

Community Care And Assisted Living Appeal Board

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

APPELLANT: **KL, Licensee (operating a family child care facility)**

RESPONDENT: **Suzanne Sellin, Manager, Community care Facilities
Licensing, Fraser Health Authority, Fraser East Area**

BOARD MEMBER: **Marcia McNeil, Vice-Chair**

INTERIM STAY DECISION

[1] On December 7, 2005, a licensing officer with the Community Care Facilities Licensing Division of the Fraser Health Authority issued a decision, effective January 6, 2006, cancelling the Community Care Facility license held by the Appellant, KL, to operate a family child care facility. The Appellant sought a reconsideration of the decision and on January 6, 2006, the Respondent, Suzanne Sellin, issued a decision confirming the decision to cancel the license effective January 6, 2006.

[2] On January 6, 2006, the Appellant, through an agent, applied to this Board for an appeal of the decision of the Respondent and on January 10, 2006, applied for an order staying the cancellation of the license, pending the Board's determination on the merits of the appeal.

[3] Section 29(6) of the *Community Care and Assisted Living Act* addresses the Board's authority to issue an order staying or suspending a decision, in the following terms:

“29(6) The board may not stay or suspend a decision unless it is satisfied, on summary application, that a stay or suspension would not risk the health or safety of a person in care.”

[4] The Respondent opposes the request for a stay and submits that the Appellant has failed to demonstrate sustained compliance with minimum standards despite numerous inspections, discussions, resources and formal meetings.

[5] In her submissions filed on January 11, 2006, the Respondent notes a number of concerns that had come to her attention during a site inspection of the facility by licensing officers on January 11, 2006, notably:

- a. Despite the effective date of the cancellation of the licence on January 6, 2006, and the discussion with KL on January 9, 2006 by licensing officers confirming that KL could not continue to operate the daycare, KL continued to operate the daycare and indicated that it was her intention to continue to do so.
- b. Upon arriving at the facility on January 11, 2006, licensing staff noted that the front door to the daycare was open, that four children were in the playroom area adjacent to the open door and no adult was present. It was determined that KL was on the phone in another part of the house. Three additional children were in the nap room.
- c. It was determined that two of children in the daycare on January 11, 2006 were not children that KL had registered with the daycare.

[6] The Appellant's agent confirmed in her reply submissions filed on January 16, 2006 that it was KL's continued intent to operate the daycare pending receipt of this decision, despite the clear information provided to her that her license was cancelled.

[7] The Appellant's agent also notes that she had informed KL; "not to let anyone from licensing on to her premises until something was rectified. . ."

[8] Further, the reply submissions confirm that two children were admitted to the daycare following the initial decision cancelling the license.

[9] The Appellant's agent's submissions do not respond to the allegation that during the site inspection by licensing officers on January 11, 2006, seven children were unsupervised in the daycare.

[10] Finally, the Appellant's agent's submissions include the following comments:

"As stated [KL] corrects non-compliance issues, but unless you understand that in your opinion you are not in non-compliance it is pretty hard to fix until someone tells you over and over again how bad you are. After discussing with [KL] she feels that she is not in non-compliance and if she was it was for a reason and rectified or the reason was justifiable."

[11] I am concerned with the suggestion that the Appellant will not correct non-compliance issues if she feels that there was a justifiable reason for the non-compliance. There can be no doubt that the Appellant has been advised both by correspondence from the Director of this Board as well as by licensing officers of the Fraser Health Region that she can not continue the operation of her facility without a decision granting a stay in her favour. Not only has the Appellant ignored this direction she has registered new children in her facility.

[12] The Respondent provided a list of suggested terms and conditions to be imposed if this panel were to issue a stay of her decision. The suggested terms would require a commitment by KL that she comply with the requirements of the *Community Care and Assisted Living Act* and the *Child Care Licensing Regulations* at all times and that she cooperate with ongoing monitoring and inspections. KL has not provided this panel with any comfort that she would agree or comply with such conditions.

[13] Further, the Appellant has not challenged the Respondent's assertion that children in her care on January 11, 2006 were unsupervised when the licensing officers arrived at her facility.

[14] The Appellant has not demonstrated to my satisfaction that granting a stay in this case would "not risk the health or safety of a person in care." For these reasons, the Appellant's request for a stay of the decision to cancel her license to operate a family child care facility is denied.

[15] I wish to emphasize that this decision had been made based on the materials submitted as part of the stay application and in no way affects the Appellant's ability to continue to pursue her appeal of the decision on its merits.

January 17, 2006

MARCIA MCNEIL, Vice-Chair