

## COMMUNITY CARE AND ASSISTED LIVING APPEAL BOARD

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

**Appellant:** MP, Licensee  
(operating Happy Smiles Daycare)

**Respondent:** Dr. Richard S. Stanwick, Chief Medical Health Officer,  
Vancouver Island Health Authority

**Panel:** Gordon Armour, Panel Chair  
Joan Gignac, Member  
Mary-Ann Pfeifer, Member

**Appearances:** MP On her own behalf  
Guy McDannold Counsel for the Respondent

### Reasons for Decision

#### INTRODUCTION

[1] On June 12, 2008, MP (who we will refer to in this decision as the "Appellant") filed an appeal to the Community Care and Assisted Living Appeal Board (the "Board") from the May 13, 2008 decision of Dr. Richard Stanwick, the Chief Medical Health Officer, Vancouver Island Health Authority to cancel the Appellant's licence to operate Happy Smiles Daycare (the "Daycare") in Victoria, British Columbia, under of the *Community Care and Assisted Living Act* (the "Act"). In this decision we will refer to Dr. Stanwick and the Community Care Facilities Licensing Program together as "Licensing". The decision to cancel the licence was made effective June 30, 2008. The Appellant also requested the Board to make an order staying the licence cancellation until the completion of her appeal.

[2] On June 26, 2008 the Board Chair granted a conditional stay of the licence cancellation until August 31, 2008. The hearing commenced on August 29, 2008 and continued on September 12 and September 19, 2008. The conditional stay was extended during the continuation of the hearing.

[3] On September 19, 2008, at the conclusion of the hearing, the presiding panel of the Board (the "Panel") issued an oral decision dismissing the appeal, with written reasons to follow, in the following terms:

The Panel upholds the cancellation of the licence of Happy Smiles Daycare effective midnight, October 31st, 2008, subject to the following conditions, to be in effect up to and including the effective date of the cancellation:

- There be no new or additional enrolments to the daycare;
- The Appellant will fully cooperate with all continued monitoring by the Vancouver Island Health Authority;
- The Appellant will comply strictly with this order and any existing conditions attached to the daycare licence;
- The Appellant will ensure that the daycare is in full compliance with the *Community Care and Assisted Living Act* and the Childcare Licensing Regulation; and
- That there be no transportation of children in any motor vehicle for the duration until the effective date of the cancellation.

[4] These are the Panel's reasons for decision.

## **ISSUE**

[5] The issue is whether the decision to cancel the Appellant's licence to operate the Daycare was justified in all the circumstances.

## **BACKGROUND**

[6] The Appellant has held a licence to operate the Daycare since March 2001. The Daycare provides care for both preschool children and out-of-school care and has a current licensed capacity of up to 26 children. The limit allows for up to 16 children in Group Child Care (30 months to School Age) and up to 10 children in Group Child Care (School Age). Conditions on the licence also prohibit the preschool age and out-of-school programs from operating in the same space concurrently.

[7] Up to and including September 2006, Licensing had completed seven routine inspections of the Daycare. Of these inspections, five gave the facility a high, one a moderate and one a low hazard rating.

[8] On November 2, 2006, Licensing did a follow up inspection to the inspection it had completed on September 22, 2006. This follow up inspection gave the Daycare a high hazard rating due to outstanding items and new observations that were noted. Licensing then conducted a file review and on January 2, 2007, wrote to the Appellant providing a detailed licensing history of the facility and informing her that future recurrences of

the contraventions noted could result in Licensing staff recommending that action be taken against the facility licence.

[9] On February 2, 2007, Licensing conducted another follow up inspection. During this visit, the Appellant confirmed receiving the January 2, 2007, letter from Licensing. All items from the last inspection had been completed with the exception of missing information from children's documents. It was also noted that some staff changeover had occurred at the Daycare and the two new staff members did not have criminal record check results. A moderate hazard rating was assigned.

[10] On April 18, 2007, Licensing conducted another routine inspection, both indoors and outdoors. As a result, a high and moderate hazard rating was assigned. The inspection identified recurring items of non-compliance that were previously identified in the file review.

[11] On April 27, 2007 Licensing conducted an unscheduled visit to follow up on a complaint regarding the suitability of a staff member. An investigation process was initiated at this time.

[12] Licensing interviewed the Daycare staff between April 27, 2007 and June 1, 2007 regarding staff scheduling in the Group Child Care (30 months to school age). On October 19, 2007 a Summary of Apparent findings report was sent to the Appellant.

[13] On February 12, 2008 an Investigation Report was completed recommending cancellation of the licence for the Daycare.

[14] By letter dated March 10, 2008, Dr. Stanwick notified the Appellant that he was in receipt of an Investigation Report. The letter stated:

After reviewing the Investigation Report provided by [Licensing], I am giving you 30 days notice of my intention to cancel the Licence of Happy Smiles Daycare. I have concluded that there has been a contravention of Section(s) 7(1)(a) and 7(1)(b) of the *Act* and Sections 1, 2(b), 2(d), 19(2)(a), 19(2)(b), 19(2)(c), 29(b), 34(2)(b), 37(3)(b), 39(1), 44(1)(a), 44(1)(b), 45(1)(b), 52(1)(b), 55(2)(a), Schedule E Section 1(2)(b)(i) of the Child Care Licensing Regulation 332/2007.

In addition, a condition on the facility licence has been contravened.

[15] It also said that under the reconsideration provisions of the *Act* (section 17(2)(b) and 17(3)(a)(b)), the Appellant was entitled to submit a written response to him by April 10, 2008.

[16] The Appellant responded on April 9, 2008, outlining the changes and improvements at the Daycare, addressing some of the issues identified in the Investigation Report and asking that this information be taken into consideration.

[17] On May 13, 2008, the decision under appeal was issued in which Dr. Stanwick informed the Appellant that he had received and considered her written response and decided to cancel the licence effective June 30, 2008. He also advised the Appellant of her right to appeal his decision to the Board under section 29 of the Act. Section 29(12) allows the Board to confirm, reverse or vary the decision to cancel the licence, or to send the matter back to Dr. Stanwick for reconsideration, with or without directions.

### **PARTIES' POSITIONS**

[18] The Appellant submits that Licensing failed to give her a fair opportunity to respond to its concerns and that she can refute its reasons for canceling her licence. She states that she was unfairly disadvantaged in not being told by Licensing that the outcome of its investigation could be serious. She argues that she should be allowed to retain her licence because problems at the Daycare have been corrected and the transport of children in care by an unlicensed driver was the result of the Appellant having been misled by an employee, the Appellant's brother, about the status of his driver's licence and not because of any deceit or other wrongdoing on her part. The Appellant also believes that Dr. Stanwick should have been willing to meet with her about the problems with the Daycare before he decided to cancel the licence. For these reasons, and also on the grounds that there is a great need for daycare spaces in the community, the Appellant submits that her appeal should be allowed.

[19] Licensing states that the Appeal Record contains a substantial body of evidence supporting the licence cancellation decision based upon six main areas:

- (a) Staff Qualifications
- (b) Mixing of age groups
- (c) Driver's transporting children in care without a valid driver's licence
- (d) Unsuitable employee
- (e) Inappropriate programming
- (f) Unsuitable Licensee/Manager

[20] Licensing submits that the process leading up to Dr. Stanwick's consideration of the Investigation Report decision to cancel the licence were conducted in a fair manner that provided the Appellant with due process and an opportunity to respond to each of the issues before he made the decision under appeal. Accordingly the Respondent asks that the appeal be dismissed.

### **STATUTORY PROVISIONS**

[21] The licensing of community care facilities, including child daycare centers is governed by the *Act* and the *Child Care Licensing Regulation*, B.C.

Reg. 332/2007 (the "*Regulation*"). The licensing and appeal provisions in the *Act* that are relevant for this appeal are as follows:

#### **Standards to be maintained**

7 (1) A licensee must do all of the following:

- (a) employ at a community care facility only persons of good character who meet the standards for employees specified in the regulations;
- (b) operate the community care facility in a manner that will promote the health, safety and dignity of persons in care;

#### **Suspension or cancellation of licence**

13 (1) A medical health officer may suspend or cancel a licence, attach terms or conditions to a licence or vary the existing terms and conditions of a licence if, in the opinion of the medical health officer, the licensee

- (a) no longer complies with this Act or the regulations,
- (b) has contravened a relevant enactment of British Columbia or of Canada, or
- (c) has contravened a term or condition of the licence.

#### **Reconsideration**

17 (2) Thirty days before taking an action or as soon as practicable after taking a summary action, a medical health officer must give the licensee or applicant for the licence

- (b) written notice that the licensee or applicant for the licence may give a written response to the medical health officer setting out reasons why the medical health officer should act under subsection (3) (a) or (b) respecting the action or summary action.

(3) If a medical health officer considers that this would be appropriate to give proper effect to section 11, 13, 14 or 16 in the circumstances, the medical health officer may, on receipt of a written response,

- (a) delay or suspend the implementation of an action or a summary action until the medical health officer makes a decision under paragraph (b), or
- (b) confirm, rescind, vary, or substitute for the action or summary action.

**Appeals to the board**

29 (2) A licensee, an applicant for a licence, a holder of a certificate under section 8, an applicant for a certificate under section 8, a registrant or an applicant for registration may appeal to the board in the prescribed manner within 30 days of receiving notification that

. . . .

(b) a medical health officer has acted or declined to act under section 17 (3) (b),

. . . .

(11) The board must receive evidence and argument as if a proceeding before the board were a decision of first instance but the applicant bears the burden of proving that the decision under appeal was not justified.

(12) The board may confirm, reverse or vary a decision under appeal, or may send the matter back for reconsideration, with or without directions, to the person whose decision is under appeal.

[22] The following sections of the *Regulation* are also relevant to this appeal.

**Character and skill requirements**

19(2) A licensee must not employ a person in a community care facility unless the licensee is satisfied, based on the information available to the licensee under subsection (1) and the licensee's or, in the case of an employee who is not the manager, the manager's own observations on meeting the person, that the person

(a) is of good character,

(b) has the personality, ability and temperament necessary to manage or work with children, and

(c) has the training and experience and demonstrates the skills necessary to carry out the duties assigned to the manager or employee.

29 To qualify for employment in a community care facility as a responsible adult, a person must

. . . .

(b) be able to provide care and mature guidance to children,

**Group sizes and employee to children ratios**

34 (2) Without limiting subsection (1), a licensee must ensure that

(b) the ratio of employees to children attending a community care facility is no less than that permitted in Schedule E.

**Continuous supervision required**

39 (1) A licensee must ensure that children are supervised at all times by a person who is an educator, an assistant or a responsible adult.

**Program of activities**

44 (1) A licensee must provide to children a comprehensive and coordinated program of indoor and outdoor activities that

(a) is designed for the development and care of children,

(b) is appropriate for the age and development of children in each group in the community care facility, and

**Transportation**

45 (1) If children are to be transported by vehicle by a licensee or a licensee's employees, the licensee must ensure that the driver of the vehicle

. . . .

(b) holds a driver's license that permits the driver to operate the type of vehicle being used.

**Schedule E**

*(Section 34 [group sizes and employee to children ratios])*

**Group sizes and employee to children ratios**

1 (2) Subject to subsections (4) to (5), a licensee providing a care program described in Column 1 must ensure that

(b) the ratio of employees to children for each group is no less than that set out in Column 4 opposite

(i) the care program, ...

Column 1 Care program	Column 2 Maximum group size	Column 3 Children per group	Column 4 Ratio of employees to children in each group
Group Child Care (30 Months to School Age)	25, with not more than 2 children younger than 36 months old in a single group	≤ 8	One educator
		9 – 16	One educator and one assistant
		17 – 25	One educator and 2 assistants
Group Child Care (School Age), if any preschool child or child in grade 1 is present	20	≤ 10	One responsible adult
		11 – 20	2 responsible adults
Group Child Care (School Age), if no preschool child or child in grade 1 is present	25	≤ 15	One responsible adult
		16 – 25	2 responsible adults

## DISCUSSION AND ANALYSIS

[23] During the three day hearing of this appeal, the Panel heard solemn testimony of the Appellant, employees of the Daycare, licensing staff, and parents of children attending the Daycare, as well oral and written submissions from the parties.

### (a) Drivers transporting children in care without a valid driver's licence

[24] On August 4, 2004 Licensing conducted a complaint inspection regarding a Daycare employee (who is the Appellant's brother) transporting children in July 2004 without a valid driver's licence. The complainant reported that the Out of School children were on their way to the lake for a field trip when the police stopped the van. The van was subsequently towed because the Appellant's brother was in fact driving without a valid driver's Licence. Licensing requested that the Appellant submit an incident report and documentation confirming the employee's driver's licence by August 5,



2004. The Appellant provided Licensing with a report indicating that there was a hold on the employee's licence that had subsequently been lifted. She also provided a copy of his driver's licence indicating class LDL [Learners], "qualified supervisor required" and a driver's licence number.

[25] Police reports later obtained by Licensing indicated that the employee had been ticketed four times for not having a valid driver's licence from July 2004 though March 2006.

[26] On February 18, 2005, Licensing staff requested that the Appellant provide a copy of an updated driver's licence for the employee, as the copy on file with Licensing was a learner's licence. A copy of a novice driver's licence was provided with the employee's photo and a number. Upon confirming the status of the employee's driver's licence with the Insurance Corporation of BC, Licensing determined the Appellant's brother did not have the correct class of licence to be transporting children due to the restrictions placed on a Novice Driver.

[27] On March 13, 2006, the Appellant faxed to Licensing a driver's abstract respecting her brother that indicated he had a class five driver's licence. Licensing determined that the driver's licence number provided by the Appellant on multiple occasions as her brother's driver's licence number was in fact the Appellant's driver's licence number. In May 2007, information obtained by Licensing from ICBC confirmed that the number the Appellant gave to Licensing in 2005 and 2006 as her brother's was her own. The Appellant did not contradict or provide any explanation for this.

[28] Written documents in the licensing file indicate that on May 8, 2007, Licensing staff attended Happy Smiles Daycare and observed the facility to determine which staff member was driving. Licensing staff witnessed the Appellant's brother transporting children in a vehicle, not the Daycare van, contrary to the Appellant's April 30, 2007 health and safety plan stating that he would not be transporting children for the duration of the Licensing investigation.

[29] Evidence before this Panel, clearly indicates that the Appellant's brother repeatedly drove children in care without a valid driver's licence, a fact admitted by the Appellant in her testimony. Further, evidence indicates that the Appellant, deliberately and repeatedly, misled Licensing about the validity and status of his licence and did not adhere to the health and safety plans she submitted while the concerns with regard to the transportation of children were being investigated.

[30] In addition, the evidence presented at the hearing demonstrated that the Appellant and another employee were driving children without correct licences for the number of children being transported. Daycare staff reported to Licensing that the Appellant drove the van many times with up to ten children despite her driver's licence classification having restrictions against doing so. The Panel heard evidence from another employee that he too

transported up to 10 children plus himself in the van while his current licence, a Class 5, does not permit more than 10 persons in total in the van.

[31] In reviewing the totality of the evidence with regard to the transportation of children by employees without a valid or sufficient driver's licence, the Panel concludes that there were a number of instances of serious violations of section 45(1)(b) of the *Regulation*. The Appellant told the Panel that she was well aware of the *Regulation*. Notwithstanding that knowledge, the evidence clearly shows that driving violations occurred with alarming frequency, putting the safety of the children in jeopardy for many months.

[32] The Panel concludes that these infractions, which placed the health and safety of the children in care at risk, and the Appellant's providing of false and misleading information to Licensing about the status of her brother's driver's licence and record warranted serious action against the licence.

[33] While the Panel heard convincing evidence from parents and Daycare staff regarding the Appellant's brother's likeable manner, particularly with children, he demonstrated gravely impaired judgment in knowingly driving children in his care without a valid driving licence. Rather than supporting or hiding his conduct, the Appellant should have immediately stopped it and scrutinized his suitability for employment at the Daycare. We find a contravention of section 29(b) of the *Regulation*.

**(b) Staff Qualifications**

[34] Section 8 of *Act* states:

A certificate may be issued to a person in accordance with the regulations stating that the person has the qualifications required by the regulations for certification as an educator of children, or as an educator in the manner specified in the certificate respecting children, at a community care facility.

[35] The *Regulation* refers to the issuing of an early childhood educator certificate (an "ECE") to a person who meets the qualifications through registration under the *Act*.

[36] Licensing alleges that the Appellant repeatedly operated the Daycare while not meeting the required staff to child ratios in Schedule E of the *Regulation*, both in regard to the number and the qualifications of staff on duty. Licensing also alleges that there was staff working at the Daycare as early childhood educators (ECEs), without the required ECE certification by the Province of British Columbia, which inevitably led to the Daycare not complying with the required ratios, even where there were adequate numbers of staff at a particular time. As shown above, the *Regulation* provides that for a Group Child Care (30 months to school age), there must be one ECE and one qualified assistant for 9 to 16 children in a group.

[37] The January 2007 file history noted that there was noncompliance six times in relation to the staff to child ratios. The interviews Licensing conducted with facility staff and the Appellant between April 27, 2007 and June 1, 2007, resulted in conflicting evidence regarding whether the facility was at all times in compliance with the ratios for qualified staff to children in care.

[38] The Panel heard conflicting testimony from the Appellant, from a former member of the staff of the Daycare (referred to as L) and from the Licensing Officer as to the status of the ECE certification held by L when she was employed at the Daycare. The Appellant was unable to establish that L did in fact have her ECE certification to practice in BC at the relevant time and, based on the evidence adduced, we conclude that she worked at the daycare for almost a year without a valid ECE certification.

[39] The Panel also heard uncontradicted testimony from Licensing that another staff member, A, who had been introduced to Licensing staff in February 2007 as one of two new ECEs the Appellant had hired, had only completed an early childhood education course at Camosun College, but had no ECE certification to practice.

[40] In her evidence before this Panel, L stated that child ratios were always followed and that if she was not there, then someone who had the same qualifications as she did took over for her. However, L's further testimony indicated that she did not in fact know what qualifications the staff had.

[41] The Panel concludes that the evidence demonstrates, on a balance of probabilities, that in many instances, the Daycare was not in compliance with the staff to child ratios set out in the *Regulation*. The level of non-compliance is serious and a direct negative reflection on the Appellant's ability and willingness as a manager/licensee to operate within the *Regulation*. Despite being advised by Licensing staff on numerous occasions during inspections that staffing ratios established by the *Regulation* needed to be maintained at the Daycare, the Appellant continued to have inadequate and unqualified staff available to maintain the needed ratios. We find the Appellant responsible for significant and pervasive non-compliance with the regulatory requirements with respect to staff qualifications.

**(c) Mixing of age groups**

[42] Licensing's January 2007 file review noted five instances of mixing together of the Group Day Care and Out of School Care children at the Daycare. When the licence was amended to reflect a room change in December of 2004, the Appellant voluntarily agreed to a licence condition that, "The Group Day Care and Out of School Care are not to operate in the same space concurrently. This includes both the indoor and outdoor areas."

[43] Evidence gathered from an employee of the Daycare and Licensing observations on August 17, 2007 indicates that the Out of School Care and Group Day Care have mixed together at this facility. Licensing also observed a three-year-old child being cared for in the Out of School Care room on August 17, 2007. Additionally, Daycare staff reported that the two groups would be joined together after naptime to ensure two staff were working with the fourteen children present that date. It was further reported that it was the practice to have a three year old child in the Out of School Care room, as the parents did not want the child napping in the afternoon.

[44] The Appellant, in her testimony, acknowledged that there was mixing of age groups because she had children in both programs who are siblings and that it is natural for them to want to have contact with each other. She indicated that she personally did not think it was wrong for her to do so. Further evidence contained in an inspection report of August 17, 2007, indicated that L reported that the Appellant would allow the groups to mix after naptime to meet the ratio after the older children had left.

[45] The Panel finds that mixing of the groups did occur, notwithstanding the fact that the facility licence had a condition prohibiting the two groups from operating in the same space concurrently, and that this non-compliance was probably not serious enough, on its own, to warrant cancellation of the licence. It is, nonetheless, a further negative reflection on the Appellant's ability as a manager/licensee and her willingness to disregard licence requirements that do not suit her.

**(d) Allegation of inappropriate conduct by an employee**

[46] On April 25, 2007 Licensing received a call from the police reporting concerns about the suitability of an employee at the Daycare as a result of an allegation that the employee had made an inappropriate sexual overture/suggestion to a minor volunteer at the Daycare. Licensing's investigation found, on the balance of probabilities, that there was insufficient information to substantiate the allegation and no further evidence was provided on the hearing of the appeal to substantiate the allegation. On that basis, the Panel does not regard this allegation to be relevant to the decision to cancel the licence.

**(e) Inappropriate programming**

[47] In an interview with Licensing on May 4, 2007 the Appellant discussed a program called "Good Touching, Bad Touching" she taught at the Daycare. When Licensing questioned where the Appellant received the training to teach this program, she stated that she learned it at school as part of her early childhood education training. She graduated in 1999 and reported that she keeps up to date on these issues by reading books but does not belong to any professional organizations. When the Appellant was asked if she had taken a course specifically about sex education for school-age children, she indicated that she had not. Most of her knowledge had been gained through

books and research. In addition, she reported that she had gone through these things with her own child, who is now 13.

[48] This program was conducted with both age groups and the Appellant's brother assisted with the Out of School Care group. The Appellant said that she taught the "Good Touching, Bad Touching Program" to all of the children, never indicating that she divided the groups to ensure that the material presented was age and developmentally appropriate. Licensing concluded that the Appellant was offering a program that she was not specifically trained to provide.

[49] The Panel finds that while the Appellant was not specifically qualified to provide the Good Touching, Bad Touching training, and the apparent mixing of age groups in the delivery is a potential concern, the evidence about her conduct in this area does not in itself justify the licence cancellation or constitute a high level subsidiary circumstance in support of the decision to cancel the licence.

**(f) Unsuitable Licensee/Manager**

[50] Due to a routine inspection conducted in September of 2006 where many items of non-compliance were noted, Licensing conducted a detailed file review of the facility. This review identified a history of high hazard inspections and a delay in completing corrections by the date assigned. A copy of the review was forwarded to the facility in January of 2007, highlighting specific areas of concern. The review concluded by indicating that "future recurrence of these contraventions could result in licensing recommending action on your facility licence to the Medical Health Officer."

[51] As a Licensee, the Appellant was required to submit health and safety plans as a response to identified areas of noncompliance with the *Act* and *Regulation*. During the investigation process as noted above, the Appellant did not consistently adhere to the health and safety plans she submitted to Licensing.

[52] The Panel is satisfied that the Appellant is fully aware of the *Regulation* as it pertains to the operation of the Daycare. Upon reviewing all of the evidence before it, the Panel finds that there is sufficient concern to conclude that the Appellant is unwilling or unable to comply with the *Regulation* to meet the minimum health and safety requirements for children in care.

[53] Numerous inspection reports evidence that the Daycare had high hazard ratings of which the Appellant was aware. Her failure to correct many items in a timely manner and to maintain consistent compliance is a serious concern and reveals her lack of judgment in managing a facility.

[54] The Appellant's response to Licensing's investigation was to feel defensive and attacked, rather than to take seriously its concerns about her

conduct, the history of non-compliance and the resulting ultimate risk to children. Among other things she claims that she was unfairly disadvantaged in not being advised by Licensing that the outcome of the investigation could be the loss of her licence to operate a daycare. We find no evidence to support this claim. We find that the Appellant was provided with due process, was given ample opportunity to respond to the investigation and inspection reports, but failed to do so in a constructive, timely and corrective manner.

[55] The Panel concludes that the Appellant is unwilling or unable to comply with the *Act* and the *Regulation* as demonstrated through her actions discussed above including:

- Violating conditions and terms on the licence
- Allowing transportation of children by unqualified drivers
- Providing misleading information to Licensing
- Not following health and safety plans at all times

[56] The Panel finds that the Appellant has demonstrated consistent inability to manage the Day Care within the requirements of the *Regulation*, even in the face of an interim Stay Order from the Board requiring that the Appellant “ensure that the daycare is in full compliance”.

[57] July 2008 Inspection Reports document continued violations of regulations including, lack of qualified staff present at the facility during inspections, incomplete staff and child documentation, the state of non repair of furnishings within the facility, and incomplete or unavailable emergency documentation and equipment.

[58] We find contraventions of sections 7(1)(a) and (b) of the *Act*, and Sections 19(2)(b), 19(2)(c), of the *Regulation*.

[59] The Panel concludes that the demonstrated unsuitability of the Appellant to manage the daycare facility, places the health and safety of the children in care at risk.

## **CONCLUSION**

[60] In making this decision the Panel has considered all the evidence, materials and arguments submitted to us by the parties, whether or not they are specifically referred to in these reasons.

[61] The Panel fully appreciates the seriousness of the issues. Section 29(11) of the *Act* requires the Board to receive evidence and argument on an appeal as if the Board was making a decision of first instance, but the Appellant bears the burden of proving that the decision under appeal was not justified. Having reviewed the written documentation presented by the parties, and hearing the evidence from all of the witnesses, the Panel concludes that the Appellant has not met that burden.

[62] For the reasons stated above, the Panel finds that the Appellant has failed to establish that cancellation of her licence was not justified in all the circumstances.

[63] Finally, the Panel notes that there was no evidence or suggestion on the appeal that the Appellant lacks the educational or care giving skill to be an ECE. In fact the Panel heard evidence from several parents of how much they appreciated the services provided by the Daycare. The focus of this appeal and decision is on the Appellant's failure to manage the Daycare in compliance with the *Act* and *Regulation* in ways, particularly respecting transportation, that seriously and obviously threatened the safety of the children in care, and her failure to interact with Licensing in a truthful manner regarding the qualifications and suitability of her staff, particularly her brother's driving licence and record. The evidence amply establishes, and it is indeed disappointing, that despite the Appellant's educational skills, her conduct fell well short of the diligence, responsible judgment and honesty that are essential qualities for a licensee entrusted with ensuring the health and safety of children.

[64] The appeal is dismissed.

November 11, 2008

Gordon A. Armour, Panel Chair

Joan Gignac, Member

Mary-Ann Pfeifer, Member