

Community Care and Assisted Living Appeal Board

**2023-2024
Annual Report**



For the period
April 1, 2023 – March 31, 2024

 **Community Care and
Assisted Living Appeal Board**



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Contact Information

Mailing Address: Community Care and Assisted Living Appeal Board
PO Box 9425 Stn Prov Govt
Victoria, BC V8W 9V1

Location: 4th Floor, 747 Fort Street
Victoria, BC V8W 3E9

Telephone: 250-387-3464

Fax: 250-356-9923

Email: info@bcccalab.ca

Website: www.bcccalab.ca





MESSAGE FROM THE CHAIR

I am pleased to submit the Annual Report of the Community Care and Assisted Living Appeal Board (the “CCALAB” or the “Board”) for the fiscal year beginning April 1, 2023 and ending March 31, 2024. 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.

At the beginning of the reporting period there was one appeal before the Board. During the reporting period, two new appeals were filed with the Board. The existing appeal before the Board was disposed of after a final decision on the merits. Of the two new appeals, one was rejected for lack of jurisdiction and the other remains active at the end of the reporting period.

Further details of these appeals, and decisions which the Board issued in relation to them, are provided later in this report pursuant to section 59.2(c) of the *Administrative Tribunals Act*.

Forecast of Workload for the Next Reporting Year

Section 59.2(f) of the *Administrative Tribunals Act* requires the Board to provide a forecast of the workload for the succeeding reporting period.

Based on average numbers, the Board generally expects to deal with three to five appeals each year. While the volume of new appeals was lower than usual for the current reporting period, upcoming changes to the provincial legislation regulating Early Childhood Educators may result in higher appeal volumes in the 2024-2025 reporting period and beyond.

Trends Noted

Section 59.2(g) of the *Administrative Tribunals Act* requires the Board to report any trends or special problems it foresees.

The main trend the Board has noted over the last several years is the increase in the complexity and length of the matters which come before it. In the past, many Board hearings were scheduled for one to three days and there were few, if any, preliminary applications for the Board to manage and adjudicate. However, over the last several years, the nature of the



appeals coming before the Board has changed. More complicated legal issues are being raised by the parties, and it is common for multiple preliminary applications to be made on appeals.

These changes have contributed to an increase in the length of time between the filing of a Notice of Appeal and the scheduling of an oral hearing, the overall length of oral hearings, and the length of time to issue decisions.

Plans For Improving the Board's Operations

Section 59.2(h) of the *Administrative Tribunals Act* requires the Board to report its plans for improving operations in the future.

During the current reporting period, the Board updated its Notice of Appeal form to include more inclusive language and proactively prompt appellants to request accommodations specific to their circumstances. The Board also introduced a new Participants Code of Conduct, which describes the minimum standards of behaviour expected of all Participants, so the Board can ensure that appeals are heard fairly, efficiently, and in a safe and supportive environment that is trauma informed and culturally sensitive. The Board expects to continue revising these documents and welcomes feedback as this process continues.

Lynn McBride

Chair, Community Care and Assisted Living Appeal Board



INTRODUCTION TO THE CCALAB

The CCALAB is an administrative tribunal that hears appeals under section 29 of the *Community Care and Assisted Living Act*, SBC 2002, c 75 (the “Act”). Decisions made under the Act must balance the need to ensure minimum standards of health and safety for those cared for in facilities and the need to ensure fair process for operators and educators.

Mandate

The CCALAB’s mandate is to provide a specialized, independent, accessible, and cost-effective forum for the hearing of appeals as described in sections 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 section 17(3)(b) of the *Act* regarding community care facilities;
2. Appeals from decisions under section 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 section 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 section 16 to grant a licensee an exemption from the *Act* or regulations; and
5. Appeals from the Assisted Living Registrar’s registration decisions under section 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*¹ describes the *Act* and its purpose:

The [Act] 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. [The Act] also applies to children in licensed child day care facilities and children and youth in group homes.

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



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-makers, and the processes they use to conduct investigations and make decisions, are far from uniform. 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, and 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 section 29(2) of the *Act*. The need for licensing decision-makers to consider multiple interests was recognized by the BC Supreme Court in *Wilkins v. British Columbia*

(Attorney General), [1985] B.C.J. No. 1312 (BCSC), a case dealing with childcare facilities.



The Board’s existence is predicated on the view that an appeal board is a necessary 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, transparent, 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 childcare or adult care standards in the legislation.

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. Such errors might include a decision-maker not following proper procedure or adhering to the principles of natural justice. Alternatively, they might include factual errors or errors in the consideration of evidence.

In this context, a significant degree of legitimacy and accountability is added by creating a low-cost Board that can hold 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 British Columbia dealing with similar sets of facts. This purpose applies irrespective of any particular regionalization structure within the Ministry’s licensing process.





Typical Appeal Process

Information about the appeal process is available on the Board’s website under the “How to Appeal” tab. An extensive collection of information sheets on specific topics has also been published there.





Operations

Beginning December 1, 2004, the administrative support functions of the Board were consolidated with the Environmental Appeal Board cluster of tribunals (the “EAB cluster”) in Victoria.

In addition to the CCALAB, the EAB cluster provides administrative support to six other quasi-judicial administrative tribunals. This clustering of administrative support for eight independent appellate tribunals has been done to achieve economic and program delivery efficiencies by allowing greater access to resources while, at the same time, reducing administration and operating costs.

In addition to the CCALAB and the Environmental Appeal Board, the other clustered tribunals are:

- Energy Resource Appeal Tribunal;²
- Financial Services Tribunal;
- Forest Appeals Commission;
- Health Professions Review Board;
- Hospital Appeal Board; and
- Skilled Trades BC Appeal Board.³

This clustering has resulted in significant savings to government through a shared services approach. This arrangement has proven to be an effective and efficient means for providing administrative support to the Board, which in turn enables the Board to effectively and efficiently fulfill its appellate mandate to the public.

Beginning April 1, 2017, host Ministry responsibilities for administration of the 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.

² Formerly the Oil and Gas Appeal Tribunal and renamed as of September 1, 2023.

³ Formerly the Industry Training Appeal Board and renamed as of December 1, 2022.



BOARD MEMBERSHIP

Throughout the course of this reporting period, the CCALAB membership consisted of:

Board Member	Role	Term Expiry
Margret (Lynn) McBride	Chair Vice-Chair	2026-07-31 2023-07-31
Alison Narod	Chair	2023-07-31
Karen Ameyaw	Member	2025-02-13
Tung Chan	Member	2023-04-12
Shelene (Shelly) Christie	Member	2024-06-30
Harry Gray	Member	2024-06-30
Patrick Lewis	Member	2024-06-30
Richard Margetts, K.C.	Member	2025-07-31
Tajdin (Taj) Mitha	Member	2025-02-13
Cynthia (Cindy) Page	Member	2025-02-13
Donald Storch	Member	2024-06-30

Section 29 of the *Act* provides that a Chair and other members are to be appointed to the Board by the Lieutenant Governor in Council after a merit-based process.

The Board thanks all its members for their service during the reporting period. The Board’s ability to adjudicate sensitive and complex appeals fairly and efficiently is a direct result of the expertise and commitment of these members’ service.

Biographies of members are provided in Appendix 1 to this report.



APPEAL ACTIVITY AND DECISIONS

New Appeals Filed

During the reporting period, two new appeals were filed. They are:

- **CCALB-CCA-23-A001, Filed August 28, 2023, by a mental health and substance use assisted living residence** – Appeal of a decision of the Assisted Living Registrar to impose conditions on the registration of a mental health and substance use assisted living residence. The appeal was held in abeyance for several months pending discussions between the parties, however ultimately an oral hearing was scheduled for September 2024, in the next reporting period.
- **CCALB-CCA-23-A002, Filed December 28, 2023, by a member of the public** – Appeal of the outcome of a Vancouver Coastal Health Authority patient care quality complaint investigation. After the Appellant was asked to clarify how the matter at issue fell under the Board’s jurisdiction under sections 29(2) and (3) of the Act, the appeal was rejected for lack of jurisdiction and the file was closed.

Decisions Issued

There was one decision on the merits issued during this reporting period:

- ***Ofra Sixto (Operating as ICARE Childcare Inc.) v. Dr. Meena Dawar, Medical Health Officer, Vancouver Coastal Health Authority, 2023 BCCCALAB 2.***

A summary of this decision is provided in Appendix 2 to this report.

CCALAB decisions can be found on the Board’s website (<https://www.bcccalab.ca/decision>), and on CanLII (<https://www.canlii.org/en/bc/bcccalab>).

Appeals Outstanding

There was one appeal outstanding at the end of this reporting period:

- **CCALB-CCA-23-A001, Filed August 28, 2023, by a mental health and substance use assisted living residence** – Appeal of a decision of the Assisted Living Registrar to impose conditions on the registration of a mental health and substance use assisted living



residence. The appeal is scheduled for an oral hearing in September 2024, in the next reporting period.

Judicial Reviews of CCALAB Decisions

During this reporting period, one petition for judicial review of a CCALAB decision was filed in the BC Supreme Court. This was the first petition for a judicial review of a CCALAB decision in twenty years.

The petition for judicial review related to a CCALAB decision from a prior reporting period: *Ghalia Rebei Adlani (Moonlight Daycare) v. Dr. Emily Newhouse, Medical Health Officer, Fraser Health Authority*, 2023 BCCALAB 1. The petition was filed on April 11, 2023, in the BC Supreme Court (file no. S232798). After a three-day hearing, the court dismissed the petition in a decision on January 17, 2024: *Adlani v. Medical Health Officer (Fraser Health Authority)*, 2024 BCSC 84. The Appellant subsequently filed a Notice of Appeal in the BC Court of Appeal against the order of the BC Supreme Court; however, there has been no further activity in that appeal.

Performance Indicators and Timelines

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 or commencement to decision of the applications and other 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) of the *Act* to prove that the decision being appealed was not justified. Hearings are primarily conducted orally and 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.

The Board’s Practice Directive #1, available on the Board’s website, provides that the Board will make its best efforts to **hear each appeal, orally or in writing, within 120 days of receiving the notice of appeal**, noting that this time period may be longer where a party or parties



request to adjourn an appeal, or where the appeal is complex and takes multiple hearing days. The Practice Directive also provides that **for matters that proceed to hearing, the Board will endeavour to issue the final decision or order, including written reasons, within 90 days from receiving the last submissions of the parties**, again noting that for more complex appeals this timeline may be longer.

Of the two new appeals filed during the reporting period, one was dismissed on March 1, 2024, which was 64 days after the notice of appeal was received on December 28, 2023. This appeal was dismissed for lack of jurisdiction and was not set down for a hearing.

The second new appeal received during this reporting period has been set down for a five-day hearing beginning on September 23, 2024, which is in the next reporting period. Unless it is rescheduled, that hearing will begin 392 days after the notice of appeal was received on August 28, 2023. This period of 392 days resulted from the appeal being held in abeyance for several months pending discussions between the parties.

There was one decision on the merits issued during this reporting period: *Ofra Sixto (Operating as ICARE Childcare Inc.) v. Dr. Meena Dawar, Medical Health Officer, Vancouver Coastal Health Authority*, 2023 BCCCALAB 2. The 6-day hearing for this appeal began on June 15, 2021, and the hearing dealt with two grouped (related) appeals at the same time. One of the appeals was filed on November 13, 2019, and the other was filed on January 20, 2021, which respectively corresponded to an elapsed time of 580 days and 146 days between filing and hearing. The final decision was given April 12, 2023, which was 596 days after the oral hearing concluded on August 24, 2021.

The Board did not meet the targets set out in its Practice Directive with respect to completion of hearings or issuance of final decisions. This is largely due to the effects of the availability of witnesses and legal counsel, and the length and complexity of the appeal files discussed above. This continues the trend towards increased complexity and length of the matters that come before the Board noted earlier in this report, and in recent annual reports.



SURVEYS

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.

PUBLIC INTEREST DISCLOSURE ACT

The *Public Interest Disclosure Act* (“*PIDA*”) provides employees of some public bodies with protection from reprisal if they bring forward concerns about specific kinds of serious wrongdoing (i.e. whistleblower protection). The Board is one of the government bodies subject to *PIDA*.

Section 38 of *PIDA* requires the Board to report the number of disclosures of wrongdoing we receive and the results of any investigations we undertake each year. During this reporting period the Board did not receive any *PIDA* disclosures. The Board is unaware of any reports in which it is alleged or its staff or members (past or present) are alleged to have committed any wrongdoing.





FINANCIAL STATEMENT

In fiscal year 2023/2024 (ending March 31, 2024), the CCALAB incurred expenses of \$47,624 as detailed in the four-year comparative chart below.

EXPENSES	2020/2021 (\$)	2021/2022 (\$)	2022/2023 (\$)	2023/2024 (\$)
Salaries and Benefits	0	0	0	0
Board Member Fees & Expenses	18,797	52,822	15,096	13,468
Professional Services	605	11,859	7,698	21,026
Office and Venue Expenses	11,295	11,500	13,853	13,130
Total CCALAB Expenses	\$30,697	\$76,181	\$36,647	\$47,624

- **Salaries and Benefits** encompass the full-time staff who support the Board. This number is zero because the Board’s staff are shared with a cluster of other tribunals who bear that cost instead.
- **Board Member Fees and Expenses** reflect the remuneration and expenses for the Chair and appointed members of the Board. The Chair and members are appointed on an as-and-when needed basis and only paid for the time they work in accordance with the BC Ministry of Attorney General’s Tribunal Performance Framework and Remuneration Plan.
- **Professional Services** are the cost of retaining outside legal counsel to support professional development and to provide legal advice and representation in court where needed. It also encompasses outside professional services such as court recorders for hearings.
- **Office and Venue Expenses** reflect both the direct costs incurred by the Board when it meets in-person (i.e. meeting space and refreshments), routine office expenses, and the IT infrastructure which support’s the Board’s website and case management system.



APPENDIX 1: BIOGRAPHIES OF BOARD MEMBERS

Margret (Lynn) McBride, Chair (Chair term beginning August 1, 2023)

Lynn McBride is a graduate of the University of British Columbia Faculty of Law (LL.B.) and Faculty of Arts (B.A.). She also holds a Certificate in Early Childhood Care and Education (ECCE) from Capilano College. Ms. McBride practiced law for 12 years, where she gained extensive litigation, research and writing experience. In the ECCE field, she worked in daycare, preschool, and out of school care settings, and as a Child Care Advisor for the BC Aboriginal Child Care Society. Ms. McBride is currently a planning analyst in the Strategic Planning and Policy department at Legal Aid BC. Active in her community, she has been a member of the Community Care and Assisted Living Appeal Board since 2012, and has also been a member of the Board of Directors for the Early Childhood Educators of BC and other non-profit organizations.

Alison Narod, Chair (Chair term expired July 31, 2023)

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. Ms. Narod currently practices in the areas of employment law, human rights and administrative law. She served as the Chair of the Community Care and Assisted Living Appeal Board and the President of ACT Autism Community Training Society, and is a Member of the Canadian Bar Association (BC Branch). Ms. Narod was formerly a member of a number of adjudicative tribunals, and the boards of various public and private bodies.

Karen Ameyaw

Karen Ameyaw is a Lawyer and Centralized Disclosures Manager for WorkSafeBC. Previously, Ms. Ameyaw was an Associate Lawyer at Twining, Short and Haakonson Barristers. Active in her community, she is a Member of the City of Vancouver Black History Month Opening Ceremony Planning Committee and previously she was a Council Member on the Real Estate Council of British Columbia. Ms. Ameyaw is the recipient of several academic awards as well as a Humanitarian Award and was the recipient of the McCarthy Tétrault Leadership Award. She holds a Bachelor of Arts degree in Criminology from Simon Fraser University and a Bachelor Laws from the University of Victoria.



Tung Chan (member term expired April 12, 2023)

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. His 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, Mr. Chan 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. Mr. Chan 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, Mr. Chan was awarded the Queen's Jubilee Medal in recognition of his contribution to the community. In 2014, he was invested into the Order of BC.

Shelene (Shelly) Christie

Shelly Christie is a retired Child Care Licensing Officer and Early Childhood Educator. She has worked in the field of early childhood education for over 34 years in a variety of settings including pre-school, daycare, family resource programs and Child Care Resource and Referral. Ms. Christie worked as a Licensing Officer with Vancouver Coastal Health Authority and the Fraser Health Authority. Prior to that, Ms. Christie was an Instructor in the Early Childhood Education at Langley College and Pacific Rim Early Childhood Education Institute. Ms. Christie is active in her community with Victoria Grandmothers for Africa. She has been active in her community sitting on the board of directors for non-profit daycares and was instrumental in establishing on site childcare programs at the University of the Fraser Valley and Kwantlen Polytechnic University. Ms. Christie holds a Bachelor of Child and Youth Care from the University of Victoria and an Early Childhood Education certificate from Douglas College.



Harry Gray

Harry Gray has over 40 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. Mr. Gray is the Executive Director of the Resident Doctors of BC. He was previously the Associate Vice President of Administration at Kwantlen Polytechnic University. Prior to that he was the Director Consulting Services with the Health Employers Association of BC, worked with the Vancouver Coastal Health Authority and was the Regional Director, Human Resources for the North Short Health Region. Mr. Gray holds a Master of Industrial Relations from Queen's University and a Bachelor of Commerce, (Finance & HR) from the University of British Columbia.

Patrick Lewis

Patrick Lewis is a Partner at the boutique litigation firm, Sugden, McFee & Roos LLP. 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. He is actively involved in his community as a member of the B.C. Branch of the Canadian Bar Association, Civil Litigation Subsection, a member of the Trial Lawyers Association of British Columbia, a guest lecturer for the Continuing Legal Education Society of British Columbia and the Moot Court Judge at the U.B.C. Law School. Mr. Lewis was admitted as a barrister and solicitor to the Bar of the Province of British Columbia on June 14, 1985. He holds a Bachelor of Laws from the University of British Columbia.

Richard S. Margetts, K.C.

Richard Margetts is Associate Counsel with Johns Southward and Co. He is a Life Bencher and past President of the Law Society of British Columbia. Mr. Margetts has been active in his community as a former chair on many Law Society Committees, Past President of CanLII, past Chair of the British Columbia Justice Review Task Force and the past Secretary of the YM/YWCA (Victoria). Previously Mr. Margetts was a Governor for Camosun College and a Bencher and President of the Law Society. He holds a Bachelor of Laws from the University of British Columbia and a Bachelor of Arts (Honours) from Monash University in Melbourne, Australia.



Tajdin (Taj) Mitha

Taj Mitha is a self-employed Barrister at Law. Mr. Mitha has over 30 years experience of working in developing countries in the fields of industrial development, microfinance banking, tourism, education and social development through private enterprises, privatizations, public private partnerships (PPP) and not-for-profit organizations. Active in his community, he was Chair of the British Columbia Institute of Technology, a Panel Chair of the Employment Assistance Appeals Tribunal and Member of the Property Assessment Review Panel. Mr. Mitha also was a Director for Sunnybrook Hospital and Health Sciences Centre and a Public Interest Member of the Council of the Association of Engineers and Geoscientists of British Columbia. He holds a Bachelor of Laws from the University of Western Ontario.

Cynthia (Cindy) Page

Cindy Page is an Instructor at Northern Lights College (NLC) in the Early Childhood Education program. Previously, Ms. Page was a Program Chair at NLC and an Instructor of Early Childhood Education at Vancouver Island University. Active in her community, she is a Board member of the Early Childhood Educators of BC and sits on the Learning Outside Together Steering Committee. Ms. Page was the recipient of the Gayle Davies, as well as the Founders Award and Chancellor's Award from Royal Roads University. She holds a Master of Arts degree in Learning and Technology from Royal Roads University and a Diploma in Child and Youth Care from Vancouver Island University. In addition, Ms. Page also holds certificates in Early Childhood Education from Northern Lights College, a certificate in Family Child Care from Vancouver Island University and a certificate in Long Term Care (Residential Care) Aide from Vancouver Island University.

Donald Storch

Donald Storch has over 40 years experience in counselling and employment. He had his own practice in Victoria until 2016. Prior to that he was a counsellor and manager for South Vancouver Island Counselling and Assessment Service, a counsellor and manager for Kelly Lutter & Associates in Calgary and the Vice President of the Catholic Social Services in Edmonton. Mr. Storch received an Order of Canada for his extensive volunteer activities in 2008. These activities included Chair for the Victorian Order of Nurses of Canada, the Good Samaritan Society of Canada, the Alberta Association of Children and Families, and Our Place. Mr. Storch has also been a peer reviewer for the North American Council of Accreditation for Children and



Families conducting visits in the USA and Canada. He holds a Masters of Social Work from McGill University and a Bachelor of Arts, Sociology from the University of Alberta.



APPENDIX 2: DECISION SUMMARIES

There was one decision on the merits issued during this reporting period: ***Ofra Sixto (Operating as ICARE Childcare Inc.) v. Dr. Meena Dawar, Medical Health Officer, Vancouver Coastal Health Authority, 2023 BCCALAB 2.***

Background

The underlying appeal was brought by a childcare licensee that was the subject of a series of decisions by Vancouver Coastal Health Authority Licensing Officers (collectively “Licensing”) and the Vancouver Coastal Health Authority Medical Health Officer (the “MHO”). First, in June 2019, Licensing imposed an immediate interim condition on the Appellant’s license “as a summary action”. In September 2019, those interim conditions were continued and additional conditions were added. The conditions included that the Appellant not be allowed on the premises during operational hours for a period of 12 months. Later in September 2019, after investigating complaints that the appellant had breached these conditions on numerous occasions, Licensing



suspended the licence “summarily”, and advised that they would be cancelling the licence. In October 2019 the MHO confirmed Licensing’s decision to suspend and cancel the Appellant’s license.

Final Decision on the Merits, Issued April 12, 2023

After several preliminary decisions given in prior reporting periods, the Board ultimately issued a decision on the merits of the appeal on April 12, 2023. In the decision the Board found several shortcomings with the MHO’s decision which served to compound, rather than cure, the numerous procedural errors and irregularities of the initial Licensing investigation and decisions.

Regarding the initial investigation and decisions by Licensing to impose a licensing condition, and then to revoke the Appellant’s license for breaching said condition, the Board found that both were fundamentally flawed by breaches of procedural fairness and natural justice. Licensing initially imposed the summary condition on the Appellant’s license without adequate consultation and without consideration to alternative, less intrusive means. During the following investigation, Licensing failed to provide sufficient notice of the allegations to permit the Appellant to respond, re-interviewed staff members and failed to account for inconsistencies in the resulting testimony, failed to interview parents in possession of information germane to the investigation in accordance with an unwritten policy which could not be justified, changed the scope of the investigation and decision-making process on the basis of insufficient evidence, and presented unsubstantiated allegations to interviewees as fact, thus tainting the evidence provided.

Licensing relied on information tainted by this flawed investigative process in their initial decision to impose licensing conditions, and in their subsequent decision to revoke the Appellant’s license for allegedly breaching the aforementioned condition on multiple occasions. The Board held that these errors amounted to sufficiently serious breaches of procedural fairness, and that as a result, Licensing’s June 2019 decision to impose the condition and September 2019 decision to suspend and cancel the Appellants license were unjustified.

Turning to the MHO’s reconsideration decisions, the Board found that the MHO made several stand-alone errors in addition to relying heavily on the fundamentally flawed investigation carried out by Licensing.

The MHO’s October 2019 decision regarding the decision to suspend and cancel the Appellant’s license, the Board found that the MHO wrongly interpreted the scope of the licensing condition,



thus finding that eight breaches of the condition had occurred when in fact the Appellant only breached the condition once, and in a manner which posed no risk to the health and safety of the children at ICare. Further, the MHO failed to consider parts of the Appellant's submissions relating to the flawed investigation leading to the licensing conditions and the adverse impact of the sanctions imposed by Licensing.

In a November 2020 decision by the MHO regarding the licensing condition, the MHO misapprehended the appellant's arguments regarding evidence of good character, viewing letters received from parents which contained testimony directly contradicting Licensing's findings as merely letters of support for the Appellant, and according them little weight as a result. Further, the MHO failed to consider parts of the Appellant's submissions highlighting inconsistencies in witness testimony, failures by Licensing to examine the Appellant's testimony in context, and the apparent disproportionality of the measures imposed as a result. The MHO's reasons were not responsive to the Appellant's submissions, and as such failed to address or cure the underlying procedural fairness issues present in Licensing's investigation and decision.

In addition to these stand-alone errors, the MHO's reliance on the Licensing's flawed investigation tainted both reconsideration decisions. The board concluded that both reconsideration decisions were unjustified. As the Appellant indicated no desire to continue working in the industry at this point, and other participants had dispersed, no remedy was ordered beyond reversing or setting aside the MHO's decisions.