Community Care and Assisted Living Appeal

Citation: *TA v. Karen Ayers*, 2005 BCCCALAB 7

Date: 2005-09-16

Community Care and Assisted Living Act, SBC 2002, c.75

Between:

TA

Appellant

And:

Karen Ayers, Executive Director,
Child Care Programs and Services,
Early Childhood Educator Registry

Respondent

Panel: Susan E. Ross, Chair
Pinder Cheema, Q.C., Member
Gordon Armour, Member
Judy Pollard, Member*

* Judy Pollard was present at the hearing of the appeal on June 23, 2005, but took no part in the decision.

Decision

INTRODUCTION

[1] The appellant, TA, appeals to the Community Care and Assisted Living Appeal Board (Board) from the decision on February 28, 2005 of Karen Ayers, Director of Childcare Programs and Services, Early Childhood Educator Registry (ECE Registry) refusing to grant the appellant basic early childhood education program equivalency in British Columbia for her training in the United States at the Montessori Teacher Preparation of Washington institution.

[2] The appeal is brought under s. 29(2)(d) of the *Community Care and Assisted Living Act,* SBC 2002, c. 75 (Act), which provides that an applicant under s. 8 of the Act for certification as an educator of children may appeal to the Board within 30 days of receiving notification of refusal to issue the certification. This appeal was conducted on the basis of the parties' written and oral presentations.

FACTS

[3] The appellant, a 30 year old woman, appeared on her own behalf and gave evidence. She presented herself as an intelligent, articulate and motivated woman with impressive academic credentials. She was born in Pakistan and graduated with a M.A. from Peshawar University where she subsequently taught English literature. In 2000, she immigrated to the United States with her husband. She enrolled in the Montessori Teacher Preparation of Washington, which is located in the state of Washington, and graduated in 2004.

[4] Now the mother of two young children, the appellant immigrated to Canada with her family, where she contacted the ECE Registry to request certification as an early childhood educator in British Columbia. The evidence before the Board is that between 1999 and 2003 at least four previous graduates of this particular school applied for and were eventually issued ECE certificates in British Columbia. Without further query, the ECE Registry directed her to submit her out-of-province training to the International Credential Evaluation Service (ICES), an advisory service of the British Columbia Institute of Technology that conducts research on international educational credentials and compares them to the British Columbia educational system. Some seven months later, the appellant received ICES's report, including its recommendation, which read as follows:

> The Montessori Teacher Preparation of Washington, Teaching Certificate in the Montessori Method of Preschool Education generally represents the completion of three years of study at the post-secondary level. Because this institution does not have accreditation from one of the six regional accrediting bodies in the United States, this credential would not normally be recognized or accepted for admission or transfer credit by recognized post-secondary institutions in Canada or the United States. This credential therefore is not

considered generally comparable to the completion of post-secondary study from a recognized post-secondary institution in British Columbia or elsewhere in Canada.

[5] The ICES report also explained that

> Recognition of an institution implies a validation that they have been investigated and found worthy of approval. While national standards may vary, recognition is usually an indicator of program quality, reliability of student records and official documents, integrity, legitimacy, legal status, financial status, and so forth. These quality indicators may or may not have been satisfied by non-recognized institutions.
>
> An institution might not be recognized because it: a) does not meet the recognition or accreditation standards of the appropriate recognizing authority; b) is too new; c) has chosen not to go through a recognition process; or d) political or religious reasons. Non-recognized institutions would not normally be eligible for admission or transfer to recognized institutions in Canada. Caution must be used when dealing with education from non-recognized institutions.

[6] Soon after, on January 23, 2005, the appellant submitted to the ECE Registry her application to qualify as an assistant early childhood educator, along with the ICES report in support.

[7] Section 11 of the *Child Care Licensing Regulation,* BC Reg 319/89 (Regulation), prescribes the qualifications for assistants as follows:

> 11 To qualify for employment in a community care facility as an assistant, a person must
>
> (a) be of good character,
>
> (b) be able to provide care and mature guidance to persons in care, and
>
> (c) either
>
> (i) be in the process of qualifying for a certificate under section 9, or
>
> (ii) have completed a training program that is equivalent, in the opinion of the director of the early childhood education registry, to one course of a basic early childhood education program referred to in section 9(1)(a)(i).

[8] The portions of s. 9 of the Regulation which are relevant to this appeal read as follows:

> 9(1) The director of the early childhood educator registry may issue an early childhood educator certificate to an applicant who

(a) has successfully completed a basic early childhood education training program

(i) through an educational institution listed in item 1 of Schedule B, or

(ii) that is equivalent, in the opinion of the director of the early childhood educator registry, to a program offered by an educational institution described under subparagraph (i),

...

(3) For the purpose of section (1)(a)(ii), the director of the early childhood educator registry may refuse to issue a certificate to a person solely on the basis that the educational institution from which the person received training is not approved by a provincial, state, national or other government body.

[9] On February 28, 2005, the ECE Registry refused the appellant's application on the ground that, because Montessori Teacher Preparation of Washington

> does not have accreditation from one of the six regional accrediting bodies in the United States, this credential would not normally be recognized or accepted for admission or transfer credit by recognized post-secondary institutions in Canada or the United States... As a result, it does not appear that you have completed training equivalent to one course of an approved basic Early Childhood Education Program.

[10] The ECE Registry also indicated that it was reviewing its policy regarding the acceptance of Montessori training programs and that another option for the appellant might be to obtain a prior learning or academic assessment from a recognized British Columbia institution:

> It should be noted that the ECE Registry is currently reviewing our policy regarding the acceptance of training offered by a Montessori Accreditation Council for Teacher Education (MACTE) and the Association of Montessori Internationale (AMI). In the event that our policy is modified and the ECE Registry is able to acknowledge your training we will notify you.
>
> You may be interested in obtaining a prior learning assessment or academic assessment, as described in the booklet *The Early Childhood Educator in British Columbia: A Guide to Registration and Renewal Procedures.* A prior learning assessment provides applicants an opportunity to demonstrate that their skills, knowledge, and abilities meet the required competencies....

[11] On March 17, 2005, the appellant sent her Notice of Appeal to the Board. This appeal was heard on June 23, 2005. In addition to previously filed materials, the appellant filed two exhibits (copy of email dated May 25, 2005 and copies of her academic credentials from Pakistan) and provided to the Board for its review her four binders of materials prepared as part of her Montessori course work.

[12] Section 29 of the Act outlines the jurisdiction of the Board:

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 is not justified.

(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.

POSITION OF THE APPELLANT

[13] The appellant takes issue with both the decision not to grant her equivalency in British Columbia for her training at Montessori Teacher Preparation of Washington and the process the ECE Registry used to exercise discretion under s. 9(3) of the Regulation.

[14] The appellant's statement of points dated April 13, 2005 and filed at Tab C of the materials before the Board can be summarized as follows:

- Between 1999 and 2003 the ECE Registry issued ECE certificates to at least four graduates of Montessori Teacher Preparation of Washington
- Before deciding whether to grant an ECE certificate, the director of the ECE Registry should interview the individual applicant
- The ECE Registry acknowledged in another case, *SC v. ECE Registry,* 2004 BCCCALAB 2, that Montessori Teacher Preparation of Washington had higher admission standards and course requirements than those required for ECE certification in British Columbia
- The appellant's academic qualifications exceed those of other out-of-province graduates to whom the ECE Registry issued ECE certificates
- The appellant believes that complaints against Montessori Teacher Preparation of Washington influenced the ECE Registry to reject her application
- The ECE Registry utilizes a system of double standards by imposing very strict standards on out-of-province graduates, while permitting facilities in British Columbia to hire non-ECE qualified personnel
- The appellant believes that she faces discrimination due to her ethnic and religious background

[15] In her well prepared, oral presentation to the Board, the appellant elaborated and reiterated and emphasized her position as follows:

- The director of the ECE Registry's improperly exercised discretion under s. 9(3) of the Regulation in not interviewing the appellant before deciding to refuse her application

- The ECE Registry's apparent differential treatment of previously issuing ECE certificates to at least four graduates of Montessori Teacher Preparation of Washington, yet refusing to grant the appellant's application
- The appellant's university education together with her Montessori training clearly exceeded the qualifications of other out-of-province graduates to whom the ECE Registry had issued certification
- Given that the appellant's educational experience and academic credentials were higher than her four fellow graduates who were issued ECE certificates, she believes that she was refused due to discriminatory practices by the ECE Registry
- The ECE Registry was effectively condoning double standards as British Columbia child day care facilities were advertising positions requiring skills essential for ECE certification but not the actual ECE certification, and yet the ECE Registry denied the appellant's application due solely to her out-of-province training
- The British Columbia child care facilities to which the appellant had applied either required ECE certification or did not respond to her whatsoever
- While the appellant's application to the ECE Registry was for qualification as an assistant, her goal was to be fully qualified as an early childhood educator
- The appellant was not prepared to follow the alternate certification options suggested to her by the ECE Registry, given the cost and time required and her belief that she had all the tools necessary to be an effective early childhood educator
- In reviewing the appellant's case, the director of the ECE Registry should have exercised her discretion pursuant to s. 9(3) of the Regulation and paid "some sympathetic consideration" to the appellant's circumstances

POSITION OF THE ECE REGISTRY

[16] The ECE Registry's statement of points dated June 3, 2005 and found at Tab D of the materials before the Board outlines the following:

- The requirements to be certified as an early childhood educator pursuant to the Act and Regulation
- The director of the ECE Registry's discretionary power to deem equivalency for out-of-province training programs and the procedures for so determining

[17] The ECE Registry also responded to the appellant's statement of points as follows:

- There is no specific certification for Montessori teachers within the ECE regime
- The previous issuance of ECE certificates to four graduates of Montessori Teacher Preparation of Washington was due to inconsistent practice by the ECE Registry in assessing out-of-province training
- In May 2004, the Regulation was amended to add s. 9(3) which authorizes the director of the ECE Registry to deny certification based solely on the fact that the educational institution in question is not approved by a provincial, state, national or other government body
- Section 9 (3) of the Regulation does not impose a requirement on the director of the ECE Registry to interview an applicant as a prelude to exercising discretion in the issuance of an ECE certificate
- Irrespective of higher admission and course requirements, Montessori Teacher Preparation of Washington is not an educational institution "approved by a provincial, state, national or other government body" within s. 9 (3) of the Regulation
- The ECE Registry cannot comment on the appellant's educational credentials from Pakistan as it has not been privy to this information
- Any complaints received by the ECE Registry against Montessori Teacher Preparation of Washington graduates now certified in British Columbia would have been an irrelevant factor in assessing the appellant's application
- The ECE Registry cannot comment on the job posting the appellant submitted to the Board because the ECE Registry does not know the type of license held by the facility involved, which determines the requisite qualifications of those working there
- The ECE Registry denies any ethnic or religious discrimination in evaluating the appellant's application
- The ECE Registry advised the appellant of other options she may exercise to qualify for ECE certification in British Columbia

[18] Denise Hunt, A/Registrar, represented the ECE Registry at the oral hearing of the appeal. She testified that soon after joining the ECE Registry in April 2004, it became apparent to her that there was a history of inconsistent decision-making in cases involving out-of-province training certification. While the ECE Registry had apparently had a policy that out-of-province training had to be from an institution approved by a provincial, state, national or other government body, this policy was not strictly applied. Hence, the appellant's four fellow graduates were initially denied ECE certificates and upon protesting were granted same.

[19] In May 2004, s. 9(3) of the Regulation came into force and the ECE Registry decided to apply a consistent policy of not recognizing training from out-of-province educational institutions that are not approved by a provincial, state, national or other government body. Ms. Hunt acknowledged that s. 9(3) of the Regulation is discretionary and the director of the ECE Registry is not bound to apply it. She explained that circumstances particular to an institution may warrant the director of the ECE Registry departing from its policy. By way of example, Ms. Hunt described an out-of-province Canadian training institution that was listed as a recognized ECE training program in relevant legislation of its home province. However, as it was privately funded, the ICES report would reflect that it was "not approved by a provincial, state, national or other government body." Ms. Hunt stated that in these circumstances, given the legislative approval, the training would be deemed acceptable by the ECE Registry in spite of the ICES report.

[20] The ECE Registry will not depart from its policy of consistent reliance on s. 9(3) of the Regulation for case-by-case consideration of the training of graduates of non-approved out-of-province educational institutions. An applicant who received training at a non-approved out-of-province educational institution may, however, obtain a prior learning assessment or academic assessment from a recognized educational institution in British Columbia, which the ECE Registry will recognize for the purpose of determining equivalency under s. 9 of the Regulation.

[21] Ms. Hunt also explained that the ECE Registry has recently concluded that, at this point, it does not intend to accept training received at a MACTE or AMI accredited educational institution, unless the institution is approved by a provincial, state, national or other government body within the meaning of s. 9(3) of the Regulation. She explained that this decision is based in part on concerns about the challenges of assessing educational philosophy-based training. For the time being, therefore, the ECE Registry intends to continue to rely on s. 9(3) of the Regulation to generally limit its recognition of out-of-province training to educational institutions approved by a provincial, state, national or other government body and, for its determination of the adequacy and equivalency of training acquired at out-province-institutions that do not qualify under s. 9(3), to continue to rely on prior learning or academic assessments conducted by recognized British Columbia educational institutions.

ANALYSIS AND CONCLUSION

[22] With respect to the process followed by the ECE Registry and, specifically, the appellant's complaint that the director of the ECE Registry did not interview her before making a decision, the Board is of the view that an applicant for ECE certification is not required to be offered or given an oral interview before a decision is made on his or her application. We also note that the appellant did not request an interview and only raised this issue on appeal. Having heard the appellant's articulate oral submissions on the issues on this appeal, we also conclude that, notwithstanding shortcomings in the ECE Registry's communications with the appellant, the written nature of its process for considering applications for ECE certification was not unfair or prejudicial to the appellant in her particular circumstances.

[23] The Board, on all of the evidence before it, concludes that the application of s. 9(3) of the Regulation to the appellant's case did not constitute an improper fettering or arbitrary exercise of discretion by the director of the ECE Registry. The ECE Registry's policies of relying on s. 9(3) to require out-of-province training to be from an educational institution that is approved by a provincial, state, national or other government body and requiring an applicant trained at a non-approved institution to obtain a prior learning or academic assessment from a recognized British Columbia educational institution, are designed to ensure uniformity in assessing training irrespective of individual or institutional origin.

[24] While the Board is sympathetic to the appellant's situation, we find that the director of the ECE Registry has not unreasonably exercised her discretion to rely on s. 9(3) of the Regulation and the appeal is hereby dismissed.

[25] We recognize that our decision will come as a disappointment to the appellant. However, our decision is without prejudice to any level of equivalency that she may be granted through a prior learning or academic assessment from a recognized British Columbia educational institution, which the ECE Registry suggested she obtain. The appellant stated to us that she is not ready to "do even one course to qualify herself in the ECE field". We encourage her to review this decision.

[26] The Board also wishes to specifically address the appellant's concerns of discrimination by the ECE Registry. It is understandable how the appellant came to believe that she was the subject of discrimination on the basis of her race or religion.

[27] The ECE Registry's pre-2004 history of inconsistent decision-making in cases involving out-of-province training certification obviously reflects poorly on the ECE Registry as a licensing body and, it must be said, greatly contributed to the appellant's perception of discriminatory treatment.

[28] Compounding this was the fact that when the appellant spoke to the ECE Registry about becoming certified as an early childhood educator, she was told without any further queries to obtain a report from ICES and submit her application. This was a futile endeavour as it was well known to the ECE Registry that the Montessori Teacher Preparation of Washington institution did not have accreditation from one of the six regional post-secondary educational institution accrediting bodies in the United States. Regardless of the underlying quality or quantity of the appellant's Montessori training, an ICES report would conclude that her training was not generally comparable to post-secondary study from a recognized instituition in British Columbia and the appellant would have to consider pursuing a prior learning or academic assessment from a recognized British Columbia educational institution. Thus, had the ECE Registry made some perfunctory inquiries of the appellant, she could have been spared considerable time, effort and false expectation.

[29] Finally, it appears that, despite repeated emails from the appellant, she did not receive an effective response from the director of the ECE Registry until the appellant's MLA had contacted the ECE Registry on her behalf.

[30] Ms. Hunt acknowledged that the practice of automatically sending out-of-province applicants to ICES was unsatisfactory. She assured the Board that this practice has now been

tempered and system-wide changes are being made. We also strongly encourage the ECE Registry to continue on a path of much greater transparency in terms of its policies and practices for recognizing Montessori and other so-called educational philosophy-based training for purposes of early childhood education certification.

[31] The Board must consider all of the evidence, the clear wording of s. 9(3) of the Regulation which only came into force in May 2004, and the rationale for the ECE Registry's administration of s. 9(3), generally and in the appellant's case, as explained by Ms. Hunt. The Board, having considered all these matters, cannot conclude that the appellant was targeted or subjected to unfair treatment by the ECE Registry due to her race or religion.

[32] Finally, the Board wishes to acknowledge the appellant's considerable efforts to establish herself since her arrival in North America from Pakistan. It is clear from her statement of points, her four binders of materials relating to her Montessori training in the United States and her oral presentation to the Board that she has ability and passion for early childhood education and has put a great deal of energy and determination toward achieving her goal of working in this field.

September 16, 2005

"Susan E. Ross"

Susan E. Ross, Chair

"Pinder Cheema"

Pinder Cheema, Q.C., Member

"Gordon Armour"

Gordon Armour, Member