

# Six-year prison sentence for Ontario daycare operator convicted in child's death <sup>[1]</sup>

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## EXCERPTS

A Toronto-area daycare provider convicted of manslaughter in a toddler's death was sentenced to six years in prison Monday, after a judge determined she was "a good person who did a bad thing."

April Luckese was found guilty in March in the death of 14-month-old Duy-An Nguyen. The judge presiding over her case found the 41-year-old woman had lost her patience and assaulted the child, causing a skull fracture.

The little girl was discovered unconscious and unresponsive in Luckese's Mississauga, Ont., home — an unlicensed daycare centre — on Jan. 5, 2011. She died in hospital two days later.

"I have no doubt that Ms. Luckese is a good person who did a bad thing," said Justice Gordon Lemon, as he delivered Luckese's sentence in a Brampton, Ont., courtroom. "What has occurred is a tragedy... Ms. Luckese and her family is only one half of the tragedy. The Nguyens lost their first child at 14 months through no fault of theirs."

The Crown had asked for eight to nine years behind bars for Luckese, while the defence had argued for a suspended sentence and a three-year probation term which would include 240 hours of community service.

Lemon, in considering both sides, noted that while Luckese had shown remorse, she had not pleaded guilty.

He determined that a suspended sentence would not go far enough. Taking into account time spent in pre-trial custody, Luckese has to serve a term of five years and 11 months in prison.

Luckese, who has two young children of her own, was a respected and experienced daycare provider who is now unemployed and dealing with anxiety, depression and post-traumatic stress disorder, Lemon noted.

Duy-An first attended Luckese's daycare on Jan. 4, 2011. On the following day, when Luckese was caring for seven children under the age of three, Duy-An was crying throughout the day, court heard.

At one point, Luckese momentarily lost her patience and assaulted Duy-An, and then failed to get medical attention for the child despite being aware something was wrong, Lemon found, noting that Luckese told a detective she'd never seen a child that "lifeless."

"The assault took but seconds in her otherwise exemplary life," Lemon said, noting, however, that not seeking immediate assistance for the child was an aggravating factor. "Her failure to immediately get this infant proper treatment was a significant breach of trust."

A 911 call was eventually made by one of the parents using the daycare and paramedics arrived to find Duy-An unconscious, with breathing that was irregular and slow.

Luckese's trial heard that at one point she told police she had tripped over a mat while carrying Duy-An and accidentally hit the child's head on a banister. Court heard that she then denied she tripped and instead said she shook the child and a few minutes later, the girl went limp.

Based on medical evidence heard at Luckese's trial, Lemon determined that the child died because of lack of oxygen to the brain caused by a skull fracture.

"Ms. Luckese failed to perform her duty to provide necessities for the child," Lemon found. "The delay in treatment was a significant contributing cause to Duy-An's death."

Luckese's defence lawyer said he found the sentence delivered on Monday "fair," given the factual findings of the case, but said he is appealing his client's conviction.

"This is an unusual case," said Stephen Whitzman. "The judge said in his reasons for judgement that this was totally out of character for Ms. Luckese."

-reprinted from News 95.7

**Region:** Ontario <sup>[2]</sup>

**Tags:** legislation & regulation <sup>[3]</sup>

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