

Ombudsman Report: Careless about child care ^[1]

Investigation into how the Ministry of Education responds to complaints and concerns relating to unlicensed daycare providers

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AVAILABILITY

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Executive Summary:

1. Every weekday, hundreds of thousands of working parents in Ontario entrust their children to the care of others. Unfortunately, some children are placed at unnecessary risk in unlicensed and illegally operated child care centres, often hidden behind the closed doors and shuttered windows of private homes.
2. The dangers associated with these child care arrangements were brought into sharp focus when, over a seven-month period in 2013-2014, four young children died in unlicensed child care settings in the greater Toronto area. My investigation was launched shortly after two-year-old Eva Ravikovich died in Vaughan on July 8, 2013, in an illegal home daycare where, according to Ministry records, police found 29 children and public officials discovered a multitude of hazardous conditions. During my investigation, probes by the police and coroner were underway, while Eva's family launched a civil suit against the daycare operators and the Ministry of Education. My investigation did not involve assigning blame in any specific case, but centered on the system for responding to complaints and concerns about unlicensed child care operations.
3. In the unlicensed child care sector, the only restriction is on the number of children that can be served. Under Ontario's Day Nurseries Act, anyone can look after five unrelated children under the age of 10 without requiring a licence or meeting any standards or qualifications. In contrast, licensed child care operations must follow health, safety, and programming rules and are subject to regular inspection. This has resulted in a disincentive to licensing and led to an increase in the number of unlicensed caregivers.
4. The Ministry of Education, which has been responsible for responding to complaints and enforcing the "five child" rule in the unlicensed child care sector since 2012, estimates that there are more than 800,000 Ontario children in unlicensed care - from newborns to age 12 - more than double the number in licensed settings. While some are with relatives, nannies or babysitters, others are cared for in overcrowded homes, storefronts and offices, in violation of the law.
5. As waiting lists and the costs associated with licensed child care have grown, many Ontarians have turned to cheaper, more readily available informal options, often unaware of the rules and of the risks. Each year, the Ministry receives hundreds of complaints about illegal daycare operators and finds more than 25% of them are substantiated.
6. Regrettably, the system for receiving and responding to such complaints and concerns has suffered from entrenched organizational malaise for years. In the case of Eva Ravikovich, the Ministry repeatedly failed to follow proper procedures or follow up on multiple complaints, including from children's aid society officials. Its ineptitude allowed this brazenly illegal daycare to operate unabated for many months, until Eva's death incited Ministry officials to take action.
7. One of the contributing factors to the enforcement morass is the outdated legislation. The Day Nurseries Act has remained largely intact since it was passed in 1946. Its drafters never envisioned today's child care landscape, and it does not cover many of the unlicensed child care arrangements of 2014. Some of its language is unclear, creates confusion and leads to inconsistent enforcement. The enforcement powers it provides are also limited and, in many situations, ineffective. Successive governments have been aware of the need for reform, and inquests into several child deaths in unlicensed care have called for legislative change. Yet still, transformation of the system for monitoring child care services has not proceeded with the urgency this issue deserves. When Eva Ravikovich died, a replacement for the antiquated Day Nurseries Act was in the works, including expanded inspection powers, enhanced penalty provisions and incentives for licensing. Her death prompted the Ministry to accelerate its plans and introduce Bill 143, the Child Care Modernization Act, 2013 on December 3, 2013. Although this initiative was stalled on May 2, 2014, when the Legislature was dissolved pending the spring election, the bill was reintroduced as Bill 10 on July 10, 2014 and its provisions relating to unlicensed child care remain unchanged.
8. While this legislative reform should remain a priority, my investigation of the Ministry's practices and policies also revealed many administrative problems that require urgent action. Poor planning for the transition of the licensing program from the Ministry of Children and Youth Services left the Ministry of Education scrambling in January 2012, when it discovered it had inherited a legacy of dysfunction. The processes for dealing with unlicensed operators were fraught with bureaucratic inefficiencies and bad practices, and the Ministry lacked the resources and infrastructure needed to cope with a burgeoning workload and to implement

improvements.

9. My investigation found that the system for responding to complaints about unlicensed daycares included careless and inconsistent complaint intake practices. It was also infused with a reactive, passive and conflicted enforcement culture that focused on encouraging and educating illegal operators into compliance - to the detriment of ensuring the health, welfare and safety of children.
10. We discovered that the Ministry lacked a case management system for tracking complaints about unlicensed operators, its process for documenting complaints was disorganized and its records were incomplete. We reviewed dozens of cases where the Ministry's own directives and guidelines for responding to complaints were not followed, and where inspections of unlicensed daycare operations were delayed or skipped altogether. Lack of communication and co-ordination between different branches of the Ministry added to the confusion and resulted in ineffective and untimely inspections. We uncovered such poor inspection practices as cursory and careless evidence gathering, inadequate assessment of evidence and failure to properly document inspection results. We revealed that Ministry staff not only lacked any training on best practices for conducting investigations - many did not even possess a clear understanding of the legislation they were enforcing or of the Ministry's own policies and procedures.
11. We also identified inconsistency in how the Ministry administered the enforcement continuum, from sending warning letters to initiating prosecution. It rarely went so far as to prosecute, and even when it did, serious cases escaped significant repercussions.
12. As well, the Ministry neglected to engage parents in the enforcement process, and tended to avoid them altogether. The Ministry has not undertaken sufficient steps to educate parents, caregivers or the public about the requirements of the Day Nurseries Act and the important health, safety and child welfare purposes underlying the legislation.
13. The Ministry of Education is just one in a line of ministries to have had responsibility for administering the Day Nurseries Act. Since taking on this role, it has initiated improvements to its operational practices and policies, including development of a dedicated enforcement unit to respond to complaints about unlicensed daycare operators. However, the Ministry's efforts are too little, too late. In my opinion, its delayed, inconsistent and incomplete response to complaints and concerns relating to unlicensed child care providers is unreasonable and wrong under the Ombudsman Act.
14. I have made a significant and unprecedented number of recommendations - 113 in total - to address the gaps in the system. Some are addressed to the Government of Ontario, whose co-operation is necessary if modernization of the legislative framework for monitoring unlicensed child care is to move forward. Many are focused on improvements in the Ministry's administration of the system for responding to complaints about illegal caregivers.
15. The Ministry has accepted all of my recommendations and provided a detailed response to them. It is already working to implement them and has committed to providing me with semi-annual updates on its progress.
16. I am hopeful that implementation of my recommendations will lead to a more rigorous, proactive, and risk-based system for monitoring unlicensed child care in Ontario that will better protect the interests of children and their families.

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