

COMMUNITY CARE AND ASSISTED LIVING APPEAL BOARD

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

APPELLANT: SBR (Operator of a Licensed Child-Care Facility)

RESPONDENT: Clifford Daly, Assistant Director of Health Protection,
Licensing Practice, Interior Health Authority

PANEL: Susan E. Ross, Chair

Conditional Stay Order Pending Disposition of Appeal

[1] On May 1, 2006 the appellant commenced an appeal to the Board of a reconsideration decision of the Interior Health Authority (Clifford J. Daly, Assistant Director of Health Protection, Licensing Practice) dated April 25, 2006. The decision under appeal cancelled the appellant's licence to operate a group childcare facility under section 13(1) of the *Community Care and Assisted Living Act*. The cancellation of the licence was to be effective May 5, 2006.

[2] On May 4, 2006 the Board issued a one-week interim stay order on consent and on May 11, 2006 continued that interim stay for a further week to May 19, 2006.

[3] The Interior Health Authority ("IHA") opposes a protracted stay pending disposition of this appeal on the ground that allowing this facility to remain in operation poses an increased risk to the health or safety of children in care at it. The IHA states:

Community Care Licensing is opposed to the granting of a protracted stay of the cancellation of the licence for [the childcare facility].

Community Care Licensing has demonstrated that the licensee is either unable or unwilling to operate a community care facility in

compliance with the Community Care & Assisted Living Act and pursuant Child Care Regulation. The concerns include but are not limited to:

- [the licensee's] refusal to accept responsibility for chronic non-compliance,
- Her efforts to deflect responsibility onto others, i.e. parents, licensing officer, Interior Health, City of Kimberly, School District #6,
- Her exercise of poor judgment and decision-making,
- [the licensee's] demonstrated inability to maintain health and safety of children in care.

Community Care Licensing's position is that, given the above, there are no terms or conditions that could reasonably be applied with any assurance of compliance. In several instances, perceived harm and/or established risk of harm to children in care has occurred through the licensee's own conduct or failure to act on acknowledged concerns.

...It is therefore, the opinion of Community Care licensing that the stay not be extended beyond May 12, 2006.

[4] The appellant maintains that the continued operation of the facility pending the disposition of the appeal does not put at risk the health or safety of children because all contraventions have been remedied and the children are being cared for above minimum standards. The appellant also says that since a new and qualified manager has been designated for all decision-making authority at the facility and the appellant is no longer working there, the IHA's concerns about the appellant's operation of the facility should have no bearing on a stay pending the outcome of the appeal. Finally, the appellant says that the community of Kimberly relies on this facility as the only available group childcare facility in the area, so its immediate closure will cause harm to the families and children using the facility and to this community.

[5] The cancellation decision under appeal concerns serious issues about chronic regulatory non-compliance in the operation of this facility though, as stated on page 4 of the March 13, 2006 decision of the Medical Health Officer that preceded the reconsideration decision under appeal, "[n]one of the allegations and observations on their own is serious enough to recommend permanent action on the licence" and the appellant and the manager of the facility have "addressed some of the concerns following the complaints or requests from the licensing officer". The appellant's appeal also raises serious issues. It is not plain or obvious that the appeal lacks merit. The appellant will experience significant, very likely irreparable, harm to the viability of the facility if the stay application is refused. Critically, having carefully considered the submissions and related documents provided in respect of the application for a stay, the Board is satisfied that a stay of the decision to cancel the appellant's licence to operate a group childcare facility pending disposition of the

appeal of that decision, if the conditions in this order are incorporated, would not risk the health or safety of a person in care. The Board finds that section 29(6) of the *Community Care and Assisted Living Act*, the balance of convenience, and the public interest favour a stay order in the following terms.

[6] Under section 29(6) of the *Community Care and Assisted Living Act* and sections 15, 26(9) and 50(2) of the *Administrative Tribunals Act*, the Board orders that the cancellation decision under appeal is stayed until June 30, 2006 or until further order of Board, whichever comes sooner, on the following conditions:

- a) the parties will accommodate the scheduling of an early hearing date of the appeal;
- b) the appellant will comply strictly with any existing conditions attached to the facility licence and with the delegation of authority to the manager;
- c) the appellant will ensure the facility is in full compliance with the *Community Care and Assisted Living Act* and the Child Care Regulation throughout the term of the stay order; and
- d) the appellant will fully cooperate with all continued monitoring by the IHA.

[7] The IHA may request the Board to vary or lift this interim stay order if it has reason to believe that the conditions of the stay are not being complied with in a material respect or that, on any new information, the continued operation of this childcare facility pending the disposition of the appeal of the cancellation decision puts at risk the health or safety of a person in care at the facility.

[8] Under sections 37(1)(a) and (b) of the *Administrative Tribunals Act* the Board also orders that the related appeal filed by the appellant on November 16, 2005 is joined and will be heard together with this appeal of the licence cancellation decision.

[9] The Board thanks the parties for their submissions to date and reminds them that this order is limited to whether the licence cancellation decision should be stayed pending disposition of the appeal of that decision and to the joining of the two related appeals. It is not a determination or reflection on the merits of the appeals.

May 16, 2006

Susan E. Ross, Chair