

Preparing and Presenting Your Case – Director

Child Care Licensing Act (CCL Act)

Related Documents

A Guide to Appeal – CCL Act

Preparing and Presenting Your Case – Appellant – CCL Act

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Introduction

The Community and Services Appeals Secretariat has provided Presenting and Preparing Your Case – Director – *Child Care Licensing Act* (CCL Act) to help you:

- Understand the appeal process;
- understand your role in the appeal process; and
- prepare for the hearing.

The appeal process described in this guide and those listed below may be amended from time to time. The guides provide information about the general process for appeals and serve only as broad guidelines of what to expect.

Other guides available to assist you with the appeal are:

- A Guide to Appeal – *Child Care Licensing Act*; and
- Preparing and Presenting Your Case – Appellant – *Child Care Licensing Act*.

Commonly used terms

In this document and the other documents listed above, the following terms are used:

- **Appellant** – this is the person who filed the Notice of Appeal (a licence holder, a person who applies for a licence or the renewal of a licence) or a person to whom a decision prescribed in the regulations pertains as being subject to an appeal to an appeal panel.
- **Director** – decisions made under the *Child Care Licensing Act* (CCL Act) are made under the authority of the director. A number of individuals in the Child Care Family Services Authorities (CFSAs) (such as a Licensing Officer, Manager, etc.), have the authority to make decisions on behalf of the director.
- **Child Care Licensing Appeal Panel (Appeal Panel)** – this is a panel of Albertans from the community appointed by the Community and Social Services Minister and trained to hear appeals under the *Child Care Licensing Act* (CCL Act). Three members of this panel will serve as the hearing panel for the appeal. It is important to note that the members are volunteers; they are not employees of Community and Social Services and they are not a part of the Child and Family Services Authorities (CFSAs).
- **Appeals Secretariat** – this is an impartial government body that provides administrative support to the appeal process and the Appeal Panel. The Appeals Secretariat schedules hearings and provides information to all parties about the appeal process. In addition, the Appeals Secretariat maintains a website, www.appeals.gov.ab.ca which contains information about the appeal process. The Appeals Secretariat operates at arm's length from all parties and focuses on providing support services.

General summary of the appeal process

The appeal process starts with a Notice of Appeal that the appellant filed under the CCL Act. In most cases, the Notice of Appeal is brought into the local CFSA office handling the appellant's case. The director will date stamp it and immediately send it to the Appeals Secretariat. The Appeal Panel must also receive a signed copy of the director's decision. Please provide this document to the Appeals Secretariat with the Notice of Appeal, if available. Also include the name of the director's representative and his/her contact information.

As you use this guide to prepare for an appeal, please feel free to call the Appeal Secretariat office at 780-427-2709 (Edmonton and Area) or toll-free at 310-0000 then dial 780-427-2709 if you need assistance.

Upon receipt of the Notice of Appeal, the Appeals Secretariat contacts you and the appellant to schedule an appeal hearing and to answer any questions you may have about the appeal process. The Appeals Secretariat also provides instructions about exchanging documents and providing them to the hearing panel before the hearing takes place.

The appeal hearing is conducted by a three-member hearing panel consisting of a hearing chair and two members. In the majority of cases, hearings are held in the community or region where the appellant's file is located. However, in some cases, the hearing panel may consider it appropriate to hold a hearing by teleconference or videoconference, with agreement from the parties.

It is important to understand that the hearing panel is not conducting an investigation. The hearing panel may only make a decision using the information presented to it during the hearing (verbally or in writing) by you, the appellant, and through witnesses.

After the appeal hearing is complete, the hearing panel will review all of the information that was presented and make a decision. The panel will issue a written decision to the parties that includes the reasons for its decision.

Before the Hearing

Understanding your role

An appeal hearing will be scheduled by the Appeals Secretariat. Your role prior to the appeal hearing is to:

- gather documents supporting your case; and
- send copies of the documents to the Appeals Secretariat (who distributes them to the hearing panel) and exchange documents with the appellant by a date set by the Appeals Secretariat. The date is usually three weeks before the hearing is to take place.

Your role at the appeal hearing is to:

- present your case, including any written information you believe supports your position, to the hearing panel;
- explain to the hearing panel why the decision was made and the rationale behind the decision in the context of legislation; and
- bring witnesses, if you choose, to support your case.

Legal counsel

Legal counsel for the director is provided by Alberta Justice Family Law. If you believe that legal counsel need to be consulted, forward a copy of the Notice of Appeal and any pertinent supplemental information to their office as early as possible for an initial review and discussion of the case.

Preparing for the Hearing

Introduction

The hearing is your opportunity to tell the hearing panel what the circumstances of the situation are and how and/or why you believe the decision of the director is appropriate or correctly applied.

When preparing your case, make sure your arguments fit under the CCL Act and Regulation. The hearing panel is not required to comply with Children's Services policies, such as those found in the CCL Policy and Procedures Manual, though the panel will consider all information presented by the parties when making its decision.

You can prepare for the hearing by:

- reading the documents submitted by the appellant;
- writing an appeal summary detailing the information considered in making the decision that has been made;
- planning to explain how the director acted in accordance with the CCL Act and Regulation;
- planning to support your position through witnesses; and
- providing documents supporting the decision made.

When you are considering what information to present, you should consult with your legal counsel to determine what evidence to present and what witnesses to call.

If you are referencing past history, show or tell the hearing panel how and why that information is relevant to the decision under appeal.

Documentation submission

Documentation submission, also referred to as disclosure, is the exchange of documents and information between the parties and is necessary to ensure that each party has knowledge of the case of the other party. When preparing documents for disclosure, it is critical to be aware of confidentiality issues. Legal advice can be sought for advice on confidentiality issues if in doubt.

Parties must disclose their case by following these steps:

- gather your appeal summary, a copy of the director's written decision, and all your supporting documents, statements and letters together;
- make a list of these documents (title, date, description);
- list the names of your witnesses;
- list the names of other persons who may be attending as a support person or representative; and
- make copies of all these documents (one for the appellant, four for the hearing panel, and one for other parties to the hearing, if applicable) and organize the documents in packages with the document list on the top of each package.

You and the appellant will be required to exchange this information between yourselves and to submit the information to the Appeals Secretariat for distribution to the hearing panel approximately **21 calendar days prior to the hearing**. The date will be set by the Appeals Secretariat.

When documents are submitted at the hearing, it will likely cause a delay, as the hearing chair may adjourn the hearing to allow the other party to review the documents and prepare a rebuttal, and to give the hearing panel time to review the new documents.

Use of witnesses

Witnesses are people that you may want to have present information at the hearing to help you support your case. These people can be expert witnesses (such as child care experts) or factual witnesses (such as parents or staff who have first-hand knowledge about your case). When witnesses come to the hearing, it gives them a chance to explain your evidence and answer any questions that the parties to the appeal and hearing panel members ask them. Witnesses are not allowed into the hearing boardroom until they are called to present their evidence at the appeal hearing.

When preparing for the hearing, contact each of your witnesses to be sure they:

- can attend the hearing, at the scheduled time and place to give their submission;
- know that they do not sit in the hearing except for when they are giving their evidence and answering questions;
- know what information you need from them;
- ensure that prior to the hearing witnesses are well prepared. In other words, the witness has reviewed any contact notes or documents he/she has prepared. Ensure the witness knows why they are attending the hearing; i.e.; I have asked you to be a witness for me because the decision of the Director is being appealed (state what the decision is) and I believe you have information which is relevant to this appeal;
- understand that the appellant and hearing panel may ask them questions; and
- dress and act appropriately at the hearing (witnesses should be aware that dress is business casual and that they are expected to behave in a courteous and respectful manner to all parties attending the hearing).

Plan for the appellant's case

Be prepared to respond to what the appellant submits to support his/her position by:

- reviewing the submissions the appellant made;
- understanding the “why” of the appellant's case (e.g. “Does it make sense?”);
- being prepared to clarify or rebut the appellant's case by referring to the CCL Act and Regulation and other documents, and through verbal submissions;
- preparing questions to ask the appellant and the appellant's witnesses; and
- arranging to bring your own witnesses, if you choose, to present information to support your case.

Prepare to question and be questioned

You will have a chance to ask questions of the appellant and his/her witnesses at the hearing. Think about what you would like to ask and whether the answers will help your case and be important for the hearing panel to hear and understand. You may want to ask:

- questions for clarification (e.g. “What did you mean by. . .?”);
- questions to challenge (e.g. “How could you comment on that when you weren't present?”); and
- questions to obtain admissions that help you (e.g. “Did you state that...?”).

Be aware that the appellant will have the same chance to question you and your witnesses. Preparation is important. Try to anticipate those questions and prepare the answers that you will give when you are questioned. You may also wish to talk with your witnesses about the questions the appellant may ask them. Ask them to prepare answers for the questions they may be asked so their information can be clearly told.

What to expect at the appeal hearing

Reading all of the documents submitted to the hearing panel, and contacting the Appeals Secretariat if you have any questions about the process, will help you know what you can expect at the hearing.

You can expect a certain level of formality and a pattern to appeal hearings. The panel will follow specific procedures to keep the hearing running smoothly and to ensure that all parties have adequate time to give their evidence. Please note that all hearings are not identical, but the procedures followed by the hearing panel will always be similar.

At the Hearing

Introduction

All persons will enter the hearing boardroom together so there is no private contact with the hearing panel. Upon entering the room, the hearing panel will advise you and the appellant on where to sit. They will try to create the most comfortable arrangement possible. After the parties have all taken their seats, the hearing chair will call the hearing to order, make introductions, explain the hearing procedures, explain the objective of the panel, and confirm the roles of the parties, witnesses, and other persons that may attend the hearing.

Confirming the issue(s) under appeal

The hearing chair will ask both you and the appellant for clarification or confirmation of the director's decision being appealed.

New issues cannot be added at the hearing. The hearing is normally limited to the issues identified in the Notice of Appeal. However, the appellant may be able to request to clarify or confirm the issue(s) under appeal at the start of the hearing. If this occurs, the panel will ask you to respond to the appellant's request for the clarification or confirmation, in which case you may request an adjournment.

Presenting Your Case

The jurisdiction of the panel

Jurisdiction means the Appeal Panel's authority to hear and decide the issue being appealed. The Appeal Panel's jurisdiction is set out in the CCL Act. If the issue being appealed does not fall within section 21 of the CCL Act, the Appeal Panel will not have jurisdiction to continue with the hearing.

If, after reading section 21 of the CCL Act, you have an argument regarding the jurisdiction of the Appeal Panel, you should communicate this to the Appeals Secretariat as soon as possible before the appeal hearing. (See page 3 of *A Guide to Appeal – Child Care Licensing Act* for more details.)

In some cases, objections concerning jurisdiction are not raised until the beginning of the hearing. If this occurs, the hearing will be delayed because the jurisdictional issue has to be heard first. (See page 10 of *A Guide to Appeal – Child Care Licensing Act* for more details.)

Identify the outcome you are requesting

Once the issue or matter under appeal and the jurisdiction of the panel have been confirmed, both parties will be given the opportunity to make a brief opening statement on the decision that was made and what outcome each party is requesting from the hearing panel (e.g. Confirm an Order to Remedy).

Presentations

The director's case

As the director, you will be called on to make your submissions first, in exactly the same way as the appellant will be later. You are asked to go first so that the appellant may hear what you have to say about how and why the decision being appealed was made and may prepare questions to ask to clarify or rebut the information that you present.

When presenting your case, it is important to:

- explain your case in a clear and logical way to the hearing panel, noting how the decision is supported by the CCL Act and Regulation;
- present your evidence witness by witness;
- refer to the documents you have submitted to the hearing panel by identifying a specific document and page number (remember that the appellant and hearing panel have received copies of your documents); and
- speak slowly and clearly so the panel members can take their own notes.

The appellant will be given the opportunity to ask you questions after you have finished your submission and to ask questions of each of your witnesses after each one has

finished making submissions. The hearing panel will also ask you questions about your case and the submissions you have made for clarification.

- Answer clearly, concisely and honestly.
- If you are unclear about the question asked or did not hear it, ask to have the question repeated.

The same process will be followed for all of the witnesses that you have brought to support your case.

The appellant's case

The appellant will be called to make his/her case after you have finished presenting your case. The appellant will:

- demonstrate to the hearing panel his/her position;
- present evidence witness by witness; and
- include the documents supporting his/her position.

When the appellant is presenting his/her case, it is important to:

- listen carefully and follow the presentation of the appellant and his/her witnesses; and
- write down the questions you want to ask each presenter.

You will then have the opportunity to ask questions about the submissions made by the appellant. The hearing panel will also ask the appellant questions about the submissions that he/she provided in order to clarify information or points that were made.

The same process will be followed for each witness that the appellant has brought to support his/her case.

New Material

You may request a break from the hearing panel if new material is brought to the hearing by the appellant that you need to review or if you need to consult with legal counsel or a supervisor regarding the new material. You may also request an adjournment. You will be expected to give reasons to show the hearing panel that an adjournment is necessary.

Resolution

You and the appellant are free to talk about resolving the matter being appealed at any time during the appeal process. The hearing panel will not participate in discussions about resolutions and will not be influenced by them. If, during the hearing dates, you and the appellant agree to engage in resolution discussions, indicate this to the hearing panel and ask for an adjournment to do so. An adjournment may be granted to allow the parties to determine if there is a chance for resolution. If you and the appellant agree to a settlement, the appellant will be requested to withdraw his/her appeal in writing.

Closing the hearing

At the end of the hearing, each party has an opportunity to summarize all of the relevant points made during the hearing. No new evidence is allowed at this point in the appeal hearing. After the summaries have concluded, the hearing chair will close the hearing.

After the Hearing

The hearing panel's decision

After the hearing is concluded, the hearing panel reviews all of the verbal and written information provided by the parties to the appeal and makes its decision. The hearing panel may confirm, vary or rescind the decision of the director under appeal.

The hearing panel then prepares its written decision and issues it to the appeal parties within approximately 45 calendar days of the hearing. Given the complexity of some cases, however, the hearing panel may require more than 45 calendar days to issue the decision.

The written decision will contain the issue under appeal, the hearing panel's finding of facts, the decision and the reasons for the decision. The written decision that is issued on this appeal is the hearing panel's final decision.

In making decisions on issues under appeal, the hearing panel must comply with the CCL Act and its respective Regulation. However, the hearing panel is independent from Childrens Services and is not required to comply with Childrens Services' policies, such as those found in the CCL Policy and Procedures Manual. The hearing panel will, however, consider any and all evidence submitted as part of the appeal, including policy documents. Also, Appeal Panel decisions are not precedent setting in the same way as case law is precedent setting in the courts. Each appeal is heard on its own merits.

If you are dissatisfied with the hearing or the panel's decision

A party who is not satisfied with the hearing process or a decision of the hearing panel under the CCL Act can apply to the Court of Queen's Bench for a judicial review of the decision. The assistance of a lawyer in bringing an application for judicial review will always be required. A judicial review is not a re-hearing; rather, it is a review of the process by which the decision was arrived at. Upon completion of the judicial review, the Court of Queen's Bench may confirm the decision of the hearing panel or it may send the issue back to the Appeal Panel to be reheard.

If you believe you want to have the hearing panel's decision referred to the Court, you will likely need the assistance of a lawyer. You may want to contact Alberta Justice Family Law for advice. Contact information for the Court of Queen's Bench locations around Alberta can be found online at www.albertacourts.ab.ca/qb/.

The Office of the Ombudsman cannot change a decision of the hearing panel; however, it can review the process and make recommendations to the Appeal Panel Chair. The Ombudsman's office number is 780-427-2756 in Edmonton or 403-297-6185 in Calgary. Additional information is available online at www.ombudsman.ab.ca.

Contact Us

If you have any questions or would like more information about appeals under the *Child Care Licensing Act* or the appeal hearing process, please contact the Community and Social Services Appeals Secretariat by:

Phone:

780-427-2709 (Edmonton and Area) or toll-free at 310-0000 then dial 780-427-2709

Mail or in person:

Community and Social Services
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201 Agronomy Centre
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Information is also provided on the Appeals Secretariat website:

www.appeals.gov.ab.ca

