IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Adlani v. Medical Health Officer (Fraser Health Authority),* 2024 BCSC 84

Date: 20240117
Docket: S232798
Registry: Vancouver

Between:

Ghalia Rebei Adlani

Petitioner

And

Dr. Emily Newhouse, Medical Health Officer, Fraser Health Authority and Community Care and Assisted Living Appeal Board

Respondents

Before: The Honourable Justice Edelmann

On appeal from: An order of the Community Care and Assisted Living Appeal Board, dated February 7, 2023.

Reasons for Judgment

Counsel for the Petitioner:	K.D. Craig
Counsel for the Community Care and Assisted Living Appeal Board:	R.J. Gage
Counsel for Dr. Emily Newhouse Medical Health Officer, Fraser Health Authority:	R.P. Hrabinsky T.L. Coulter
Place and Dates of Hearing:	Vancouver, B.C. November 27-29, 2023
Place and Date of Judgment:	Vancouver, B.C. January 17, 2024

[1] The petitioner, Ms. Ghalia Rebei Adlani seeks to set aside a decision of the British Columbia Community Care and Assisted Living Appeal Board (the "CCALAB"). The appeal decision upheld a decision made by Dr. Emily Newhouse,

Medical Health Officer for the Fraser Health Authority, on June 9, 2021, to terminate Ms. Adlani's licence to operate a daycare in her home.

[2] The petition raised a number of issues with the decision, including bias and a lack of procedural fairness at various stages of the investigation and decision-making processes. Following oral submissions, counsel for the petitioner is only pursuing one issue on the petition, which is the implication of an alleged failure to comply with a requirement in the *Community Care and Assisted Living Act,* S.B.C. 2002 c. 75 ("*CCALA*") that a decision be given to a licensee at least 30 days before an action is taken.

[3] I will begin by setting the legislative context before turning to the procedural history in this matter and ultimately addressing the issue raised by the petitioner.

Legislative Context

[4] The licensing of child care facilities is undertaken pursuant to *CCALA*. The overriding purpose of the licensing regime and consideration in all decisions with respect to licensing is the protection and promotion of the health and safety of persons in care. A "community care facility" is defined in s.1 of *CCALA* and includes daycares like the one that was run by the petitioner.

[5] Responsibility for community care facilities licensing is, under s. 11 of *CCALA*, assigned to the Medical Health Officers employed by the various health authorities and designated as such under Part 6 of the *Public Health Act.* S.B.C. 2008, c. 28. A medical health officer is empowered, pursuant to s. 13 of *CCALA*, to suspend or cancel a license, or to attach terms or conditions to a license. As a matter of practice, medical health officers delegate their authority to licensing officers to carry out the day-to-day work of licensing, inspection, and monitoring.

[6] Section 17 of *CCALA* provides for the reconsideration of decisions relating to licensing, including the imposition of terms and conditions to a license, or the suspension or cancellation of a license. Upon reconsideration, the medical health officer may confirm, rescind, vary or substitute for the action.

[7] In turn, a reconsideration decision of a medical health officer related to the suspension or cancellation of a licence may be appealed by a licensee to the

Board under s. 29 of *CCALA*, which also provides that the medical health officer who made the decision under appeal is a party to the appeal.

[8] Section 29(6) of *CCALA* gives the Board the power to issue a stay or suspension of the decision under appeal if "satisfied that the stay or suspension would not risk the health or safety of a person in care".

[9] Section 29(11) and (12) set out the approach to be taken by the Board on an appeal:

> 29 (11) The board must receive evidence and argument as if a proceeding before the board were a decision of first instance but the applicant bears the burden of proving that the decision under appeal was not justified.
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> (12) The board may confirm, reverse or vary a decision under appeal, or may send the matter back for reconsideration, with or without directions, to the person whose decision is under appeal.

[10] There is no dispute that s. 58 of the *Administrative Tribunals Act,* S.B.C. 2004, c. 45 *[ATA]*, relating to statutes with a privative clause, is applicable to this Court's review of a decision of the Board. Section 31.1 of *CCALA* contains a privative clause granting the Board exclusive jurisdiction over matters required to be determined in an appeal under s. 29. In any event, s. 29.1(m) of *CCALA* explicitly provides that s. 58 of the *ATA* is applicable to the Board. Section 58(1) directs that, as a result of the privative clause, the Board is considered an expert tribunal and s. 58(2) directs that in a judicial review of the Board's decisions:

> a) a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable,
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> b) questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly, and
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> c) for all matters other than those identified in paragraphs (a) and (b), the standard of review to be applied to the tribunal's decision is correctness.

Procedural History

[11] The petitioner was issued an In-home multi-age care licence which permitted her to "care for up to eight children in the licensee's personal home and where the licensee personally provides the care", and began to operate Moonlight

Daycare in her home in Surrey in 2013. She was the subject of investigations in 2016, 2018, and 2019 which made various findings that she had contravened different aspects of *CCALA*.

[12] On July 9, 2020, a licensing officer purported to place conditions on the petitioner's licence pursuant to s.13 of *CCALA* (the "Licensing Decision"). The conditions, to be effective August 9, 2020, precluded the petitioner from providing care for school-age children and required her to complete an ethical practice training course.

[13] There is some dispute about whether the petitioner received the licensing decision prior to the effective date of the conditions. There was evidence before the Board that the decision was delivered to the petitioner's daycare facility on July 9, 2020, by courier and appears to have been signed for by someone at the facility. The petitioner says it is not her signature, that she did not sign for the package and that she did not receive the letter at that time.

[14] On August 26, 2020, the licencing officer contacted the petitioner by telephone. In the course of that call, the petitioner advised that she had not received a copy of the July 9, 2020 decision. The officer attended the facility that day and provided the Petitioner with a copy of the July 9, 2020 decision in person.

[15] On December 8, 2020, the petitioner applied for reconsideration of the Licensing Decision by the Medical Health Officer pursuant to s.17 of *CCALA*.

[16] On June 9, 2021, the Medical Health Officer issued a reconsideration decision in which she ordered the cancellation of the petitioner's license, effective September 15, 2021, with some additional conditions in the interim.

[17] The petitioner appealed the reconsideration decision to the Board, and subsequently applied to the Board for a temporary suspension or stay pursuant to s. 29(6) of *CCALA*. On September 13, 2021, the Board Chair granted an interim stay of the reconsideration decision.

[18] An oral hearing by the Board took place over MS Teams over 10 days from December 2021 to April 2022 before a panel of three. During the hearing, both the petitioner and the Medical Health Officer adduced evidence by way of documentary exhibits and personal testimony.

[19] In a decision dated February 7, 2023, the Board determined that the petitioner had not established that the reconsideration decision was not justified, and accordingly dismissed the petitioner's appeal and confirmed the cancellation of the petitioner's license.

[20] The judicial review before me was filed on April 11, 2023.

Delivery of Licensing Decision

[21] As noted above, the only issue being pursued by the petitioner at this point is whether the process was vitiated by the alleged failure of the licencing officer to provide her with the licencing decision at least 30 days prior to the conditions taking effect.

[22] The obligation to provide reasons prior to taking an action is set out in s. 17(2) of the *CCALA*:

> (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
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> (a) written reasons for the action or summary action, and
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> (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.

[23] There is no dispute that the imposition of conditions by the licence officer was an "action" as defined in s. 17(1).

[24] Both in the request for reconsideration and in her appeal to the Board, the petitioner took issue with the alleged failure to give her the decision 30 days before the conditions took effect. The Board addressed the issue of the delivery of the letter in the following terms:

> [45] In the Reconsideration Decision, the MHO writes the following in response to the Appellant's assertion that she did not receive the Licensing Decision on July 9, 2020 but did receive it on August 26, 2020:
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> Given the written confirmation Canada Post provided for the delivery of the Licensing Decision Report, I find it likely that you receive this document on July 9, 2020. Irrespective of this, since you acknowledge receiving personal delivery of the same materials a few weeks later, I believe the procedural requirements for notification of a change of license have been required.

> [46] Dr. Newhouse finds it was likely the July 9, 2020 Licensing Decision was delivered by Canada Post on July 9, 2020. Based on the evidence, it appears to the Panel that this is an error in terms of which carrier delivered the letter. The report was entrusted to Vancity Courier for delivery, and not Canada Post.
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> [47] Ms. Adlani denies receipt on July 9, 2020, and acknowledgment of delivery receipt cannot be tied to anyone residing or working at the Moonlight Daycare premises. However, there is no doubt that a hand delivered copy was provided to Ms. Adlani on August 26, 2020.
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> [48] While it cannot be determined that the report was delivered on July 9, 2020, the circumstances of delivery are irrelevant to our consideration, as we have mentioned above. No substantive rights of the Appellant were lost or compromised. She requested reconsideration of the Licensing Decision, and the request for reconsideration was considered on its merits by the MHO.
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> [49] We do not find anything in this aspect of matters to conclude that the MHO's Reconsideration Decision is not justified.

[25] Throughout the proceedings, including before this Court, the petitioner primarily framed the problem as one of procedural fairness. She argues that the failure to provide 30 days notice of the action meant that when the reconsideration was requested, the measures were already in place. She does not point to any direct prejudice caused by the conditions imposed by the licencing officer. In fact, in her appeal before the Board, the petitioner suggested that the board ought to impose the conditions and overturn the cancellation of the licence.

[26] I am not persuaded there was any indication that the fact reconsideration was not sought until December in any way influenced the medical health officer in coming to her decision. She in fact explicitly denied that suggestion when it was put to her in cross examination.

[27] In any event, the decision before me is not the reconsideration decision. This is a judicial review of the decision of the Board on appeal. As noted above, the hearing before the Board is essentially a hearing *de novo*, and in this case some 10 days of submissions and evidence were heard by the Board prior to coming to its decision.

[28] The Court of Appeal has recently addressed circumstances where breaches of procedural fairness were raised in a *de novo* appeal (*British Columbia (Attorney General) v. 992704 Ontario Limited*, 2023 BCCA 346). The salient question is whether the *de novo* hearing could cure the alleged breaches, and the Court

concluded in the case before it that it clearly could. In my view, to the extent the failure to provide 30 days notice of the action might have created some procedural unfairness in the underlying decision, I am satisfied that any such breach was cured by the full hearing held before the Board. There is no indication that the alleged delay in receiving the licencing decision in July or August of 2020 in any way prejudiced the petitioner's ability to present her case before the Board between December 2021 and April 2022.

[29] The second argument raised by the petitioner before this Court is that the failure to provide the decision 30 days in advance of the action vitiated the entire procedure flowing from the initial action. It is not clear to me the argument was articulated in the same form before the Board, as the focus was clearly on procedural fairness issues. I do accept, however, that comments from the panel chair during the hearing gave a strong indication that the Board would reject any such argument if it were made. Given the number of issues before the Board and the fact that many of them were not clearly articulated, I am not satisfied that it was patently unreasonable for the Board to have dealt with this issue in the manner it did. The decision under review was not that of the licencing officer in July 2020, but that of the medical health officer in June 2021. In effect, the main action being contested before the Board was the cancellation of the licence. Not only had there not been a cancellation of the licence by the licencing officer in July 2020, but the medical health officer provided over three months notice before the cancellation would take effect, a period that notably gave the petitioner ample time to get a stay before the Board. In my view, the petitioner had ample notice of the substantive decision of the medical health officer that was under review before the Board and was able to avail herself of the remedies foreseen in the legislation. I do not find the failure of the Board to find the entire process to have been vitiated by the alleged breach of the notice provision by the licencing officer to be patently unreasonable in the circumstances.

[30] The petition is dismissed.

Costs

[31] As none of the respondents have sought costs, there will be no order as to costs.

“The Honourable Justice Edelmann”