



Community Care and Assisted Living Appeal Board

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DECISION PUBLICATION POLICY

Introduction

The Community Care and Assisted Living Appeal Board (“the Board”) is required to make its decisions in writing, give reasons for those decisions and make them accessible to the public.

Ensuring that the public has easy and full access to all the Board’s decisions promotes openness and transparency regarding a public body that exercises statutory power. It also helps to educate potential parties about the Board’s process, and about the principles that govern its decision-making. The Board is committed to these principles of openness, transparency and public accountability.

Board hearings may be conducted in writing or in person and any oral hearings are required to be open to the public, unless the panel conducting the hearing orders otherwise.

In a modern internet age, the world-wide public disclosure of personal information contained in the Board’s reasons for decision requires a delicate balancing between the principle of public accountability and respecting individuals’ rights to privacy, particularly vulnerable persons in care.

The Board is sensitive to privacy issues in general, particularly in regard to information available on the internet, and is committed to respecting the privacy of those whose personal information may be contained in the decisions, particularly where they are not necessarily parties to the proceedings.

Prior to December 31, 2016, the Board generally published its decisions without identifying individual appellants by name (using initials only). With a view towards increasing openness and transparency in the Board’s processes, and in the public interest, the Board has determined that it is not necessary to automatically protect the identity of individual appellants in all cases. Accordingly, this Policy outlines the change in the Board’s previous practice in the publication of decisions on the website and describes how the Board will balance public accountability with personal privacy in the public release of its reasons for decision going forward. This Policy is effective January 1, 2017.

Legal Requirements of Disclosure

Legal requirements of disclosure that are applicable to the Board are provided in the *Community Care and Assisted Living Act*, S.B.C. 2002, c. 75 and the *Administrative Tribunals Act*, S.B.C. 2004, c.45 (ATA).

Section 50(4) of the ATA requires that the Board make its decisions available to the public.

Section 61(2)(f) of the ATA provides that the relevant privacy protection provisions in the *Freedom of Information and Protection of Privacy Act* do not apply to a decision of the Board for which public access is provided by the Board. This gives the Board discretion to determine what information should and should not be included in its published decisions.

Publication Policy

All decisions of the Board in appeals filed prior to December 31, 2016 will continue to be made available to the public on the Board's website or from the registry office, in a form consistent with the Board's previous decision publication format, identifying individual appellants by initials only.

All decisions issued by the Board in appeals filed after January 1, 2017 will be written in a manner that takes into account personal privacy and is suitable for public disclosure of the decision in its entirety, wherever possible. In order to ensure the protection of certain information and to promote public accountability, the following guidelines will generally be used in publishing decisions of the Board issued in appeals filed after January 1, 2017:

- 1) The name of the panel member/s issuing the decision will be disclosed.
- 2) The names of the appellant, respondent or any other parties and their legal counsel or other representatives will be included in the published decision, except where the Board orders otherwise.
- 3) The names and all other identifying and personal information of children, youth and adults in care, along with their families, will not normally be included in the published decision.
- 4) At the discretion of the Board, individual witnesses may be referred to by name or by their position, relationship to the parties or their initials only in published decisions. Government and Health Authority staff, operating within the scope of their employment, will generally be identified in Board decisions. The identity of other witnesses will not be disclosed if non-disclosure is necessary in order to protect the identity of children, youth and adults in care whose identities are not disclosed.
- 5) Decisions of the Board will be posted to the Board's website not less than 7 days after the date of the decision.

Decisions will contain only the personal information that is necessary to establish or explain the grounds for the Board's findings and decision. In certain circumstances where it is necessary to include sensitive personal information regarding an appellant or particularly, personal information involving children and adults in care, the Board may invite submissions from the parties on the degree of disclosure in the public document and/or in its discretion, may edit or summarize such information in the version of the decision that is publicly disclosed. Normally, any sensitive personal information regarding children or adults in care is subject to redaction and vulnerable persons are not generally identified in the Board's published decisions.

The Board will publish all decisions of the Board (in their entirety or with certain protected

information edited or summarized) on the Board's website. Copies of Board decisions are also available from the Board's registry office upon request. This will include final decisions and any significant preliminary decisions dealing with such matters as jurisdictional challenges, stay applications, evidentiary issues or other important procedural matters.

Application to Alter Usual Form of Publication

The Board recognizes that it has the discretion in appropriate circumstances to alter its usual practice as described above regarding the form in which its decisions are published. This Decision Publication Policy therefore outlines the considerations the Board takes into account in undertaking publication, and recognizes that, in appropriate circumstances, the Board may, either at the time of publication or later upon application to the Board, alter its usual practice in individual circumstances.

Decisions will not be posted to the Board's website until a minimum of 7 days from the date of the decision have passed to allow for an application to anonymize or redact certain information.

A party or non-party named in a decision of the Board issued after the effective date of this Policy may apply to the Board, in writing, outlining why a particular type of editing for publication is appropriate.

The person requesting alteration of the manner in which a decision is published must address (a) the specific information to be redacted or anonymized, and (b) why the identified privacy interest (or other interest) outweighs the public interest in access to the Board's proceedings.

The balance between openness and privacy can be difficult. The Board recognizes that the internet is far-reaching and that damage to a person's reputation may go far beyond what was intended by the "open court" principle when first established in a non-digital age. The openness principle subscribed to by the courts requires that a person wishing confidentiality must satisfy the onus of demonstrating that the circumstances are sufficiently compelling.

Broad categories of interests that may be considered by the Board in responding to an application to redact or anonymize a decision for public distribution include, but are not limited to, interests in:

- ensuring appeals are advanced;
- furthering the administration of justice;
- protecting the innocent and vulnerable;
- general protection of privacy, particularly as it relates to information made available on the internet;
- minimizing the potential or unnecessary harm that may be suffered if a person is identified;
- ensuring that disclosure does not undermine the integrity and purpose of the right of appeal or undermine access to justice;
- ensuring that publication does not unreasonably hamper the ability of a person to rehabilitate themselves or restore a tarnished reputation;
- protection of the public from harmful operators and general deterrence;
- safeguarding sensitive personal information from misuse.

In making an application to alter the usual form of publication, the person requesting non-disclosure of identifying information or alteration of the manner in which a decision is published should outline their concerns and identify any consequences of publication or continued publication of a decision in its usual format (including names of the parties and witnesses). The requestor must show that a person's privacy interests (or other interests) outweigh the public interest in openness and access to the Board's proceedings. The specific information to be protected should be described, for example state the information to be redacted or the person to be made anonymous, and detailed reasons for the request, including the harm that may be suffered if the person is identified.

After considering the requestor's reasons and submissions, the Panel or Chair of the Board will determine whether he/she is satisfied that the legal duty to publish the decision, the principle of openness and the public interest can all be served in the particular instance without publishing the requestor's name or other identifying information. In such a case, the published decision will be replaced by a version of the decision appropriate for publication, as determined by the Board.

In considering whether the public interest in disclosure outweighs any resulting invasion of personal privacy, the Board may consider, among other things, safety issues, the sensitivity of the information, whether the information relates to a person in care, the accuracy and level of detail of the personal information, the specific public policy objectives and mandate of the Board, the expectations of affected individuals, the impact on a person beyond the usual loss of privacy and the possibility that an individual to whom the information relates may be unfairly exposed to monetary, reputational or other harm.

This policy was approved by the members of the Community Care and Assisted Living Appeal Board to be effective on the 1st day of January, 2017.