Citation: 2006 BCCCALAB 9 Date: 20061026

Community Care And Assisted Living Appeal Board

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

APPELLANT: SBR
(Operator of a Licenced Child Care Facility)

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

Deborah Bockner, Senior Licensing Officer, Interior Health Authority

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

DECISION

Introduction

[1] This decision concerns the appeal of two determinations made by representatives of the Interior Health Authority (which we will refer to throughout this decision as "Licensing") in relation to the licensed day care facility initially known as Sonya's Quality Child Care and later known as Sonya's Child Care (which we will refer to throughout this decision as the "Facility"). The ultimate result, and focus of this decision, was Licensing's cancellation of the license to operate the Facility on account of persistent inability or unwillingness to comply with licensing requirements by its owner, SBR (who we will refer to throughout this

decision as the “Appellant” but who is also referred to in some of the quoted correspondence as the licensee).

Background

[2] The Appellant, has held a license to operate a childcare facility in British Columbia since 1994.

[3] The Appellant’s original Facility, known as Sonya’s Quality Child Care, was located in Marysville, BC and included a license to operate out of school care, preschool and group day care programs.

[4] In early November 2005, the Facility was relocated to a former school in Kimberly BC and a new licence was issued to the Appellant to operate the Facility under the name of Sonya’s Child Care. The current license for the new Facility was granted on April 14, 2006.

[5] Currently, the Facility is licensed to operate as a group day care program for up to 16 children, but is not licensed to operate an out of school care program.

[6] Licensing’s decision to cancel the current license issued to the Appellant to operate the Facility has been stayed by the Board pending the disposition of the appeal.

[7] The first determination under appeal is the Medical Health Officer’s determination (communicated by a letter dated October 12, 2005 from Deborah Bockner, Senior Licensing Officer of the Interior Health Authority) to accept findings and recommendations in a September 2005 investigation report prepared by Licensing Officer, Jill Johnston, with the assistance of the Senior Licensing Officer.

[8] The first investigation report was initiated because of an allegation against the Facility received by Licensing in February 2005. The process to complete the report was delayed and the final investigation report was not completed until September 2005. We note that the Appellant was provided with a copy of the preliminary summary of the report on August 5, 2005, and had an opportunity to, and did, provide a response before the final report was issued.

[9] The October 12, 2005 determination was subject to a hearing before another panel of this Board on preliminary issues. That panel’s decision resulted in three issues coming before this Panel:

a. whether the Appellant, should have been required to enter into an agreement releasing the decision-making authority for the Facility to a designated manager;

b. whether the Senior Licensing Officer properly placed an expiry date on the license for the Facility located in Marysville; and

c. whether the Senior Licensing Officer properly placed an expiry date on the license for the Facility located in Kimberly.

[10] Further complaints were received by Licensing on January 6, 2006, which led to the preparation and completion of the second report dated February 17, 2006. The second report led the Medical Health Officer to cancel the Appellant's license to operate the Facility, which Clifford Daly, the Assistant Director reconsidered and confirmed in the second determination that is under appeal.

[11] The September 2005 and February 2006 investigation reports found that the Appellant had engaged in a number of contraventions of the *Child Care Regulations* (the "*Regulations*") to the *Community Care & Assisted Living Act* (the *"Act"*). The reports concluded that many of those contraventions were ongoing and had not been corrected despite repeated requests. Without listing each of the contraventions alleged, primary emphasis was placed by Licensing on the following allegations:

a. staff members employed at the Facility did not have the required credentials;

b. contrary to the *Regulations*, children who were registered in the day care program were frequently intermingled with children registered in the out of school program;

c. the Appellant engaged in inappropriate interactions with the parents of children in her care as well as others;

d. appropriate staff to child ratios were not consistently maintained;

e. required documentation for children in care was not complete;

f. appropriate attendance records for children in care were not maintained;

g. a staff member of the Facility required a 4 year old child to sit on a chair for approximately 45 minutes as a time out. This incident was not immediately reported to Licensing; and

h. a child was transported in a vehicle without the use of an appropriate child seat.

Issues

[12] The main issues to be determined in this matter are:

1. Whether the Appellant should have been required to enter an agreement releasing the decision-making authority for the Facility to a designated manager.

2. Whether the Senior Licensing Officer properly placed an expiry date on the license for the Facility located in Marysville.

3. Whether the Senior Licensing Officer properly placed an expiry date on the license for the Facility located in Kimberly.

4. Whether the Assistant Director properly decided to cancel the Appellant's license to operate the Facility.

Discussion and Analysis

I. ROLE OF LICENSING AND RELATIONSHIP WITH THE APPELLANT

[13] Before going further, we will address the relevance to this appeal of the role of Licensing and its relationship with the Appellant.

[14] On the one hand, the Panel received into evidence a document authored by the Senior Licensing Officer entitled "Kootenay Service Area, Community Care Facilities Licensing – Overview of Program and Key Procedures" which identifies that the first responsibility of a licensing officer is to provide information, guidance and consultation related to licensing requirements. On the other hand, we heard evidence, mostly led by the Appellant, of what could be characterized as a dysfunctional relationship between herself and members of Licensing. We are satisfied that those dysfunctions interfered with the parties' abilities to constructively address and resolve licensing issues and became integral to the way they interacted about the problems that culminated in the cancellation of the Facility's license.

[15] The Appellant led evidence, for example, that the Licensing Officer made statements to her to the effect that:

a. she would not issue a license to the Appellant;

b. she would not grant the Appellant exemptions from the *Regulations*;

c. she would not process applications for new licenses for the Facility;

d. as the Appellant was familiar with the *Regulations*, "why are you calling me?"

[16] Although the Licensing Officer did not testify, she was present at the hearing. The evidence about communications with the Licensing Officer did not rest on the Appellant's testimony alone or her perspective and interpretation of the events. In some cases the Appellant's experiences were confirmed or corroborated by emails that were in evidence. She also took significant steps to bring her concerns about what she regarded as improper and unfair treatment to the attention of appropriate Licensing personnel, including the Licensing Officer, the Senior Licensing Officer, the Assistant Director and Don Corrigal, the Manager of the Kootenay office of the Director of Health Protection. Correspondence from Mr. Corrigal, dated October 13, 2005, acknowledged that there were serious communication issues between the Appellant and the Licensing Officer, in particular, and to a lesser extent with the Senior Licensing Officer, and indicated that the Licensing Officer and the Senior Licensing Officer had been spoken to in this regard, presumably by their superior(s).

[17] The Licensing Officer's conduct could have been expected to convey to a reasonable person, and did convey to the Appellant, that the Licensing Officer no longer viewed her role as one of providing assistance to the Appellant to act in a manner that was compliant with the *Regulations*. It was reasonable to infer from the communications and conduct of Licensing that the outcome now under appeal (namely Licensing's cancellation of the license) was predetermined.

[18] We heard evidence that calls to the Licensing Officer from the Appellant were routinely not returned and that e-mails were not acknowledged. While the Licensing Officer may have been very busy, it would have been a simple courtesy to have at least acknowledged the Appellant's calls and identified an appropriate time when her questions could be answered.

[19] One of the findings made by the Licensing Officer in the September 2005 report was that the Facility routinely blended children from two separate programs for periods of time during the day. Rather than communicating to the Appellant that an exemption to the *Regulations* could be requested to address this issue, it is apparent that the Licensing Officer predetermined that such an exemption would not

be granted and communicated that to the Appellant. We do not wish to suggest that such an exemption should have been granted in this case. We are concerned, however, that the Licensing Officer's conduct led the Appellant to perceive, not unreasonably in the circumstances, that her arguments as to why an exemption would have been appropriate would not have been given a fair hearing by Licensing.

[20] The Appellant also testified about a conversation she had with the Licensing Officer in July 2005 concerning a number of applications for licenses for the new Facility relocated to Kimberly in November 2005. The Appellant testified she was told that the applications would not be processed until the investigation report was completed. As noted earlier, the investigation commenced in February 2005 but the report was not completed and provided to the Appellant until September 2005. The Appellant confirmed her understanding of the conversation in an email on July 14, 2005. There was no evidence that the Licensing Officer sent a response to that e-mail or otherwise communicated any disagreement with the Appellant's understanding that Licensing would not process new applications for the Facility until Licensing concluded its investigation report.

[21] The Senior Licensing Officer testified that it was unclear to Licensing who was making the license applications and that Licensing chose not to follow up as they had no contact with the applicants. This evidence was consistent with the finding of the Assistant Director in his April 25, 2006 reconsideration determination where he states at p. 5:

> . . . The delay in processing the applications for a new license were in part due to Ms. Richter having made application on behalf of other individuals, and did not appear to understand that any prospective Applicant/Licensee must make application on their own behalf.

[22] Licensing drew the conclusion, despite the Appellant's efforts to advise them otherwise, that the license applications were not being filed by the third-party signatory but were being filed by the Appellant. Indeed, at one point during the hearing, Mr. Daly seemed surprised when a witness confirmed that in fact it was her signature on the application and not the Appellant's. We fail to understand how Licensing formed the perception that it was unclear who was filing the applications. While the Appellant certainly may have played a role in preparing the applications, the applications themselves appear to be properly completed and to be signed by identified individuals other than the Appellant.

[23] The Senior Licensing Officer testified that the applications were not processed because the applicants did not contact the Licensing Officer. We are mystified by this. The applicants had clearly contacted Licensing by the act of submitting their applications. It was for Licensing to then take appropriate steps to process the applications, including, presumably, contacting the applicants. Had Licensing done this, it could easily have satisfied itself whether the applications were genuine.

[24] The Appellant provided ample evidence to support her suggestion that she was taking all appropriate steps to ensure the continuance of the Facility, including, if necessary, handing over the authority and ownership of the day care to new individuals who she believed were not tainted by the investigations into her own conduct as license owner and Facility manager.

[25] While it may have been the case that Licensing would have ultimately concluded that the Appellant's involvement in the proposed new operation precluded the granting of the licenses sought, simply declining to acknowledge or address the third-party applications robbed those applicants of the opportunity to fairly advance their applications or to appeal any decision to deny the applications.

[26] Licensing's refusal to process the applications and the explanations it provided to us for why that happened were, in our view, not in keeping with Licensing's responsibilities under the *Act*. This unacceptable conduct by Licensing set the scene for even more friction with the Appellant before Licensing issued the license cancellation.

II. THE OCTOBER 12, 2005 DETERMINATION

A. Investigation findings

[27] As noted-above, the first decision under appeal followed an investigation report completed in September 2005. That investigated two complaints received by Licensing in February 2005 including a complaint that:

a. a staff person at the Facility had placed a child in a "time out" chair for over 45 minutes; and

b. the Appellant had inappropriately managed custody and family communications issues, as well as permitting a child to be transported in an unsafe manner by a Facility staff.

[28] In addition, the investigation reviewed the following concerns:

a. that the Appellant had failed to report to Licensing two serious incidents, including a child biting another child and

kicking a staff member as well as a possible allegation of abuse within a child's home;

b. a failure to meet child/staff ratios on a consistent basis;

c. maintenance of accurate child attendance records; and

d. posting in a public area personal information about parent clients in the Facility.

[29] The report includes the following findings:

> At this time Licensing lacks confidence in Ms. Sonya Blanes-Richter to comply with the legislation and has serious doubts about her ability as a licensee/manager.
>
> The licensee has communicated her intention to close the facility in early October. A new application to relocate the child care programs was received by Licensing on September 8, 2005.

[30] The report concluded that:

> Given the licensee's intention to close this Facility within the month, it is recommended that the Medical Health Officer take no action on the status of the license for Sonya's Quality Child Care Centre.
>
> In the event the licensee does not cease her current facility operation by October 31, 2005, it is recommended that a condition be placed on the license establishing an expiry date of December 1, 2005 and that the Licensing Authority conduct a full review of the facility operations.
>
> It is recommended that future applications from this Licensee to operate a community care facility be reviewed with full consideration of the conclusions reached in this investigation.
>
> It is recommended that by copy of this report, the early Childhood Educator Registry be advised of the Licensing Authority's concerns regarding this licensee's ability to operate a community care facility in compliance with the *Community Care and Assisted Living Act* and the *Child Care Licensing Regulation*.

[31] The determination dated October 12, 2005 adopted each of these recommendations.

B. Appointment of designated manager

[32] On October 27, 2005, a meeting was held between the Appellant and representatives of Licensing to follow up on the recommendation that the investigation report should be considered in reviewing any application by the Appellant to operate a community care facility.

[33] One of the outcomes of that meeting appears to be that the Appellant signed a document delegating the authority for operating the new Facility to a new manager, namely, Debbie Gawryletz. The Appellant has appealed what she characterizes as Licensing's imposition of this requirement.

[34] It became apparent during the course of this hearing that the Appellant's decision to remove herself from the role of manager and put Ms. Gawryletz in that role was not part of the Appellant's ongoing plans for the Facility. She made this decision because she understood from her previous communications with the Licensing Officer that she would not be issued a license as long as she remained in charge of the Facility. The Appellant clearly attempted to take whatever steps she felt would satisfy Licensing that the day care should continue to operate.

[35] Licensing's response to this issue on appeal was that the Appellant voluntarily put forward a new manager and the requirement that the Appellant sign the delegation of authority to the new manager was part of the normal process when a licensed Facility is operated under the care of a manager who was not the owner/operator.

[36] The Panel accepts that the new manager's installation made the Appellant's delegation of authority to her appropriate. We also find that the interactions around the Appellant providing the delegation document to Licensing were symptomatic of the breakdown in communication between the parties. The Appellant's concern was not that she was required to sign the form, but that she was forced to insert a new manager at all. More open communication between the Appellant, the Licensing Officer and the Senior Licensing Officer would have at least clarified the issue from the Appellant's perspective and, if she did not agree with the insertion of a manager, would have led to a timely and properly transparent determination by Licensing to impose that requirement as a license restriction, which the Appellant could then decide to appeal or not.

C. Expiry dates on the license

[37] While the initial decision of Licensing was that the Marysville Facility should operate with an expiry date of December 1, 2005, through a series of subsequent events, the Facility continued to be granted time limited licenses to operate in Kimberly.

[38] Licensing ultimately decided to cancel the license to operate the Facility, on the basis of both the September 2005 and the February 2006 investigation reports. By virtue of the stay orders of this Panel, the Facility has continued to be licensed to operate pending the hearing and outcome of this appeal of the license cancellation decision. Since both reports were considered in the determination by Licensing to cancel the Facility's license, we will analyze the compliance issues raised in the reports later in this decision, in our consideration of the cancellation of the license.

[39] Our decision on the issue of the time limits placed on the license follows.

[40] Section 11(3) of the *Act* provides:

> On issuing a license under subsection (1), a medical health officer may attach the terms and conditions to the license, subject to this Act and the Regulations, that the medical health officer considers necessary or advisable for the health and safety of persons in care.

[41] There is no doubt that a medical health officer has the authority to determine that a license should operate with an expiry date.

[42] We do not dispute that the specific issues considered by Licensing in rendering its decision to place an expiry date on the Facility license were relevant to such a determination. However, a review of the correspondence from Licensing demonstrates that it was their hope that the compliance problems would be resolved by the Appellant closing the Facility.

[43] Effectively, the Senior Licensing Officer's October 12, 2005 letter concludes that a decision would be made about whether the Facility should continue to operate only if the Appellant did not voluntarily cease operation.

[44] Once again, we find this decision of Licensing was seriously misguided. It was abundantly evident by the fall of 2005 that the Appellant had taken extraordinary steps to continue the operation of the Facility, whether it be under her ownership or management or under the

ownership or management of some other individual or organization. The decision of Licensing effectively ignored all of these efforts.

[45] This Panel finds that Licensing's decision left the Appellant in a "Catch 22" situation. The various applications that had been made for the continued operation of the Facility were not being processed by Licensing, purportedly pending their decision with respect to the existing license. Licensing then decided it would only determine the status of the license if the Appellant continued to indicate an interest or desire to operate the Facility.

[46] We find that it was unfair of Licensing not to provide the Appellant with a timely and transparent determination that clarified and defined her options for proceeding. The imposition of a time limit on the Facility's license ultimately became moot because of subsequent events, but we find that the decision to impose a time limit was unfair to the Appellant.

[47] We find that by October 12, 2005, the Appellant was entitled to a determination from Licensing about the status of her license which would provide her with the options of:

a. continuing to operate the Facility under any restrictions that may have been imposed;

b. continuing to make efforts to sell her business; or

c. appealing all or part of the determination to this Board.

III. CANCELLATION OF THE LICENSE

A. Blending of Programs

[48] In 1999, the Facility was issued a license that included an exemption allowing the blending of group day care children with out of school care children for the first 40 minutes and last 40 minutes of the day. This exemption was necessary as the *Regulations* at the time only permitted blended programs for 30 minutes per day.

[49] In 2001, the Licensing Officer conducted a Facility inspection and determined that under the *Regulations* that existed at that time the Appellant would be required to apply for an exemption to permit continued blending of the two programs. A deadline of June 1, 2002 was established for the application for the exemption. The need for an exemption was again noted in a Facility inspection report dated February 19, 2002, although, the permission to blend was extended to June 30, 2002, presumably to recognize the end of that school year.

[50] The Appellant confirmed in her testimony that she did blend the programs and that she had not applied for an exemption. In the absence of the exemption, any continued blending of programs was no longer permitted under the *Regulations*.

[51] The Appellant explained in her testimony that she did not apply for an exemption on the license to permit blending because, at some point, the Licensing Officer advised her that she would not grant such an exemption if the Appellant applied for it.

[52] The evidence presented to the Panel supports the suggestion made by Licensing that blending occurred on a regular basis, at least until April 2006.

[53] For example, a facility inspection report prepared in September 2002 identifies blending of programs at that time. The Appellant was advised in a letter from Interior Health on July 25, 2003 that blending of programs was a contravention of the *Regulations*.

[54] Blending was again noted in facility inspection reports prepared in September 2005 and January 2006. The then Facility manager confirmed that blending of childcare programs occurred at the centre on a regular basis to the knowledge of the Appellant.

[55] In February 2006, the Facility manager wrote to the Licensing Officer and confirmed that blending was no longer occurring. Further, as of March 2006, the Facility no longer offered out of school care programs and was licensed and operating only group day care programs. Accordingly, assurances were given that blending no longer occurred.

[56] While we are certainly concerned with the impression left by the Licensing Officer, as noted above, that she had pre-determined that she would not grant an exemption to the Appellant, it is also of concern to this Panel that in the absence of a valid exemption, the Appellant continued to act in contravention of the *Regulations*. We accept that blending of programs has stopped because only one program is now being provided, but we also conclude that the Appellant knowingly ignored the requirements of the *Regulations* regarding the separation of programs because they were not operationally convenient to her.

B. Child Staff Ratios

[57] The evidence demonstrates that on inspection, the Facility was not compliant with the child/staff ratios established by the *Regulations*. These contraventions are noted in facility inspection reports prepared in September 2002 and May 2003. Further, the facility inspection report prepared in September 2005 notes:

> A review of attendance records, transportation records and staff schedules indicated that child/staff ratios were not consistently met.

[58] In a response prepared by the Appellant to the initial report, and dated August 15, 2005, she noted:

> I – the Licensee acknowledge that for the maximum of 10 minutes it takes to drive to the Marysville school (2 blocks away) and back – to pick up a kindergarten student at 11 am every morning – I have in the past left one staff and one supported child care staff at the centre with an average daily attendance of 10 children at that time. A support worker is at the day care every am until 12 noon.

[59] Section 46(b) of the *Regulations* require that for each group of 9 to 16 children, one early childhood educator and one assistant must be present. An assistant does not include a support worker.

[60] In November 2005, the Licensing Officer requested that a staff schedule be prepared. This was prepared and submitted by the Appellant on January 5, 2006. However, in discussions between the Licensing Officer and the Facility manager, the manager admitted that she was not familiar with the schedule that had been submitted by the Appellant. The Appellant admitted in the course of the hearing that the schedule presented did not accurately reflect the staffing, as she was included on the schedule but had obtained another position that did not permit her to work at the Facility on Tuesdays or Thursdays.

[61] The evidence demonstrates that the Appellant submitted a schedule that she knew was inaccurate or that she did not notify Licensing that the schedule was no longer accurate after she accepted other employment.

[62] It also became apparent in the evidence led at the hearing that a significant number of the issues relating to the staff to child ratios arose because of the Facility's service of transporting children to and from the day care for school programs. The transportation service was suspended in March 2006 and with the reduction of the programs offered by the Facility it appears that staffing may not currently be an issue.

[63] As with the previous issue raised, it remains, however, a concern of this Panel that despite being notified that the ratios established by the *Regulations* needed to be maintained, the Appellant continued to have inadequate staff available to maintain the needed ratios from time to time, and especially while transporting children to and from the Facility.

C. Staff Qualifications

[64] The evidence presented at the hearing demonstrated that there were several occasions where staff employed at the Facility did not have the requisite qualifications. Specifically:

a. Betsy continued to work as an early childhood educator after her certification expired.

b. Maya was certified as a public school teacher but did not have early childhood educator qualifications. It was admitted by the Appellant that this staff member did occasionally substitute in the group day care program, although she did not have approved assistant qualifications for a group program.

c. Tammy was hired in September 2004, but had not completed the hours of work required to obtain her ECE qualifications.

[65] In response the Appellant admitted that in the latter two cases she was aware that the individuals had not completed all of the requirements for their qualifications. In the case of the first staff member, she and Betsy had been unaware that her license had expired. The Appellant testified that she had difficulty finding qualified staff and that this was a re-occurring problem throughout the region. Other witnesses confirmed this testimony.

[66] The Appellant's inspection reports dating from 1999 demonstrated that the files on site did not contain up-to-date staff qualification information and in 2002, an inspection report demonstrated that two of the staff did not have confirmed qualifications for their positions.

[67] We find that the Appellant failed to meet regulatory requirements with respect to staff qualifications and that she did not seek an exemption to these requirements.

D. Record Keeping

[68] Although there were a number of issues raised with deficient record keeping, some of these issues will be discussed under other headings. However, one issue was raised throughout the course of the hearing specifically with respect to recording children's attendance. A concern was raised in an inspection report in May 2005 that although attendance records had been prepared, the attendance records did not actually reflect the children present and that staff were unfamiliar with the attendance documentation. The Appellant did not deny this.

[69] We find that the Appellant did not meet the requirements of the *Regulations* with respect to attendance records.

E. Inappropriate Contact with Parents and Others

[70] Two incidents in particular were relied on by Licensing as evidence that the Appellant did not maintain appropriate boundaries with parents and that inappropriate comments were made by her to parents and others.

[71] The first incident involved a discussion the Appellant had with the father of two children in her care. The mother of these two children noted on an entry intake form used by the Facility:

> Right now I have sole custody but will let day care know if the father will be picking the child up before hand.

[72] The mother testified at the hearing that at the time the entry was made she had sole custody of the children and there was not a restraining order against the father in place. The father would from time to time pick up the children. A restraining order was issued by the court against the father on January 19, 2005. The mother advised the Appellant of the restraining order but she did not have a copy of the order as she was advised that she would not get a copy and that it was only provided to the father. The intake form was amended by the mother to show:

> Will not be picking up the kids ever.

[73] Both the Appellant and the mother confirmed that the Appellant inserted the word “Dad” in front of the entry to clarify who would not be picking up the children.

[74] There was a discrepancy between the investigation report and the evidence with respect to what further information the Appellant was given. It was confirmed in evidence that the Appellant was advised by the mother that there was a restraining order in place and that the father was not to pick up the children. The investigation report prepared by the Licensing Officer in September 2005 also found that the mother advised the Appellant that no personal information regarding the children or herself should be shared with the father.

[75] During the course of her testimony the mother did not suggest that she had made such a statement to the Appellant and we note that the Appellant denied that such a statement had been made to her.

[76] The Appellant acknowledged that the father attended at the day care on one occasion when his children were not in attendance. The

Appellant and a practicum student who was working at the Facility advised him that he really needed to let his children know that he loved them because their behaviour reflected that they did not believe that he did and that he should seek some counselling to better himself for his children. The practicum student provided the father with information on how parents can help their children through divorce in the form of a book or pamphlet.

[77] With respect to this matter we find that the evidence demonstrates that there was insufficient communication between the mother and the Appellant to provide the Facility's staff adequate instructions with respect to the attendance by the father at the day care. We find that the Appellant should have been more diligent in this regard to ensure that she had a clear understanding of the mother's instructions and that these instructions were clearly documented in the children's file.

[78] We also accept the mother's testimony that the Appellant's comments to the father may have exposed her or her children to additional risk. Specifically, by encouraging more contact with his children, the Appellant may have been involving herself in a matter in which she did not fully appreciate the consequences.

[79] While we accept that the Appellant intended no harm by her actions, it does concern us that even in the course of the hearing of this matter, she appeared to accept no responsibility for her comments and appeared to be unable to understand the additional risk she may have caused the mother or her children.

[80] That being said, we also find that the decision of Licensing accepted without proper analysis statements made by the mother that were denied by the Appellant. It is the view of this Panel that the Licensing Officer conducting the initial investigation did a superficial analysis of the information that reflected a general bias against the Appellant.

[81] The mother also testified about an incident between the children's maternal grandmother and the Appellant. She testified that the Appellant had improperly discussed her personal matters with the grandmother.

[82] Licensing accepted this evidence without discussing the matter with the grandmother and also accepted that the incident had been frightening to the child, who was present.

[83] In her evidence, the Appellant acknowledged that she had a discussion with the grandmother within proximity to the child. The nature of the conversation arose as a result of some confusion as to who

was picking up the child from school on the day in question. We accept that the conversation arose on an innocent basis.

[84] The Appellant further admitted that she touched the grandmother on her arm, but said she did not do so in anger and that the touch was not aggressive. The Appellant also admits that she attempted to engage the grandmother in a conversation about her previous conversation with the father, to confirm that she had done nothing wrong. She also confirmed that she had been told by the mother that she was not to discuss matters involving her children with her mother.

[85] We again find that Licensing drew conclusions without a proper analysis of the information presented to it. Without discussing the matter with the grandmother, we do not understand how Licensing could come to the conclusion that the Appellant had touched her aggressively, or that she had frightened the child. Certainly, this Panel is unable to draw that conclusion, as the grandmother did not testify in the proceedings before us, and the only other witness to the events who testified, the Appellant, denied that her behaviour was either aggressive or frightening.

[86] However, the Appellant's own evidence in this matter confirms that she attempted to engage in a conversation with the grandmother when she had previously been advised by the mother not to do so. We find that the Appellant did over-step appropriate boundaries to this extent.

[87] We also heard evidence about another matter involving the Appellant and another parent. In their second investigation report, Licensing found that the Appellant had made statements to this parent that suggested that her children were at risk of government apprehension and that the children's respite caregiver should not be trusted. Both the parent and the Appellant testified about the incident.

[88] When the parent testified, she was extremely emotional and we accept that she was genuinely concerned by the statements made by the Appellant. This concern arose in part because of her experiences with the Ministry for Children and Families in relation to the custody of her children.

[89] The evidence provided by the Appellant to Licensing and in the hearing before this Panel asserted that it was her experience that the parent's children needed significant supports in order to integrate well into her group day care setting, but that their relief care providers suggested that, in their experience, such supports were not necessary as the children were well behaved when in their care. The Appellant admitted that she may have suggested to the parent that she questioned

the motives of the relief caregivers in making such statements and that she should be careful who she trusted.

[90] Our assessment of the Appellant's interaction with the parent is that the Appellant acted in her own interest. The Appellant made her comments to the parent out of self-concern that the caregivers were suggesting that the care provided by her Facility was some how in question because the children were not as well behaved while attending the day care as in other circumstances.

[91] We also accept that the parent drew the conclusion that the Appellant was suggesting that her parenting was in question, that she should not trust the relief caregivers and the children might be at risk of government apprehension.

[92] Although the parent may have misinterpreted the intent of the Appellant's comments, we find that her interpretation of the comments was not unreasonable in all the circumstances. Again, we are concerned that the Appellant did not fully appreciate the impact her comments may have had on the parent and that her actions after the incident came to the attention of Licensing were designed to protect her own interests rather than to fully recognize how the comments could have been misinterpreted.

[93] We continue to be critical of the manner in which Licensing investigated this matter. We find that the Appellant, though misdirected and imprudent in her communication, did not state or intend to suggest that the parent's children were at risk of apprehension. However, the parent did reasonably interpret the comments in this manner. Licensing did not take the opportunity to adequately clarify the Appellant's version of the events.

F. Time Out

[94] There is no dispute between the parties that in February 2005 a child was told by a Facility staff member to sit on a chair as a form of timeout that lasted approximately 45 minutes. It is also accepted by both parties that a 45 minute time out is excessive.

[95] It is further accepted by the parties that the matter was not immediately reported by the Appellant to Licensing. In fact, the matter did not come to the attention of the Appellant until several days after it occurred. A practicum student who was working in the Facility at the time observed the interaction and was uncertain how to proceed. She raised the matter with one of her instructors who then arranged to meet to discuss the matter with the Appellant.

[96] The discussion between the practicum student and the Appellant occurred on February 4, approximately a week after the incident occurred.

[97] The Appellant determined that the employee who had placed the child on the time out did so in part because of a difficult pregnancy. She recognized that the same staff member had been having ongoing problems properly managing the children in her care. As a result the Appellant removed the staff member from the schedule and placed her on an early maternity leave.

[98] The Appellant did ultimately file a report with Licensing on February 8. That report notes on it:

> Unreported due to past difficulty with Licensing Officer and Sonya dealt with staff problem.

[99] While the incident itself is cause for concern, once it came to the attention of the Appellant we find she acted appropriately by relieving the staff member in question of her duties. We accept that it was not a common practice within the Facility to place children on time outs for such a lengthy period of time. We also accept that while time outs were used, they were not used as the primary method of correcting children's behaviour and that when used, the time out was of a reasonable duration.

[100] We are however concerned that when the incident came to the Appellant's attention she did not immediately report it to Licensing as a result of her interpersonal difficulties with the Licensing Officer.

[101] The Panel cannot have confidence that the Appellant will comply with the requirements of the *Act* and *Regulations* where she deliberately chooses to ignore them as a result of her difficulties with Licensing. We are also concerned that Licensing continued to emphasize this issue during the course of the proceedings without any recognition of the Appellant's appropriate response with the staff member in question after the matter came to her attention.

G. Car Seat Incident

[102] The first investigation report concluded that on one occasion a staff member of the Facility transported a child in a car that did not have an appropriate child seat. While the Appellant admits the incident, she maintained in her responses to Licensing and in the course of the hearing that the parents of this child often transported the child in a similar manner and therefore the incident was not of serious consequence.

[103] Again, the Panel has difficulty maintaining confidence that incidents of this nature will not reoccur where the Appellant continued to deflect responsibility for the incident and not acknowledge the seriousness of it. While this incident appears to be a unique event, the Panel does not have confidence that it would not reoccur in the future if similar circumstances arose.

Conclusion

[104] This Panel has struggled throughout these proceedings with the evidence led by both Licensing and by the Appellant. We accept that there is a long-standing and deep-rooted distrust between these parties which arose largely out of significant communication difficulties. We find that responsibility for those communication difficulties was shared between the Appellant and the Licensing Officer in particular and to a lesser extent the Senior Licensing Officer and the Assistant Director who conducted the reconsideration.

[105] The Panel is left to wonder if the difficulties noted in the inspection reports prepared by the Licensing Officer would have or could have been alleviated had the Licensing Officer established a more positive and cooperative relationship with the Appellant from the start. If Licensing had properly accepted its role as involving a component of education and guidance and, if it had properly used more progressive techniques to demonstrate to the Appellant the standards it required of her, we wonder if we would now be hearing an appeal into a decision to cancel the Facility's license.

[106] On the other hand, as we have noted above, it appears that the Appellant simply choose to ignore the requirements of the *Act* and *Regulations* where they were not convenient to her. Further, we are concerned that the Appellant demonstrated through her testimony that on many occasions she did not take responsibility for her actions but attempted to deflect the criticism elsewhere. This does not leave the Panel with confidence that she is capable of operating this Facility and properly accepting the responsibilities as licensee/manager in future.

[107] With respect to the specific issues raised in this appeal our findings follow:

1. Should the Appellant have been required to enter an agreement releasing the decision-making authority for the Facility to a designated manager?

[108] We find that the requirement that she enter into an agreement releasing the authority to the designated manager was appropriate, once the decision was made to install a new Facility manager. We also find

that the breakdown in communication between the Appellant and Licensing led to this issue being referred to this Board. We accept that the decision by the Appellant to install the facility manager was not entirely voluntary, but rather was proposed, and ultimately accepted by Licensing, as a method to ensure the continued operation of the Facility.

2. Did the Senior Licensing Officer properly place an expiry date on the license for the Facility located in Marysville?

[109] We find that the expiry date should not have been placed on the license of the Facility located in Marysville. We find that Licensing had a responsibility to make a determination as to the status of the license, which would have clarified the options available to the Appellant.

3. Did the Senior Licensing Officer properly place an expiry date on the license for the Facility located in Kimberly?

[110] On this question, for the same reasons set out in question 2, we find that the action of Licensing was inappropriate.

4. Did the Assistant Director properly decide to cancel the license held by the Facility?

[111] Pursuant to section 29(11) of the *Act* the Appellant bears the burden of proving that the decision under appeal was not justified. The evidence before us has demonstrated that the Appellant has consciously made decisions that contradict the *Act* and *Regulations*. Those decisions exposed the children in the Facility to risk of harm. As a result Licensing had sufficient evidence to support the decision to cancel the licence. Therefore, on this question we find that the decision was justified and the license was properly cancelled.

[112] However, as a new school year has commenced, and in order to permit the parents of the children currently attending the Facility an opportunity to make new arrangements for child care, the Panel has concluded that the current license should continue to be effective until December 31, 2006. Licensing remains free to apply to this Panel to cancel the license immediately if emergent circumstances come to its attention.

[113] We also anticipate that this order will give Licensing an opportunity to consider and process any new applications which are filed to operate the Facility.

[114] It is the hope of this panel that the communities of Kimberly and Maryville will continue to be serviced by safe and well-managed day care facilities. We trust that Licensing will take a more constructive role in this process and will not limit their responsibility to that of enforcement.

[115] After carefully considering all the evidence and submissions before the Panel, and for all the reasons stated above, the Panel finds that the imposition of expiry dates on the Appellant's licences for the Facility was inappropriate in all the circumstances but that the decision to cancel the Appellant's licence to operate the Facility was justified and reasonable. The licence cancellation is hereby confirmed, however the effective date is varied to be December 31, 2006.

October 26, 2006

Marcia McNeil, Vice-Chair

Amy Collum, Member

Joan Gignac, Member