BRITISH COLUMBIA

Community Care and Assisted Living Appeal Board

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DECISION NO. 2019-CCA-003(d)

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

BETWEEN:	Safwana Ahmed	**APPELLANT**
AND:	Dr. Althea Hayden, Medical Health Officer Vancouver Coastal Health Authority	**RESPONDENT**
BEFORE:	A Panel of the Community Care and Assisted Living Appeal Board: Richard Margetts, Panel Chair Lynn McBride, Member Shelene Christie, Member	
DATE:	Conducted by way of written submissions concluding on April 1, 2021	
APPEARING:	For the Appellant: Clea F. Parfitt, Counsel For the Respondent: Robert P. Hrabinsky, Counsel	

Preliminary Decision Regarding Application for Disclosure

APPLICATION

[1] This is an application by the Appellant, Safwana Ahmed, to the Community Care and Assisted Living Appeal Board (the "Board"), for further and better production and, in particular, for an order that:

a. The Respondent provide the names of Family Childcare Licensees identified in Mr. Hrabinsky's letter of November 11, 2020 as Licensees 1 to 6; or

b. In the alternative, the Respondent provide anonymized copies of all of the information on the Respondent's inspection website for each of these Licensees.

BACKGROUND

[2] Paragraphs 5 through 22 of the Appellant's submissions set out the procedural history and background leading to this application. In her submissions, the Appellant identifies several disclosure requests she has made in relation to information regarding Family Child Care Licensees who have been found to be operating with more than the permitted number of children.

[3] She points to several disclosure requests, including the request for this information which she made to the Medical Health Officer in the request for reconsideration made on October 09, 2019. She also highlights a Freedom of Information request she made in January of 2020, which she says was not fully responded to, and an application for disclosure that she made to this Board on August 24, 2020.

[4] The Appellant further identifies the October 13, 2020 decision of this Board (Decision No. 2019-CCA-003(c)) which ordered disclosure of certain information relating to Family Child Care Licensing, and specifically information about Licensees found to be operating with too many children in care (the "Disclosure Decision").

DISCUSSION AND ANALYSIS

[5] The Appellant submits that during the course of her cross-examination of the Respondent's witnesses she became aware of certain licensing and investigation information pertaining to Family Child Care Licensees which is available publicly. She further submits that the information pertaining to six Licensees that she received from the Respondent as a result of the Disclosure Decision is only "partial information" which she intends to supplement, in her reply submissions, with information which she believes is publicly available about these same Licensees. She argues that in order to do so, she either needs the names of these Licensees (so she can review the public information about them), or she needs the Respondent to provide (with identifying information redacted), the full inspection and investigation information which is publicly available about these six Licensees.

[6] The Appellant submits that her request for this specific information is justified on the basis that "requiring standards for licensing that are markedly different than the standards applied once someone is licensed is … improper because it amounts to arbitrary decision-making, and is a form of discrimination in the administrative law sense of adverse differential treatment without a reasonable foundation." She argues that in order for this Board to determine whether the Respondent acted in an arbitrary or discriminatory fashion when it denied her a licence, this Board "must have before it some information about how the [Respondent] handles breaches of the Act and Regulations for licensed Family Child Care operations".

[7] Relying on the principles identified in *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971) (*Grigg*), and *British Columbia (Public Service Employee Relations Commission) v. BCGSEU* 1999 CanLii 652 (SCC) (*Public Service Employee Relations Commission)*, the Appellant submits that "establishing standards that are not related to the job to be performed is adverse treatment which will be found to be

discriminatory under human rights legislation if the impact of that treatment is disproportionately felt by statutorily protected groups". Although the Appellant is clear that she is not alleging human rights discrimination in this appeal, she relates the concept of adverse treatment and discrimination to administrative decision-making generally as follows:

> Establishing standards for applicants for a licence that are much stricter than the standards which holders of the licence must meet once licensed is an arbitrary and discriminatory exercise of the administrative licensing power.

[8] Whether the law supports the Appellant's submission has yet to be determined as neither the *Grigg* nor *Public Service Employee Relations Commission* decisions appear directly apropos the issue before this panel. However, it is an arguable position to take and of some interest to this panel, and the public at large, as to whether the principal posited by the Appellant is supportable at law. It is an issue that is frequently faced by professional organizations in their deliberations on the suitability of a candidate for admission, and during the administration of their disciplinary functions.

[9] The Respondent submits that the information sought has no probative value or relevance and says that it is well established that a regulator's response to others in similar circumstances is irrelevant and immaterial. The Respondent quotes at length from the decision of Voith, J. in *TSG Sales Ltd v. Vancouver (City)* [2012] B.C.J. No. 1639, and posits that the Appellant seeks to place the focus on the activity of the other Licensees, when the real issue is the illegality of the Appellant's own conduct. The Respondent says that the evidence of both affiants is to the effect that instances where duly licensed daycare facilities have exceeded ratios are not analogous to the circumstances before the Board in this case.

[10] The Respondent further submits that the Respondent's witnesses have been thoroughly cross-examined about "decisions made by other Licensing Officers and other Medical Health Officers" and that "those decisions are not before the Board on this appeal". The Respondent argues that the Board "is now in a position to rule upon the relevance and probative value of such inquiries".

[11] This position asks the Board to decide an issue which the Appellant has identified as key to her appeal, in a preliminary ruling, without considering the issue fully on the merits. As we are nearing the close of this hybrid hearing process, and because the information sought may contextualize information which is already before the panel, the panel declines to make this determination in a preliminary ruling. The panel disagrees with the Respondent that requiring this further disclosure will transform this appeal into "a general inquiry of potentially unlimited scope".

[12] Whether or not the panel ultimately accepts it, the Appellant is entitled to make the argument that other situations involving Family Child Care Licensees found to be operating with too many children is relevant to the determination of this appeal. We find that the minimal information the Appellant has requested may assist her to make that argument, at very little prejudice or obligation to the Respondent insofar as information production is concerned.

[13] This is the second application by the Appellant for disclosure of information and documents. This panel's Disclosure Decision, referenced above, stated that the direction to produce does not constitute a determination of relevance, probative value or admissibility of those records. For clarity, this ruling also does not make any determination of relevance, probative value or admissibility.

[14] As a matter of expediency, we direct that the Respondent provide the Appellant with the names of those family childcare licensees identified in Mr. Hrabinsky's letter of November 11, 2020 as Licensees 1 to 6.

"Richard Margetts"

Richard Margetts, Q.C., Panel Chair

"Lynn McBride"

Lynn McBride, Member

"Shelene Christie"

Shelene Christie, Member

May 19, 2021