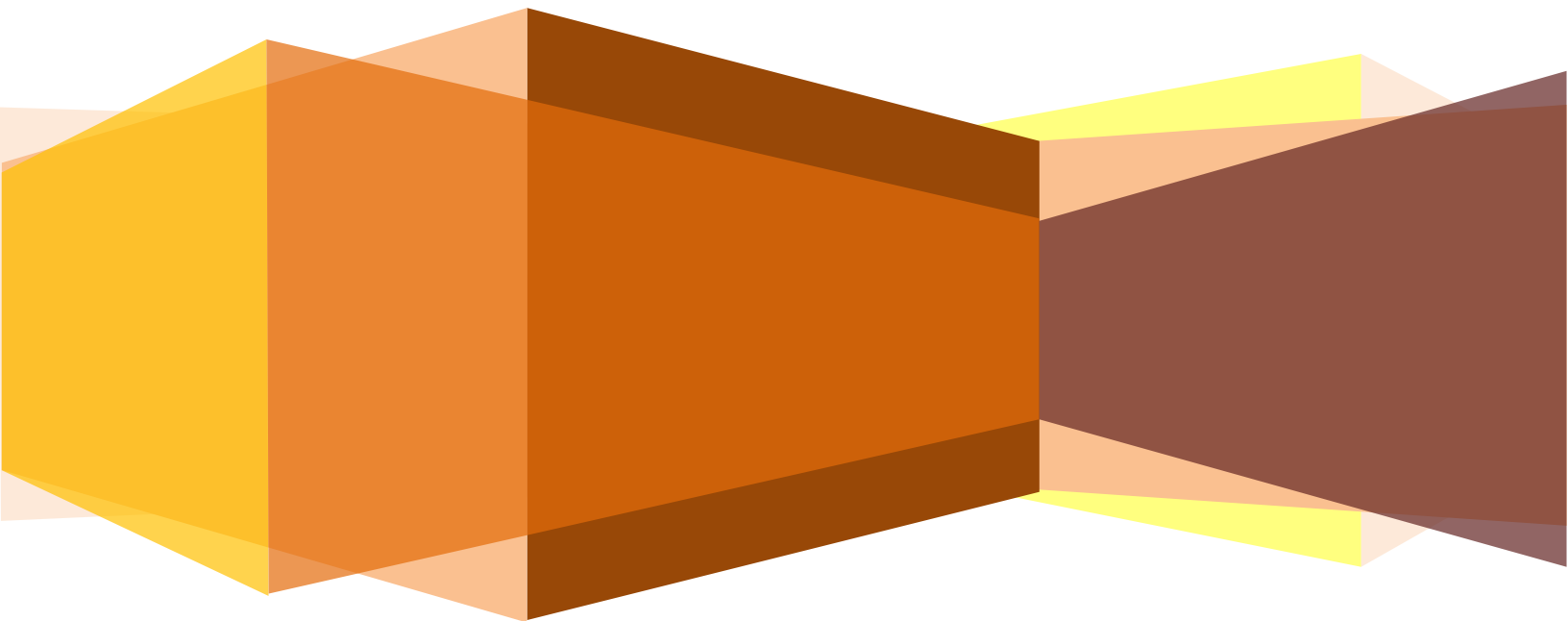




# **Community Care and Assisted Living Appeal Board**

*2017-2018 Annual Report*

*Covering the reporting period from  
April 01, 2017 – March 31, 2018*





## Community Care and Assisted Living Appeal Board

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January 15, 2019

The Honourable David Eby  
Ministry of Attorney General  
Room 232, Parliament Buildings  
Victoria, British Columbia  
V8V 1X4

Dear Attorney General:

**Re: Community Care and Assisted Living Appeal Board 2017-2018 Annual Report**

I am pleased to submit to you the Annual Report of the Community Care and Assisted Living Appeal Board ("CCALAB") for the fiscal year beginning April 1, 2017 and ending March 31, 2018.

Sincerely,

Alison Narod  
Chair  
Community Care and Assisted Living Appeal Board

Enclosure

## *Message from the Chair*

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I am pleased to submit the Annual Report of the Community Care and Assisted Living Appeal Board (“CCALAB” or “the Board”) for the fiscal year beginning April 1, 2017 and ending March 31, 2018. This report is submitted pursuant to section 59.2 of the *Administrative Tribunals Act*.

### ***Appeals during Reporting Period***

Section 59.2(a) of the *Administrative Tribunals Act* requires the Board to provide a review of its operations during the preceding reporting period. During this reporting period, there were four new appeals filed with the Board and three decisions issued and published by the Board. Further details of these appeals and decisions are provided later in this report pursuant to section 59.2(c) of the *Administrative Tribunals Act*. One additional matter carried over from the previous reporting period was also dealt with during this period, for a total of five appeals.

Four of the five matters before the Board were closed during this reporting period. The final matter was disposed of early in the next reporting period.

Of the four appeals closed during the reporting period, two appeals (50%) were withdrawn prior to an oral hearing being held, one appeal (25%) was dismissed in a preliminary decision for lack of jurisdiction, and one appeal (25%) was dismissed after it had proceeded to a full hearing on the merits.

Finally, there were no applications for judicial review of CCALAB decisions filed in or issued by the BC Supreme Court in this reporting period.

### ***Forecast of workload for the next reporting year and trends noted***

Section 59.2(f) of the *Administrative Tribunals Act* requires the Board to provide a forecast of the workload for the succeeding reporting period. The Board’s workload for the 2018/2019 fiscal year reporting period is expected to remain relatively constant, with no significant increase or decrease from the average numbers seen in the past 10 years, averaging 5-7 appeals being dealt with by the Board each year.

Section 59.2(g) of the *Administrative Tribunals Act* requires the Board to report any trends or special problems it foresees. I am pleased to report that we have not identified any trends or special problems that need to be reported on at this time.

### ***Plans for improving the Board’s operations***

Finally, section 59.2(h) of the *Administrative Tribunals Act* requires the Tribunal to report its plans for improving operations in the future. During this reporting period, the Appeals Office cluster

responsible for providing administrative support to the Tribunal sought out and evaluated a new case management system to replace the outdated appeals management system the tribunal cluster has been using for the past two decades. The new case management system will allow the tribunal cluster to function effectively and efficiently, using modern information technology. In particular, the CCALAB will have quicker, easier and more accurate access to appeal information and statistics, and will be able to more effectively track and report out on key performance indicators. Implementation of the new system is scheduled to take place over the subsequent reporting period, and the CCALAB anticipates full integration of the system to occur by mid-2019.

A handwritten signature in black ink that reads "Alison H. Narod". The signature is written in a cursive style and is enclosed within a thin black rectangular border.

Alison Narod, Chair  
Community Care and Assisted Living Appeal Board

## *Mandate*

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Section 29 of the *Community Care and Assisted Living Act*, SBC 2002, c 75 (the “Act”) provides that a Chair and other members are to be appointed to the Community Care and Assisted Living Appeal Board by the Lieutenant Governor in Council after a merit based process.

The CCALAB is an independent administrative appeal board that is vested with important statutory powers, exercises adjudicative functions and must exercise those functions in accordance with the law. The Board’s purpose or mandate is to provide a specialized, independent, accessible and cost-effective forum for the hearing of appeals as described in s. 29(2) and 29(3) of the *Act* which, in summary, provide for appeals that fall into these five categories:

1. Appeals from Medical Health Officer licensing decisions under s. 17(3)(b) of the *Act* regarding community care facilities.
2. Appeals from decisions under s. 8 of the *Act* concerning the early childhood educator certificates of persons who wish to work in a community care facility.
3. Appeals from a Minister’s decision under s. 23 of the *Act* to appoint an administrator to operate a community care facility.
4. Appeals by a person in care, or a person on their behalf, challenging a Medical Health Officer’s decision under s. 16 to grant a licensee an exemption from the *Act* or regulations.
5. Appeals from the Assisted Living Registrar’s registration decisions under s. 28(3)(b) of the *Act* in relation to assisted living residences.

The Ministry of Health’s *Guide to Community Care Facility Licensing In British Columbia* (the *Guide*) describes the *Act* and its purpose as follows<sup>1</sup>:

The CCALA governs both licensed community care facilities and registered assisted living residences. In BC, assisted living and facility care are parts of a continuum of care provided to persons who need ongoing support and assistance for a variety of health and disability-related reasons. CCALA also applies to children in licensed child day care facilities and children and youth in group homes.

The *Act* contemplates a variety of decision-makers and their delegates within government and throughout the health regions making what are collectively many thousands of licensing, registration and certificate decisions each year. The resources and time available to these decision-

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<sup>1</sup> *A Guide to Community Care Facility Licensing in British Columbia* (Updated, Spring, 2016), p. 19.

makers, and the processes they use to conduct investigations and make decisions, are far from uniform. Moreover, even the best “first instance” processes sometimes give rise to a perception by appellants that the process was not fair because the same government office was both “investigator” and “decision maker”. The Board’s independent process is therefore crucial to ensuring an objective and arm’s length review of licensing, registration and certificate decision-making, whether those decisions have been right or wrong.

Licensing, registration and certificate decisions can have very serious impacts on the individuals affected. That is why the legislature has given a “licencee, an applicant for a licence, a holder of a certificate under section 8, a registrant or an applicant for registration” the rights of appeal set out in s. 29(2) of the *Act*. The need for licensing decision-makers to consider multiple interests was recognized by the Supreme Court in *Wilkins v. British Columbia (Attorney General)*, [1985] B.C.J. No. 1312 (S.C.), a case dealing with child care facilities:

Suspension or cancellation of a licence ... can have serious consequences....

[Decision-makers] have a heavy responsibility, under the *Community Care Facility Act* and regulations, to safeguard the welfare of children in, or attending, facilities covered by the regulations. It has powers appropriate to the discharge of those responsibilities. No doubt, from time to time, circumstances arise where precipitous action is mandatory in the interests of a child or children, without regard to the niceties of administrative procedure. But, although the interests of the children must always be paramount, it must be a rare occasion when there are not other interests, such as those of Wilkins, to be taken into account. In my opinion, when there are other interests which will be affected by the exercise of ... power, it is incumbent upon it to consider what avenues may be open to it to minimize adverse impacts without compromising the welfare of the children.

The Board’s existence is predicated on the view that an appeal board is necessary to act as an independent safeguard to ensure that licensing, certificate and registration decisions are sound and accord with the law. An erroneous decision to refuse or revoke a licence may have serious adverse impact on access to a good quality placement for children or seniors in the region. An erroneous decision may severely disrupt the lives of parents of children in daycare, or adult children of aged parents in adult community care. And for the licensee, registrant or certificate holder, an erroneous, adverse decision may have a profound impact on that person’s livelihood and reputation.

Within this context, one key public interest purpose of the Board is to ensure that persons aggrieved by “first instance decisions” under the *Act* have access to a specialized forum, as an alternative to the courts, in which to hold those decisions to account in a fashion that is fair, efficient, specialized and independent.

A second public interest purpose of the Board is to ensure that the Board's process is available to members of the public who take issue with any "exemption" granted to the basic child care or adult care standards in the legislation. In this regard, section 16 of the Act provides as follows:

16 (1) A medical health officer may grant an exemption from a requirement of this Act or the regulations to a licensee or an applicant for a licence who applies for the exemption, if satisfied that

- (a) there will be no increased risk to the health and safety of persons in care, and
- (b) the exemption meets prescribed requirements.

(2) A medical health officer may attach terms and conditions to the exemption and suspend, cancel or vary an exemption granted under subsection (1) in the same manner as under sections 13 and 14.

Unlike other decisions or actions under the *Act* which may only be appealed by the individual who is the subject of the decision or action, exemption decisions may be appealed by a person in care (or that person's agent or personal representative) or a spouse, friend or relative of the person in care.

The Board's existence is not predicated on any notion that "first instance" decision-makers systematically abuse their power. Rather, it is predicated on the reality that within any system that deals with such important interests in great volume and in a variety of regional settings, error is inevitable. In this context, a significant degree of legitimacy and accountability is added by creating a low-cost Board that is capable of holding such decisions accountable in a non-partisan and specialized fashion. Such a specialized forum serves licensees and the public where the decision-maker has erred.

It is also important to emphasize that Board review assists the legitimacy of the first instance decision-maker where the Board upholds its decision. For many appeals which have a high emotional component, a Board decision upholding the decision-maker serves a significant purpose in adding credibility to the first instance process. Further, in each case, the Board gives reasons which are of assistance both in the immediate dispute and to other first instance decision-makers across the Province dealing with similar sets of facts. This purpose applies irrespective of any particular regionalization structure within the Ministry's licensing process.

## *Tribunal Membership*

Throughout this reporting period the CCALAB membership consisted of:

| <b><i>TRIBUNAL MEMBER</i></b> | <b><i>ROLE</i></b> | <b><i>TERM EXPIRY</i></b> |
|-------------------------------|--------------------|---------------------------|
| Helen Ray del Val             | Chair              | 2018-07-31                |
| Alison Narod                  | Vice-Chair         | 2019-07-31                |
| Tung Chan                     | Member             | 2018-07-31                |
| Shelene (Shelly) Christie     | Member             | 2019-07-31                |
| Harry Gray                    | Member             | 2019-07-31                |
| Patrick Lewis                 | Member             | 2019-02-23                |
| Richard Margetts, Q.C.        | Member             | 2018-07-31                |
| Lynn McBride                  | Member             | 2018-06-30                |
| Donald W. Storch              | Member             | 2019-07-31                |

### ***BIOGRAPHIES FOR THE TRIBUNAL MEMBERSHIP AT THE END OF THE REPORTING PERIOD ARE AS FOLLOWS:***

#### ***Helen Ray del Val, Chair***

Helen R. del Val, ICD.D is a mediator (member of the Civil Roster of Mediate BC) and a retired lawyer. She is a past Chair of BC's Financial Institutions Commission and current Chair of the Community Care and Assisted Living Appeal Board. Formerly she was the commissioner representing the BC and Yukon regions on the Canadian Radio-television and Telecommunications Commission (CRTC). She also taught telecommunications regulation internationally. She had practiced business law in major Vancouver law firms and also as senior counsel in a telecommunications company. Committed to community service, she currently serves as ex-officio director (immediate past President) of the British Columbia Council of Administrative Tribunals and as an adjudicator of the Canadian Broadcast Standards Council. Formerly she also served as a director of the Justice Education Society of BC. and was a director of Vancouver's Chinese Cultural Centre and of S.U.C.C.E.S.S. Born and raised in Hong Kong, she moved to Canada at age 15. She attended UBC and was the medalist for graduating with the highest standing in the Arts Faculty. She then graduated from UBC Law School.

#### ***Alison Narod, Vice-Chair***

Alison Narod is a graduate of Osgoode Hall Law School (LL.B., 1982) and McGill University (B.A., Hons., 1975), and a Member of the Law Society of British Columbia. Alison currently practices in the areas of labour and employment law, human rights, workers compensation, administrative and family law at the Vancouver law firm of Farris, Vaughan, Wills & Murphy LLP. Alison is currently a Disciplinary Panel Chair for the Investment Industry Regulatory Organization of Canada, the Vice-Chair of the Community Care and Assisted Living Appeal Board, a Director of ACT Autism Community Training Society, a Member of the Board of Directors of the B.C. Safety Authority and a Member of the Canadian Bar Association (BC Branch).



### ***Tung Chan***

Tung Chan is an Honorary Captain of the Canadian Navy and the former Chief Executive Officer of S.U.C.C.E.S.S., a group of registered charities dedicated to the creation of a world of multicultural harmony by building bridges, harvesting diversity and fostering social integration. His responsibilities in that capacity included the operations of a senior care home. Tung is a director of the Canadian Foundation of Economic Education, a member of the Community Care and Assisted Living Appeal Board, and the immediate past Chair of the Board of the Canadian Museum of Immigration at Pier 21. Tung's early career included stints as a stock broker in Hong Kong and a waiter in Holland; since coming to Canada in 1974 at the age of 22, Tung has been a waiter, a bartender, a radio program producer, a Councillor and Deputy Mayor with the City of Vancouver, a branch manager of the Royal Bank and a vice-president of the TD Bank Financial Group, where he had operational and strategic responsibilities for two overseas branches (Hong Kong and Taiwan) and 17 domestic branches. Tung has volunteered his time in leadership positions of numerous civic, cultural, business and educational organizations, including E-Comm Emergency Communications (Board Chair), Richmond Public Library (Board Chair), Fairchild TV (Program Advisory Board Chair), International Financial Center Society of BC (Vice Chair), BC Premier's Chinese Community Advisory Committee (Member), Province of BC Equal Opportunity Community Advisory Board (Member), Kwantlen Polytechnic University (Board Member), Asia Pacific Foundation (Board Member), the Immigrant Employment Council of British Columbia (Board Member), the Metropolis BC (Board Member), and the United Way of the Lower Mainland (Board and campaign cabinet member). In 2002, Tung was awarded the Queen's Jubilee Medal in recognition of his contribution to the community. In 2014, Tung was invested into the Order of BC.

### ***Shelene (Shelly) Christie***

Shelly Christie is a qualified Early Childhood Educator and obtained her degree in Child and Youth Care from the University of Victoria in 1994. Shelly has worked in the field of early childhood learning and care for more than 35 years in a variety of settings including pre-school, daycare, family resource programs and Child Care Resource and Referral. Shelly has also taught a variety of Early Childhood Education courses at Fraser Valley College (now University of the Fraser Valley), Langley Continuing Education and Pacific Rim Early Childhood Education. Shelly recently retired after working for the past 17 years as a Child Care Licensing Officer with Vancouver Coastal Health Authority and Fraser Valley Health Authority.

### ***Harry Gray***

Harry Gray has over 30 years of experience in the health care and post-secondary industries and has worked in a variety of administrative roles, advising employers in sectors including Community Care, Assisted Living, Long Term Care and Acute Care and post-secondary. Harry acquired extensive experience in advocacy and mediation of labour disputes. Harry holds a Master of Industrial Relations from Queen's University and a Bachelor of Commerce, (Finance & HR) from the University of British Columbia. Harry was the Associate Vice President of Administration at Kwantlen Polytechnic University, from 2010-2016 where he was responsible for Human Resources, Facilities Management, Security and Emergency Planning. From 2005 to 2009 he was the Director, Consulting Services at the Health Employers Association of BC. From 2001 to 2005 he worked at Vancouver Coastal Health Authority and prior to that was the Regional Director, Human Resources for the North Shore Health Region.

***Patrick Lewis***

Patrick Lewis is a Partner at the litigation firm, Sugden, McFee & Roos LLP, in Vancouver, practicing exclusively in the area of civil litigation with an emphasis on commercial disputes. He was admitted as a barrister and solicitor to the Bar of the Province of British Columbia on June 14, 1985. The cases Mr. Lewis handles include securities litigation, mining disputes, professional liability claims and defence thereof involving lawyers, doctors, engineers and accountants, corporate litigation, insurance litigation, real property disputes, defamation claims, banking litigation, employment disputes and personal injury actions. Mr. Lewis has appeared in all levels of courts in British Columbia, the Federal Court of Canada and been involved in opposing applications for leave to appeal to the Supreme Court of Canada in a number of cases. As of August 30, 2010, Mr. Lewis has been a member of the Financial Services Tribunal and in that capacity adjudicates appeals from the decisions of statutory regulatory agencies in British Columbia. Mr. Lewis is a member of the B.C. Branch of the Canadian Bar Association, Civil Litigation Subsection. He is also a member of the Trial Lawyers Association of British Columbia, a guest lecturer for the Continuing Legal Education Society of British Columbia and a Moot Court Judge at the U.B.C. Law School.

***Lynn McBride***

Lynn McBride (B.A. (Linguistics), LL.B., E.C.E.) is the Community Engagement Coordinator with Legal Services Society (LSS); in that role, she provides training and support to community agencies in BC who partner with LSS to increase awareness of and access to legal services and resources. Another primary aspect of her work is to connect and engage with rural, remote and Aboriginal communities throughout the province to find innovative ways to make public legal education and information more accessible to them. Lynn's prior work history includes working as an educator and as a lawyer. She practiced law for 12 years, where she gained extensive litigation, research and writing experience. She is also a qualified Early Childhood Educator with experience working in daycare (3 to 5 year olds), preschool, and out of school care.

***Richard S. Margetts, Q.C.***

Richard Margetts is a Lawyer and Partner with Johns, Southward, Glazier, Walton & Margetts. His area of practice is restricted to personal injury, corporate, commercial and insurance litigation. He is a Life Bencher and past President of the Law Society of British Columbia. Mr. Margetts has chaired and sat on many Law Society Committees including Executive, Discipline, Credentials and Practice Standards. Mr. Margetts is the Past President of CanLII and the past Chair of the British Columbia Justice Review Task Force. In the community, Mr. Margetts is a past Secretary of the YM/YWCA (Victoria) and a past Director of the Vancouver Island Road Relay. Mr. Margetts is a regular speaker on profession, legal and procedure training programs. Mr. Margetts holds his Bachelor of Arts (Honours) from Monash University in Melbourne, Australia and his Bachelor of Laws from the University of British Columbia. He was called to the British Columbia Bar in 1981.

***Donald W. Storch***

Donald holds a BA from the University of Alberta in Sociology and a Masters in Social Work from McGill (MSW). Following graduation from McGill he was employed as a counsellor and family life educator at the Family Service Association in Edmonton. He became Executive Director of that organization in 1970. From 1976 to 1991 he was Vice President of Services for Children for Catholic Social Services. In 1991 he joined

an Employee Assistance firm in Calgary (Kelly Lutmer and Associates) and managed the EAP at the University of Calgary. From 1997 to 2001 he was a counsellor with an EAP program in Duncan BC, (South Vancouver Island Counselling and Assessment Service). He then operated his own private practice in Victoria from 2001 to 2014. Don received an Order of Canada for his extensive volunteer activities in 2008. These volunteer activities included serving on many boards and becoming Chair of the Board of the Victorian Order of Nurses of Canada, the Good Samaritan Society of Canada (on 2 separate occasions), the Alberta Association of Children and Families, of Our Place in Victoria and Council member and Chair of several Lutheran congregations in Alberta and BC. He was a member of the Governing Council of the Evangelical Lutheran Church in Canada beginning in 1997 and then served as Council Secretary from 2000 to 2011. Donald was a peer reviewer for the North American Council of Accreditation for Children and Families from 1975-2001, conducting visits in the USA and Canada. Mr. Storch is also a member of the Employment and Assistance Appeal Tribunal.

## *Operations*

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Effective December 1, 2004, the administrative support functions of the CCALAB were consolidated with the Environmental Appeal Board/Forest Appeals Commission Appeals Office (Appeals Office) in Victoria.

In addition to the CCALAB, the Appeals Office provides administrative support to five other adjudicative tribunals. This clustering of the administrative support for eight independent appellate tribunals has been done to assist government in achieving economic and program delivery efficiencies by allowing greater access to resources while, at the same time, reducing administration and operating costs. The additional tribunals include the:

- Health Professions Review Board;
- Hospital Appeal Board
- Financial Services Tribunal;
- Industry Training Appeal Board; and,
- Oil and Gas Appeal Tribunal.

This move has resulted in significant savings to government for the operation of the CCALAB through a shared services cluster approach which takes advantage of synergy and assists government in achieving economic and program delivery efficiencies.

This arrangement has been in operation for over 13 years now and has proven to be a very effective and efficient means for providing administrative support to the CCALAB, which in turn enables the CCALAB to effectively and efficiently fulfill its appellate mandate to the public.

Effective April 1, 2017, host Ministry responsibilities for administration of the Community Care and Assisted Living Appeal Board (including budget oversight and member appointments, human resources, facilities, and records supports, etc.) were transferred to the Attorney General as part of the Tribunal Transformation Initiative.

## Contact Information

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Victoria BC V8W 9V1

**LOCATION:** 4<sup>th</sup> Floor, 747 Fort Street  
Victoria BC V8W 3E9

**TELEPHONE:** 250 387-3464

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**EMAIL:** [ccalab@gov.bc.ca](mailto:ccalab@gov.bc.ca)

**WEBSITE:** <http://www.ccalab.gov.bc.ca/>

## *Appeal Activity and Decisions Issued*

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### ***APPEALS FILED***

There were four new appeals filed during this reporting period, in addition to one appeal which was open from the previous period. The new appeals filed are described below. One matter remained outstanding at the end of this reporting period.

***2017-CCA-001 BY A FAMILY CHILD CARE PROVIDER, FILED APRIL 20, 2017*** – Appeal of a decision of a MHO to place conditions on the license of a family childcare provider. Originally the license was cancelled by a Licensing Officer, but upon reconsideration by the MHO, several conditions were attached to the license in lieu of cancellation. During the course of the appeal the Board issued one preliminary decision on an application to receive evidence in confidence. The appeal was ultimately withdrawn by the Appellant prior to a hearing on the merits.

***2017-CCA-002 BY AN ASSISTED LIVING RESIDENCE OPERATOR, FILED JUNE 26, 2017*** - Appeal of a decision of the Assisted Living Registrar to place conditions on the registration of an Assisted Living Residence and to place the residence under “enhanced monitoring”. The appeal was ultimately withdrawn prior to a hearing on the merits.

***2018-CCA-001 BY A FAMILY CHILDCARE PROVIDER, FILED JANUARY 8, 2018*** - Appeal of a decision of a MHO to conduct a risk assessment on a childcare facility and to issue a health and safety plan which the Appellant was required to follow. The appeal was ultimately dismissed for lack of jurisdiction by the Chair of the Board in a preliminary decision.

***2018-CCA-002 BY AN EARLY CHILDHOOD EDUCATOR, FILED MARCH 8, 2018*** - Appeal of a decision of the Director of the Registry of Early Childhood Educators (ECE) to suspend the Appellant’s ECE certificate without a hearing. The Appellant’s certificate had been suspended for approximately one year without any investigation having taken place. After the appeal was filed, the Respondent Director applied for a stay of proceedings pending completion of the ECE Registry’s investigation. A decision dismissing the Stay application was issued outside of this reporting period. The matter was ultimately settled between the parties and the appeal was withdrawn early in the next reporting period.

### ***DECISIONS ON THE MERITS ISSUED***

There was one decision on the merits issued in this reporting period and that was in relation to an appeal which was filed in the previous reporting period. There were also two preliminary decisions

issued regarding jurisdiction and exclusion of evidence. Each of these three decisions is described below. In addition to the decisions described below, two appeals were ultimately withdrawn prior to a hearing on the merits.

***KN, Licence Applicant v. Medical Health Officer, Decision No. 2016-CCA-001(a),***

- Decision Date: April 4, 2017
- Issue: The primary issue on appeal was whether the licensing decision that resulted in refusal to grant the Appellant a licence to operate a daycare was justified. The decision refusing to grant the licence was denied despite the fact that the Appellant’s daycare of the same name had been licensed between 2011-2015 at a different address in Penticton, and all she thought she needed was an “address change”. The Appellant argued that the MHO’s decision should be set aside because it breached her right to procedural fairness and because it was not justified on the merits.
- Disposition: Although the panel agreed with the Appellant that the MHO’s finding that she was not of “good character” were not justified, the Panel did not find any breaches of procedural fairness which were not cured by the Panel holding a full *de novo* hearing on the merits. Further, the Panel found that the contraventions cited by the MHO, along with his finding that the Appellant did not meet all the requirements necessary to operate and manage a child care facility, justified the decision overall not to grant the license.
- Appeal Decision: <http://www.ccalab.gov.bc.ca/dec/2016cca001a.pdf>

***PRELIMINARY DECISIONS ISSUED***

***May Au-Yeung v Vancouver Coastal Health, Decision No. 2017-CCA-001(a)***

- Decision Date: June 09, 2017
- Issue: This was a preliminary decision which dealt with the Respondent’s request that the Board exercise its discretionary authority under section 42 of the *Administrative Tribunals Act* (the “Act”) to direct that certain portions of the Appeal Record be received in confidence, to the exclusion of the Appellant. The information at issue was comprised of three sentences detailing personal information about two children and their caregivers which the Respondent argued was not relevant to the appeal.

**Disposition:** The panel agreed with the Respondent that the information at issue should be received to the exclusion of the Appellant and ordered that the information be redacted prior to provision of the Appeal Record to the Board. The Board also used its discretion under section 42 of the Act to order that the entire exhibit which contained the redacted sentences would be received to the exclusion of the public, meaning that the exhibit would be excluded from disclosure in any future request for public access to the Appeal Record.

**Appeal Decision:** <http://www.ccalab.gov.bc.ca/dec/2017cca001a.pdf>

***Alyson Culbert, Licencee v. Cronin, Medical Health Officer Decision No. 2018-CCA-001(a)***

**Decision Date:** March 19, 2018

**Issue:** This was a preliminary decision which dealt with the issue of whether the Board had the jurisdiction under section 29 of the CCALA to consider the appeal of a risk assessment and resultant safety plan conditions which the Appellant was required to follow.

**Background:** In 2016, the MHO imposed a condition on the Appellant's licence which prevented her from managing the daycare or directing any aspect of the care. She did not seek reconsideration of that condition or seek to appeal it. In 2017, the MHO inspected the facility, which resulted in a subsequent risk assessment report that set out a "high" risk rating. That inspection led to an investigation, which required the Appellant to submit a health and safety plan. The plan, which the MHO approved, contained 4 terms.

**Disposition:** The Chair of the Board held overall that the Board lacked jurisdiction to consider the appeal. In particular, the Chair held that the Board did not have jurisdiction under section 29(2)(d) of the CCALA as there was no evidence that the Appellant or any other party to the proceeding was a person whose Early Childhood Educator certification was at issue. The Chair further held that the Board lacked jurisdiction under section 29(2)(b) because the health and safety plan had expired so could not constitute "summary action" under section 17 of the CCALA, and went further to note that even if the plan had still been in effect, not all supervisory or regulatory restraints imposed by an MHO amount to an action or summary action under s. 17 of the CCALA.

**Appeal Decision:** <http://www.ccalab.gov.bc.ca/dec/2018cca001a.pdf>

### *Matters Outstanding at end of Period*

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There was one matter outstanding at the end of this reporting period which was settled between the parties and was withdrawn early in the next reporting period.

### *Judicial Review of CCALAB Decisions*

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There were no applications for judicial review of CCALAB decisions filed in or issued by the BC Supreme Court in this reporting period.

### *Performance Indicators and Timelines*

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Section 59.2(b) and (d) of the *Administrative Tribunals Act* requires the Board to report on performance indicators, and provide details of the time from filing to decision of matters disposed of by the Board in the reporting period.

The CCALAB appeal process has been designed to be a timely, efficient and cost effective means to hear these important matters. Appeals are a full rehearing of the matter akin to “hearings de novo”, except that the onus remains on the Appellant under section 29(11) to prove that the decision being appealed was not justified. Hearings are primarily conducted in person with a three person panel, however, where circumstances are appropriate, hearings have also been heard in writing before a single panel member. The Board generally designates a lawyer to act as panel chair, with side panelists having adult or child care or administrative experience to ensure the appropriate expertise on the panel to deal with the various issues arising on appeal. Where appropriate, the Board explores with the parties the possibility of mediation or some other form of collaborative resolution of the issues on appeal.

For those appeals closed within this reporting period (4 appeals), the overall average time from the date of filing an appeal to its disposition was 159 days or approximately 5 months. The shortest time from open to close was 70 days (approx. 2 mos.), and the longest was 393 days



(approx. 13 mos.) For those matters resolved without a hearing, the average time was 81 days. For those appeals requiring a hearing on the merits and adjudication, the average time from filing to decision was 393 days.

The Board's Practice Directive #1, which is available on the Board's website, provides that the Board will endeavour to issue a copy of the final decision or order, including written reasons, to each party within 90 days from receiving the last submissions of the parties. In the one appeal that proceeded to an oral hearing and adjudication during this reporting period, the Board was not able to meet that standard due to the length of the hearing, the amount of evidence (documents and testimony) and the complexity of the issues, all of which required extra time and care in drafting the decision. In that appeal it took 226 days for the Panel to issue its decision on the merits.

Finally, section 59.2(e) of the *Administrative Tribunals Act* requires the Board to report the results of any surveys carried out by the Boards during the reporting period. The Board did not conduct any surveys during this reporting period.

## Statement of Financial Performance

(For the fiscal year ending March 31, 2018)

In fiscal year 2017/2018, the CCALAB incurred expenses of \$14,884 as detailed below in this six year chart. The expenses for this reporting period reflect the smaller than usual number of appeals which went on to full hearing (only one appeal).

| <i>Direct Expenses</i>       | <b>2012/2013</b><br>\$ | <b>2013/2014</b><br>\$ | <b>2014/2015</b><br>\$ | <b>2015/2016</b><br>\$ | <b>2016/2017</b><br>\$ | <b>2017/2018</b><br>\$ |
|------------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|
| Salaries and Benefits        | 0                      | 0                      | 0                      | 0                      | 0                      | 0                      |
| Board Member Fees & Expenses | 31,933                 | 52,422                 | 74,173                 | 23,481                 | 80,171                 | 14,578                 |
| Professional Services        | 80                     | 3,664                  | 14,158                 | 819                    | 16,615                 | 0                      |
| Office and venue Expenses    | 3,680                  | 7,298                  | 3,053                  | 1,437                  | 4,182                  | 306                    |
| Other                        | 30                     | 27                     | 27                     | 27                     | 27                     | 0                      |
|                              |                        |                        |                        |                        |                        |                        |
| <b>Total CCALAB Expenses</b> | \$35,723               | \$63,411               | \$91,411               | \$25,764               | \$100,995              | <b>\$14,884</b>        |