

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: Marcia McNeil, Vice-Chair
Amy Collum, Member
Joan Gignac, Member

Application to Rescind a Conditional Stay Order

[1] On May 1, 2006 the appellant commenced an appeal to the Board of a reconsideration decision of the Interior Health Authority 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] On May 16, 2006 the Board, after considering submissions from the parties, ordered 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*, that the cancellation decision under appeal be stayed, subject to certain conditions, until June 30, 2006 or until further order of the Board, whichever came sooner.

[4] The Board commenced its hearing on June 26, 2006 and the hearing continued on June 27, July 5 and July 6, 2006. Final arguments were heard by teleconference on July 19, 2006.

[5] On June 27, 2006 the Board issued an order extending the stay order pending disposition of the appeal on the following terms:

- (a) the parties will continue to accommodate the scheduling of early hearing dates if additional dates are necessary;

- (b) the appellant will strictly comply with any existing conditions attached to the facility licence and with the delegation of authority to the manager;
- (c) the appellant will ensure that the facility is in full compliance with the *Community Care and Assisted Living Act* and the *Child Care Licensing Regulation* throughout the term of the stay order;
- (d) the appellant will fully cooperate with all continued monitoring by Interior Health Authority; and
- (e) the stay will operate until the appeal is disposed of by this Panel or until further order of the Board. For clarity, and without limiting the rights of either party, the respondent is at liberty to apply to the Panel to further amend the order if new issues arise with the licence prior to the Panel's disposition in this case.

[6] On September 18, 2006 the Board received an application from the Interior Health Authority seeking to rescind the stay order and that the facility licence be cancelled, effective immediately. The basis of the application were two inspection reports, the first conducted on June 30, 2006 and the second conducted on September 7, 2006, which noted a number of hazards and identified various dates for their resolution.

[7] The first inspection report assessed a high hazard rating to the facility, and the second report noted that the majority of the issues identified in the previous report had been resolved, and further identified that some additional issues were ongoing and assessed a moderate hazard rating. The second report further identified additional deadlines by which the outstanding matters should be corrected. The Interior Health Authority has not advised us whether those matters were resolved within the identified timeframe.

[8] The application by Interior Health Authority also notes "The imminent departure of the current facility manager also poses a potential increase for non-compliant facility operation and risk to children in care". We have been provided with no information to confirm when the current facility manager will no longer be operating the day care or what plan is in place to operate the day care thereafter.

[9] The September 7, 2006 inspection report identifies four items that remain outstanding.

[10] The first item addresses employee reference checks. The inspection report notes that, although reference checks have been done for staff, they are brief and "may not demonstrate a sufficient level of screening prior to employment". It appears to be accepted that the current form to be used for future reference checks is acceptable. There does not appear to be any further action necessary on this item at this time.

[11] The second item is identified in the following terms: "Appropriate sleeping arrangements for children remain deficient since November 2005. The manager is requested to please provide a plan for compliance." Although the report does not specifically identify the outstanding issue, it appears that the issue is the condition of the sleeping mats that children use.

[12] The appellant responded that the children in the day care facility rarely nap and gave details regarding how they address those occasions when a child may wish to nap. She indicates that this methodology has been discussed with the licensing officer. We are satisfied that the proposal made by appellant is satisfactory on an interim basis.

[13] The third issue is a request for the appellant to prepare a plan for staff supervision that is identified as having been outstanding since November 2005. The appellant identified some documents that have been provided to the licensing officer which address supervision matters and has indicated that she will present a supervision policy to the licensing officer. We are satisfied that permitting the facility manager to prepare a supervision policy and provide it to the Interior Health Authority for their consideration no later than October 23, 2006 would not risk the health or safety of children in care.

[14] The final matter outstanding addresses the need to complete renovations to the bathroom stalls. There appears to be a dispute between the licensing officer and the appellant with respect to the status of drywalling in the bathroom stalls. There also appears to be a debate as to whether the bathroom stalls require doors. Further, there appears to be an issue with respect to preparing a plan to reduce risk of contamination in the food preparation area. The appellant responds that this matter was discussed and resolved with licensing officers prior to the present facility being occupied.

[15] We do note that the June 30th inspection report clarified that it was not expected that the licensee would resolve this item through additional renovations but, rather, through facility practices.

[16] We also note that there seems to be some inconsistency between the June 30th inspection report and the September 7th report. Specifically, the June 30th report notes "bathroom renovations not completed. This allows toileting and food prep to be done in the same space." The report does not identify what aspects of the bathroom renovations needed to be completed. Instead, the primary issue appears to be separating toileting and food preparation functions.

[17] Due to the apparent confusion with respect to these particular items, we believe that it is reasonable and necessary for the licensing officer to provide to the appellant a detailed list of the items outstanding with respect to the bathroom and food preparation concerns and to specify what resolution would satisfy the concerns. We are satisfied that continuing the stay of the cancellation of the facility license in order to give the appellant 20 days to comply with the requirements specified by the licensing officer would not risk the health or safety of a child in care.

[18] While we are satisfied that the appellant has failed to comply with some matters which were identified as outstanding items from previous inspections, she apparently has resolved the vast majority of those concerns. We accept that the appellant is making efforts to comply with her obligations and that, as long as reasonable efforts are made to resolve the two matters which remain outstanding, the Panel is satisfied that a continuation of the stay of the cancellation of the facility license would not risk the health or safety of a child in care.

[19] The Panel confirms the continuation of the order of this Panel dated June 27, 2006, with the following additional terms and conditions:

- a. The requirement that the parties facilitate early hearing dates is now moot and, accordingly, that condition is now cancelled;
- b. The facility manager will prepare a supervision plan and provide it to the Interior Health Authority on or before October 23, 2006;
- c. The licensing officer will provide to the appellant a detailed list of the items outstanding with respect to the facility's bathroom and food preparation areas and identify how the items can be resolved. The appellant will ensure compliance with the outstanding items within 20 days of receiving the list from the licensing officer.

October 16, 2006

Marcia McNeil, Vice-Chair

Amy Collum, Member

Joan Gignac, Member