find that this case is the most unfairly handled and unfairly judged” [emphasis added]. She also stated that

"I never even met the medical officer, *she made her decision based on licensing findings*. Where is the justice there?" [emphasis added].

[19] In the Respondent's February 7, 2020 application for a summary dismissal of this appeal, the Respondent makes the following submissions:

In summary, the Respondent submits that the substance of the Notice of Appeal is directed at a decision made by the Community Care Facilities Licensing ("CCFL") on June 5, 2019 with respect to which no reconsideration decision has yet been made by the MHO.

Conversely, there is nothing in the Notice of Appeal which directly relates to or challenges the reconsideration decision that was made by the MHO on October 18, 2019, which in turn relates to a subsequent decision made by CCFL on September 19, 2019.

Furthermore, the MHO's decision is based on evidence that was either uncontested or admitted by Ms. Sixto.

Finally, even if it could be established that CCFL's decision of June 5, 2019 was ill-conceived (despite the absence of any reconsideration of that decision), this would have no bearing on the MHO's decision dated October 18, 2019.

. . .

None of this is meant to suggest that the MHO's decision of October 18, 2019 is impervious to *any* challenge before the [Board]. The Respondent submits only there is no reasonable prospect that the appeal, as it is presently framed, will succeed. For example, the Appellant might have argued, as it did before the MHO, that while breaches of the condition are admitted, cancellation is not the appropriate disposition. However, this argument (or any other that might be said to be properly directed at the MHO's decision) is not advanced in the appeal as it is currently framed. [emphasis in original]

[20] In response to the application for summary dismissal, the Appellant submits, among other points, that the "appeal request is for the process of which licensing had conducted their investigation" and the "way that the investigation was conducted by licensing throughout the year". The Appellant also submits "I feel strongly that licensing have power that they misuse and abuse" and that "their conduct was less than honest or fair".

[21] In its final reply submissions, the Respondent reiterates its position that the appeal is not in relation to the October 18, 2019 reconsideration decision upholding the decision to cancel the Appellant's Licence, but that it relates instead to earlier decisions of Licensing and the MHO which have yet to be reconsidered.

## REASONS

[22] In its submissions on this summary dismissal application the Respondent appears to be focusing its argument on the premise that the appeal has been brought in relation to the earlier decisions of Licensing which have not yet been reconsidered by the MHO, and that those decisions are distinct and exclusive of the eventual decision to cancel the Licence to operate. I find that the Respondent is

advancing a strict and narrow legalistic approach and interpretation which I do not follow or adopt.

[23] First, I disagree with the Respondent that there is nothing in the notice of appeal which relates to and/or challenges the October 18, 2019 reconsideration decision. I find that the Appellant has raised issues of procedural fairness in relation to the entire course of conduct of Licensing and the MHO, including in the context of the October 18, 2020 reconsideration decision. Her request that the Board look at "all the materials, the way the VCH handled it all, and what they based their decision on", for example, indicates she is not seeking to limit the Board's review to any one issue and/or decision. Further, the Appellant's question about the lack of "justice" in the MHO basing her decision on the findings of Licensing, indicates the Appellant is attacking the MHO's decision, at least in part, on the basis of what she argues are significant flaws with the earlier decisions of Licensing.

[24] Second, even if it could be said that the Appellant's arguments relate mainly to the decisions attaching a condition to the Licence, which finding I *do not* make in this decision, in the context of this application I find that the decisions made in relation to the placement of the condition on the Licence and in relation to the suspension and cancellation of the Licence, are inextricably linked.

[25] The June and September letters and decisions and the MHO's October 18, 2019 reconsideration decision are all connected and intertwined. The June 5<sup>th</sup> decision placed an interim condition on the Licence (the "summary action") that would persist pending a final determination of whether a condition should be placed on the Licence (the "proposed action"). The September 11<sup>th</sup> decision implemented the proposed action and placed a condition on the Licence (the "action"). The September 19<sup>th</sup> decision suspended the Licence effective immediately (the "Summary Action") and cancelled the Licence effective October 21<sup>st</sup> (the "Action"). The September 19<sup>th</sup> decision indicated that the Summary Action and the Action were taken because the Licensing Officer found, among other things, that the Appellant had breached the condition imposed on the Licence, and the Licensing Officer concluded that the Appellant's "willingness" to breach the condition demonstrated "a disregard for the regulatory system in which she has operated. She is, in essence, ungovernable." In her October 18<sup>th</sup> reconsideration decision, the MHO confirmed the Summary Action and the Action and agreed that the Appellant "has demonstrated herself to be ungovernable."

[26] The Respondent has argued that even if the condition placed on the Appellant's Licence was found by the Board to be "ill-conceived", such a finding would have no bearing on the October 18, 2019 reconsideration decision. I find this statement speculative at best, and I am not prepared to make such a finding on the limited information and evidence before me on this summary application.

[27] The Respondent's application for a summary dismissal of this appeal is based solely on the ground that there is no reasonable prospect that this appeal will succeed.

[28] In *MT (Operator of Happy Hearts Licensed Family Daycare) v Fraser Health Authority*, (2010 BCCALAB 6) this Board stated:

[17] With respect to Section 15(f) of the Rules, we find the following comments by the Supreme Court of Canada relevant and useful in our analysis:

Whether an appeal has any reasonable prospect for success is a highly discretionary issue and a question of fact, militating in favour of deference: *Baker v. Canada (Ministry of Citizenship and Immigration)*, [1992] 2 S.C.R. 817 at 61.

It is therefore quite clear that in considering the application before us, we must ensure that proper discretion is exercised and ensure that the principles of natural justice and procedural fairness are followed.

[29] As noted at the outset of this decision, I have reviewed all the materials submitted by the parties and I find that the Appellant has raised appealable issues which are grounded on alleged failures on the part of Licensing and the MHO to follow the principles of natural justice and procedural fairness. I disagree with the Respondent that there is no reasonable prospect that the Appellant's appeal will be successful.

[30] Accordingly, the Respondent's application for summary dismissal is dismissed.

"M. Lynn McBride"

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

March 31, 2020