

COMMUNITY CARE AND ASSISTED LIVING APPEAL BOARD

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

APPELLANT: KR, Licensee
(operating Happy Hearts Daycare)

RESPONDENT: Suzanne Sellin, Manager, Community Care Facilities Licensing,
Fraser Health Authority

PANEL: Susan E. Ross, Chair

Conditional Stay Order Pending Disposition of Appeal

[1] The appellant operates a licensed community care facility called Happy Hearts Daycare in Langley, British Columbia. In a reconsideration decision dated August 8, 2007, under section 17 of the *Community Care and Assisted Living Act* ("CCALA"), the respondent, Suzanne Sellin, Manager, Community Care facilities Licensing, Fraser Health Authority ("FHA"), confirmed the June 22, 2007, decision of Licensing Officer Denise Carr to cancel the licence of Happy Hearts Daycare. The initial licence cancellation was effective August 10, 2007, but the reconsideration decision varied the effective date as follows:

...I am prepared to vary the initial closure date to provide parents with sufficient time to find alternate care for their children. The closure date is now set at midnight on Friday, September 14, 2007.

[2] On September 7, 2007, the appellant filed an appeal of the reconsideration decision. She also requested an order staying the cancellation of the licence until the completion of her appeal. The Board's authority to stay the cancellation decision and to attach terms or conditions to its order comes from sections 15, 26(9) and 50(2) of the *Administrative Tribunals Act* ("ATA") and section 29(6) of the CCALA. Sections 15, 26(9) and 50(2) of the ATA empower the Board (or the Board Chair or her delegate) to make interim orders and to attach terms or conditions on orders. Section 29(6) of the CCALA provides that the Board may not stay or suspend a decision unless it is satisfied, on summary application, that doing so would not risk the health or safety of a person in care. Risk to the health or safety of the children who attend Happy Hearts Daycare is therefore an indispensable, and the single

most important, consideration for the Board in deciding whether to order a stay of the cancellation of the facility licence pending this appeal.

[3] The Board has the appellant's September 7, 2007 notice of appeal and request for a stay of the licence cancellation under appeal (5 pages), the FHA's August 8, 2007 reconsideration decision that confirmed cancellation of the licence (8 pages), the FHA's June 22, 2007 investigation report and licence cancellation decision (53 pages plus voluminous attachments), the appellant's July 2007 response to the June 22, 2007 report (5 pages plus attachments), the FHA's September 11, 2007 response to the request for a stay order (3 pages) and the appellant's September 13, 2007 reply to the FHA's response (4 pages plus attachments). All of these materials have been reviewed, with the exception of detailed perusal of the very voluminous attachments to the June 22, 2007 report.

[4] The June 22, 2007 report is a review of the complete licensing history of Happy Hearts Daycare. The preparation of the report commenced in December 2006 after the FHA decided that the appellant was not suitably responding to a substantiated June 2006 complaint of lack of supervision and inappropriate conduct by staff, which had involved a child being left unattended in a vehicle while the appellant made purchases at a grocery store. The June 22, 2007 report took some months to prepare and it is comprehensive in nature. The FHA issued moderate hazard ratings for the facility in August and December 2006 and a low hazard rating in September 2006, but no added restrictions were put on the licence while the FHA's complete review was underway nor were there further reported incidents or complaints after July 2006.

[5] The June 22, 2007 report describes numerous compliance concerns over the years, some more serious than others. Particularly notable are observations of some 10 substantiated complaints/incidents from October 1993 to June 2006 relating to lack of supervision of children by the appellant. They center most seriously on transportation and field trips: leaving children in care unattended in vehicles or leaving them behind in public places, some double seat belting and generally not attending to them with an appropriate level of care, attention and supervision. The author of the report concluded that the appellant downplayed the seriousness of the incidents and, rather than correcting the problems, continued to expose children in her care to such safety risks. The summary to the report stated as follows:

It is found that [the appellant] continues to place children at risk by engaging in high risk practices such as locking children inside the vehicle "keys in hand" while using the bank machine, while she picks up children from their home and while checking to see if the corner store has popsicles.

It is also found that [the appellant] does not accept her responsibilities as licensee and attempts to deflect blame on others. There are repeated patterns of [the appellant] fluctuating between expressing gratitude toward

Licensing and then when required to produce further information expresses frustration and anger.

...[The appellant] continues to put herself out as a highly respected, professional, quality care provider. When she does admit any wrong-doing it typically takes the form of using the incident as an opportunity for personal growth. Of great concern is that making critical errors resulting in safety risks for children appears not to be taken seriously enough to cause lasting change.

* * *

Regarding ability, training and experience, it is found that [the Appellant] has obtained certification in Early Childhood Development however lacks the knowledge and skills required as demonstrated in the evidence, for example the large number of investigations into incidents and complaints. Decisions are made by [the appellant] which increases the risk of serious injury to children during times when transportation is occurring, when accessing community events, and when running personal errands.

It is found that [the appellant] has actively ignored the clear and strong verbal and written advisements of the Licensing Department in which she was cautioned of further action should supervision continued to be of issue. [The appellant] has submitted many statements to suggest that she has "learned through her mistakes" yet repeatedly engages in similar practices placing children in her care at risk.

[6] In her July 2007 response to the June 22, 2007 report, the appellant proposed to no longer drive children in care to and from school or to outside activities. She indicated that she had hired a qualified caregiver whose specific role would be to drive children to and from school starting in September 2007. The FHA considered and rejected this in the August 8, 2007 reconsideration decision under appeal for the following reasons:

I contemplated whether I could substitute Ms. Carr's decision and allow you to continue to operate under terms and conditions, such as, using a second care provider to provide transportation. I cannot, however, be confident that having a second care provider provide transportation to and from school is going to reduce the overall risk to children, as serious incidents have occurred outside that activity. For example, even in your home environment, should you be restricted to it under terms and conditions, you have refused to comply with Guidelines and Standards pertaining to the use of resilient surfacing under Outdoor Play Equipment. You expressed to me at the time of my June 18, 2007 visit that you do not want to mess up your back yard and that you believe that some of the surfacing materials are unsafe. Children therefore cannot use the equipment in your backyard.

Health, safety and injury prevention must be a pro-active attitude and a constant state of mind. The decision report clearly shows a pattern that you do not do this. The decision report illustrates to me that you do not possess the safety and injury prevention orientation needed to ensure the ongoing health, safety and well-being of children in your care. In addition I do not have the confidence, based on the reoccurring nature of the contraventions that you would be able to maintain compliance to terms and conditions.

[7] In her request for a stay of the cancellation decision pending completion of the appeal, the appellant repeated her willingness to become home-based and hire an assistant with responsibility for taking children to and from school and outside activities:

I also outlined in my "Request for Reconsideration", further plans of hiring an assistant and to be home based. I was and am willing to give this a try.

[8] The FHA does not support a stay of the cancellation decision pending the completion of the appeal. It does not have confidence in the appellant's judgment with respect to safety risks to children. It is concerned that her poor supervision practices for children while in the community also extends to poor decision-making by her about safety risks at the home base. It reiterates that the appellant has had to close large equipment in the outdoor play area at Happy Hearts Daycare to the use of the children in care for lack of required resilient surfacing. It takes the view that the appellant had a fair and reasonable amount of time for the orderly closure of the facility and that any current complications around affected families making alternate arrangements for the care of their children are the result of the appellant's lack of planning with parents. The FHA has, alternatively, submitted minimum terms and conditions to any stay order the Board might consider.

[9] In reply to the FHA's opposition to her request for a stay of the licence cancellation pending completion of her appeal, the appellant has offered information around adequate time for closing Happy Hearts Daycare, the needs and disruptions for families around moving their children to new child care facilities and her intention on the appeal to vigorously defend her fitness as a licensee.

[10] The FHA's June 22, 2007 report is comprehensive and its reconsideration decision appears to have been thoughtfully undertaken in a procedurally fair manner. The licensing history involved is extensive and the appellant, under section 29(12) of the *Community Care and Assisted Living Act*, "bears the burden of proving that the decision under appeal was not justified". This may prove difficult. The Board cannot say with sureness however, that the appeal has no hope of succeeding in some significant measure such as, for example, the substitution of lesser or different remedial action.

[11] The apparent absence of reported complaints/ incidents from July 2006 is also significant.

[12] Compliance concerns around the appellant's closure of large equipment in the outdoor play area, necessitated by the FHA's policy respecting resilient surfacing, important though they may be, are overstated as an impediment to an interim stay of the licence cancellation.

[13] The critical risk to the health and safety of children in care that is posed by the requested stay order is safety risk associated with the appellant's transporting and taking children to and from school and outside activities such as 'field trips', programmed classes (gymnastics, swimming etc.) and personal errands. In the Board's view, these can be addressed through new restrictive terms and conditions and an expeditious processing of the appeal.

[14] 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 the disposition of the appeal or further order of the Board, whichever comes sooner, on the following conditions:

- a) The appellant will not take children in care off-site. An alternate qualified adult person will provide any transport and care off-site. Children who are not required to be transported, will remain on site at Happy Hearts Daycare.
- b) There will be no new or additional enrollments.
- c) No emergency or drop in care will be provided.
- d) Use of the on-site based outdoor play area continues to be restricted to areas that have been previously identified as safe. Equipment identified as unsafe in existing inspection reports will not be used by children in care. Transport and care of children for play at off-site parks will be provided by an alternate qualified adult person.
- e) The parties will accommodate the scheduling of an early hearing date of the appeal.
- f) The appellant will comply strictly with this order and existing conditions attached to the facility licence.
- g) The appellant will ensure that 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.
- h) The appellant will fully cooperate with all continued monitoring by the FHA;
- i) The appellant will forthwith provide a copy of this order to a responsible parent or guardian of each child in care at Happy Hearts Daycare.

[15] The FHA 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 Happy Hearts Daycare 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.

[16] 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 and is not a determination or reflection on its merits.

September 14, 2007

Susan E. Ross, Chair