

Careless *About* Child Care

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

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MAIN COVER PHOTO: The backyard of the unlicensed home daycare in Vaughan where 2-year-old Eva Ravikovich died on July 8, 2013.

Photo by Alex Consiglio, Toronto Star.





Ombudsman Report

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responds to complaints and concerns
relating to unlicensed daycare providers**

“Careless About Child Care”

October 2014

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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 illegally¹ 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.

¹ In this report, terms such as "illegal" in connection with an unlicensed daycare operator or operation denote situations where there is evidence that the operation cared for more children than allowed by the *Day Nurseries Act*. Unless otherwise noted, it does not signify that the operator has formally been found guilty of violating the Act.

- 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.

Investigative Process

- 17** On July 8, 2013, two-year-old Eva Ravikovich died in a home-based illegal daycare in Vaughan, Ontario. My Office had just begun to gather information on unlicensed daycares in the wake of Eva’s tragic death, when, on July 12, 2013, MPP Monique Taylor issued an open letter calling for us to investigate the adequacy of Ontario’s protection of children in such situations. After conducting a preliminary assessment, I notified the Ministry of Education on July 16, 2013 that I would conduct a systemic investigation into how the Ministry responds to complaints and concerns relating to unlicensed daycare providers.
- 18** The investigation was assigned to the Special Ombudsman Response Team and involved five investigators, an Early Resolution Officer, as well as Senior Counsel.
- 19** We conducted 30 interviews, including with the deputy minister, two assistant deputy ministers, program advisors and licensing assistants from the Ministry, and stakeholder groups such as the Ontario Coalition for Better Child Care, the Home Child Care Association of Ontario and the Child Care Providers Resource Network.
- 20** After our investigation was announced, 22 people contacted our Office to comment about unlicensed daycares. Two were parents who expressed concerns about unlicensed operations where they had placed their children.

- 21 We obtained and reviewed 17 banker’s boxes of documents from the Ministry, including complaint records for an 18-month period.
- 22 We also monitored social media for references to this issue and to identify any emerging trends.
- 23 The Ministry co-operated fully with our investigation.

Ontario’s Child Care System – The Big Picture

- 24 The Ministry of Education is responsible for funding, licensing and developing policy to support the provision of licensed child care in Ontario. Planning and management of child care services is administered at the local level. The province provides about \$1 billion in annual funding to municipalities, First Nations, school boards and other organizations to support licensed child care. Unlicensed child care is not publicly funded, except for some Ontario Works recipients, who can apply for subsidies to cover the cost of either type of daycare for their children.²
- 25 The Ministry issues annual licences for two types of child care – “day nurseries” and “private-home day care agencies,” which work with providers.³
- 26 Licensed “day nurseries” are daycare centres in schools, churches, public and commercial buildings, etc., and are run by non-profit community boards of directors, private sector operators, municipalities and colleges. They are subject to regulatory requirements and standards, including staff-to-child ratios for various age groups. The Ministry inspects these daycare settings before licences are issued or renewed, and monitors and/or inspects them in the case of concerns or complaints. In such inspections, it examines a wide range of factors, including staff qualifications, staff-to-child ratios, building and playground safety and nutrition.
- 27 Licensed “private-home day care agencies” recruit, support and monitor home-based daycare providers, who receive such benefits as training and referrals for being associated with them. These home-based caregivers can care for up to five

² The Ministry of Education refers to unlicensed child care as “informal” child care. The terms “unlicensed” and “informal” are used interchangeably in this report.

³ The *Day Nurseries Act* refers to “day care” (as in “private-home day care agency”) as two words; however, for reasons of consistency, this report uses the style “daycare” – one word – including in reference to the Act.

children under 10 years of age. However, only two can be under the age of 2, and three under the age of 3 – and any of the provider’s own children under age 6 must be counted in this total. Such agencies must meet regulatory requirements before they are licensed, and must also visit and inspect each prospective private-home operation before children are enrolled, and then at least once every three months. When the Ministry conducts an annual inspection of an agency for licensing purposes, it reviews documentation for a sample of the agency’s private-home daycares, including the agency’s inspection records. The Ministry may inspect agencies and home-based providers in response to concerns or complaints.

- 28** Child care providers who are not registered with an agency do not require a licence, provided they only care for five or fewer unrelated children under age 10. However, the limit of five children is not a hard cap. Unlicensed providers can look after more children if they are all of “common parentage,” and they do not have to count their own children in the total. Informal child care is not subject to the standards and restrictions that apply to caregivers working with private-home daycare agencies. The Ministry will only inspect an unlicensed daycare if it has reason to believe it is caring for too many children. Typically, this only happens if the Ministry receives a complaint about the provider.
- 29** According to the Ministry, as of March 2013, there were **5,050** licensed child care centres in Ontario, with a total licensed capacity of **294,490** children. Some 76% of licensed centres are non-profit or municipally operated. There were **127** licensed private-home daycare agencies. The fact that private-home child care operators affiliated with licensed agencies must comply with more requirements than those in the unlicensed sector creates a disincentive for providers to join agencies. The number of private-home daycares affiliated with licensed agencies has decreased significantly: In March 2011, there were **6,832** regulated private-home daycares with an enrolment of **18,122** children; two years later, there were only **5,960**, with an enrolment of **16,807**.
- 30** Approximately **22%** of some **1.8 million** children in Ontario (up to age 12) receive care either through licensed child care centres or regulated private-home daycares. About **30-33%** are at home full-time with parents, while **45-50%** are cared for by relatives or others in the home, or through various informal arrangements outside the home. The Ministry estimates there are some **823,000** children of school age (starting at 3 years and 8 months) who are in unlicensed daycares when not at school or home – more than double the number who are in licensed care.

- 31** It is not uncommon for licensed daycare centres to have lengthy waiting lists. They are also relatively expensive. The median fee per day at such centres is \$50 for an infant, \$42.30 for a toddler and \$38 for preschoolers.⁴ Among other factors, cost and convenience cause many families to opt for informal, unlicensed child care arrangements.

Eva’s Last Day – Daycare Tragedy

- 32** Based on Ministry records, it seems likely that July 8, 2013, began as a typical workday for Eva Ravikovich’s parents, with two-year-old Eva at her unlicensed home-based daycare at 343 Yellowood Circle in Vaughan. But by early evening, paramedics arrived at the daycare to find Eva without vital signs. She was later pronounced dead at the scene.
- 33** The Ministry’s records and media reports vary as to the total number of children found in care at Yellowood Circle at the time of Eva’s death. Ministry documents, based on secondhand accounts, state that officials at the scene discovered some **20** children at 343 Yellowood Circle. The operator’s spouse also owned the house next door, at 345 Yellowood Circle. Inspection of that residence reportedly revealed **nine** more children, along with **14** dogs.
- 34** Later that day, concerned about the state of 343 Yellowood Circle, the regional coroner called on local public health officials to carry out an inspection. That evening, a public health inspector found numerous problems, including unsanitary conditions such as dirty diapers in the kitchen, a child care operator who had no knowledge of basic infection control, and rotten food in the fridge, (some of which later tested positive for contamination by potentially toxic listeria bacteria). The public health inspector also discovered one bedroom packed with seven daybeds and another filled with five cribs.
- 35** The next day, public health officials issued an order under the *Health Protection and Promotion Act* for the immediate closure of 343 Yellowood Circle and evacuation of everyone not involved with its operation, inspection or maintenance. A Children’s Services official from the regional municipality also contacted the Ministry of Education to report what appeared to be an illegal child care operation.

⁴ Ontario Ministry of Education, Early Learning Division, *Licensed Child Care Questionnaire 2012 Results*, p 4. Online: <<http://www.edu.gov.on.ca/childcare/ChildCareQuestion.pdf>>.

- 36** The Ministry conducted its own inspection of 343 Yellowood Circle, under the *Day Nurseries Act*, on July 9, 2013. Because one of the caregivers disclosed that she had been caring for 25 children under age 10 years – 20 over the allowable limit – the Ministry issued a letter the next day, warning that she was not in compliance with the Act. Ministry staff conducted further inspections, including of the adjacent property at 345 Yellowood Circle.
- 37** On July 17, 2013, Ministry staff executed search warrants for both 343 and 345 Yellowood Circle, and found four children at the latter. Both houses were fraught with unsanitary and dangerous conditions, including:
- approximately 50 bags of food, waste, and dirty diapers cluttering a garage;
 - medications unlocked and accessible to children;
 - food waste staining the counters;
 - dog feces and urine soiling the floors;
 - unplugged smoke detectors;
 - cleaning products, knives and other dangerous items accessible to children;
 - and
 - thorny weeds overgrowing the backyard (343 Yellowood Circle).
- 38** As one Ministry official who took part in the inspection described it:
- ...the conditions they were living in, was just unbelievable ... to me those people should not be caring for even one child...
- 39** On August 28, 2013, the Ministry obtained a court injunction prohibiting four individuals connected with the Yellowood Circle daycare from establishing, operating, or maintaining a day nursery or private-home daycare agency without a licence, and from providing private-home daycare or home daycare to any children regardless of their ages.
- 40** In September 2013, the homes at 343 and 345 Yellowood Circle were listed for sale. The latter was described in the listing as “immaculate” and “child safe.”
- 41** On October 15, 2013, the Ministry charged the primary operator, her husband and their daughter in connection with operating an illegal day nursery at 343 Yellowood Circle (from January 2, 2013 to July 8, 2013) and 345 Yellowood Circle (July 8, 2013). The matter is still before the courts.

- 42** At the time this report was written, the Office of the Chief Coroner was still investigating Eva’s death and police had not laid any charges. Eva’s parents’ civil court action against the daycare operators and the Ministry is also ongoing.

The Ministry Drops the Ball ... Repeatedly

- 43** While the Ministry acted fairly swiftly in the aftermath of Eva’s death, an internal review launched in July 2013 found a litany of problems relating to its response to earlier complaints about the Yellowood Circle daycare.
- 44** Initially, when news of Eva’s death arrived, the Ministry believed that it had received only one complaint about the Yellowood Circle child care operation – in November 2012 – and that it had investigated, ensured compliance with the Act, and closed the file. But by July 11, 2013, when it issued a press release about the incident, the Ministry had learned there were three complaints about Yellowood Circle in 2012 – one each in October, November and December. It also discovered that regional staff had persistently failed to follow standard procedures. They had only conducted one site inspection in November 2012, and had never followed up to ensure compliance. This revelation soon led to the suspension of three staff members, all without pay.
- 45** As the Ministry continued to review its records – which proved incomplete, disorganized and difficult to access – it uncovered more complaints. By the time the Minister made a public statement on August 16, 2013, it was revealed that five complaints had been made about 343 Yellowood Circle over an eight-month period in 2012.

First Complaint: May 2012 – No Action

- 46** A children’s aid society worker made the first complaint on May 2, 2012. She alerted the Ministry that 20 children were receiving care at the home. She also inquired about co-ordinating a visit to the property with Ministry officials. The Ministry took no action on this complaint.

Second Complaint: May 2012 – No Action

- 47** On May 7, 2012, the Ministry received an email from a member of the public, asking about the status of the operator at Yellowood Circle. This person reported that the operator appeared to have 13 children enrolled, and was claiming she

was licensed. The next day, a program advisor in London, Ont. confirmed the address and transferred the matter to the Ministry's regional office in Barrie. However, the complaint was not logged or assigned for follow-up, as required by Ministry directives.

- 48** There is one record in the Ministry's files that suggests a partial explanation for its lack of response. An internal email, dated May 10, 2012, states that someone from the children's aid society (the source of the original complaint on May 2) had called back to say its inspection of the home found only five children. The Ministry did not take any independent steps to verify the information, and the file was closed.
- 49** After Eva's death in July 2013, the Ministry discovered there was no documentation confirming the second contact with the children's aid society that is described in the May 10, 2012 email. When she was contacted, the children's aid society worker also did not support the information in the email; rather, she said Ministry staff had assured her they would look into the number of children at the home within a few days.

Third Complaint: October 2012 – No Action

- 50** On October 25, 2012, a complaint was received that there were 15 children, mostly toddlers, in care at the Yellowwood Circle daycare. Again, the Ministry did not follow up, relying on the undocumented (and later disputed) information from the children's aid society that there were only five children being cared for in the home.

Fourth Complaint: November 2012 – First Inspection

- 51** On November 16, 2012, a complaint came in that about 10 children between the ages of 2 and 5 were in care at 343 Yellowwood Circle. This time the Ministry did conduct a site visit. The operator's daughter greeted Ministry program advisors at the door, but denied them entry because the operator was not there. They waited outside, witnessed someone drop off a child at the home, and then observed someone leave 345 Yellowwood Circle and enter the home at 343 with a key. They again approached and found seven children inside under age 3.
- 52** On November 26, 2012, the Ministry sent a letter to the operator warning that she was contravening the *Day Nurseries Act*. However, even this letter contained

errors; the wrong inspection date and address (it referred to 345 Yellowwood Circle) were identified.

Fifth Complaint: December 2012 – No Action

53 On December 21, 2012, a complaint was received that 17 children were in care at 343 Yellowwood Circle. One of the Ministry staff, who had conducted the November inspection, suggested in an internal email the same day that the complainant “was [the daycare operator’s] former employer who keeps calling, he’s mad because she took some of his kids.” However, the Ministry worker had the addresses confused. She also claimed to have conducted a follow-up inspection the week before, and found the operator in compliance. However, there is no record that the Ministry ever conducted an inspection, as required by directives, after issuing the November 2012 warning letter. In fact, no steps were ever taken to ensure the operator had complied with the Act.

Too Little, Too Late

54 Given that Ministry records indicate that there were some 29 children in care at Yellowwood Circle on July 8, 2013, it is clear the operator was not dissuaded from running an illegal daycare by the Ministry’s lax enforcement steps in the seven months after its November 2012 warning letter.

55 The Ministry clearly dropped the ball repeatedly in responding to the multiple complaints about Yellowwood Circle. Its failure to enforce the *Day Nurseries Act* left unscrupulous individuals free to provide illegal child care, and placed scores of children at risk in an overcrowded, unsanitary and unsafe environment. Unfortunately, the Ministry’s abysmal response to complaints about the Yellowwood Circle child care was not an isolated occurrence.

56 As a result of the concerns uncovered in the Ministry’s review of the history of the Yellowwood Circle child care, the Minister announced on July 11, 2013 that it would examine all complaints received about unlicensed daycares over the past year, to determine the scope of compliance with its processes.⁵

⁵ Ontario Ministry of Education, “Ministry of Education Taking Action on Daycare Complaints” (July 11, 2013, 10:55 p.m.). Online: <<http://news.ontario.ca/edu/en/2013/07/ministry-of-education-taking-action-on-childs-death.html>>.

- 57** On July 19, 2013, the Minister announced that out of **280** complaints received, nine had not resulted in a site visit.⁶ The Minister pledged that all complaints would be responded to in future, noted the Ministry had acted on all unaddressed complaints, and said the internal review would be extended back to January 1, 2012 – when the Ministry first took on responsibility for daycare licensing.
- 58** On August 16, 2013, the Minister announced the results of the extended review, which were posted on the Ministry’s website.⁷ Out of **448** complaints received from January 1, 2012 to July 12, 2013, **25** had not been not addressed with a site visit as required by Ministry policy. The Minister announced a “dedicated enforcement unit” would be set up to investigate complaints about non-compliant unlicensed providers, respond to public inquiries and supply information to parents.

Tragedy Strikes Again ... and Again

- 59** Eva was just one of four Ontario children who died in unlicensed child care situations over a seven-month period in 2013-2014. On **July 4, 2013**, two-year-old **Allison Tucker** drowned at the Toronto condominium of her babysitter, who was also reportedly caring for her own child. This arrangement did not violate the *Day Nurseries Act*, but a criminal charge of manslaughter is pending. In the other three cases, the cause of death has not yet been released.
- 60** On **November 13, 2013**, nine-month-old **Aspen Moore** died in an unregulated Markham home-based daycare. The next day, the regional coroner notified the Ministry that the operator appeared to be caring for more than five children. Ministry staff immediately conducted an inspection and found registration records in the home for 12 unrelated children under the age of 10. The Ministry laid charges against the daycare operator on March 17, 2014; it had not received prior complaints about this operation.
- 61** And on **February 14, 2014**, a four-month-old baby boy died in an unlicensed and apparently illegal daycare in a northwest Toronto apartment, where police observed eight children in care. The Ministry investigated and charges were laid on August 8, 2014; it had no record of previous complaints about this child care provider.

⁶ Ontario Ministry of Education, “Minister’s Statement on Unlicensed Child Care Review” (July 19, 2013, 2:00 p.m.). Online: <<http://news.ontario.ca/edu/en/2013/07/ministers-statement-on-unlicensed-child-care-review.html>>.

⁷ Online: <<http://news.ontario.ca/edu/en/2013/08/minister-of-educations-update-on-unlicensed-child-care-review.html>>.

62 I commenced my investigation to help minimize the opportunities for tragedies such as these from recurring in the unlicensed child care sector. During the investigation, I learned that the government has been aware for years that the licensing program for child care services requires a significant overhaul.

The *Day Nurseries Act* – Overview and Issues

- 63 The *Day Nurseries Act* establishes the licensing scheme and standards for licensed child care operators.⁸
- 64 The Ministry of Children and Youth Services was responsible for administering the Act from 2003 to 2011. In April 2010, the government announced, as part of its “early learning vision,” that child care licensing would be transferred to the Ministry of Education, coincident with the introduction of full-day kindergarten.⁹ The transfer was phased in from May 2010, when the Ministry assumed responsibility for the program and policy, to January 1, 2012, when it took on the licensing and enforcement function.
- 65 The *Day Nurseries Act* only applies to some child care services in Ontario, not all situations where children are cared for by people other than their parents. It regulates those who establish, operate or maintain a “day nursery” or a “private-home day care agency.”¹⁰
- 66 A “day nursery” under the Act is defined as:
- a premises that receives **more than five children** who are not of common parentage, primarily for the purpose of providing temporary care, or guidance, or both temporary care and guidance, for a continuous period not exceeding twenty-four hours, where the children are,
- (a) under eighteen years of age in the case of a day nursery for children with a developmental disability, and
- (b) under ten years of age in all other cases,

⁸ RSO 1990, c D.2.

⁹ In June 2009, Dr. Charles E. Pascal released his report, *With Our Best Future in Mind*, outlining a plan for the implementation of the government’s early learning vision: Charles E. Pascal, *With Our Best Future in Mind. Report to the Premier by the Special Advisor on Early Learning* (Queen’s Printer for Ontario, 2009). Online: <<https://www.ontario.ca/education-and-training/early-learning-report>>.

¹⁰ As stated in Note 3, although the *Day Nurseries Act* refers to “day care” as two words, this report uses the style “daycare” – one word – including in reference to the Act, except where it is directly quoted.

but does not include,
(c) part of a public school, separate school or private school within the meaning of the *Education Act* or part of a school continued or established under section 13 of the *Education Act*.¹¹

- 67** Day nurseries must be licensed under the Act.¹² On the other hand, “private-home day care” services do not require a licence. “Private-home day care” means:

the temporary care for reward or compensation of **five children or less** who are under ten years of age where such care is provided in a private residence, other than the home of a parent or guardian of any such child, for a continuous period not exceeding twenty-four hours.¹³

- 68** Anyone who establishes, operates or maintains private-home child care at more than one location is considered a “private-home day care agency” and must be licensed under the Act.¹⁴

- 69** Licensed daycares must also comply with standards established by regulation and Ministry directives, guidelines, and policies. The regulatory requirements cover a wide range of areas, including the safety of the physical space in which services are provided, nutrition, behaviour management, health and medical supervision, record keeping, staff qualifications, child-to-staff ratios, and the number of children that can be cared for. Licensed “private-home day care agencies” contract with people who provide child care services in their own homes. The agencies are responsible for ensuring that the care provided meets the established standards, through monitoring and inspections.

- 70** A “director” appointed under the Act can revoke or refuse to issue a licence to such an operation in certain circumstances,¹⁵ or issue directions, including that a premises cannot be used for child care where there is a threat to the health, safety or welfare of children.¹⁶

- 71** The Ministry of Education’s Child Care Quality Assurance and Licensing Branch is responsible for administering the *Day Nurseries Act*. It has six regional offices; Ottawa, London, Barrie, Toronto West, Toronto Central and North

¹¹ s 1(1) s.v. “day nursery” (emphasis added).

¹² s 11 (emphasis added).

¹³ s 1(1) s.v. “private-home day care” (emphasis added).

¹⁴ ss 1(1), 11.

¹⁵ ss 11-13.

¹⁶ s 15.

Bay/Sudbury/Thunder Bay (located in Sudbury). Each regional office has a manager, a licensing assistant, and program advisors (49 permanent and 15 temporary in total, at the time this report was written), who are responsible for inspections of licensed day nurseries, private-home daycare agencies and of sites subject to complaints about unlicensed day nurseries. A Director at the Ministry's corporate head office, reporting through the Assistant Deputy Minister, Early Years Division, oversees the regional offices.

- 72** Appointed as “directors” under the Act are the six regional managers, the corporate director and manager of the Child Care Quality Assurance and Licensing Branch, and the Assistant Deputy Minister, Early Years Division.
- 73** Program advisors designated under the Act have the authority, at all reasonable times and upon producing proper identification, to inspect day nurseries and premises used by private-home daycare agencies. They can also inspect facilities, services, books of account and any records, if they believe on reasonable and probable grounds that a premises is being used as a day nursery, a private-home daycare agency, or to provide private-home daycare by an agency.¹⁷
- 74** The Act requires that persons allow program advisors to enter premises to carry out inspections and expressly prohibits obstruction of an inspection:
- No person shall hinder or obstruct a program advisor in the performance of the program adviser's duties or refuse to permit the program adviser to carry out such duties or refuse to furnish the program adviser with information or furnish the program adviser with false information.¹⁸
- 75** If a day nursery or a private-home daycare agency is operating without a licence or has failed to comply with a director's order in a situation where there is a threat to the health, safety or welfare of children in care, the director may apply to the Superior Court of Justice for an injunction to prevent child care services from continuing at the premises.¹⁹
- 76** The Act also establishes offences for knowingly furnishing false information in an application, report or return under the Act, contravening the licensing requirements, or failing to comply with a direction relating to a threat to health, safety or welfare of children or an injunction issued by the courts. Upon conviction, violators may be fined up to \$2,000 for each day the offence

¹⁷ s 16.

¹⁸ s 16(5).

¹⁹ s 17.

continues, imprisoned for no more than one year, or both.²⁰ In addition, anyone who contravenes the provisions relating to inspections is guilty of an offence and if convicted is liable to a fine of up to \$5,000, imprisonment for a term of not more than two years, or both.²¹

77 The *Provincial Offences Act* applies to offences under the *Day Nurseries Act*.²² Under certain circumstances, the Ministry may apply for search warrants under the *Provincial Offences Act*.²³ That Act also requires that proceedings relating to illegal day nursery and private-home daycare agencies must be commenced within six months of the alleged offence.²⁴

78 The *Day Nurseries Act* also provides the Ministry with the authority to enter into agreements for the management and funding of local child care systems. Individuals using child care services may also apply under the Act for financial assistance towards the cost of private-home daycare, services provided in a day nursery or extended day programs.²⁵

The Number Five

79 Presumably, there is some policy rationale behind the “five children under the age of 10” limit for unlicensed care established by the *Day Nurseries Act*. However, Ministry officials were unable to offer us an explanation for it. Just prior to 1971, the maximum number of children allowed in informal care arrangements was three under age 10. From 1960 to 1969, it had been three under age 7.

80 As the accompanying chart demonstrates, Ontario is one of Canada’s most lenient jurisdictions in this area. Most include the caregiver’s own young children when counting up to the limit for licensing, while seven have additional restrictions based on age. For example, in New Brunswick, a caregiver can only look after two infants or four children aged 2-5.

81 In Ontario, unlicensed caregivers can legally look after well over five children, since their own children are not counted, and special rules apply to children of “common parentage.”

²⁰ s 21(1).

²¹ s 21(2).

²² RSO 1990, c P.33.

²³ See, for example, s 158.

²⁴ s 76(1).

²⁵ s 19.

Comparison Chart of Home Daycare Child Maximums

Jurisdiction	Maximum number of children in unregulated home-based care	Maximum number of children in regulated home-based care
Alberta	6 under age 12, including caregiver's own children.	6 under age 12, including caregiver's own; additional restrictions based on ages.
British Columbia	2 excluding caregiver's own, or a sibling group.	7 to 8 depending on ages.
Manitoba	4 under age 12, including caregiver's own; additional restrictions based on ages.	8 under age 12, including caregiver's own; additional restrictions based on ages.
New Brunswick	5 under age 12, including caregiver's own; additional restrictions based on ages; 8 if all school age.	6 under age 12, including caregiver's own; additional restrictions based on ages; 9 if all school age
Newfoundland and Labrador	4 under age 12 or 3 under 24 months, including caregiver's own.	6 including caregiver's own preschoolers; up to 8.
Northwest Territories	4 under age 12, including caregiver's own.	8 under age 12, including caregiver's own.
Nova Scotia	6 including caregiver's own preschoolers; additional restrictions based on ages.	6 including caregiver's own preschoolers.
Nunavut	4 under age 12, including caregiver's own.	8 under age 12, including caregiver's own.
Ontario	5 under age 10, excluding caregiver's own; more if of common parentage	5 under age 10, including caregiver's own; additional restrictions based on ages.
Prince Edward Island	6 including caregiver's own preschoolers; additional restrictions based on ages.	7 including caregiver's own preschoolers; additional restrictions based on ages.
Quebec	6 including caregiver's own.	6 including caregiver's own.
Saskatchewan	8 under age 13, including caregiver's own; additional restrictions based on ages.	8 under age 13, including caregiver's own; additional restrictions based on ages.
Yukon Territory	3 under age 6, excluding caregiver's own.	8 preschoolers including caregiver's own; additional restrictions based on ages.

- 82** All jurisdictions in Canada allow some form of unlicensed child care arrangements. This is in contrast to the United Kingdom, where even self-employed “minders” who look after children in their own homes must be registered and are inspected once every three years.

Day Nurseries Act – The Renovation Saga

- 83** Ministry officials acknowledged at the outset of my investigation that one of the key challenges to enforcement of the *Day Nurseries Act* in the unlicensed child care sector is the Act itself. They indicated that it has been known for some time that the Act needs extensive revision.
- 84** The *Day Nurseries Act* dates back to 1946, when Ontarians pressured the government to continue to support subsidized child care arrangements for working families, as the federal government had done during World War II.²⁶ The last comprehensive review of the Act was in 1983, when the regulations were amended to clarify and raise standards. More than 30 years later, the Act is out of step with modern realities. Even the name “day nurseries” is a throwback to earlier times. Ontario is the only jurisdiction still using this outdated terminology.
- 85** Unfortunately, despite many warning signs about the Act’s inadequacies, momentum for legislative change has been slow.

Legislative Inertia – Renovation Delayed

- 86** Several coroner’s inquests have urged amendment of the *Day Nurseries Act*, including one in 1999 that recommended the government explore setting minimum requirements for unlicensed child care. Regrettably, successive governments failed to respond with legislative reform.

²⁶ See Jennifer Scott, “Daycare during wartime”, *The National Magazine* (April 14, 1998). CBC Archives, online: <<http://www.cbc.ca/archives/categories/society/family/who-cares-for-our-kids-the-changing-face-of-daycare-in-canada/day-care-during-wartime.html>>; Mary J Wright, “Toronto’s Institute of Child Study and the Teachings of W.E. Blatz” in Larry Procher and Nina Howe, eds, *Early Childhood Care and Education in Canada* (Vancouver, B.C.: UBC Press, 2000) 96 at 106-107; Susan Prentice, “Theorizing Political Difference in Toronto’s Postwar Child Care Movement”, Occasional Paper No. 8 (Toronto: Childcare Resource and Research Unit, 1996). Online: <<http://childcarecanada.org/sites/default/files/op8.pdf>>.

- 87** On July 28, 2010, the death of two-year-old Jérémie Audette in Orléans focused attention on the issue of illegal daycares. Jérémie was taken on a play date, without his parents' knowledge, by an unlicensed child care provider to another unlicensed provider's home, which had a pool in the backyard. Jérémie accessed the pool unnoticed and subsequently drowned. The inquest into his death resulted in 16 recommendations in December 2012, eight directed at the Ministry. The recommendations included ensuring that unlicensed home daycare providers are not allowed to care for more children than those licensed through an agency, creating a registry for unlicensed caregivers, ensuring the licensing process involves first aid and CPR training requirements, and investigating opportunities for increasing the number of regulated home daycares.

Under New Management – Renovation Begins: 2010-2012

- 88** The Ministry of Education began work on revising the *Day Nurseries Act* soon after it assumed responsibility for child care policy in 2010. However, Ministry officials told us that the unlicensed sector was not then a primary focus of this initiative.
- 89** In June 2012, the Ministry released a discussion paper entitled *Modernizing Child Care in Ontario: Sharing Conversations, Strengthening Partnerships, Working Together*, which outlined the government's long-term vision for seamless and integrated child care located in or linked with schools.²⁷ One component was review of the *Day Nurseries Act*, regulations, and policies governing licensed daycare. Some issues identified in the paper were clarification of programs requiring a licence, the status of child care in private schools, and the discrepancy between requirements for regulated versus unregulated providers. It noted there were no provincial standards for health and safety in the informal care sector, and observed:

Because many services in Ontario are regulated to protect consumers, parents may sometimes have inconsistent expectations about the protection of children in unlicensed/unregulated home-based care.

- 90** In December 2012, the same month the Audette inquest recommendations were released, the provincial cabinet directed the Ministry of Education to report back in spring 2013 with policy, regulatory and legislative measures to modernize Ontario's child care system.

²⁷ Ontario Ministry of Education, Early Learning Division, *Modernizing Child Care in Ontario: Sharing Conversations, Strengthening Partnerships, Working Together* (Queen's Printer for Ontario, 2012). Online: <<http://www.edu.gov.on.ca/childcare/ChildCareQuestion.pdf>>.

On Target: January to July 2013

- 91** In January 2013, the Ministry issued the *Ontario Early Years Policy Framework*, setting out a vision, guiding principles and strategic direction for “early years” programs and services for children.²⁸ The document noted the *Day Nurseries Act* was under review with a focus on strengthening the safety and quality of licensed daycare and supporting more providers to become licensed.
- 92** In June 2013, the provincial cabinet approved a multi-year, staged transformation plan to modernize child care. The first phase, targeted for late fall 2013, was to communicate the government’s plan and take regulatory and policy actions under existing legislative authority to support access, safety and quality in the licensed child care sector. The second phase, targeted for winter 2014, involved a broader transformation of the system through new legislation, which would include repealing and replacing the *Day Nurseries Act*.
- 93** The province’s plan proposed changes to support safety and quality in the informal child care sector and encourage more providers to join the licensed sector. They included reducing the restrictions on licensed home daycare providers and increasing those on unlicensed ones, licensing of all private schools serving children under junior kindergarten age, and introducing a progressive compliance and deterrence scheme comprising such tools as administrative penalties. The Ministry was also directed to undertake further research and examine potential alternatives to the required age groupings, staff-to-child ratios and staff qualifications. To support safety, it was envisioned that only licensed, regulated providers would be authorized to use the term “child care” to describe their operations, and that the Ministry would create a “visual brand” for this type of care.

Grander Plans: Post-July 2013

- 94** The government’s modernization initiative, as it relates to unlicensed child care, was kickstarted in July 2013 by Eva Ravikovich’s death, the media storm it incited and the commencement of my investigation. Up until then, Ministry discussion around amending the *Day Nurseries Act* had focused on counteracting the disincentives for joining the licensed daycare sector. Eva’s death shifted the spotlight to the safety issues associated with unlicensed daycare.

²⁸ Ontario Ministry of Education, *Ontario Early Years Policy Framework* (Queen’s Printer for Ontario, 2013). Online: <<http://www.edu.gov.on.ca/childcare/OntarioEarlyYear.pdf>>.

- 95** The provincial cabinet met in August 2013 to revisit child care modernization. Cabinet directed the Ministry to take measures to enhance and accelerate the modernization plan and report back to a cabinet committee with a new bill that fall.

Ahead of Schedule: December 2013

- 96** On December 3, 2013, the government introduced Bill 143, the *Child Care Modernization Act, 2013* – ahead of the original target of winter 2014.²⁹ The preamble stated, in part:

The *Day Nurseries Act* is the current statute governing child care in Ontario. Enacted in 1946, it does not reflect current evidence-based best practices or standards of care. It does not align with the child care needs of today’s families, nor is it adaptable to serve the needs of families in the future. The legislative framework that regulates child care must be updated and improved to strengthen oversight of the sector, to clarify when a licence is required, and to provide greater incentives to obtain a licence.

- 97** The purposes of the proposed legislation were to foster the learning, development, health and well-being of children and to enhance their safety. This was to be accomplished by making four key changes – establishing greater authority and enforcement tools to strengthen oversight and enhance safety, increasing access to spaces in regulated home child care settings, clarifying the programs that do not require a licence, and improving the quality of programs.
- 98** Under the bill, child care centres and home child care agencies that contract with home-based providers, would have to be licensed. Certain types of care would be exempt, including that provided by relatives, babysitters and nannies in a child’s home, and child-minding at a mall or gym while parents are in the building. According to the Ministry, authorized recreational and skill-building programs serving children age 6 and up would also be exempt, in accordance with future regulations.

²⁹ Bill 143, *An Act to enact the Child Care and Early Years Act, 2013, to repeal the Day Nurseries Act, to amend the Early Childhood Educators Act, 2007 and the Education Act and to make consequential amendments to other Acts*, 2nd Sess, 40th Leg, Ontario, 2013. Once enacted, the Act would have been known as the *Child Care and Early Years Act, 2013*.

- 99** The proposed legislation also contained provisions directed at encouraging home daycare providers to join the regulated sector. Ministry officials candidly acknowledged that a critical fault in the system was that unlicensed providers have a clear monetary incentive to remain unregulated. One described it in an internal email (dated June 4, 2013) as “almost a license to print money,” and observed that the Ministry’s bid to push operators towards licensing “by putting more rules on them” was “a stick incentive, rather than a carrot.”
- 100** While the bill still allowed unlicensed providers to care for fewer than five children without requiring a licence, it made the five-child limit a hard cap. An unlicensed provider’s own children under age 6 would be counted, and there would be restrictions on age groupings.
- 101** As well, all providers, licensed or not, would have to allow parents access under normal circumstances.³⁰ (The operation where Eva Ravikovich died reportedly prevented parents from visiting.)
- 102** To encourage private-home caregivers working with licensed agencies, the bill proposed to increase the number of children that they could care for from five to six. They would have greater flexibility to care for children of different ages and could adopt a two-provider model. The Ministry estimated that some 6,000 new child care spaces would be created if each of the home daycares working with licensed agencies added one more space.
- 103** In addition, the bill proposed enhanced authority to address violations, including the ability to:
- issue administrative penalties of up to \$100,000 per infraction;
 - immediately stop a provider from operating where a child’s safety is at risk;
 - issue compliance orders and enforce rules in the unlicensed sector; and
 - prevent individuals convicted of certain crimes from providing child care.
- 104** It also increased the maximum penalties for offences from \$2,000 to \$250,000.
- 105** As well, the bill called for better information sharing – e.g., with children’s aid societies and public health agencies – to support a more co-ordinated approach to protecting the well-being of children.³¹

³⁰ s 19.

³¹ Ontario Ministry of Education, “Backgrounder: Child Care Modernization Act” (December 3, 2013, 9:45 a.m.). Online: <<http://news.ontario.ca/edu/en/2013/12/child-care-modernization-act.html>>.

- 106** Finally, it expressly required the Minister of Education to publish information about contraventions of the Act and have the discretion to publish summaries of restraining orders and proposals to revoke or refuse to issue or renew a licence. Directors appointed under the Act would also have the ability to publish such information in any other manner or medium they considered appropriate, including posting a summary at the relevant premises.³²
- 107** While awaiting passage of the *Child Care Modernization Act, 2013*, the Ministry also issued proposed regulations under the existing *Day Nurseries Act* on December 18, 2013. These included allowing home-based providers associated with licensed agencies to care for more than three children under age 3. Criminal reference checks and vulnerable sector screening would also be required for various groups, including all individuals contracted with a licensed daycare agency.³³ All licensed home daycares would also be required to have first aid certification from a recognized training program.

Renovation Stalled, Stopped and Revived

- 108** On May 2, 2014, the Legislative Assembly was dissolved in preparation for the June 12 provincial election. Unfortunately, the end of the legislative session also marked the demise of Bill 143, and a halt to the long-awaited reform of the law governing unlicensed daycare.
- 109** On July 10, 2014, shortly after the Legislative Assembly resumed post-election, the government reintroduced the *Child Care Modernization Act, 2014* as Bill 10.³⁴
- 110** The Ministry and the Government of Ontario have recognized for years that the system for monitoring unlicensed daycare is in desperate need of revision. The drive for legislative change must persist in order to safeguard the health and welfare of children in unlicensed care. Accordingly, both the Ministry and the government should take all steps necessary to continue to promote modernization of the child care system in Ontario, to ensure adequate supervision of unlicensed child care arrangements.

³² s 19.

³³ Ministry policy requires that licensed day nursery operators and private-home daycare agencies have a criminal reference check policy.

³⁴ Bill 10, *An Act to enact the Child Care and Early Years Act, 2014, to repeal the Day Nurseries Act, to amend the Early Childhood Educators Act, 2007, the Education Act and the Ministry of Training, Colleges and Universities Act and to make consequential and related amendments to other Acts*, 1st Sess, 41st Leg, Ontario, 2014.

Recommendation 1

The Ministry of Education should take all necessary steps to support reform to improve the system for monitoring unlicensed child care operators.

Recommendation 2

The Government of Ontario should continue to seek reform of the system for regulating unlicensed child care services in Ontario.

Additional Initiatives

- 111** In August 2013, the Ministry announced it would establish a dedicated enforcement unit to investigate complaints, respond to public inquiries and supply information to parents about unlicensed providers.
- 112** The Ministry intends the dedicated enforcement unit to include six investigators with designation under the *Provincial Offences Act*, allowing them to lay charges. In fall 2013, it established a temporary project team to develop this unit, which began managing complaint intake in early 2014. The Ministry told us its intention was to have the unit staffed, trained and operational in August of 2014, and it was seeking expert prosecutors to work on cases involving illegal child care operations.
- 113** The Ministry committed to designing, developing and operating a 1-800 telephone number for parents, members of the public and community-based agencies to call to report complaints about unlicensed providers. Originally scheduled for February 2014, this was implemented in August 2014.
- 114** During our investigation, the Ministry developed an online search tool to allow parents and the public to search unlicensed daycares by operator's name, business name and/or by address to see if they have had any verified complaints against them, as well as the status of those complaints. This was also originally scheduled for February 2014 but implemented in August 2014. Up until then, Manitoba was the only province with an online tracking system for complaints about child care providers.
- 115** At the time this report was written, the Ministry had begun to staff the dedicated enforcement unit, but it was not fully operational. The unit was conducting complaint intake with temporary staff, but the complaint line was not yet available to the general public.

- 116** While the government and the Ministry have taken positive steps and made concrete plans to improve the process for dealing with complaints about unlicensed daycares in the wake of recent tragedies, legislative proposals have only recently been resurrected, and many operational improvements are still pending. The Ministry needs to recall the sense of urgency that followed Eva Ravikovich’s death and the commencement of my investigation last summer, and ensure that its plans for improvement are implemented expeditiously.

Recommendation 3

The Ministry of Education should implement its stated plans to establish a dedicated enforcement unit, a 1-800 complaint line and an online search tool to improve oversight of unlicensed child care operations as soon as possible.

A Poorly Planned Move

- 117** Many of the gaps and inefficiencies in the child care licensing program are not necessarily products of outdated legislation, but of years of bad administration and neglect. Essentially, the Ministry of Education inherited a clunker when the licensing program moved over from the Ministry of Children and Youth Services in 2012.

Inconsistencies Abound

- 118** Enforcement of the *Day Nurseries Act* in the unlicensed sector was not initially flagged as an area of concern when the licensing program was transferred to the Ministry of Education on January 1, 2012. However, the Ministry soon discovered the process for responding to complaints about unlicensed daycares was patently defective.
- 119** Within two months, the Ministry identified inconsistent and unclear practices, procedures, forms and tools for dealing with complaints. It began working on a procedural guideline for complaints, standardizing the complaint process, forms, letters and tools for surveillance and prosecution, and planning for staff training.
- 120** Beginning in June 2012, the Ministry received a series of media requests under the *Freedom of Information and Protection of Privacy Act* for information about complaints against unlicensed child care providers. As the Ministry reviewed the historical records in response to these requests, a dismal picture emerged.

Complaint documentation was disorganized and incomplete. One regional office had misplaced six months' worth of inspection records for 2011 after moving locations. Another informed the Ministry that it was unable to find some sensitive records.

121 In an email dated July 10, 2012, one Ministry official remarked to another:

I think we may want to reinforce the issue of making sure 2012 reports (unlicensed care, complaints about licensed care and serious occurrence reports) are all up to date and squeaky clean. We can't fix prior to transfer [from the Ministry of Children and Youth Services] but we can't continue in the same manner.

122 The Ministry of Children and Youth Services' policy on the *Day Nurseries Act* included only one section on unlicensed operators and the investigation of complaints. In November 2012, the Ministry of Education introduced and started training staff on 41 pages of "Internal Directives and Guidelines" for complaints about unlicensed caregivers. The directives were revised in April 2013, September 2013 and April 2014. The document grew to 82 pages, and includes detailed guidance for dealing with and documenting complaints about unlicensed operators.

123 In January 2013, the Ministry also adopted a common set of forms for recording complaints, documenting and tracking the complaint investigation process and recording information about children found in unlicensed care. Previously, recording processes varied among regional offices, making comparisons and accessing information extremely difficult.

124 As well, recognizing that the electronic information system for the child care licensing program was antiquated, the Ministry began development of its own case management system. Complaints about unlicensed daycares were not even captured in the system that was being used at the Ministry of Children and Youth Services at the time of the transition. In December 2013, the Ministry of Education introduced a new web-based Child Care Licensing System for use by licensed child care operators and Ministry staff to record licensing activities. The Ministry plans to add capacity to the system to document and track complaints about unlicensed operators, but it does not anticipate that it will be available until sometime in the fall of 2014.

Inadequate Resources

- 125** The main focus of the Child Care Quality Assurance and Licensing Branch is “licensing.” Staff must carry out inspections before an annual licence or renewal is issued, and monitor and respond to reports about serious incidents as well as complaints about regulated child care operations. While complaints about unlicensed operations are treated as a priority, they have historically been viewed as secondary to the Branch’s licensing responsibilities. Shortly after the transition to the Ministry of Education, some regional offices were swamped with heavy licensing workloads. Ministry officials told us that the staff resources accompanying the transition were insufficient, contributing to significant backlogs.
- 126** A variety of factors compounded the staffing situation, including relocations, retirements, recruitment and retraining associated with the transition. The introduction of full-day kindergarten for 4-5-year-olds also had a negative impact. The Ministry had increasing difficulty in processing the new and revised licences that arose as school- and community-based child care programs changed to accommodate full-day kindergarten. According to Ministry records, from April 2012 to September 2013, the number of licenses increased by 239 – from 5,056 to 5,295. One manager described program advisors as “drowning” under the volume of licensing tasks.
- 127** It also took the Ministry months to discover and fix one glitch that added to an ever-growing inspection caseload for licensed child care. The computer system for issuing licences incorporated a business rule that permitted them to be granted for no more than one year beyond the previous expiry date. As inspection delays mounted and licence renewals were increasingly delayed, renewals were issued for decreasing periods of time. For example, if a renewal inspection was delayed for six months, the renewal licence could only be issued for six months, triggering yet another renewal inspection in six months’ time – and so on.
- 128** An internal Ministry email, dated January 14, 2013, observed that the backlog was creating negative impacts on staff morale and distracting from other important work. It was only in March 2013, after the Ministry became aware of the computer system problem, that it modified its systems to allow users to set a licence’s expiry date based on its issue date. However, Ministry staff continued to face significant workloads. By September 10, 2013, **1,400** of 5,295 licences had expired, averaging 137 days overdue to a maximum of 454 days. By then, in the Barrie office, nearly 50% of licences had expired; in the Ottawa office, close to 60%.

- 129** The workload pressures relating to licensed child care may well have been a factor in delayed and inadequate response to complaints about unlicensed operators. In fact, in May 2012, when the first complaint was received in the Barrie regional office about the Vaughan daycare where Eva Ravikovich later died, the licensing assistant who took the call advised her manager she wasn't sure who to give the file to as the program assistants were trying to "catch up on regular licensing." Ultimately, the case fell through the cracks, with no one responding appropriately.
- 130** Since mid-July 2013, when media attention focused on illegal daycares in the wake of Eva's death, complaints to the Ministry about unlicensed child care have also substantially increased. In 2012, the Ministry received **274** complaints. In 2013, it received almost double that number – **526**.
- 131** The Ministry hired additional administrative staff in some regional offices on a temporary basis, as well as temporary program advisors to contend with the extra workload. Its plan to separate out responsibility for responding to complaints about unlicensed care through creation of a dedicated enforcement unit should ensure this function does not take a back seat to licensing duties in future. However, it is disturbing that within a short time of taking over management of the licensing program, the Ministry was left to contend with serious unanticipated problems, and had to initiate significant program changes to respond to crisis.

Recommendation 4

The Ministry of Education should ensure that it has adequate resources to properly administer and effectively enforce the *Day Nurseries Act*.

Lessons Learned

- 132** Clearly, the Ministry of Children and Youth Services bears responsibility for the licensing program prior to the transfer. It apparently failed to adequately monitor, identify and resolve systemic concerns. On the eve of the transfer, regulatory challenges in the unlicensed child care sector were due for examination in yet another inquest into the death of a young child (Jérémie Audette). The licensing program was moribund and in serious need of both an administrative and a legislative makeover.

- 133** For the Ministry of Education’s part, it consciously chose to accept the licensing program without first ensuring that a comprehensive review of issues and concerns had taken place to allow for informed, organized and strategic transitional planning. As with most transitions, thorough advance planning can make the difference between a successful venture and one fraught with unforeseen pitfalls and problems. In future, the Ministry should ensure that, prior to assumption of any program area, it engages in careful and comprehensive pre-planning.
- 134** The Government of Ontario should also use the example of this program and its transfer as a cautionary tale for all levels of management in the Ontario Public Service, to encourage proper program administration in future.

Recommendation 5

The Ministry of Education should ensure that, prior to assuming responsibility for any new program area, it conducts sufficient research to ensure it is aware of and can plan for any serious issues and deficiencies, which may compromise the effectiveness and efficiency of program administration.

Recommendation 6

The Government of Ontario should use the *Day Nurseries Act* licensing program and its transition to the Ministry of Education as a learning example for Ontario Public Service administrators.

Handling Complaints – Structural Flaws

- 135** Our investigation reviewed each stage of the Ministry’s process for responding to complaints and concerns about unlicensed child care operators.

It Starts With Intake

- 136** When our investigation began, regional offices typically received complaints about unlicensed daycares by phone and email. Complaints come from various sources, including neighbours, other child care workers and children’s aid and municipal staff who come across suspicious operations in the course of their duties.

- 137** Each regional office’s licensing assistant was responsible for complaint intake. The licensing assistant filled out a complaint intake form³⁵ in accordance with the Ministry’s directives, and set out basic questions to be asked.
- 138** The licensing assistant was also supposed to check the “informal care log” to see if there were any prior complaints about the operator or location in question. The log is an Excel spreadsheet filed in a folder on a shared electronic drive. It contains complaint information including relevant dates, the name of the assigned program advisor and names and addresses of caregivers and complainants (unless the latter choose to remain anonymous). If the assistant found a match with the address and/or name identified in a complaint, the date of the prior complaint and the log number would be marked on the form.
- 139** Licensing assistants were instructed to focus on the number of children allegedly receiving care. If a complainant expressed concerns about issues outside the Ministry’s authority, licensing assistants would provide referrals to other agencies – e.g., children’s aid societies or municipal bylaw enforcement officials. In the case of serious allegations, the Ministry might also provide information directly to the relevant agency.
- 140** The licensing assistant would then forward the form by email to a program advisor, copied to the relevant manager. The Ministry always treats complaints about informal child care providers as a priority, and internal communications identify them as “urgent.”
- 141** All complaints were required to be recorded by the licensing assistant on the log, and updated as the case progressed – e.g. with results of inspections and whether or not the operator was found to be in compliance with the Act.
- 142** In spring 2014, the Ministry consolidated the complaint intake function. Instead of having regional clerical staff conduct complaint intake, this task was assigned to trained investigative staff in the process of developing the new dedicated enforcement unit.

Inspection Procedures

- 143** Managers are responsible for assigning complaints to program advisors immediately – on the same business day they are received. Complaints are

³⁵ This form and others referred to in this report can be found on our website here: <http://www.ombudsman.on.ca/Resources/Reports/Careless-About-Child-Care.aspx>

assigned a number in the informal care log. The number in the log is supposed to match the file number for the complaint on the shared drive, where all documents relevant to a complaint and inspection are supposed to be stored electronically.

- 144** The assigned program advisor must conduct an investigation within five days of a complaint being received. For staff safety reasons and to ensure proper oversight of children during a visit, two people are always required to do an inspection. One program advisor takes the lead, and the other acts as an observer. If a site visit is not conducted, the lead program advisor must specify the reason on the complaint intake form, which must then be approved by a manager. Details of unsuccessful attempts to gain entry are also recorded on the form.
- 145** When program advisors inspect a home daycare, they typically offer residents their identification, business cards and a copy of a document setting out their powers. However, they do not have the legal authority to enter without the occupant's consent.
- 146** If a visit is conducted, the program advisor must fill in the details of the inspection on the form, including information about the caregiver, the number of children receiving care, the advisor's observations, findings about compliance and actions taken.
- 147** The focus of the program advisor is on the number of children being cared for, but some cases may involve contacting a children's aid society, if child welfare concerns are identified during the visit or a municipal authority, if fire hazards or other potential health and safety issues are observed.
- 148** If a caregiver is found in compliance with the *Day Nurseries Act*, program advisors provide him or her with a document entitled "Child Care in Ontario Fact Sheet." If the sheet is not provided, the program advisor is expected to explain why. If a violation is identified, the program advisors leave a form called "Information for Caregivers and Parents," which sets out the requirements of the Act. The expectation is that the caregiver will relay this information to parents to explain why the daycare must reduce the number of children served.
- 149** The lead program advisor is also responsible for filling out a form called "Information about Children Receiving Care." The program advisor requests information from the caregiver about the children on site, including names and birthdates of children under 10 and contact information for their parents. The program advisor is required to obtain information about what days and hours the children under 10 were at the daycare during the week of the visit. Names and birthdates of children who are 10 and older must also be recorded, as well as

those of the caregiver's own children. If too many children under age 10 are found in care (not counting the caregiver's own children), the program advisor is expected to tell him or her to reduce the number to no more than five.

150 Typically, program advisors fill out this form by hand, and either scan it or type the information they have recorded into an electronic version when they return to the office. These forms are housed on the shared drive.

151 The two program advisors who do the inspection must sign the complaint intake form. A manager reviews and signs off on it once the caregiver is found to be in compliance with the Act.

152 If a caregiver is in compliance, a program advisor sends him or her a letter of compliance. If not, the regional manager, as a Director under the Act, sends out a non-compliance letter, and the program advisor must return to re-inspect within 30 days. Observations from follow-up inspections are recorded on the complaint intake form.

153 As of September 2013, the Ministry's internal directives refer to program advisors conducting a new "third site visit," when more than five children are observed in care during the second inspection. This is to take place within a month of the second inspection. Managers have the discretion to decide whether a third site visit should take place or whether other avenues such as surveillance or a search warrant should be pursued. The directives note:

The decision to conduct a third site visit is based on several factors including the severity of the *DNA* [*Day Nurseries Act*] violation observed during the site visit(s) and the willingness of the caregiver to address remaining issues in order to bring the site into compliance with the *DNA*.

154 If a provider remains non-compliant on the third visit, the manager is to consult with the Ministry's legal services staff about possible prosecution.

155 Licensing assistants are responsible for completing the "record of documentation" required on the complaint intake form, and saving all relevant documents. In future, this will be the role of staff with the dedicated enforcement unit. Once the unit is fully staffed, it will be responsible for conducting all complaint inspections, and program advisors in the regional offices will focus on tasks related to licensing.

156 The Ministry has recognized that there are systemic problems with its procedures and practices for responding to complaints and concerns about unlicensed child

care operators, and it is working towards making improvements. My investigation also identified serious structural flaws at virtually every stage of the complaint response process that must be addressed.

Inaccurate and Incomplete Informal Care Logs

- 157** As the Ministry has acknowledged, there are significant issues with its documentation of complaints. Complaint intake is a vital first step. Unless sufficient and accurate information is obtained at the outset, the opportunity to respond to concerns about illegal operators may be lost.
- 158** Our review of Ministry records for **2012** revealed a multitude of errors and omissions in informal care logs. In fact, we found more incomplete complaint records for that year than complete ones. We discovered wrong and missing provider names, addresses, and dates, as well as inaccurate information about complaint history.
- 159** Some complaints did not even show up on the log. In one regional office, the licensing assistant neglected to record several complaints on the log. One complaint was received on March 20, 2012, but not logged until August 9, 2013, some 17 months later. When the Ministry reviewed its records in 2013, it also identified eight complaints in three different regions that had not been logged. While most of these complaints were followed up, in one case, the lack of documentation may have contributed to the fact that no inspection was ever carried out, even when a second complaint was received about the same child care operator.
- 160** Our review of Ministry emails also uncovered six more complaints in two regions that had not been logged by mid-August 2013, and were not recorded in complaint files. By December 2013, four of the six complaints had been identified by the Ministry, and the remaining two have now been added to the logs.
- 161** The Ministry's January 2013 version of its internal directives sets out explicit instructions about the information to be recorded in the logs and how folders in them were to be set up for each year. The directives also established a supervisory review process to minimize the risk of errors in complaint records. Each regional manager was required to review the informal care log on a monthly basis to ensure that documentation standards and timelines were met. In turn, the Director of the Child Care Quality Assurance and Licensing Branch was to review this information on a quarterly basis.

- 162** Despite the new directives, logs we saw from 2013 continued to be incomplete and inaccurate. We found instances where the care provider’s name was not included, even though a site visit was conducted. In one region, the log for 2013 failed to identify names of providers associated with complaints in 23 instances.
- 163** As for the new supervisory review requirements, regional managers admitted that they had generally not been following the direction, and the director at the corporate head office never once conducted a quarterly review.
- 164** Shortly after news of Eva Ravikovich’s death hit the media in July 2013, the Ministry instituted a revised process requiring regional managers and the corporate office to review logs and related documents on a weekly basis, confirm that all required documents were appropriately logged, and immediately address any performance gaps.
- 165** As of September 2013, the internal directives contain additional requirements about logging complaints, including that all complaints about informal care, even where a referral elsewhere is made, are to be recorded. The directives also encourage greater attention to accurately recording information and correcting errors in a timely way. In addition, they reflect the supervisory review process put into place after Eva’s death, “to ensure timely, consistent information collection practices by regional offices.”
- 166** The Ministry has recently placed more emphasis on complaint intake and assigned this task to investigative staff developing the new dedicated enforcement unit. However, given the importance of proper recording of complaints, and the history of problems in this area, it should also conduct periodic audits to ensure that its requirements are observed and to identify performance issues for further follow-up.

Recommendation 7

The Ministry of Education should conduct periodic audits of its informal care logs to ensure compliance with its directions regarding record keeping and supervisory review of records.

Waiting for the Whistle to Blow

- 167** The Ministry’s enforcement of the Act in the unlicensed child care sector is reactive and complaint driven. Under s. 16(3) of the *Day Nurseries Act*, program

advisors may inspect a premises that they believe on “reasonable and probable” grounds is being used as a day nursery. This provision has never been judicially considered. However, the general test for “reasonable and probable” grounds includes both a subjective and objective element. Generally, there must be actual belief on the part of the person that is reasonable in the circumstances.³⁶

- 168** The *Day Nurseries Act* does not actually refer to receipt of complaints. However, the majority of Ministry staff we interviewed said they could not inspect an unlicensed child care operation unless a complaint has been received suggesting the Act has been violated. For instance, a regional manager told us:

‘Reasonable and probable grounds’ is we’ve received a complaint that this premise is being used as a day nursery and that you have more than five children in care. That’s our reasonable and probable grounds.

- 169** The Director of the Child Care Quality Assurance and Licensing Branch told us there must be reasonable cause to believe more than five children under the age of 10 are being cared for: “The conversation with the caller or the complainant is important to ensure that we have reason to go in under our authority.”

- 170** Some program advisors explained that, even if they observed firsthand what appeared to be an unlicensed child care operation, a complaint would have to be initiated before they could address it officially. For instance, in the case of the illegal child care operation where Eva Ravikovich died, the program advisors witnessed the operator enter the day nursery after exiting the residence next door in November 2012. In our interviews, one said she believed she could not request entry into the adjacent property because it was not mentioned in the complaint.

- 171** One program advisor told us that a sign on someone’s lawn offering daycare is not enough to warrant Ministry inspection. When asked by our investigators if it would be different if a program advisor saw someone walking into the home with nine children, she observed:

We have never been given direction on doing that. We have always been complaints driven.

- 172** Another program advisor went so far as to suggest that, in the absence of a complaint, it would be a “conflict of interest” for her to inspect a home child care operation she happened to notice on her own. She insisted:

³⁶ See, for example, *Nelles v Ontario*, [1989] SCJ No. 86, [1989] 2 SCR 170 (SCC).

I have no right to call them up or go and do a visit...we need to get a complaint...somebody needs to call and share those observations with us... I mean, it's not our role. We're not searching for them. It's more... reaction than action.

- 173** Similarly, a program advisor predicted that the Ministry might be accused of harassment if staff inspected a home that was not the subject of a third-party complaint.
- 174** On the other hand, some enforcement staff have creatively worked around the perceived complaint requirement by lodging complaints themselves about suspicious child care operators. In 2012, one program advisor personally filed three complaints about unlicensed child care services and then investigated them; two of the complaints were substantiated as involving illegal operations.
- 175** Interestingly, the Ministry counsel responsible for addressing *Day Nurseries Act* issues does not support the view that a complaint must always be received to justify an inspection. She explained it was open to Ministry staff to use their own observations or evidence found on the Internet to launch an inspection. She also told us that on occasion she has seen something that has led her to ask program staff to follow up.
- 176** Unfortunately, the Ministry's complaint-based enforcement culture remains predominately passive. Ministry staff do not routinely review advertisements, social media websites or otherwise act on publicly available information that might identify potentially illegal operations. Some program advisors told us emphatically that they could not act on information obtained from the Internet.
- 177** Using simple Internet searches, our investigators located numerous examples of homes and commercial settings advertised as operating daycare programs that did not appear to be licensed. Some posted photographs and promotional videos. In one case, there was no reference to a licensed private-home daycare agency, but a caregiver claimed she operated three associated daycare centres. Her promotional video clearly shows more than five children under 10. Another Internet listing for a group of daycare providers shows multiple locations. In a random search of care providers, we found two advertising six openings, one seven, and another 10. Another advertising two openings displayed a photograph with seven children appearing to be under age 10.
- 178** We showed one regional manager an Internet advertisement that suggested a local unlicensed child care provider, who claimed to have space for "5 to 10" children, was in violation of the Act. The manager maintained that the Ministry

would have to receive a complaint about this operation before staff could take any action.

- 179** Our review of Ministry records revealed that another regional manager actually warned against using social networking sites to identify problematic child care providers. A program advisor had suggested to this manager that, because daycare operators frequently use Facebook to advertise, staff should have ready access to it “as we step up our investigation and enforcement practices.” On July 8, 2013, the manager discouraged this approach, cynically observing in an email:

I seem to recall an old phrase that goes ‘be careful what you wish for’... If the regional offices were given access, what would be our liability in the event that something is on a particular site that should not be there or is illegal[?] Is the fact that we have access and sometimes monitor the sites increase our liability in the event that something illegal or improper gets posted and we didn’t catch it?

- 180** One enterprising program advisor in December 2012 followed up a complaint about a potential illegal operator and located the address of the provider through an Internet search. When she sought permission to conduct an inspection, her manager initially emailed the response:

No – when you get a legit complaint that they are concerned about more than 5 and that you are provided an actual address, we’ll investigate. We could chase our tails with many calls but we need to be provided something with some meat.

- 181** When the program advisor suggested another staff member felt there was enough to justify inspection, the manager indicated that she could “Google” the provider and see if she had any advertisements for child care first. The program advisor noted there was a sign in front of the house that said “Home child care.” The manager compromised and directed that a “courtesy” call be made to the provider to convey information about the Act.

- 182** Some Ministry staff, while acknowledging that they could act proactively to conduct Internet research or inspect premises based on their own observations, expressed that this would simply overburden an already heavy workload. As one regional manager commented:

We’re so busy, we don’t want to go out looking for them because we can’t handle it. It’s not that we don’t want children to be protected, but

please don't go out looking for them because we can't handle what we have now.

- 183** Ultimately, our investigation revealed conflicting views amongst enforcement staff as to what circumstances trigger the right to inspect a potentially illegal child care operation, with many staff adopting an overly restrictive interpretation requiring a complaint. The Ministry should not rely solely on external sources to identify potentially illegal child care operations. The proposition that a complaint is a prerequisite to launching an investigation is ridiculous. It is not supported by the wording of the Act, and appears to have arisen simply to justify a meek enforcement style. The Ministry must embrace a proactive approach to enforcement, with the primary goal of protecting the safety of children. It should ensure that enforcement staff are directed to act on their own observations and to conduct research on their own initiative using various news media, social media, and the Internet to identify potentially illegal child care arrangements. Many illegal operators blatantly advertise their services. The Ministry's practices allow them to do business and put children at risk without fear of consequences.
- 184** The Ministry should also adopt and train staff on tactical investigative techniques that encourage pre-emptive enforcement, such as the "secret shopper" approach. Investigators, posing as potential consumers of child care services, may be able to identify illegal activity that would otherwise escape detection. Other regulatory bodies have employed such methods successfully to uncover unscrupulous activity.

Recommendation 8

The Ministry of Education should adopt a proactive approach to enforcement that reflects the fundamental importance of protecting children in informal care arrangements.

Recommendation 9

The Ministry of Education should direct enforcement staff to conduct media and Internet searches to identify potential illegal unlicensed child care arrangements for inspection, and to conduct inspections when their own observations or research identify potentially illegal child care arrangements.

Recommendation 10

The Ministry should adopt pre-emptive investigative techniques, such as the "secret shopper" method, and train its staff to encourage active enforcement of the *Day Nurseries Act* and any successor legislation.

Failure to Identify Past Complaints – History Repeats Itself

- 185** Our review of the Ministry’s informal care logs for the period January 1, 2012 to October 31, 2013, revealed **82** instances in which the same caregiver or address was the subject of multiple complaints. Sometimes the same operator was providing services at different addresses. During this period, 28 providers previously subject to complaints were found to be contravening the *Day Nurseries Act*.
- 186** In recognition of the importance of tracking frequent violators, licensing assistants were expected to search Ministry records and include information about prior complaints and inspections on the complaint intake form. However, we found several cases in which related files were not linked. In July 2012, an unlicensed operator was found illegally caring for 10 children, five above the allowable limit. Later, a complaint about another location led the Ministry to find the same operator in contravention of the Act. Yet the complaints and inspections were not cross-referenced in the Ministry’s records.
- 187** The danger of overlooking complaint history is aptly illustrated by the case of the daycare where Eva Ravikovich died. The Ministry received four complaints in 2012, inspected in response to one and found the caregiver operating illegally. It then failed to inspect after receiving a fifth complaint. Had the complaint and inspection information been consolidated and easily accessible, the Ministry might have escalated enforcement measures before tragedy struck.
- 188** We were told that licensing assistants typically only searched the shared computer drive for matching “addresses” to determine if the location identified was subject to earlier complaints. This can result in information about providers who have moved or operate from multiple locations being missed. We also found many instances where there was no indication whether or not a complaint was substantiated. This is vital information that should always be recorded. If the person conducting intake fails to note past compliance issues, they may remain hidden. Some program advisors told us they relied on the information initially provided by licensing assistants, rather than conducting their own search of the shared computer drive.
- 189** The Ministry changed its internal directives in September 2013 to include instruction to licensing assistants to search names and addresses related to a complaint, and record dates and log numbers of any previous visits on the complaint intake form. Having more skilled staff in the dedicated enforcement unit conduct intake may also improve matters. However, given the importance of getting complaint history right, the Ministry should reinforce its instructions

about searching for names as well as addresses relating to complaints and inspections, and ensure that findings of compliance, non-compliance, enforcement steps and their outcomes are all recorded on the complaint intake form.

- 190** In addition, the Ministry should direct enforcement staff to undertake independent electronic searches prior to inspections, to confirm the accuracy of the complaint history noted on the intake form and revise it as necessary.

Recommendation 11

The Ministry of Education should provide additional direction to staff conducting complaint intake to ensure that names and addresses relating to complaints are searched and recorded on complaint intake forms, along with information about past contraventions, enforcement steps and results.

Recommendation 12

The Ministry of Education should direct that enforcement staff responsible for conducting inspections routinely search Ministry records to confirm compliance history.

When a Complaint is Not Enough

- 191** When the Ministry receives a complaint about an unlicensed child care operator, it does not necessarily mean an inspection will take place. During our interviews with Ministry staff, it became apparent that there were conflicting views about what specific information a complaint must contain to justify an inspection. The Ministry's internal directives are not terribly helpful on this point. In response to a question about what to do if the caller is unsure about the number of children in care, the document states: "The Ministry follows up on all complaints where it is alleged that care may be provided to more than five children without the authority of a licence."
- 192** The counsel who advises the Ministry on the application of the *Day Nurseries Act* told us that a complainant does not have to expressly state that there are more than five children in care to trigger an inspection. Some managers and program staff confirmed that an inspection might be conducted even if a complainant was uncertain about the number of children in care. However, others took a much narrower view of the level of detail required to warrant inspection, observing that if someone alleges a caregiver is looking after "too many" or "numerous children," this might be too unclear to prompt an inspection.

- 193** We found cases in which the Ministry did not pursue complaints because of doubt about the number of children. In one 2012 case, no action was taken on a complaint because the informant did not know the number of children in care and failed to say she was concerned that there were too many. A 2013 complaint in another region, referencing “too many children” was not followed up, as it lacked sufficient information. Five months later, after Eva Ravikovich’s death, the Ministry did conduct an inspection and the operator was found in compliance.
- 194** The Ministry should clarify that when a complainant does not know if there are more than five children in care, enforcement staff should seek to obtain additional details. This can be done through further contact with the person who made the complaint, searching the Ministry’s records relating to the address and caregiver, as well as other sources of information. The health and safety interests of children are paramount. If there is any uncertainty, the residence should be visited to confirm the situation. The Ministry should treat every contact from a citizen as a serious event, requiring thorough consideration and follow-up.

Recommendation 13

The Ministry of Education should direct enforcement staff, to confirm details when they receive complaints that do not contain specific information about the number of children in care in unlicensed child care operations, including contacting the complainant for further information, reviewing Ministry records for prior complaints, searching the Internet, and also conducting site inspections.

Systems Failure

- 195** The Ministry’s method of tracking complaints about illegal day nursery operators is extremely cumbersome. Our review of its electronic records found them often unclear, incomplete, inaccurate, inadequate, and out of sequence.
- 196** Complaint information is entered manually into the Excel spreadsheet that serves as the log, which is filed in a folder on a shared drive. Those conducting intake of complaints must laboriously search through various folders in the shared regional database to piece together complaint history. As the enforcement process progresses, documents related to complaints and inspections are uploaded to folders on a shared drive.
- 197** While the Ministry has provided direction to ensure consistent storage of electronic files in the regions, we found that regional offices continued to store

folders in different places on the shared drive, leading to confusion and difficulty accessing information. A similar problem existed with paper files. The Ministry's expectation is that any hard copy documents are to be kept in a separate file in the region. However, in some offices there was no organized paper filing system and we found these documents often went astray.

- 198** Additionally, the internal security of the electronic file storage is an issue. The complaint logs can be accessed, changed and moved in the Excel format by multiple users. One regional office found that when searching for unlicensed complaints, an entire informal care log disappeared. It was later discovered that someone at the corporate office had been working on the file and had accidentally dragged it into another log. Another region also reported temporarily losing logs.
- 199** The Ministry's system is also only as good as the information in it. According to the September 2013 version of its internal directives, staff conducting intake were required to search electronic records on the shared drive for complaint history back to January 1, 2012, the date when the Ministry's oversight of the *Day Nurseries Act* began. However, many operators have been in business for significant periods of time. The practice of limiting historical searches in this manner may well have resulted in past enforcement information being overlooked. The directives were updated in April 2014 to require that staff search "as far back as information is readily available, to a minimum of January 2012." The Ministry's regional offices should still have custody of historical compliance records dating from the period when administration of the Act was the responsibility of the Ministry of Children and Youth Services. It should ensure that this valuable information is retained and incorporated into its new case management system to allow for comprehensive tracking.
- 200** In addition, at the time of our interviews with Ministry staff, we were told that only regional managers and corporate office staff could access all of the shared regional drives in the province. Licensing assistants and program advisors were restricted to searching electronic records in their own region. If a provider with a history of compliance problems moved to a different region, that history could go unnoticed. This issue may be alleviated to some extent through the centralization of the enforcement function, but if regional staff retain some responsibility to address unlicensed child care situations, they require full access to this information. The Ministry has since acted to address this issue.
- 201** The system also has no capacity to analyze data and generate statistics, which are essential for identifying complaint trends, multiple violators, and priority areas for enforcement and program improvement.

- 202** To its credit, when the licensing program was in transition, the Ministry realized it needed a new electronic case management system, including capacity to record, track, and store complaints against unlicensed child care providers. In a document setting out the business case for this improvement in January 2012, the Ministry observed that problems with the system, including inaccurate and incomplete data and the lack of any way to track complaints, “posed a great risk.”
- 203** According to the Ministry, the case management system proposed for unlicensed complaints will allow tracking and managing public complaints in a centralized and consistent manner while ensuring data accuracy. It will also support further standardization for recording and responding to complaints, and will have the ability to generate provincewide statistics and reporting, and enable baseline measures and performance standards to be set. The Ministry implemented a new system for licensing in December 2013, but the system to track unlicensed child care operations was not expected to be ready until sometime in the fall of 2014.
- 204** It is inconceivable in this electronic age that regulatory activity that impacts the health and safety of children has been monitored for years by such archaic means. The Ministry’s case management initiative is well overdue, and improvements should be pursued with expediency.
- 205** The Ministry should also ensure that the new case management system is designed to include features necessary for effective enforcement in the unlicensed child care sector, including:
- access for all relevant program staff to search records throughout the province based on multiple identifiers, e.g., name, address, complainant, date of complaint and inspection;
 - capacity to generate information about statistical trends, multiple complaints about locations and providers;
 - security of data to ensure information is not lost or misplaced as a result of multiple users; and
 - migration of historical complaint and enforcement information from the Ministry of Children and Youth Services.
- 206** Once the new system is in place, enforcement staff should be directed to search all available records relating to compliance history of potentially illegal unlicensed child care providers, not just records limited to the period the Ministry has been responsible for the licensing program.

207 The Ministry should also ensure that regional offices are required to organize their electronic and paper files in a consistent manner, to facilitate storage and retrieval of information.

Recommendation 14

The Ministry of Education should implement additions to its new case management system to allow for tracking of complaints and enforcement relating to unlicensed child care providers on an expedited basis.

Recommendation 15

The Ministry of Education should ensure that program staff have access to search the case management system for records relating to unlicensed child care throughout the province and can search for information using multiple identifiers.

Recommendation 16

The Ministry of Education should ensure that its new case management system has capacity to generate statistical information, to effectively track cases and complaint trends and allow for effective enforcement and program improvement.

Recommendation 17

The Ministry of Education’s case management system should incorporate security features that minimize the risk of data being lost or misplaced as a result of multiple users.

Recommendation 18

The Ministry of Education should ensure that complete historical data relating to complaints, inspections, and prosecutions is incorporated into its case management system in an easily searchable format.

Recommendation 19

The Ministry of Education should direct enforcement staff to search all available historical complaint records, including information generated before January 1, 2012.

Recommendation 20

The Ministry of Education should ensure that all regional offices maintain organized electronic and paper files in a consistent manner.

Inspection Issues

- 208** The Ministry requires a site visit within five days of receiving a complaint about an allegedly illegal unlicensed daycare. If the caregiver is found to be contravening the Act, another inspection is to take place within 30 days. As of September 2013 internal directives, a third inspection may take place if the caregiver is found in violation during the second inspection.
- 209** The Ministry has historically received between 200 and 300 complaints about illegal daycares annually. It discovered **25** cases during its review of 448 complaints received between January 1, 2012 and July 12, 2013, in which inspections should have occurred, but did not. These included cases where there was no first visit, no follow-up visit, no electronic file, and unclear resolutions.
- 210** When we reviewed the Ministry's documentation, we found an additional **16** such cases. The Ministry confirmed that it had acted on these cases once they were identified, but they were not counted in its tally of problem inspections. We also discovered **12** other cases in which inconsistency in assessing non-compliance resulted in a failure to conduct follow-up inspections.
- 211** Our review of Ministry records indicated that most inspections were carried out in accordance with the Ministry's internal directives. However, we found some cases where response to complaints was significantly delayed or nonexistent.

Better Late than Never

- 212** The most notorious example of serial failure to inspect involves the Vaughan daycare where Eva Ravikovich died on July 8, 2013. On May 7, 2012, the Ministry neglected to investigate a children's aid society report that there were 20 children at this location. In October 2012, the Ministry took no action on an anonymous complaint claiming there were 15 children being cared for at the residence. The only site visit was conducted in November 2012, following receipt of a complaint about too many children in care. After a warning letter was sent out, no follow-up inspection was ever conducted. Despite the persistent history of complaints and a finding of non-compliance the month before, the Ministry did nothing when another complaint about the caregiver was received on December 20, 2012, alleging there were 17 children at the site.
- 213** We also found an email dated January 14, 2012 from the same region, listing three private schools and a daycare centre that had been the subject of complaints,

and appeared to be operating daycares illegally. They were not inspected and the complaints were not officially logged and assigned for inspection until 18 months later – after the Ministry began reviewing its files in July 2013. By the time the inspections were conducted that summer, the caregivers were found to be operating as “summer camps,” which did not require licensing.

- 214** In yet another case from the same region in 2013, although a complainant provided an address and said too many children were being cared for, no inspection took place until five months later. Once again, that delayed inspection was only prompted by the Ministry’s internal file review after Eva Ravikovich’s death.
- 215** In another region, although a provider was found non-compliant in November 19, 2012, a follow-up visit did not take place until some three months later, by which point the provider was in compliance.
- 216** In July 2012, a parent complained to the Ministry about an operator who had more than five children in care, including five under age 2. The Ministry did not conduct an inspection until December. The operator did not allow the program advisors entry, saying she was on holiday and would resume looking after children in January 2013. She refused to give parent contact information or children’s names, but did provide initials of five children between the ages of 1.5 and 9 years, whom she said would be in her care in the new year. During the visit, program advisors observed a hot tub in the backyard that was not properly fenced. Despite the caregiver’s grudging co-operation, the regional manager directed that a letter confirming she was in compliance be sent and the file closed. Staff were also directed not to pursue the issue of the unprotected hot tub with local authorities. The file did not indicate that any further follow-up was undertaken to ensure the caregiver was in compliance.
- 217** The Ministry’s January 2013 internal directives required all complaints to be followed up. Since September 2013, they have required staff to document their reasons for not undertaking a site visit and obtain managerial approval. As part of their weekly review of the logs, managers must now ensure that initial site visits and follow-up inspections are completed and documented within the set timelines. The corporate office is also required to review regional records to ensure that timely inspections are carried out.
- 218** While the Ministry has made efforts to encourage staff to conduct timely inspections, given the failure to follow such direction in the past, additional measures are necessary. For instance, whenever a decision is made not to conduct a site inspection, the director at the Ministry’s corporate office should be

notified, confirm and track these decisions. The Ministry should also arrange for periodic audits to ensure that timely initial and follow-up inspections are being conducted, and to identify any problem areas requiring further remedial action.

Recommendation 21

The Ministry of Education should require that the Director of the Child Care and Quality Assurance and Licensing Branch review, approve and keep track of all decisions not to undertake site inspections in response to complaints.

Recommendation 22

The Ministry of Education should arrange for periodic audits of its informal care logs to ensure timely inspections and supervisory review of records are being conducted.

Compliance Confusion

- 219** During our investigation, we learned that program advisors took differing approaches to assessing compliance with the Act and whether a further site visit was required. Some based their evaluation only on the number of children they personally observed in care when they inspected a residence. Others also took into consideration the information provided by the caregiver. For example, if four children were found in care, but a caregiver indicated that three were at home sick, some program advisors might treat the situation as compliant, while others would consider this a contravention and schedule a further visit.
- 220** We identified **10** incidents in **2012** in which program advisors based their assessment of compliance solely on how many children they actually found in care, and ignored other information suggesting the caregiver had violated the Act.
- 221** The Ministry addressed the issue of such inconsistencies in its January 2013 directives, but only in the question-and-answer section:

If the caregiver is in compliance at the time of the site inspection but the information provided indicates there are more children on other days, are program advisors obliged to return on one of the other dates to assess compliance?

- 222** The answer given was that information recorded about children receiving care is based on the program advisor's observations as well as information provided by the caregiver. Essentially, if caregivers give information that confirms they are

not in compliance with the *Day Nurseries Act*, it is to be treated as a contravention of the Act requiring follow-up.

- 223** Despite this direction, we found **two** additional problematic cases in 2013. In one, from July 2013, program advisors observed that the provider had twice been over capacity in the previous month, but this was not factored in, as she happened to be found in compliance on the date of the site visit. In the other case, while the program advisors initially appeared to treat the situation as non-compliant, they failed to conduct a follow-up inspection.
- 224** These **12** files were not reflected in the statistics generated by the Ministry's July 2013 review. One regional office accounted for **9** of these cases, including both incidents arising in 2013.
- 225** In the September 2013 version of the internal directives, the Ministry clarified that the assessment of non-compliance is to be based on the program advisor's observations as well as information provided by the caregiver or found in the caregiver's records. Program advisors are also specifically directed to ask caregivers how many children they care for on other days, and review attendance records to see if there are more than five children in care at any time. The directives specify that if the caregiver provides information or the program advisor sees evidence in records that there are more than five children on "**other** days, the caregiver is **NOT** in compliance."

Form Over Substance

- 226** While the Ministry has provided clearer direction on the evidence to be considered in assessing compliance, the forms it introduced in January 2013 for collecting information about complaints and site visits are themselves problematic, and contribute to continuing confusion.
- 227** Earlier versions of the "Information About Children Receiving Care" form did not include a section for recording children's ages. In one case, this led to a manager having to send program advisors back to obtain further details in order to assess compliance. This was corrected in January 2013.
- 228** The January 2013 version of the form instructed staff to record information such as the children's names, dates of birth, parents' names and home addresses, phone numbers and the hours children were in care (to be recorded on a chart showing the days of the week). Program advisors were asked to note the hours that children were in care on the day of the site visit, and the previous days in the

week of the visit. However, the remaining days of the week were to be crossed out. Unfortunately, we found cases where program advisors did not appear to either understand or follow these instructions. Some filled out the chart for the entire week, not just the day of the site visit and the previous weekdays. While some crossed days out as directed, many used unclear symbols, marks, lines and squiggles. Some also added illegible notations and ambiguous comments. For instance, one program advisor described child attendance as “variable.” In April 2014, the form was revised slightly to direct staff to only include the dates and hours that a child had actually been at the daycare, and not to include planned attendance for future days.

- 229** It was often unclear, based on the information captured on the form, whether a caregiver was complying with or contravening the legislation. In one case involving a site inspection on May 30, 2012, a program advisor found that the caregiver was compliant, but the attendance records indicated six children who normally received care were absent on the day of the visit. The program advisor noted on the chart: “No set schedule, as needed, unknown, yet to be determined.” There was no attempt to follow up to confirm the actual attendance pattern.
- 230** In another case from 2013, a program advisor placed checkmarks beside the names of 12 children on the chart. These marks might have been intended to indicate how many children were present during the inspection, but the letter of non-compliance that was later issued only referred to 10 children in care.
- 231** It is also unclear why the Ministry directed staff to cross out and disregard the days of the week falling after the site visit, on the chart. This means that if a site visit takes place on a Monday, only the hours children attended that day will be recorded; information about the normal scheduled attendance for the remainder of the week is ignored. Some program advisors we spoke to questioned this practice, and when we asked the Director of the Child Care Quality Assurance and Licensing Branch about the reasoning behind it, she was unable to explain its purpose.
- 232** Given that the information gathered from inspections is used to assess whether or not a caregiver is violating the Act, and to determine appropriate enforcement steps, the Ministry should ensure that its forms are clear and encourage complete and accurate records of inspections. The Ministry should revise the “Information About Children Receiving Care” form to add a requirement that enforcement staff record information about the normal schedule of child attendance throughout the week, not just attendance confirmed on the day of the inspection and the previous days that week. While knowing the actual hours that individual children were in care is necessary to support enforcement steps such as

prosecution, it is also important to know the typical child care schedule, particularly for follow-up inspections. For example, if the schedule shows that few children attend on a particular day of the week, and more are present on another day, this should be factored into the choice of day for a follow-up inspection.

- 233** Neither this form nor the complaint intake form differentiates between the children actually observed at the daycare and those who are scheduled to be there at other times. Staff should clearly record, on both forms, how many children were found on site and their ages, as well as details about any children who were not present but appear to be scheduled to be in care on other days. If attendance fluctuates over a period longer than a week, the forms should provide space for this to be recorded. There should also be room on the forms to record the source of the information (whether it came from caregivers, parents, the program advisor’s own observations, or records found at the site). Enforcement staff should also be asked to confirm on the forms whether or not the caregiver was found in compliance of the Act, and to explain the basis for their findings.
- 234** Once the Ministry has revised its forms, it should train enforcement staff to ensure they are consistently, clearly and accurately completed in future.

Recommendation 23

The Ministry of Education should revise or replace its “Complaint Intake” and “Information about Children Receiving Care” forms to ensure that the following information is captured:

- **How many children were found on site;**
- **How many children found on site were under 10 years of age and their specific ages;**
- **Details of any other children not found on site who appear to be scheduled to attend the child care operation;**
- **The source of information about children’s ages and attendance, e.g., caregiver records, interviews with caregivers or parents;**
- **The full schedule of attendance of all children for the week of the visit, and for a longer period if it appears that the schedule varies; and**
- **A clear explanation of the basis on which the caregiver has been found to be compliant or non-compliant.**

Recommendation 24

The Ministry of Education should train enforcement staff to ensure that its “Complaint Intake” and “Information about Children Receiving Care” forms are consistently, clearly and accurately completed.

Failure to Co-ordinate with Other Agencies

- 235** Children’s aid societies and municipal officials often contact the Ministry when they identify unlicensed child care situations that appear to violate the *Day Nurseries Act*. School officials are another useful source of information about suspicious child care operations. Several cases we reviewed made reference to contact with school officials who were familiar with caregivers providing services to a large number of children before and after school.
- 236** Unfortunately, in the past, even when outside agencies alerted the Ministry about illegal child care operations, there was no guarantee that their information would incite action. We found several instances in which apparent violations of the Act, raised by outside officials, either resulted in no independent inspection or a half-hearted response by the Ministry.
- 237** In the case of the daycare where Eva Ravikovich died, the Ministry failed to act on information supplied by a children’s aid society in May 2012, suggesting that it was operating illegally. The Ministry’s records of the contacts with the children’s aid society were also inaccurate and incomplete.
- 238** Similarly, in June 2012, the Ministry received a call from a children’s aid society worker who said she had visited a home the day before that was littered with feces and urine, and where it appeared eight children under the age of 10 were being cared for by an unlicensed caregiver. Given the seriousness of the situation, the worker asked the Ministry to advise her of the results of its investigation. Program advisors waited four days before visiting the home. When they did, they arrived at 9:30 a.m., when there were no children present.
- 239** The caregiver acknowledged she did care for 10 children on a part-time basis, before and after school. However, as no children happened to be there at the time, the program advisors treated the caregiver as compliant and the case was closed. No attempt was ever made to visit the home during the hours when child care was normally provided. The Ministry also neglected to follow up with the children’s aid society worker.

- 240** The Ministry’s internal directives now require that referrals from or to another agency be done in writing. Program advisors must confirm any telephone conversations with outside agencies by email. They are also to record the findings of outside agencies with respect to the number of children receiving care at a premises, and keep notes of any discussions with outside agencies. We were told the Ministry’s new case management system will include database fields able to capture this information.
- 241** While Ministry staff often work in tandem with children’s aid and bylaw enforcement officials, they also deal with authorities who may be less familiar with enforcement of standards in the unlicensed child care sector. For instance, a senior Ministry official noted that when 2-year-old J r mie Audette drowned in a backyard pool, local police were surprised and intrigued by the provincial government’s authority in these circumstances. The Ministry has acknowledged that improvement is necessary in co-ordinating and sharing information amongst child welfare and law enforcement officials.
- 242** In August 2013, the provincial cabinet directed that the Ministry work with municipalities and relevant agencies and ministries on measures to support inter-agency co-operation on compliance and enforcement related to licensed and informal child care. Further to this initiative, Bill 10, the *Child Care Modernization Act, 2014*, would require certain prescribed persons to report instances immediately to the Ministry where there is a reasonably grounded suspicion of an imminent threat to the health, safety or welfare of any child for whom child care is provided.³⁷ The Ministry intends that public officials subject to this duty to report would be designated by regulation, and that it would work closely with its “municipal partners” on implementation and training prior to this occurring.
- 243** When municipal, child welfare, police or school officials contact the Ministry with concerns about child care providers, the Ministry should ensure that any discussions are clearly documented and prioritized for response. Outside agencies specializing in education, child welfare, and health and safety are normally credible sources, and generally such contacts should trigger immediate inspections.
- 244** The Ministry should also update outside agencies, as appropriate, about its enforcement efforts, to keep them in the loop. Towards this goal, the Ministry should take concrete steps to enter into formal protocols with outside agencies, to

³⁷ s 18.

establish expectations for documenting concerns and sharing information about unlicensed child care operations.

- 245** In addition, regardless of the progress of legislative reform, the Ministry should take the initiative to educate municipal, police, school board and children’s aid society officials about its role in enforcing requirements relating to child care. The Ministry should develop outreach materials that include contact information, to facilitate quick access for local authorities to Ministry enforcement staff, and to encourage speedy communication and response concerning illegal child care operations.

Recommendation 25

The Ministry of Education should direct its staff to prioritize inspection of complaints received by municipal officials, children’s aid societies, police services, and school officials.

Recommendation 26

The Ministry of Education should enter into protocols with outside agencies such as municipalities, children’s aid societies, police services, and schools to ensure effective follow-up and information sharing relating to concerns about unlicensed child care operations.

Recommendation 27

The Ministry of Education should take steps to educate municipal, children’s aid society, police and school officials, about the Ministry’s role in ensuring unlicensed child care operations comply with the *Day Nurseries Act* requirements and its successor legislation.

Recommendation 28

The Ministry of Education should develop outreach materials for local authorities, including information on how to readily communicate with its enforcement staff, and encouraging them to come forward with concerns about unlicensed child care operations.

Lack of Inspection Rigour

- 246** One disturbing trend we identified in reviewing individual complaint files was a palpable lack of rigour in pursuing inspections. For instance, where any obstacles arose, some staff simply gave up and closed the file, or took action that otherwise compromised the integrity of the inspection process.

Knock, Knock – Who’s There?

- 247** In 2013, the Ministry received a complaint alleging a caregiver was looking after nine children, seven under the age of 10. Program advisors made two trips out to the home, but no one answered the door. Although no site inspection was ever completed, the regional manager decided that the matter did not require further follow-up.
- 248** In another 2013 case, the Ministry received an email complaint about a child care provider in Toronto. The sender included a photograph purportedly showing the provider walking nine children to her storefront daycare. Two days later, another complaint was received, including information about the route the caregiver normally took and the address of the storefront. The program advisors visited the address twice, but as they found no one there, they closed the file after two failed attempts.
- 249** Sometimes, even though someone is clearly at the home, program advisors forgo a site visit to avoid inconvenience. In December 2012, program advisors were following up on an anonymous complaint when they spotted a man driving a van into the garage of the home they were going to visit. He was seen leaving the van and then closing the garage door. The program advisors went to the front door, where a woman met them with her coat on. Rather than request entry, they accepted the woman’s word that she had three children of her own and sometimes did supply teaching. The file was closed as compliant. The complaint intake form noted:
- We did not enter the house. The door way was very narrow and steep. She appeared to be leaving. We did not see any obvious evidence of excess children.
- 250** The September 2013 version of the Ministry’s internal directives contained a new section about situations when there is no answer at the door of a home suspected of operating an unlicensed child care. It instructed that a second attempt should be made within five days, at a time of day when children arriving at the premises can be observed. It also noted there may be consideration of surveillance after two unsuccessful site visit attempts. All site visit attempts were also to be documented.
- 251** Some program advisors expressed nervousness and anxiety to us about conducting site visits at informal operations, which may explain why it is not

unusual for them to adopt a fairly passive approach when no one answers the door.

- 252** Given the reticence sometimes demonstrated by program advisors in conducting inspections of unlicensed child care operations, the Ministry should expressly prohibit closure of a complaint file unless positive evidence has been obtained through site visits, surveillance or other means, confirming that a caregiver is in compliance.

Recommendation 29

The Ministry of Education should ensure that complaint files are not closed unless positive evidence of compliance with the Act has been obtained through inspection.

Inspections By Phone

- 253** In reviewing the 2012 informal care logs for two regions, we discovered examples where the assessment of whether a provider was in compliance with the *Day Nurseries Act* was based solely on a telephone conversation.
- 254** In one case, program advisors went to a home, but no one answered the door. They left their business cards. The file was later closed, after the woman who was the subject of the complaint assured a program advisor over the phone that she was no longer providing care.
- 255** We found another case dating from June 2012, where a complaint was received that a caregiver had nine children under age 5 and two under 10 in her care. Instead of conducting an inspection, the program advisor simply talked to the caregiver over the phone. Based on their conversation, she was satisfied that the caregiver knew the rules and was complying with the Act. The same caregiver was the subject of another complaint in July 2013, which was substantiated when an inspection revealed that she was looking after six children, in contravention of the Act.
- 256** The Ministry should ensure that enforcement staff do not close a complaint file after only a phone interview. Staff should base their assessment of compliance on information they personally verify through site inspection.

Recommendation 30

The Ministry should expressly prohibit enforcement staff from closing complaint files based on information obtained through telephone conversations with caregivers.

Heads Up!

- 257** In accordance with its internal directives, Ministry inspections of unlicensed child care operations are expected to be unannounced. This makes sense since, if someone who is operating an illegal day nursery is warned in advance that an inspection will take place, the site may well appear compliant by the time program advisors arrive, only to revert to non-compliance once they leave.
- 258** Unfortunately, we found that in several cases the Ministry lost the element of surprise because program advisors alerted child care operators in advance before conducting an inspection.
- 259** Until recently, it was common practice for some program advisors to leave business cards if they arrived at a residence and no one answered the door. In fact, one regional manager expressed the view that this practice was not “necessarily inherently problematic,” as it might act as a catalyst for the operator to become compliant. In order to address concerns with this practice, the Ministry’s September 2013 revision of its directives clarified that leaving a business card when no one answers the door is not an option. The April 2014 version of the directives expressly prohibits leaving “any information resources or business cards” at the site in cases where the door is not answered.
- 260** We also discovered that some program advisors called first before conducting an inspection, and if no one answered, left a voice message indicating they would be coming to conduct an inspection. In addition, we found situations where program advisors told non-compliant operators when they could expect a follow-up inspection visit – saying something like “I’ll be back within 30 days.”
- 261** While undoubtedly many people who provide child care services in their homes are honest and law-abiding, the reality is that there is a financial incentive for less scrupulous operators to skirt the rules and sanitize the scene before a Ministry site inspection is conducted. The Ministry should operate on the principle that enforcement staff should take no action, either overtly or through implication, which might alert potential violators that an inspection is imminent.

Recommendation 31

The Ministry of Education should ensure that enforcement staff do not directly or indirectly alert individuals who are the subject of a complaint prior to carrying out an initial or follow-up inspection.

Sorry, Wrong Number

- 262** In some cases, faced with an apparently wrong or incomplete address related to a complaint, the Ministry did not make reasonable efforts to find the right one. We were also told that a full address must always be obtained before an inspection can take place.
- 263** A complaint was received on May 14, 2013, but program advisors did not attempt a site inspection until May 23. When they arrived, it was clear they had the wrong address. Although the complaint identified an unlicensed daycare at number “517” on the street, there was no such number. The program advisors suspected that the complainant had inadvertently reversed the numbers and actually intended to complain about the house at No. 157. When they called for direction from a manager, they were told not to attempt an inspection. Later, the complainant confirmed the street number was 157. An inspection was conducted on May 28, and the caregiver was found in contravention of the Act.
- 264** We found four complaints in one region that did not result in site visits because address information was wrong or missing and staff could not find the operations. However, when we conducted quick Internet searches based on the information available in the four files, we were able to find websites for child care providers in the vicinity which were likely the subjects of the complaints.
- 265** The September 2013 version of the Ministry’s internal directives added a section entitled “Initial Site Visit – Unable to Locate Address.” It instructs staff to contact a complainant immediately to obtain accurate information if an address proves to be incorrect or incomplete. However, it does not address cases where numbers appear inverted or reversed and it might be possible to ascertain the likely location simply based on observation or Internet research.
- 266** Given the six-month time period for prosecuting violations of the *Day Nurseries Act*, the Ministry should be vigilant in following through on complaints, including taking positive steps to obtain additional details to assist in locating potentially illegal operations.

Recommendation 32

The Ministry of Education should direct staff to take all reasonable steps to determine the correct address when responding to complaints, including contacting complainants for clarification, searching the Internet, and using independent observation.

Too Kind, Too Gentle

267 The reluctance that some Ministry staff have demonstrated in dealing with complaints about unlicensed child care operators reflects an organizational culture that has traditionally focused on encouraging rather than enforcing compliance. According to those we interviewed, the Ministry has not taken a particularly hard line with unlicensed child care providers. Program advisors primarily see their function in this sector as educating and leading operators into compliance. As one expressed, it is a “kinder, gentler approach.”

268 Program advisors also told us that the enforcement role does not always sit well with the “advisor” function of their job title. One commented:

So there’s a struggle between: Am I an enforcer or an advisor? Am I trying to work with people or is it my job just to take them to court? I don’t know. Honestly, I don’t know...

269 A regional manager similarly remarked:

The program advisors are very much like they have a double role. Enforcement and support. So it’s hard to reconcile that sometimes. It’s easier to support than to be the bad guy and do the enforcement part.

270 In inspections of licensed premises, the program advisor’s role is fairly well defined. They must ensure compliance with established standards. However, many of the program advisors we interviewed were reticent about investigating complaints about illegal operations, where they have to engage in “cold calling” on private individuals in their homes.

271 Inconsistency and lack of rigour in enforcing the *Day Nurseries Act* will continue unless the Ministry is able to foster a strong enforcement culture amongst those who investigate complaints and follow up on concerns about illegal child care operations. Changing the label used to describe enforcement staff is a first step. Under Bill 10, the *Child Care Modernization Act, 2014* it is proposed that

“inspectors” would be responsible for program enforcement.³⁸ Even without this legislative amendment, the Ministry has committed to creating a dedicated enforcement unit, staffed by investigators with authority to lay charges under the *Provincial Offences Act*. The temporary project team developing the unit has employed “investigators.” However, we understand that the permanent job description refers to these positions as “enforcement officers.” The establishment of a dedicated enforcement unit is a positive development that should provide the opportunity for the Ministry to clearly separate the enforcement role from the advisory function, and develop enforcement expertise.

Recommendation 33

The Ministry of Education should ensure that advisory and enforcement duties relating to unlicensed child care complaints remain separate and that enforcement expertise is promoted in its new dedicated enforcement unit.

Recommendation 34

The Ministry of Education should ensure that staff responsible for enforcing the *Day Nurseries Act* or successor legislation in the unlicensed sector are referred to as inspectors, investigators, enforcement officers or similar titles, to reinforce their enforcement responsibilities.

No Sense of Urgency

272 We reviewed several cases in which the Ministry did not appear motivated by any sense of urgency, despite serious and disturbing circumstances and the fact that it has only six months to commence prosecution of child care operators for offences under the *Day Nurseries Act*.

273 Its internal directives require that the first site visit take place within five working days of receiving a complaint – and immediately if there is a health, safety or child welfare concern. While we found many inspections take place within the five-day window, much can change during this period. In some jurisdictions, the standard time frame for inspection is considerably shorter. For instance, in Calgary, Alberta, the local child care licensing body attempts to carry out initial inspections within 24 hours of receiving a complaint. In Saskatchewan, the first unannounced site visit is to be conducted within three days of receiving a complaint.

³⁸ s 28.

274 The Ministry directs enforcement staff to conduct second inspections within a month if the first reveals that the caregiver is violating the Act. The September 2013 version of the directives suggested that second inspections be conducted sooner, if there are circumstances such as a high number of children found receiving care or the caregiver has a history of non-compliance. However, Ministry staff confirmed to us that it is unusual for them to conduct a second visit until just before the 30-day limit is about to expire. Some program advisors said there is no urgency in conducting a follow-up visit. They indicated that there was tacit acceptance within the Ministry that providers may be in violation for a while, to allow parents time to make alternative child care arrangements. In one internal Ministry email we reviewed from January 2013, a program advisor instructed a less experienced colleague not to rush to do a second inspection:

We do not need to follow up so quickly, we have a month to ensure that the follow-up is done. This also gives the provider time to make the necessary changes.

275 When asked how she balances the need to enforce the Act with the knowledge that parents and providers need time to make alternative arrangements, one program advisor candidly told us, “willful blindness.” In one case we reviewed, a caregiver was very frank with a program advisor, keeping her informed by email about the fact she had given a family two more weeks to find a replacement sitter. While this meant the caregiver would continue to operate in breach of the Act, the program advisor simply thanked her for the update and said she would visit her in the near future.

276 A languid approach to enforcement of the Act encourages unscrupulous operators to play the system. It also leaves Ministry staff impotent and, at times, reluctant to challenge flagrant infractions. The Ministry’s enforcement strategy should take into consideration the exigencies of differing situations. Its inspection timelines should be flexible and tailored to individual circumstances. For instance, a lot can happen in the five-day period the Ministry gives staff to conduct a first inspection, or the 30 and 60 days allotted for follow-up site visits. The Ministry should develop detailed criteria to assist staff with triaging and prioritizing cases for response. Serious allegations should be identified for immediate investigation and followed up with appropriate dispatch. In addition to the number of children in care and history of non-compliance, health and safety risks and the children’s ages should also be considered. Thirty days should be an outside date for a second inspection in routine cases, not the norm.

Recommendation 35

The Ministry of Education should replace the five-day standard for responding to complaints and concerns about unlicensed child care operators with a more expedient and flexible approach, recognizing that some cases require immediate reaction.

Recommendation 36

The Ministry of Education should develop and train its enforcement staff on a process for triaging and prioritizing cases for enforcement.

Second, Third and Fourth Chances

- 277** In some of the files we reviewed, it appeared that instead of escalating enforcement, the Ministry simply kept inspecting and giving the operator second, third and even fourth chances until he or she finally came into compliance.
- 278** The Ministry's statistics indicate that 64% of unlicensed caregivers are in compliance at the initial inspection, while 94% are compliant by the second. However, some have repeatedly flouted the law.
- 279** From January 1, 2012 to July 12, 2013, **138** out of 385 caregivers were found in contravention of the *Day Nurseries Act* during the first site inspection. By the second visit, **23** were still operating illegally, and **15** remained in violation upon subsequent visits.
- 280** One unlicensed home daycare was inspected once in September 2013 and twice in October, and found in violation of the Act at each visit. It was not until a fourth inspection at the end of October that the operator was finally in compliance.
- 281** One operator was found contravening the Act on multiple occasions, but managed to avoid any serious sanctions. Records showed that the Ministry of Children and Youth Services found her operating illegally in July 2007 and again November 2011, when she was caring for 18 children. A standard warning letter was issued. In January 2012, the operator told Ministry of Education staff that she was no longer offering child care. Based on this bald assurance, a manager instructed program advisors not to conduct any further site visits and to close the complaint file. A year later, another complaint was received, and when program advisors inspected, they found a sign on the woman's lawn advertising daycare and 10 young children inside. The caregiver insisted the children were older than 10, but when the program advisors compared the information she provided to the

records from the November 2011 visit, they learned that four of the same children were still in care, and one who was listed as 6 years old in November 2011 had miraculously reached age 10 by January 2013. Despite the suspicious circumstances, the Ministry simply issued another standard non-compliance letter. A follow-up visit found the provider in compliance and only caring for four young children, and the complaint file was closed.

- 282** The Ministry's September 2013 directives introduced a third inspection that could take place 30 days after the second site visit, if the operator is still found in contravention 30 days after the first. The manager is to determine whether a third visit should occur or whether the Legal Services Branch should be consulted about obtaining a search warrant or providing information that may lead to prosecution. While a third visit may be appropriate in some cases, I am concerned that this new step may result in prolonging the time illegal caregivers operate. A third inspection should be considered an exception, not a standard step in the process. There should, at a minimum, be criteria established and examples provided to illustrate what types of cases warrant a third inspection rather than escalated enforcement. In the absence of some explicit direction, there is a danger that the third visit will become the norm.

Recommendation 37

The Ministry of Education should revise its internal directives and guidelines to clarify that the third site inspection, as opposed to immediate escalated enforcement steps, must be approved by the Director on an exceptional basis, and to provide clear guidance as to the circumstances warranting a third inspection rather than escalated enforcement steps.

Losing Momentum

- 283** In some of the cases we reviewed, although Ministry staff took some steps to address complaints, there was no sustained effort to collect the best evidence available and pursue relevant leads. As a result, it lost out on opportunities for prosecution because of avoidable delays.
- 284** In February 2013, CBC News contacted the Ministry in connection with a program it was developing for its investigative show, *Marketplace*. The episode focused on two related caregivers in Toronto. One was convicted in 2007 under the *Day Nurseries Act* and fined \$3,000. She was found caring for 26 children when one was hospitalized after being bitten 15-20 times by another. Two further complaints had been received about her, but none resulted in enforcement.

- 285** The CBC told the Ministry its journalists saw 6-10 children dropped off at a storefront daycare run by one caregiver and transported to another location, operated by the caregiver’s partner, without proper car seats. The Ministry did visit both sites and conducted surveillance, but found no evidence of non-compliance.
- 286** On February 22, 2013, *Marketplace* aired “Who’s Watching the Kids?” featuring the two caregivers and raising concerns about the quality of care provided.³⁹ After viewing the episode, the Ministry’s Director of Child Care Quality Assurance and Licensing Branch wrote in an email to another official:

All and all, no surprises. Gosh there is some awful stuff going on....
More to do for sure. ... Next week a request and/or subpoena for CBC’s
video evidence. ...

- 287** However, it took the Ministry four months after its initial inspection to request additional information from the CBC. It sent a letter to the CBC on June 7, 2013 and received a generic acknowledgement letter saying the CBC could not respond to all correspondence received. The Ministry waited another month to contact its Legal Services Branch for advice. By then, the six-month time frame for taking prosecutorial action under the Act had passed.
- 288** In order to avoid lost opportunities for effective enforcement, the Ministry should ensure that its staff sustain investigative momentum when collecting evidence relevant to potential violations of the Act.

Recommendation 38

The Ministry of Education should direct staff to exercise due diligence and expediency in collecting relevant evidence in order to preserve enforcement options.

Revolving Door – Old Complaints are New Again

- 289** The Ministry closes its complaint files once it confirms that a caregiver is complying with the *Day Nurseries Act*. However, we reviewed several “revolving door” cases of enforcement, where caregivers were found in violation of the Act, came into compliance, and the Ministry closed its enforcement files –

³⁹ Erica Johnson, “Who’s Watching the Kids?”, *CBC Marketplace*, Season 40, Episode 18 (February 22, 2013). CBC, online: <<http://www.cbc.ca/marketplace/episodes/2012-2013/whos-watching-the-kids>> [“Who’s Watching the Kids?”, *CBC Marketplace*].

only to open them again when new complaints were received and the pattern of contravention was repeated.

- 290** To stop this cycle, the Ministry should adopt a practice of conducting inspection spot checks for persistent violators, in addition to its standard inspections. The fact that a caregiver is found in compliance with the Act on one occasion after repeated violations is no guarantee against future lapses. Enforcement history is a good predictor of future behaviour. This reality should be incorporated into the Ministry's enforcement strategy. Even after coming into compliance, serial offenders and caregivers who have been deceptive, obstructive, found caring for a large volume of children illegally, or whose premises or practices posed risks to children's health, safety and welfare, should be identified for further intermittent monitoring and inspections.
- 291** Once the Ministry's dedicated enforcement unit is well established and modifications to the case management system are completed, the Ministry should be in a position to conduct more strategic and organized monitoring of child care operators. The enforcement unit should regularly gather and analyze statistics relating to illegal child care operators, and identify trends to assist in planning proactive enforcement activities.

Recommendation 39

The Ministry of Education should institute a process for conducting spot inspections, to address caregivers in the unlicensed child care sector who have a history of compliance problems, e.g., serial contraventions of the *Day Nurseries Act* or successor legislation, significant violations, unhealthy, unsafe premises or practices, and dishonesty and/or obstruction in the inspection process.

Recommendation 40

The Ministry of Education should generate statistics and monitor and identify trends relating to illegal child care operators, to assist in planning proactive enforcement activities.

Wiping the Slate Clean

- 292** When a caregiver is found repeatedly violating the Act, no matter how old the incidents are, the pattern suggests he or she is aware of the law and has consciously breached it. Such behaviour should normally attract escalated enforcement when new offences are uncovered. However, we learned that some enforcement staff were confused by the six-month limit for prosecutions. They

were operating under the misapprehension that in determining how to respond to a new complaint, they could not consider an operator's history of non-compliance unless the prior illegal child care activity had occurred within the past six months. They would disregard any violations older than six months, and treat the caregiver as having a clean slate when new complaints came in.

- 293** During our investigation, Ministry counsel confirmed that a caregiver's history of contravention of the Act is not erased after six months. While the Ministry cannot charge caregivers in relation to events beyond that time frame, the conduct can and should be taken into account if they break the law again. However, we found situations in which older contraventions were ignored in assessing enforcement steps.
- 294** The children's aid society notified the Ministry on May 1, 2012, that while conducting a child welfare inspection, they found up to 11 children receiving unlicensed care. On May 4, 2012, a program advisor inspected the caregiver's home in the company of a children's aid society worker. They discovered six children under the age of 10, and learned that more than eight children were there on other days. On May 14, 2012, the program advisor sent an email to her manager indicating that the caregiver had been prosecuted under the *Day Nurseries Act* in 1995 and describing her as "very defiant" and insistent that she would not reduce the number of children in her care. The program advisor sought direction on whether the case should be treated as a "first" or "persistent" case of non-compliance, given the caregiver's history and attitude. The manager instructed that the caregiver be considered as a "first offender."
- 295** Despite the caregiver's past conduct and belligerent stance, she got the velvet gloves treatment. A standard first-stage warning letter was issued on May 15, 2012. When the program advisor conducted a follow-up inspection on May 28, 2012, there were only two children in care. However, the caregiver was still recalcitrant, refusing to confirm whether or not she ever looked after more than five children. Despite the children's aid society's evidence of finding 11 children in care, the program advisor's evidence of six found in the initial inspection, and the caregiver's obstructive attitude, the file was closed a few days later. This was justified on the basis that the original complaint about the child care operation was not "about the number of children in care," and the original prosecution took place years before.
- 296** The Ministry must take further steps to ensure that its enforcement staff consider all relevant circumstances when deciding the level of enforcement required to address a contravention of the *Day Nurseries Act*. It should train its enforcement staff on the significance of the limitation period set by the *Provincial Offences*

Act, and ensure that they take into account all prior violations of the *Day Nurseries Act*, regardless of date, when determining how to respond to a new violation. The Ministry should also provide direction to enforcement staff that a caregiver's unreasonable resistance or obstruction of efforts to obtain information during an inspection should be a factor when deciding on next enforcement steps.

Recommendation 41

The Ministry of Education should train its enforcement staff on the significance of the limitation period for prosecutions under the *Provincial Offences Act* and clarify that it does not prevent staff from considering historic incidents when determining how to respond to new complaints.

Recommendation 42

The Ministry of Education should provide clear direction to its enforcement staff that previous violations by an unlicensed caregiver of the *Day Nurseries Act* or successor legislation, regardless of when they occurred, should be considered in assessing how to respond to new complaints.

Recommendation 43

The Ministry of Education should provide direction to enforcement staff that a caregiver's refusal to co-operate with an inspection is to be considered when deciding on the appropriate level of enforcement to address a violation of the *Day Nurseries Act* or successor legislation.

Inadequate Inspections

- 297** A few Ministry staff candidly admitted to us that they lacked the expertise, knowledge and training to carry out enforcement. Our review of Ministry inspection records revealed a host of problems with the quality of the inspections that were completed, from collecting evidence to documenting inspection results.
- 298** The Ministry's proposed new enforcement unit provides an excellent opportunity to advance a new culture of enforcement, based on investigative best practices. However, it will only be effective to the extent that its staff receive comprehensive training on all aspects of the investigative process.

Recommendation 44

The Ministry of Education should ensure its enforcement staff receive comprehensive training on how to carry out effective inspections, including investigative planning, collection and recording of physical evidence, interviewing witnesses, assessing evidence, and report-writing best practices.

Failure to Collect Evidence - I Don't Mean to Intrude

299 We found numerous examples of cases in which Ministry staff failed to obtain relevant evidence and information. We learned program advisors are generally reluctant to request and copy records that might substantiate offences or take photographs of incriminating evidence in caregivers' homes. They tend to eschew what they perceive to be intrusive enforcement in favour of more passive means of evidence gathering through observation and gentle questioning of caregivers.

300 Program advisors have the statutory authority during inspections to review books of account and any records relevant to the issue of compliance with the Act. The Ministry's internal directives indicate that, if a caregiver provides information or program advisors see evidence in records that there are more than five children receiving care on days other than the inspection date, they must request copies of attendance records for those specific days. They also suggest that program advisors take photographs of the records rather than removing them from the site to make copies. The "Information about Children Receiving Care" form also contains a section for recording the fees charged by providers.

301 However, we found very few attendance records or receipts in the Ministry inspection files we reviewed. One manager told us the Ministry would not normally request child care receipts, unless the matter was at the prosecution stage and this evidence was within the scope of a search warrant. Several program advisors confirmed that they do not request or record information about fees. As one said to us:

It'd be pretty intrusive asking people how much do you get paid. Like, you're lucky enough to get in the door.

302 The Ministry's internal directives also encourage program advisors to take photographs, provided a caregiver does not object, of items that suggest an offence – for example, a row of children's boots or coat pegs labeled with names. Unfortunately, our investigation revealed that program advisors rarely take photographs of any evidence or make efforts to do so. They primarily rely on

their recall of on-site observations and notes from interviews with caregivers. Even during the site inspections carried out after Eva Ravikovich's death on July 9, 2013, program advisors neglected to take pictures of the interior or exterior of the home, or of the operator's paperwork containing long lists of children's names.

- 303** The directives expressly prohibit staff from taking photographs of children found in care. Ministry officials explained the reasoning behind this restriction is that parents get upset if their children are photographed. We were told that private investigators hired by the Ministry to conduct surveillance sometimes photograph or take video of children in care, but later "block out the faces."
- 304** The problem with the tentative and timid approach to evidence collection that has been exhibited by enforcement staff is that it undermines the value and integrity of the inspection process. It may result in lost opportunities for collection and preservation of evidence, and frustrates the Act's purpose of restricting the number of children who can be cared for and adherence to regulatory standards without licensing. Effective enforcement requires obtaining the best evidence possible. The hesitance among program advisors to obtain evidence during inspections is completely contrary to accepted investigative standards.
- 305** Bill 10, the *Child Care Modernization Act, 2014*, proposes to give inspectors enhanced authority, which would likely instill greater investigative rigour. Inspectors would be able to enter suspected illegal child care operations on consent to carry out inspections.⁴⁰ They would also have explicit authority to:
- (a) examine a record or other thing that is relevant to the inspection;
 - (b) demand the production for inspection of a document or other thing that is relevant to the inspection;
 - (c) on issuing a written receipt, remove for review and copying a record or other thing that is relevant to the inspection;
 - (d) in order to produce a record in readable form, use data storage, information processing or retrieval devices or systems that are normally used in carrying on business on the premises;
 - (e) take photographs, video recordings or other visual or audio recordings of the interior or exterior of a premises (provided that they do not intercept any private communication and accord with reasonable expectations of privacy); and

⁴⁰ ss 30(1)(e),(f); s 30(2).

(f) question a person on matters relevant to the inspection.⁴¹

- 306** In addition, inspectors would be able to apply without notice for a warrant to conduct an inspection in some circumstances, including if the inspector suspects on reasonable grounds that child care is being provided and is prevented from exercising a right of entry, or has reasonable grounds to believe right of entry would be prevented.⁴² An inspector named in a warrant would also be authorized to use whatever force is necessary in its execution and would be able to call upon police for assistance.⁴³
- 307** Given the beleaguered history of enforcement of the *Day Nurseries Act* and its limitations, legislative reform to enhance investigative authority in the unlicensed child care sector would be a welcome development. In the interim, the Ministry should take all possible steps to sharply reorient its enforcement culture to reflect investigative best practices.
- 308** The Ministry should direct enforcement staff to consistently obtain evidence, including accounts, records, receipts and information about fees, as well as photographic and video evidence of records and the daycare environment to ensure that findings of compliance and non-compliance are based on a solid, complete and accurate evidentiary record.
- 309** It should also consult with the Information and Privacy Commissioner and revisit its position on taking photos and/or videos children found in unlicensed settings. Capturing images of children would allow the Ministry to confirm their identities and therefore their birthdates and other personal information which might assist in enforcement, including prosecution. The Ministry must move away from the concern about parents taking offence and focus on the fundamental need to protect the health, welfare and safety of children.
- 310** While the Ministry relies on consent of caregivers to photograph items within their homes, it should train staff on how to handle sensitive interactions with caregivers to increase the likelihood of co-operation.

Recommendation 45

The Ministry of Education and the Government of Ontario should continue to promote legislative amendment to revise or replace the *Day Nurseries Act*, to

⁴¹ s 31(1),(2).

⁴² s 32(2)(a),(b).

⁴³ s 32(8).

provide the additional inspection powers contemplated by Bill 10, the *Child Care Modernization Act, 2014*.

Recommendation 46

The Ministry of Education should direct enforcement staff to make every reasonable effort during inspections to obtain information about child attendance and fees charged for child care services, and to copy and/or photograph relevant records.

Recommendation 47

The Ministry of Education should reinforce that enforcement staff should routinely photograph and/or video record the exterior and interior of premises used for unlicensed child care operations, including physical items that may demonstrate a caregiver is operating an illegal day nursery.

Recommendation 48

The Ministry of Education, in consultation with the Information and Privacy Commissioner, should change its policy to allow for photographing/video recording of children in unlicensed day nursery settings, in appropriate circumstances.

Recommendation 49

The Ministry of Education should train enforcement staff on communication techniques and strategies to encourage caregiver cooperation with its inspections.

Blinkered Views

- 311** A finding of non-compliance can have significant financial consequences for unlicensed caregivers, as they might have to reduce the number of children they take in or risk prosecution. Accordingly, some may have incentive to mislead Ministry inspectors. It is therefore important for enforcement staff to conduct objective and thorough site visits. Unfortunately, we found that the quality of inspections carried out by program advisors varies significantly.
- 312** Some vigilant program advisors discovered children concealed behind closed doors, in basements, and in one instance, hidden in a furnace room. One caregiver was particularly evasive about the number of children in her care. The program advisor found six children on the main level of the residence and insisted on being shown the upper level, despite the caregiver's resistance. There, she discovered seven more children.

- 313** On the other hand, some program advisors told us they would not normally examine an entire residence unless there are grounds to do so – for instance, if they hear children in other areas of the house. Some expressed considerable reluctance to intrude in a home beyond areas identified by the caregiver as used for child care.
- 314** In the Vaughn residence where Eva Ravikovich died, the caregiver operated unlicensed operations out of two adjacent houses. During the only inspection conducted prior to Eva’s death (November 2012), program advisors witnessed the caregiver leaving one house and entering the one next door. The caregiver acknowledged that she owned both houses, but lived in one and provided care out of the other. The program advisors did not even ask whether child care was ever provided out of the second residence, because the complaint they received identified only one address. Ministry records indicate that after Eva died, children were found in both homes.
- 315** In an effort to encourage more comprehensive inspections, as of September 2013, the Ministry’s internal directives advise staff to look for evidence of children leaving or arriving, and to pay careful attention to signs that there might be more children in care on the premises. Program advisors are to walk through the home with the caregiver to view the areas used for care, where possible. They are told it might be necessary to attempt to view most of the rooms from the entry or a central hallway if the caregiver is reluctant to give them access.
- 316** Program advisors should routinely attempt to observe all areas of the residence under inspection, including the exterior yards. Failure to do so could result in significant evidence going undetected. The Ministry needs to adopt a more assertive stance in responding to complaints about illegal child care operations. While a caregiver may refuse to allow program advisors access to certain parts of a home, this should not stop them from making all reasonable efforts to view the entire residence, inside and out, to ensure compliance with the Act. When a caregiver prevents program advisors from viewing certain areas of a home, they should consider contacting parents, conducting surveillance, obtaining a search warrant or taking other steps to confirm how many children are in care. There is nothing preventing program advisors from asking about use of adjacent properties for child care in circumstances where there may be some evidence to that effect. This is a standard question area that program advisors should be directed to pursue.

Recommendation 50

The Ministry of Education should direct enforcement staff to make all reasonable attempts to view all external and interior areas of a residence under inspection.

Recommendation 51

The Ministry of Education should direct staff to ask whether a caregiver under inspection owns or uses property adjacent to the site being inspected or elsewhere and uses that premises to provide child care.

Putting Parents Back into the Picture

- 317** Despite the fact that parents have primary responsibility for the welfare of their children, they are generally disregarded and relegated to a minor role when it comes to enforcement against illegal unlicensed child care operators.
- 318** Ministry officials told us they do not normally contact parents to obtain information about their children and daycare schedules, unless they are contemplating prosecuting a child care provider. Typically, they do not independently verify information they obtain from caregivers about children's ages or attendance; they simply accept their evidence at face value.
- 319** Parents are a valuable source of information. There are numerous cases in which caregivers have no documented attendance schedule and/or there is uncertainty about the ages of children in care. Parents may be able to provide evidence about their children and others, as well as their care schedules, routines and any related child care locations, all of which is relevant to enforcement. Ministry staff should not automatically assume that parents would be unwilling to co-operate. It makes sense for program advisors in these circumstances to contact parents and ask about their own and other children's birthdates, schedules and the daycare's practices. This should be a standard way to gather information and should be recorded on the complaint intake and "Information about Children Receiving Care" forms. These forms should be revised to require staff to identify the source of information, including whether it was obtained from parents.

Recommendation 52

The Ministry of Education should direct enforcement staff, as a standard practice, to attempt to obtain information from parents about children's care schedules, ages and child care operations to verify evidence obtained from child care providers.

Recommendation 53

The Ministry of Education should direct enforcement staff to record information obtained from parents relating to children receiving unlicensed care on the “Complaint Intake” and “Information about Children Receiving Care” forms.

Facing the Parents

320 By changing its practice to require contact with parents as I have recommended, the Ministry will open channels of communication and provide additional opportunities for educating parents about the *Day Nurseries Act*. Unfortunately, the Ministry does not consider itself responsible for dealing with parents, even when it is confirmed their children are in illegal child care operations. An internal Ministry document we reviewed from July 2012 noted that it has no obligation to advise parents of violations of the *Day Nurseries Act*.

321 The complaint intake form suggests that program advisors can leave the “Information for Caregivers and Parents” fact sheet with parents on the site at the time of the visit. However, typically, program advisors rely on the caregiver to notify parents that the daycare is not in compliance. There is no guarantee that the information will actually make its way to parents. In some cases, ignorance on the part of parents can contribute to continuation of illegal child care operations. As one regional manager acknowledged to us:

What I wish would happen and want to happen is that the Ministry mails the information to all of the parents and we do not rely on a provider. Why would they be giving their business away? So, really, if we’re collecting the [parents’] addresses from caregivers anyway, then why aren’t we following through with mailing [the fact sheets] out?

322 We also found considerable inconsistency in how program advisors interpreted the requirement that caregivers immediately reduce the number of children in care if they are found in violation of the Act. In one region, we were told that program advisors routinely stay at a non-compliant location until the parents arrive to pick up the children. However, the practice appears to vary and some program advisors said they would not normally wait for the numbers to be reduced. Many expressed significant concern about facing parents, and relayed stories of being berated by irate mothers and fathers who were incensed to learn they were losing their daycare space.

323 The situation is different if there are concerns beyond the number of children in care. The Ministry’s internal directives say program advisors are to contact their

managers if there is a concern about children's health and safety, and they may be directed to stay on site until all children have been picked up. They are also to contact appropriate child welfare and municipal authorities to alert them to any health, safety, and child welfare issues.

- 324** Some program advisors confirmed to us that if they believe there is a health and safety risk for children, they remain on site until parents have retrieved their children. Similarly, if there is a child welfare concern, they will remain until the police or children's aid society authorities arrive.
- 325** Under the proposed *Child Care Modernization Act, 2014*, there would be more information available to parents. Notices of administrative penalty would be published, and may be posted at offending premises. In addition, where an administrative penalty is under review, the relevant notice may be posted at the premises or a summary provided to parents.⁴⁴ Protection orders relating to imminent threats to children's health, safety and welfare would also be posted at the relevant child care site.⁴⁵ However, the bill does not require that inspection reports be provided to parents.⁴⁶
- 326** Staff apprehension about dealing with parents is understandable. Many parents are unfamiliar with the law and the health and safety purpose it serves. They may be more likely to criticize Ministry intervention to close their child's daycare than violation of the law by a trusted caregiver. For instance, in May 2014, the closure of one home-based child care over concerns about the number of children in care and various hazards led to a parent rally in support of the operator. However, the Ministry needs to revamp the enforcement environment so that parents are seen not as a nuisance to be avoided, but as active partners and major stakeholders in ensuring compliance with the *Day Nurseries Act*.
- 327** If the Ministry has contact information for parents of children at an illegal daycare operation, it should make efforts to communicate with them directly. Ideally, program advisors should remain on the premises and speak with parents as they pick up their children, whenever an illegal child care operation is identified. The reality is that confrontations with frustrated parents will likely continue to arise. But rather than dodging them, the Ministry should train staff on how to communicate effectively and professionally in situations of potential conflict. The goal of the legislation is to ensure the safety of young children, and their parents ultimately have the greatest interest in their welfare. Parents are

⁴⁴ ss 19, 39.

⁴⁵ s 37(5).

⁴⁶ s 33.

entitled to know whether their children are being cared for in an illegal operation. Ministry staff should be instructed in how to clearly explain to parents why it is necessary to enforce the Act. The Ministry should also be sensitive to parents' anxiety about locating alternative daycare services and develop reference materials that staff can provide to assist them in this.

Recommendation 54

The Ministry of Education should direct enforcement staff that whenever possible, and in all cases involving a health, safety, or child welfare concern, they should wait until all the children being cared for in an illegal child care operation have been retrieved by parents, before leaving the site.

Recommendation 55

The Ministry of Education should direct enforcement staff, as a standard practice, to contact parents directly to notify them that their children were in an illegal child care operation and educate them on the *Day Nurseries Act* or successor legislation.

Recommendation 56

The Ministry of Education should train enforcement staff in dispute resolution and conflict de-escalation techniques.

Recommendation 57

The Ministry of Education should develop reference materials that can be provided to parents to assist them in locating alternative and legal child care spaces.

Failure to Use Staff Effectively

- 328** Two program advisors are present during an inspection. The one who is formally assigned the case takes the lead. If two are not available, which can be more common in smaller offices, the lead advisor will find someone else in the Ministry or at another authority (such as a children's aid society worker or zoning bylaw officer) to assist.
- 329** While it is an excellent practice for staff to inspect in pairs, particularly from the perspective of safety, we found there was considerable confusion associated with the role of the second program advisor. The September 2013 version of the internal directives note: "A second PA/accompanying party is essential to corroborate the findings." However, Ministry staff had differing views of this function. Some program advisors told us when they are acting in the secondary role, they are witnesses, observers or a "second set of eyes." Others said their

primary function was to ensure child safety while the caregiver accompanies the lead program advisor and answers questions. Only a few said they were there to actively assist with the inspection and evidence gathering.

- 330** The Ministry does not require the second program advisor to write up notes or complete forms, although he or she must sign off on the complaint intake form, after an inspection.
- 331** To maximize the benefit of having two enforcement staff conduct an inspection, the Ministry must ensure they are both clear on their respective roles. It should establish written expectations, setting out staff responsibilities in inspections.
- 332** The second program advisor could make significant observations and have valuable insights that are effectively lost if they are not formally recorded. In civil and criminal investigations, as a best practice, investigators are expected to prepare contemporaneous notes independently. The Ministry should ensure that all staff members at an inspection have some responsibility to assist in the collection of evidence and that they independently record their observations.
- 333** When parties from outside agencies accompany Ministry staff in inspections, there should also be some assurance that they will prepare and share written accounts of their observations. The corroborative value of having a second pair of eyes is otherwise lost. Implementing this practice means the Ministry may have to enter into protocols with municipal or local agencies, but given the importance of its enforcement role, it should ensure it has a complete record of inspection. Ideally, the Ministry should not rely on staff of other organizations to assist with its inspections. It should ensure that its new enforcement unit is adequately resourced to allow for two staff to attend inspections in all cases.

Recommendation 58

The Ministry of Education should set out clear written expectations and roles for enforcement staff carrying out complaint inspections.

Recommendation 59

The Ministry of Education should direct all enforcement staff acting as seconds during an inspection to actively assist in the collection of evidence and record their observations independently, and as soon as possible.

Recommendation 60

The Ministry of Education should ensure that if an official from another organization assists in carrying out an inspection, that individual is required to

supply an independent and contemporaneous record of his or her inspection observations.

Recommendation 61

The Ministry of Education should avoid relying on officials from other organizations to carry out inspections and ensure that its new enforcement unit is adequately resourced to meet the requirement of two staff at each inspection.

Late and Inaccurate Inspection Records

- 334** One of the hallmarks of an effective enforcement system is the timely recording of inspection findings. Contemporaneity of inspection notes is critical, particularly if formal sanctions such as prosecution might be pursued. It is commonly accepted that memory fades quickly with time. The longer the delay between an inspection and the recording of the information and observations from that inspection, the greater the risk that the record is incomplete, inaccurate, and open to challenge.
- 335** A manager in the Child Care Quality Assurance and Licensing Branch confirmed to us that inspection documentation must be clear, concise, concrete and objective, and that the Ministry emphasizes that inspection notes must be prepared immediately during or after a site visit. However, we discovered some cases in which notes were prepared well after an inspection. The results of a July 4, 2013 site visit were not recorded until 20 days later. In the case of the daycare where Eva Ravikovich died, notes from the November 2012 inspection were not prepared until eight months later – and then only after her death, when the Ministry reviewed the file and found a gap in the documentation.
- 336** The September 2013 version of the internal directives requires managers and the corporate head office to ensure inspections are documented within required timelines. However, the Ministry should place more emphasis on the timely and accurate completion of inspection records. It should also audit these records regularly to ensure they are prepared properly and filed expeditiously.

Recommendation 62

The Ministry of Education should direct its enforcement staff to independently, thoroughly, and accurately complete all inspection records as soon as possible during and after an inspection.

Recommendation 63

The Ministry of Education should audit inspection records to ensure they are thorough, accurate and completed in a timely manner.

337 A few of the program advisors we interviewed said they were sometimes delayed in completing the required forms because they could not take notes during an inspection. They are issued handheld electronic tablets with case information, including the forms they are required to complete. However, they told us that these tablets are cumbersome and distracting, and typically they do not use them during inspections of unlicensed daycares. In fact, we learned many of them only complete the forms once they have left the site, while some fill in the forms by hand during a visit and upload this information later to the shared computer drive. There is no requirement to transcribe their handwritten notes, some of which we found to be virtually indecipherable.

338 One of the reasons given by program advisors to justify delaying writing up their notes and not using the electronic tablets is that it might upset or intimidate caregivers to do so in their presence. One told us that using the tablet took her longer than writing notes by hand. She said her colleagues also felt this way:

It is too lengthy to take your tablet and to use this tool while you've got somebody who is anxious who is sitting or standing beside you, you've got children that are their first priority, and you've got a tablet and you're trying to ask them for phone numbers and information.

339 Another commented:

My experience going into a home, most people are anxious that we're there. And I think when you bring in an electronic device and start recording, it just heightens the whole anxiety.

340 Effective enforcement involves obtaining the best evidence to support findings of compliance or contravention. Delays in recording information and observations from site inspections can compromise their reliability. I am not persuaded that sensitivity to the potential reaction of those subject to inspections excuses untimely recording of inspection results. It makes sense for enforcement staff to use tablets or other electronic means to record inspections contemporaneously. Given the Ministry's practice of having two staff conduct inspections, it is possible that one could be assigned primary responsibility for recording information on site, while the other takes the lead in conducting interviews and collecting evidence and writes up his or her observations independently later.

341 It is common for investigators in other fields to use electronic devices to record notes while they are conducting inspections. The Ministry should provide additional training to its staff on how to use their tablet devices effectively during inspections. The Ministry should also assess whether the equipment is suitable and consider other options. One possibility is to capture inspections in real time, using audio and video recording, so that a complete, contemporaneous, accurate and incontrovertible record of the inspection is available.

Recommendation 64

The Ministry of Education should direct that one of the two staff members carrying out an inspection is to have primary responsibility for recording the results during the inspection.

Recommendation 65

The Ministry of Education should provide further direction and training for enforcement staff on recording the results of site inspections using the electronic tablets they have been issued.

Recommendation 66

The Ministry of Education should assess the adequacy of its electronic tablets and whether it should employ alternative recording devices in site inspections.

Recommendation 67

The Ministry of Education should consider using audio/video recording during inspections to ensure the best evidence available is obtained.

Kid Gloves – Soft and Unfocused Enforcement

Spotlight on Surveillance and Search Warrants

342 When program advisors are denied entry into a home, there are options available to them, including initiating surveillance or obtaining a search warrant. However, we learned that some are reluctant to escalate enforcement when faced with obstructive and unco-operative child care operators. Some have simply sent a standard letter in these situations, informing the operator that he or she was in breach of the Act. We reviewed one case in which the program advisor was refused access to a home, but still inexplicably managed to conclude that the operator was in compliance with the Act.

- 343** The Ministry has taken steps recently to provide clearer and firmer guidance to staff on what to do when faced with unco-operative child care providers. Its September 2013 internal directives contain a new section that says if program advisors are denied access to a suspected illegal child care operation, they are to consult with their managers and develop a plan of action, which may include a police escort, surveillance or contacting a children’s aid society. They are to stay in sight of the premises and document their observations of children arriving and departing. A second visit is to be planned to take place within two business days. If access continues to be denied, a letter setting out the relevant requirements, Ministry powers and offence provisions is sent to the caregiver. In these situations, enforcement staff are also to consult with their managers and the Legal Services Branch on next steps, such as surveillance or obtaining a search warrant under the *Provincial Offences Act*. Search warrants are usually only obtained if surveillance confirms that the operation appears to be illegal and prosecution is being contemplated.
- 344** The directives indicate that two program advisors are to conduct surveillance. However, we found one office where the only program advisor on staff frequently watched suspected illegal daycares on her own. The Ministry sometimes hires an outside agency to conduct surveillance because it is time-consuming and resource-intensive. It does not have statistics on how often surveillance is conducted or search warrants are obtained, or about the results achieved by these measures.
- 345** The Ministry’s directives only provide basic instruction about surveillance and executing warrants. While some regulatory bodies employing these techniques offer specialized training to their staff, the Ministry has no formal training program. Some program advisors told us they received instruction years ago from prosecutors about how to conduct surveillance, but many have little practical experience with surveillance or search warrants. To avoid pitfalls and get the best value from these techniques, enforcement staff should receive training on best practices. The Ministry should also track the use and results of surveillance and warrants in order to identify trends, problem caregivers and locations for further monitoring, as well as training gaps.

Recommendation 68

The Ministry of Education should regularly train enforcement staff on surveillance and search warrant techniques.

Recommendation 69

The Ministry of Education should generate statistics on the use and outcome of surveillance and execution of search warrants, to identify trends, caregivers and locations requiring further monitoring, and training gaps.

Delayed and Toothless Warnings

- 346** Once the Ministry has completed an inspection and determined that a caregiver is operating illegally, the standard response and first level of enforcement involves issuing a cautionary letter, referred to as a “Letter of Non-Compliance.” Staff are supposed to send the letter by courier to the offending operator within six business days of an inspection. However, our review of regional office files disclosed a number of cases in which it took two to three weeks to send out a non-compliance letter. We found one that was sent out nearly 15 months after an inspection. In another case arising from the same office, there was a finding of non-compliance but no record of a letter ever being sent out.
- 347** We also discovered cases where the letters contained errors. In one instance, file notes indicated there were eight children under age 10 in a house, but the letter sent to the operator gave the number as six. Notes made in a June 3, 2013 case described 11 children in care, two of whom were related to the provider – but when the non-compliance letter was sent on June 11, the number of children was mysteriously decreased to eight.
- 348** We also uncovered similar issues with letters of compliance being delayed or going missing.
- 349** The effectiveness of the Ministry’s warning letters is significantly diminished if they don’t materialize for weeks or months after an inspection, or if they contain errors. The Ministry should continue to direct its managers and the corporate office to review complaint files and confirm that correspondence is accurate and sent out within the set time frames. The Ministry should also audit complaint files to support this review. In addition, it should incorporate electronic alerts and reminders into its new case management system, to ensure that warning letters are delivered promptly to illegal operators.

Recommendation 70

The Ministry of Education should direct its supervisory staff to ensure that correspondence to unlicensed child care operators is accurate and sent out in a timely manner.

Recommendation 71

The Ministry of Education should audit complaint files to ensure that correspondence meets time standards.

Recommendation 72

The Ministry of Education should incorporate electronic alerts and reminders into its case management system to encourage sending of correspondence to unlicensed child care operators within established time frames.

Not Bold Enough

350 The Ministry’s rather tentative approach to enforcement is also reflected in the language it uses in its letters to unlicensed daycare operators who violate the Act. The standard letters have been amended slightly a few times, but have remained fairly consistent.

351 The April 2014 version of the “first site visit” non-compliance letter includes reference to the definition of “day nursery,” the potential consequences for operating without a licence, and the concluding statement:

Based on the program advisors’ observations what you told them during the inspection [sic], you are required to immediately reduce to no more than five the number of children in your care who are not of common parentage and are under 10 years of age. This number cannot be exceeded, regardless of the number of adults present at the location. Failure to comply with the *DNA* could result in enforcement proceedings being carried against you without further notice.⁴⁷

352 If the same operator is found contravening the Act when a second inspection is conducted, a “second site visit” letter of non-compliance is sent out. This letter contains similar language to the first. However, it specifically states that the caregiver was found “not in compliance” and the reference to “**immediately reduce to no more than five the number of children in your care**” is in boldface for emphasis.

353 If the operator is discovered contravening the Act on yet a third inspection, the Ministry sends out a “third site visit” letter of non-compliance. Once again, the

⁴⁷ The letter templates referred to in this section can be found on our website here: <http://www.ombudsman.on.ca/Resources/Reports/Careless-About-Child-Care.aspx>

letter closes with the same reminders. However, the words that are bolded have shifted to emphasize “**were not** in compliance.”

- 354** Unfortunately, the Ministry loses significant deterrence value when, instead of tailoring its language and escalating the message it sends to repeat offenders, it simply churns out repetitive standard-form missives. Shifting to boldface is insufficient to express the seriousness of contravening the *Day Nurseries Act*. The language used is also hardly fear-inducing. Rather than using words strongly condemning the illegal activity, such as “contravening,” “breaching” or “violating” the *Day Nurseries Act*, the Ministry merely labels caregivers as “not in compliance.” In addition, it does not characterize its letters as “warnings” or “cautions,” and avoids words like “offence” or “prosecution” in favour of vaguely alluding to possible future “enforcement proceedings.”
- 355** Yet when the Ministry wants to justify to concerned parents why it is taking action against unlicensed operators, it employs more robust language. Its sample response letter for parents who complain about it taking action against a daycare operator who has violated the Act bluntly brands the provider’s conduct as “illegal.”
- 356** The Ministry should redraft its standard letters so that they clearly and strongly convey the seriousness associated with running an illegal daycare. The language used in correspondence should also match the specific circumstances. While an operator might plead ignorance of the law the first time, this excuse is unavailable on subsequent inspections. The Ministry’s letters should employ escalating language to reflect the increasing severity of the breach. If a situation is particularly egregious – e.g., a large number of children were being cared for illegally, or there were health, safety or child welfare concerns – the letter should identify these issues and admonish the operator accordingly. Absent exceptional circumstances, a third letter should not be sent out without more serious enforcement steps being taken, such as prosecution.

Recommendation 73

The Ministry of Education should review and revise the standard correspondence it sends to illegal child care operators to ensure that the language used reflects the seriousness of violating the *Day Nurseries Act* and successor legislation and is tailored to match the severity of the breach.

Recommendation 74

The Ministry of Education should direct staff that if they send a third warning letter to an illegal child care operator, it must be accompanied by additional escalated enforcement action, such as referral for prosecution.

Restrained Use of Injunctions

357 The Ministry has the power under the *Day Nurseries Act* to obtain a court injunction to stop someone from operating a day nursery or private-home daycare agency without a licence. However, this authority has only been exercised once – in the summer of 2013, against the operators of the Yellowwood Circle child care in Vaughan. In that case, the Ministry also obtained an injunction under s. 101 of the *Courts of Justice Act* to prevent the operators from providing child care in any home.

358 Ministry officials explained to us that their ability to crack down on illegal child care operators is restricted to preventing them from caring for too many children. To address health and safety concerns about the Yellowwood operators and stop them from caring for any children, the Ministry had to seek a general public interest injunction under the *Courts of Justice Act*. This was also the first time the Ministry had used this remedy.

359 When Ministry staff encounter health, safety and child welfare concerns, they are directed to make referrals to the children’s aid society, the police, bylaw enforcement and health officials as appropriate. The latest directives instruct staff to:

Take pictures of anything that seems hazardous to children at the time of the inspection. After the site inspection, a referral must be made to the appropriate municipal authority.

360 Program advisors are also instructed to advise the caregiver to remove/rectify any hazard that may have an impact on the health and safety of children, such as blocked exits, flammable liquids, or unfenced swimming pools. Ministry officials told us there is little they can do to restrain operators, beyond enforcing the “five-children-only” rule. One regional manager explained that, while one would be shocked by some of the things she had seen happening at the homes of informal child care providers, the Ministry has no ability to address these situations.

- 361** The situation is different when it comes to licensed operators. Under section 15 of the *Day Nurseries Act*, if, in the opinion of a director, there is a threat to the health, safety or welfare of children the director must give written direction to eliminate the threat or protect the children from it. The director can also require that the day nursery or private-home daycare not be used until the directions have been complied with, as well as notify parents and affix a notice to the premises. Failure to follow the director’s instructions is also an offence under the Act.⁴⁸ The Act also provides the Ministry with the authority to apply directly to court for an injunction against a licensed operation where health safety or child welfare threats are identified.⁴⁹ Since 2000, there have been 26 notices issued to licence holders under section 15 of the *Day Nurseries Act*. Nineteen of those were not re-instated.
- 362** Historically, the Ministry has not applied section 15 in situations involving unlicensed day nurseries. Based on its reading of the section as a whole, the Ministry is of the view that although an operator effectively may be running an illegal “day nursery,” this section is intended to apply only to licensed operations. While the intended scope of section 15 may be debatable, the fact that, in practice, there is no equivalent mechanism to address health, safety or welfare issues in unlicensed facilities is a significant gap.
- 363** It is counterintuitive that Ministry staff who discover unsafe and unhealthy unlicensed child care operations have no legal authority to address them other than to contact children’s aid society or municipal bylaw officials. Bill 10, the *Child Care Modernization Act, 2014*, attempts to remedy this. Directors and inspectors would have the authority to issue a protection order if there are reasonable grounds to believe that an imminent threat exists to the health, safety or welfare of children receiving care, even in unlicensed settings. Such orders would require caregivers to stop providing services until the director is satisfied that the threat has been eliminated.⁵⁰ Notice of the order would also have to be posted at the premises and could be provided to parents.⁵¹ The notice could not be removed without authorization,⁵² and failure to comply with these provisions would constitute an offence under the Act.⁵³
- 364** The Ministry would also have the ability to apply to the Superior Court of Justice to restrain any person from providing child care (whether licensed or not), if it

⁴⁸ s 21(1)(c).

⁴⁹ s 17.

⁵⁰ s 37.

⁵¹ s 37(5).

⁵² s 37(6).

⁵³ s 77(2).

believed on reasonable grounds that the person posed an imminent threat to the health, safety or welfare of any children.⁵⁴

- 365** The Ministry and the Government of Ontario should continue to seek legislative change to provide the Ministry with effective mechanisms to deal with health, safety and welfare issues encountered in the unlicensed child care sector, such as the ability to issue protection orders and seek injunctions on these grounds.
- 366** While injunction is an exceptional remedy, the Ministry should consider it more frequently when it is met with recalcitrant unlicensed child care operators who have shown persistent disregard for the law and/or pose a serious threat to the health, safety and welfare of children. The Ministry should seek to exert more energy and creativity in addressing problem operators in the unlicensed child care sector.

Recommendation 75

The Ministry of Education and Government of Ontario should continue to seek revision or replacement of the *Day Nurseries Act* to provide the Ministry with the authority to seek injunctions and issue protection orders to address health, safety and child welfare issues in the unlicensed child care sector.

Recommendation 76

The Ministry of Education should seek injunctions more frequently to address unlicensed child care operators who flout the law or pose risks to children’s health, safety and welfare.

Prosecution – the Final, but Rarely Used Recourse

- 367** Ministry officials acknowledged that, in the past, their preference was to “educate” child care providers into compliance rather than to launch prosecutions. As one manager told us, the Ministry does not “want to be out there prosecuting people. We want safe and viable informal care that is available to people in their communities.” Another regional manager said they had never had any prosecutions in her region. She suggested that a caregiver would have to be found operating illegally at least twice before prosecution would ever be considered. In one case from that region, a caregiver was caught providing child care illegally three times in three months, but no prosecution was commenced.

⁵⁴ s 38.

Instead, the caregiver was given one more chance, and by the fourth visit was found in compliance with the Act.

- 368** Until recently, the Ministry worked with lawyers at the Ministry of Children and Youth Services on prosecuting cases under the *Day Nurseries Act*. During our investigation, the Ministry sought a dedicated prosecutions branch within government to take on the prosecutions role for child care issues. As of July 2014, new matters are being assigned to counsel at the Ministry of the Attorney General, Crown Law Office Civil.
- 369** Prosecutions under the Act are relatively rare. During the fiscal year 2012-2013, the Ministry laid **16** charges against informal child care operators at **nine** different locations. All of these cases resulted in convictions. The fines imposed by the courts ranged from \$250 to \$1,500, while two operators received both a fine and probation. As of August 2013, there were 10 pending prosecutions of unlicensed caregivers, including the Yellowwood Circle operators. As of July 2014, two remained before the courts, one caregiver had pleaded guilty, and the rest were withdrawn for various reasons, such as the provider coming into compliance, insufficient evidence or lack of a reasonable prospect of conviction. An additional charge was laid, to which the caregiver pleaded guilty, receiving a \$1,250 fine and two years' probation. To date, the Ministry has never prosecuted any licensed daycare operators.
- 370** The cases that have proceeded to prosecution generally involved repeated, blatant violations of the Act, often along with deceptive conduct on the part of illegal caregivers. One was found to be violating the Act in 2011, and again in November 2012, when she was discovered caring for 11 children. On a follow-up visit in December 2012, the caregiver told program advisors she only had five children in the home, who were asleep on the main level. However, one of the advisors saw a child go into the basement, where nine more children were found in the care of the operator's daughter. The Ministry prosecuted, and in April 2013, the owner of the operation was fined \$1,250 and given one year of probation, while her daughter received a \$250 fine.
- 371** The Ministry received three complaints in May and July 2012 about illegal child care operations at three related residences. In May, it found one site was caring for six children, the other eight. The caregiver was prosecuted, pleaded guilty in January 2013 to two counts of breaching the *Day Nurseries Act*, and was fined a total of \$1,000.
- 372** In responding to a complaint in January 2013, the Ministry found a woman caring for 10 children in one commercial unit and 21 children in another unit

under the care of her niece. A second complaint was received in February 2013 that the operator was caring for children in a public schoolyard, in the basement of her home, and at a local library. Program advisors saw her enter her home with six children. They repeatedly knocked on the front and rear doors and observed her through a window, but she refused to open the door. At the library operation, they saw eight parents arrive to pick up children. The operator eventually acknowledged she was caring for 10 children and knowingly violating the Act. She was charged and pleaded guilty to two counts of operating without a licence in February 2014. However, she continued to provide child care services.

- 373** While we discovered numerous cases where program advisors were refused entry into a residence, the Ministry’s legal counsel explained that typically charges for this conduct are not pursued in isolation. In her experience, prosecutors prefer to lay charges for obstruction and non-compliance together, as obstruction is easier to substantiate when the caregiver is otherwise violating the Act.
- 374** Although the Ministry has pursued some serious cases through to prosecution, based on our review of its records, it does not appear that there is any consistency in the cases escalated to this level of enforcement. Some situations that seemed as egregious as those prompting prosecution resulted only in warning letters and multiple chances to come into compliance. Some program advisors also expressed frustration to us about the contradictory approach that has characterized the Ministry’s enforcement efforts.
- 375** As part of its business improvements process in February 2012, the Ministry indicated it would develop a framework for risk-based licensing, compliance monitoring and enforcement protocols, including strategies for identifying and working with “high risk priority” operators. It also said it would develop risk assessment tools. In conjunction with the development of the dedicated enforcement unit, the Ministry is now refining policies, guidelines and tools to guide enforcement staff. However, more than two years after the Ministry signalled the need for a structured and evidence-based risk assessment process for enforcement, there is still nothing in place for the unlicensed child care sector.
- 376** The Ministry urgently needs to monitor complaint files and inspection results and develop a risk-based approach to enforcement. Enforcement against unlicensed child care providers should be rational, consistent and coherent. Enforcement staff should be able to readily distinguish between minor infractions, which might warrant an instructive approach, and more serious, deliberate, and serial violations of the Act, which should attract strong and swift enforcement measures.

- 377** The Ministry should, as a priority, develop a comprehensive enforcement framework, covering all potential stages from warnings through to prosecution. This should be accompanied by staff training on the various levels of enforcement. It should also include precedent cases to illustrate situations attracting the different degrees of response, up to and including prosecution.

Recommendation 77

The Ministry of Education should, as a priority, develop a comprehensive enforcement framework for its work in the unlicensed child care sector to guide staff in assessing the appropriate enforcement response, including situations warranting prosecution.

Recommendation 78

The Ministry of Education should train staff on the enforcement continuum from warnings to prosecution, including providing precedent cases to ensure more rational, consistent and coherent enforcement in the unlicensed child care sector.

Truth But No Consequences: Forgetting History

- 378** To be effective, the Ministry’s response to individuals who operate illegal unlicensed daycares needs to be consistent and clear. However, some officials told us the Ministry sends contradictory signals to operators and its own staff when it grants day nursery licences to operators who have previously contravened the *Day Nurseries Act*.
- 379** One manager explained to us that a provider’s non-compliance history has no negative impact on the granting of a licence, since the Ministry actively encourages operators to come into compliance. A more cynical official posed the question: “How come we can find ourselves prosecuting at the same time as working with someone toward licensing?”
- 380** There may well be circumstances in which issuing a licence to someone who has violated the Act might be appropriate – for example, if a caregiver unwittingly breached the requirements, remedied the situation expeditiously, and then made a genuine effort to become regulated. However, we were astounded to find situations where the Ministry issued licences to people who had flagrantly and sometimes repeatedly violated the Act.
- 381** We found one case where a caregiver breached the Act while awaiting approval of a licence application – and still received a licence. In another case, the

Ministry granted a licence even though the operator had been discovered running an illegal daycare on multiple occasions in the past.

- 382** In a particularly egregious case, a licence was granted even though the applicants had been convicted under the Act of operating an illegal daycare. In May 2012, two related caregivers were found inappropriately caring for 14 children ranging from 14 months to 6 years old. They were both charged under the Act. With the prosecution pending, they applied to become licensed. Then the Ministry received another complaint in July 2012 that they were running a daycare at another location and letting children play in an unfenced, littered parking lot behind a dry cleaning business. The Ministry conducted an inspection and found 13 children under the age of 4. Signs and documents at the residence indicated that the pair was running a “day camp.” The Ministry considered it to be a summer camp outside of the scope of the *Day Nurseries Act* and closed the file. In December 2012, the two caregivers were convicted and each fined \$999 under the Act. Despite this checkered history, five months later, in May 2013, the Ministry approved their day nursery licence.
- 383** Similarly, the caregiver who was found caring for multiple children in commercial units, at her home, and at a local library managed to obtain a licence in the spring of 2014, mere weeks after pleading guilty to two counts of knowingly operating a day nursery without a licence.
- 384** Under the proposed Bill 10, the *Child Care Modernization Act, 2014*, in some circumstances, people who have been found guilty of professional misconduct or convicted of certain offences, including under the Act, would not be permitted to operate a premises where child care is provided.⁵⁵ The section would also apply to corporations and their directors. The Ministry would have the discretion to refuse to issue a licence in some circumstances, including if the past conduct of any person affords reasonable grounds to believe that a child care centre or home child care agency would not be operated in accordance with the law and with honesty and integrity.⁵⁶ Finally, in making a decision under the Act, a director or the Licence Appeal Tribunal would be able to consider any person’s current or past failures to comply with the Act or the regulations that they consider relevant.⁵⁷
- 385** Changing the legislation to ensure that violations affect future attempts to obtain a licence makes common sense, and the Ministry and the Government Ontario

⁵⁵ s 9.

⁵⁶ s 23.

⁵⁷ s 46.

should continue to promote this reform. In the interim, the Ministry should not wait for legislative amendment before changing its practices. It should ensure that all applicants for licensing are screened to determine whether they have violated the *Day Nurseries Act* in the past. Absent extenuating or compelling circumstances, past illegal activity should generally be considered a bar to licensing. The Ministry's existing licensing practices allow unscrupulous operators to circumvent the enforcement process and undermine efforts to instill a more rigorous enforcement culture.

Recommendation 79

The Ministry of Education should screen all applicants for licensing under the *Day Nurseries Act* or successor legislation to determine whether they have previously operated an illegal unlicensed daycare in contravention of the Act.

Recommendation 80

The Ministry of Education should change its licensing policies to reflect that, absent extenuating or compelling circumstances, individuals who have a history of violating the *Day Nurseries Act* or successor legislation should not be granted a licence to operate under the Act.

Getting the Act Together

386 The *Day Nurseries Act* has presented enforcement challenges to the Ministry in dealing with unlicensed child care operations. Some of its provisions are unclear and have been the source of contradictory interpretations. Others unduly restrict the Ministry's ability to address problem operators. The proposed amendments in Bill 10, the *Child Care Modernization Act, 2014*, might go a long way towards resolving these issues. However, while legislative reform is pending, it is still useful to identify these problem areas and reflect on potential solutions.

The 'Common Parentage' Conundrum

387 One statutory phrase that has caused considerable confusion for program advisors is the reference to "common parentage" in the definition of "day nursery." Under the *Day Nurseries Act*, unlicensed child care providers do not contravene the Act, no matter how many children they look after, if the only children they are caring for (other than their own) are of "common parentage." Common parentage is defined by regulation as meaning "all of the children have

as a parent the same individual,”⁵⁸ and this definition is reflected in the September 2013 version of the Ministry’s internal directives.

- 388** Ministry counsel told us the common parentage exception covers cases where children who have at least one parent in common are being looked after in someone else’s home. As she acknowledged, in the case of large families, this could lead to a significant number of children being cared for by a single provider without contravening the Act.
- 389** The Director of the Child Care Quality Assurance and Licensing Branch suggested that the issue of common parentage was perplexing, although she noted that it rarely comes up. During our interviews, several staff members appeared bewildered by the phrase. One regional manager observed: “Nobody knows what that means.” Another was under the misapprehension that it only applied to cases in which a caregiver’s own family was “blended.” A program advisor thought it referred only to children belonging to the child care provider.
- 390** The ambiguity surrounding the phrase “common parentage” has undoubtedly led to inconsistency in the enforcement of the Act over time. This is compounded by the fact that the policy rationale behind the exception is rather murky. In attempting to explain why the common parentage exception exists, a couple of Ministry officials suggested that it reflects the historical realities of large families, where older children typically look after younger siblings and share the child care responsibilities. However, the lack of any limit on the number of children who can be cared for in these circumstances conflicts with the safety considerations underscoring the numerical restrictions otherwise set out in the *Day Nurseries Act* and regulations.
- 391** The proposed *Child Care Modernization Act, 2014* would eliminate the concept of “common parentage” in favour of a more rational approach based on the number and ages of all children present in an unlicensed child care operation. I encourage the Ministry and the Government of Ontario to continue to press for this change.

Recommendation 81

The Ministry of Education and Government of Ontario should continue to seek legislative change to the *Day Nurseries Act* to eliminate the reference to “common parentage” in the definition of “day nursery.”

⁵⁸ *Day Nurseries Regulation*, RRO 1990, Reg 262, s 1 s.v. “common parentage.”

A Day Nursery By Another Name

- 392** One of the perennial problems in enforcement of the *Day Nurseries Act* relates to the degree that it should apply to various recreational programs. Ministry officials explained that although the definition of “day nursery” is quite broad, the Act was not intended to apply to camps, Sunday schools, ballet or swimming lessons, organizations such as Boy Scouts or Girl Guides, or programs where parents remain on the premises. The Ministry recognized in a February 2012 policy paper that the breadth of the definition of day nursery has allowed for inconsistency and misinterpretation when applying the Act in connection with these entities.
- 393** The Ministry exempts recreation programs from licensing further to a 1994 memorandum between the Ministry of Community and Social Services and what was then the Ministry of Culture, Tourism and Recreation (now the Ministry of Tourism, Culture and Sport). It also follows a 1995 internal directive relating to recreation programs. In addition, it amended its internal directives in September 2013 to clarify how these programs should be treated for licensing purposes.
- 394** Recreational programs that meet regulatory requirements established under the *Ministry of Tourism and Recreation Act* may be exempt from licensing under the *Day Nurseries Act*. These include:
- programs established or recognized by local municipalities, First Nation bands, school boards and local services boards;
 - programs run by sports organizations that are members or affiliated with provincial sports organizations recognized by the Ministry of Tourism, Culture, and Sport; and
 - camps accredited by the Ontario Camping Association – a private organization that requires camps to meet various health and safety standards in order to be accredited.
- 395** To qualify for exemption, these programs must not advertise as a child care, day nursery or nursery school, and must operate:
- for no more than three hours a day;
 - only one day per week, (except weekend programs); or
 - during the non-school year and holidays.
- 396** Unfortunately, our investigation revealed that unlicensed caregivers have been able to exploit the exemptions for recreational programs and circumvent the licensing requirements.

I Call Camp!

- 397** Ministry staff do not normally obtain proof that summer camps are accredited through the Ontario Camping Association. The Ministry generally permits camps to operate without a licence, provided they only run for a 10-week period during the summer. In the past, the Ministry did not specify that this period had to take place in summer, and some resourceful operators took advantage of this loophole to run “camps” year-round, either serving different children or alternating addresses for sequential 10-week periods. In its September 2013 revisions to the internal directives, the Ministry clarified that the camp exemption only applies to summer camps. However, this does not solve the problem of unscrupulous operators converting illegal unlicensed child care businesses into summer camps once July hits. By operating as a summer camp, caregivers are not limited (for 10 weeks) in the number of children they can legally look after without a licence.
- 398** One program advisor we interviewed questioned why all unlicensed caregivers did not simply “call camp” once the summer starts, to shield their operations from scrutiny. A regional manager told us about one case in which program advisors discovered an operator had too many children in care. When they returned in July for a follow-up inspection, the operator was still looking after a large number of children, but she was able to escape censure by claiming she was now running a “camp.”
- 399** Perhaps the most egregious case of “calling camp” involved the pair who were charged in May 2012 with operating an illegal day nursery. Even as the charges were pending, they managed to look after 13 children under age 4 without further sanctions, by labeling their residential enterprise a “day camp” in July 2012.
- 400** Since September 2013, the Ministry’s directives specifically provide that when a summer camp is operating out of a private home, staff should contact the local bylaw officer, as in some jurisdictions camps are not permitted on residential premises. They also suggest that program advisors discuss the possibility of a bylaw officer attending the site visit as a second inspector. In addition, the Ministry now expressly directs that a follow-up visit take place in the third or fourth week of September to confirm that the summer camp is no longer in operation.
- 401** The proposed *Child Care Modernization Act, 2014* also addresses camps. Under the bill, camps would be exempt from licensing requirements provided they do not operate for more than 13 weeks in a calendar year, on days on which

instruction is typically provided for children enrolled in schools or in a person's home. As well, they can only provide services for children aged 4 and up.⁵⁹

- 402** In order to plug the loophole that has allowed child care operators to “call camp” to avoid licensing requirements, the exemption for camps would not apply if the operator had stopped running a child care centre and was essentially running the same operation as a camp.⁶⁰
- 403** The Ministry and the Government of Ontario should continue to promote amendment to the legislation to limit opportunities for unlicensed operators to abuse the system by running daycares as summer camps.
- 404** However, even absent legislation reform, there is still considerably more that the Ministry could be doing to ensure the exemption for camps only applies to legitimate operations. The original intent of the camp exemption appears to have been to permit accredited camping organizations to operate without the additional requirement of licensing under the *Day Nurseries Act*. It is ironic that today the exemption is used to allow unlicensed unaccredited operators to set up as a camp and care for a large number of children without adhering to any standards.
- 405** The “summer camp” exemption is not a legislated requirement. It should be narrowly interpreted to ensure health, safety and welfare of the affected children. To avoid concerns about the bona fides of summer camps, the Ministry should restrict the exemption to providers duly accredited through the Ontario Camping Association or otherwise subject to satisfactory alternative standards. The Ministry should undertake this initiative in consultation with the Ministry of Tourism, Culture and Sport and other stakeholders.
- 406** Consistent with the direction of the *Child Care Modernization Act, 2014* proposals, the Ministry should also limit the summer camp exemption to providers who only serve children over the age of 4, and who do not operate out of private homes.
- 407** Finally, the Ministry should put an end to the “calling camp” practice by requiring operators who were running unlicensed daycares to become licensed under the Act before they can set up “camps” with similar hours and programming.

⁵⁹ s 4(1)9.

⁶⁰ s 4(3).

Recommendation 82

The Ministry of Education and Government of Ontario should continue to seek revision or replacement of the *Day Nurseries Act* to restrict the circumstances in which camps may operate without child care licensing.

Recommendation 83

The Ministry of Education should, in consultation with the Ministry of Tourism, Culture and Sport and other stakeholders, require summer camps to be licensed under the *Day Nurseries Act* or successor legislation unless they are accredited by the Ontario Camping Association or otherwise subject to satisfactory health and safety standards.

Recommendation 84

The Ministry of Education should limit the summer camp exemption to providers who only serve children over the age of 4, and do not operate out of private homes.

Recommendation 85

The Ministry of Education should require that summer camp operators obtain licences under the *Day Nurseries Act*, if they ran an unlicensed child care with similar hours and programming prior to establishing the camp.

Child Care Disguised as Recreation

408 The Ministry’s licensing requirements do not apply to various homework and tutoring clubs, music, dance and sports programs. In addition, programs that take place on school holidays and outside of the school year generally are not considered day nurseries, nor are child-minding programs at malls, fitness clubs and similar facilities, provided the children’s parents are on site at all times.

409 The Ministry’s approach to these programs has not always been consistent or clear. Originally, the exemption was applied only for programs recognized by local governing bodies or the Ministry of Tourism, Culture and Sport, as provided for in the regulations under the *Ministry of Tourism and Recreation Act*. However, today, program advisors tend to focus on whether the program runs on school days and for more than three hours. Consequently, a host of unlicensed programs, some running out of private homes, have been treated as compliant with the *Day Nurseries Act*.

410 In 2012, it took the Ministry some four months to decide whether an after-school program that operated for three hours every weekday and served 27 children required a licence or whether it qualified as a tutoring program. Eventually,

despite the large number of children regularly in attendance, it determined that a licence was not required.

411 One provider who ran a camp during the summer operated a tutoring program during the school year from 9 a.m. to 6 p.m. every Saturday and Sunday. During a weekend inspection, program advisors found 22 children between the ages of 4 and 13 receiving “tutoring.” Ultimately, the Ministry considered the program compliant with the *Day Nurseries Act*.

412 It appears that it is only in extremely suspicious circumstances that the Ministry finds a recreational program in violation of the Act. For instance, in May 2012, it determined that a program that offered dance classes and transported children to school on weekday mornings was an illegal unlicensed daycare. The Ministry observed that it was:

...very difficult to discern which children were in care and which children were part of the dance class. There was no morning schedule of dance classes, yet more than five children are expected to attend the facility Monday through Friday until which time the program was scheduled to transport the children to school.

413 An after-school program funded in part by a municipality was considered exempt by one program advisor, until another pointed out that to qualify for exemption the program would not only have to be approved by the city, but also operate for fewer than three hours a day.

414 The Ministry’s internal directives were revised in September 2013 to indicate that, if staff are familiar with an established program in the community (e.g., the YMCA), a site visit is not required to respond to a complaint. However, a visit is required if the status of the program is unclear.

415 Under the proposed *Child Care Modernization Act, 2014*, certain circumstances would not be considered “child care” and would be exempt from licensing, including child-minding at a mall or gym while parents are on site.⁶¹ Recreational and other programs would be exempt as long as the primary purpose is to promote recreational, artistic, musical or athletic skills or to provide religious, cultural or linguistic instruction.⁶² Tutoring or academic skills

⁶¹ ss 4, 5.

⁶² s 4(1)7.

programs would be exempt if their primary purpose is to assist children with academic studies and skills.⁶³

416 The bill also contemplates that some recreation and skill-building programs with a primary purpose of providing child care could be legally operated without a licence if they include complementary activities that promote recreational, artistic, musical or athletic skills or provide religious, cultural or linguistic instruction, and are not operated out of a home, or for children under age 6.⁶⁴ In addition, unlicensed child care providers and certain providers of recreational and skill-building programs would be required to proactively disclose that they are not licensed.⁶⁵

417 In the past, some child care providers have shown remarkable ingenuity in attempting to disguise child care as some form of recreation exempt from the licensing requirements. The Ministry and the Government of Ontario should continue to call for greater legislative clarity regarding the types of recreational, sport, artistic and tutoring programs that do not require licensing. Even without legislative change, the Ministry should take further action to establish clear and detailed guidelines for the public and its enforcement staff to encourage compliance and proper enforcement of the Act.

418 Consistent with the proposals set out in the *Child Care Modernization Act, 2014*, the Ministry should, in consultation with the Ministry of Tourism, Culture and Sport and other stakeholders, impose additional restrictions on the types of programs qualifying for exemption. For instance, recreational programs that do not come within the regulations under the *Ministry of Tourism and Recreation Act* should require licensing, unless there is evidence that the primary purpose of the program:

- is to promote recreational, artistic, musical or athletic skills or to provide religious, cultural or linguistic instruction; or in case of tutoring and homework clubs; or
- is to assist with academic studies and skills.

419 Programs that clearly have a child care element, but offer recreational activities as well should be licensed if they are home-based or serve children under the age of 6.

⁶³ s 4(1)8.

⁶⁴ s 6(4).

⁶⁵ s 12.

420 The Ministry should conduct research in consultation with other ministries, including the Ministry of Children and Youth Services and the Ministry of Tourism, Culture and Sport, to ensure the health, safety and welfare needs of children are appropriately addressed in situations involving unlicensed recreational, tutoring, homework, and similar programs, and to determine whether additional safeguards need to be imposed.

Recommendation 86

The Ministry of Education and Government of Ontario should continue to seek legislative amendment to clarify and restrict the circumstances in which recreational, tutoring and similar programs may operate without child care licensing.

Recommendation 87

The Ministry of Education should revise its guidelines and provide clear direction to the public and its enforcement staff as to what recreational, tutoring and similar programs qualify for exemption from the *Day Nurseries Act* licensing requirements.

Recommendation 88

The Ministry of Education, in consultation with the Ministry of Tourism, Culture and Sport and other stakeholders, should impose additional restrictions on the types of recreational, tutoring and similar programs qualifying for exemption from licensing, to ensure that their primary purpose is not child care.

Recommendation 89

The Ministry of Education should require that programs that have an element of child care but which also offer complementary recreational activities, are not exempt from licensing under the *Day Nurseries Act* if they are home-based or serve children under the age of 6.

Recommendation 90

The Ministry of Education should conduct research in consultation with other ministries, including the Ministry of Children and Youth Services and the Ministry of Tourism, Culture and Sport, and consider imposing additional safeguards to ensure that the health, safety and welfare needs of children are appropriately addressed in situations involving unlicensed recreational, tutoring, or similar programs.

The Retail Child Care Gap

- 421** Unlicensed child care centres in malls, storefronts and other commercial settings have presented unique challenges to the Ministry in enforcing the *Day Nurseries Act*. The Act was premised on child care being provided either within private homes or in licensed institutional settings. Today, some unlicensed child care providers operate out of retail spaces. These operations must comply with the five children under 10 years of age limit, but problems arise when there are multiple interrelated storefront or commercial operations. Private-home daycare agencies, as defined by the *Day Nurseries Act*, which co-ordinate child care at more than one private residence, must be licensed and meet regulatory standards.⁶⁶ However, that definition does not apply to non-residential locations, leading to an enforcement gap.
- 422** The CBC News *Marketplace* program, that aired on February 22, 2013, illustrated this problem.⁶⁷ The caregivers featured in that episode, one of whom had previously been convicted under the Act, were running daycares out of two Toronto storefront locations, and, at times, reportedly transferred children back and forth unsafely. If these child care businesses had been run from private homes, a licence would have been required. However, the couple was free to operate from commercial space without complying with any regulatory standards beyond the five-child limit.
- 423** In the case of the woman who operated child care services in her home and a local library, she was also found caring for too many children at two commercial units – 10 at one site and 21 at the other. She pleaded guilty to illegal operation of a day nursery. However, the Ministry could not charge her with operating an illegal private-home daycare agency, despite the fact she was offering care at three sites.
- 424** The distinction between commercial and residential sites, when it comes to licensing of daycare agencies, is illogical and reflects how out of step the *Day Nurseries Act* is with modern realities. Bill 10, the *Child Care Modernization Act, 2014*, recognizes this. Under the proposed Act, no person could arrange with a parent to have a third person provide child care at a premises other than the children’s own home, or enter into an agreement with a child care provider to oversee the provision of child care, without an agency licence.⁶⁸ It would also prohibit the provision of child care at multiple locations unless they are operated

⁶⁶ *Day Nurseries Act*, s 1(1) s.v. “private-home day care agency”.

⁶⁷ “Who’s Watching the Kids?”, *CBC Marketplace*, *supra* para 286, note 44.

⁶⁸ s 7.

under contract with a licensed home child care agency.⁶⁹ The use of the word “premises” rather than “private home” would ensure that storefronts and other non-residential daycare locations are caught by the licensing requirements.

- 425** The Ministry and the Government of Ontario should continue to seek amendment of the *Day Nurseries Act* to ensure that child care is regulated, regardless of whether it is operated out of a private home or non-residential setting.

Recommendation 91

The Ministry of Education and Government of Ontario should continue to seek to eliminate the distinction between private residences and commercial premises reflected in the definition of “private-home day care agency” in the *Day Nurseries Act*.

Private Schools – The Grandfather of all Loopholes

- 426** Although caring for more than five children under the age of 10 normally requires a license under the *Day Nurseries Act*, the situation is different when that care is provided by a private school. The definition of “day nursery” in the Act excludes part of a public, separate or private school within the meaning of the *Education Act*. Private schools are defined under the *Education Act* as institutions at which “instruction is provided at any time between the hours of 9 a.m. and 4 p.m. on any school day for five or more pupils who are of or over compulsory school age in any of the subjects of the elementary or secondary school course of study.”⁷⁰
- 427** Historically, government administrators did not require that private schools obtain licences for operating day nurseries, even when they provided services for children under compulsory school age. Ministry records reveal that around 1991, concerns arose that the health and safety of children under age 6 in private schools had “fallen between jurisdictions.” The Inter-ministerial Task Group on Private Schools and Day Nurseries, including representatives from the Ministry of Education, recommended in August 1991 that new private schools be required to comply with the *Day Nurseries Act* licensing requirements, but that existing private schools be “grandfathered” and allowed exemption from the requirements of the Act. The recommendation was based on the fact that neither

⁶⁹ s 8.

⁷⁰ RSO 1999, c E.2, s 1(1). Compulsory school age in Ontario is 6 years of age (as of September of each school year).

Ministry wanted to amend the legislation, there was concern about a negative reaction from the private school lobby, and past governments wanted to remain as unobtrusive as possible in regulating private schools because they were seen as an alternative to the publicly funded system. Cabinet adopted this recommendation, which was put into practice when a grandfathering policy was issued in 1993.

- 428** In the publicly funded school system, children can attend junior kindergarten at the age of 3 years and 8 months. A school providing junior kindergarten is not required to obtain a licence under the *Day Nurseries Act*, unless it is providing child care to younger children. In issuing its policy in 1993, the government accepted a similar principle – that no licence would be required for private schools caring for children over the age of 3 years and 8 months, but new schools would require a licence if they served younger children.
- 429** The result of the grandfathering policy has been that daycares in or associated with pre-1993 private schools have been exempt from *Day Nurseries Act* requirements for more than 20 years.
- 430** In 2009, the Ministry became concerned about the number of private schools that were serving preschool-aged children, but were not licensed under the *Day Nurseries Act*. It also recognized there was an increasing number of “campuses” affiliated with private schools, and that some of them were actually free-standing daycare centres using their association with grandfathered private schools to shelter from licensing requirements under the *Day Nurseries Act*. The Ministry identified this as a “policy risk” and began to propose options to address it. By the fall of 2009, it was considering amendments to the *Education Act*, including prohibiting private schools from registering if they also offered programs for preschool students in the same facility or under the same corporate entity. The former Minister (who is now Premier) also directed that policy analysis and development take place on a variety of issues, including stopping private schools from serving preschool-aged children and eliminating the grandfathering policy. However, this initiative appears to have lost momentum until concerns about private schools resurfaced in 2011.
- 431** An undated Ministry background note with an attachment dated February 2011 indicates that the Ministry did not have a complete list of the grandfathered schools, and that it was difficult to track the schools as they were bought, sold and affiliated with one another.
- 432** The Ministry also noted that the policy had resulted in some private schools only having the minimum number of school-aged children required – five – and

essentially operating as unlicensed day nurseries serving children of preschool age.

- 433** When the background note was prepared, the Ministry estimated that there were **7,266** children in private school daycare facilities that were not licensed under the *Day Nurseries Act*. Of these, **4,894** children under junior kindergarten age attended schools that were exempt under the grandfathering provision. The Ministry was also aware of another **83** schools serving **2,372** children in this age group that did not appear to qualify for the grandfathering exemption.
- 434** Over time, grandfathered status has proven a valuable commodity. Some child care operators have been willing to pay for the privilege of using private school registration to avoid licensing under the *Day Nurseries Act*. For instance, in 2012, the Ministry discovered that the purchasers of a child care operation inherited grandfathered status, well after the original private school had closed. The former owner had continued to file annual notices of intention to operate a private school at the premises in order to prolong the exemption of the daycare facility, and the child care administrators continued to pay the individual in connection with the grandfathered status of the operation.
- 435** Despite the Ministry’s acknowledgement of the risks associated with continuing to exempt private schools from the licensing requirements, the situation had not changed by the time the Auditor General released her Annual Report in December 2013. The Auditor General contrasted the “comprehensive list of standards for the health, safety and developmental needs of children” applying to licensed daycare centres with the lack of requirements applying to private schools. She cautioned:
- The Ministry could face significant liability if anything untoward happens to a private school child who should have been afforded the protections of the *Day Nurseries Act*.
- 436** The Auditor General recommended that the Ministry reduce health and safety risks to preschool children and ensure compliance with legislation by identifying all private schools that operate child care facilities and ensuring that they are licensed and inspected under the *Day Nurseries Act*. In response, the Ministry indicated that it was planning a policy change to direct that all private schools serving children under junior kindergarten age must be licensed.
- 437** Unfortunately, the Ministry’s progress in addressing the private school situation has been ponderously slow. When we inquired in September 2013 about the status of the 83 private schools it had previously identified in its undated

background note as not appearing to be licensed or exempt under the grandfathering policy, the Ministry had not yet looked into this issue. It was not until early 2014 that the Ministry was able to confirm that these schools were now compliant with the *Day Nurseries Act*, either through closure, becoming licensed, reducing numbers or through affiliation with a grandfathered school.

- 438** Five years after the Ministry identified the grandfathering policy as problematic, it finally reissued it on March 6, 2014. The policy now requires that all private school owners, regardless of how long they have been operating, obtain licences under the *Day Nurseries Act* if they serve more than five children under junior kindergarten age. Previously grandfathered schools and campuses have until July 1, 2015, to obtain a *Day Nurseries Act* licence. The Ministry also advised that it would hold a webinar for private schools and other interested stakeholders concerning the policy, the *Day Nurseries Act* requirements and the licensing process. In July 2014, the Ministry told us that after receiving feedback from private school owners and affiliated organizations, it extended the deadline for grandfathered schools to become licensed to January 1, 2016, provided they apply by January 1, 2015.
- 439** Under the proposed *Child Care Modernization Act, 2014*, child care provided by a private school would only be exempt from licensing to the extent it is provided for pupils age 4 and up.⁷¹
- 440** It is disturbing that, for more than two decades, thousands of young children have been cared for in private schools operating outside of the *Day Nurseries Acts* requirements. Some of these children were in centres within or affiliated with schools subject to the grandfathering policy. However, others appear to have simply operated under the radar. The historical practice of allowing certain private schools to avoid the requirements of the *Day Nurseries Act* is indefensible, and both the Ministry and the Government of Ontario should continue to take steps to ensure that in future, private schools are required to meet licensing standards when serving children of preschool age.

Recommendation 92

The Ministry of Education should proactively enforce the *Day Nurseries Act* or successor legislation in respect of day nurseries operating in or affiliated with private schools, regardless of whether they were in existence prior to 1993 and previously subject to exemption through ministerial policy.

⁷¹ s 4(1)6.

Recommendation 93

The Ministry of Education and the Government of Ontario should continue to promote legislative revision to the child care licensing system to ensure that private schools providing child care to children of preschool age are subject to licensing requirements.

Tracking the Numbers

- 441** While the Ministry has taken a positive step in abolishing the grandfathering exemption for private schools as of January 2016, it does not address all of the enforcement problems relating to private schools. One of the impediments to effective enforcement of the *Day Nurseries Act* in the private school sector has been the Ministry's failure to keep accurate track of the number and ages of children served by private schools.
- 442** The private school system relies on self-reporting. The Ministry conducts an investigation of each private school before it opens to ensure it meets the definition of private school under the *Education Act*. However, it does not regularly inspect private elementary schools or independently verify how many children of what ages attend them. It does not know the precise number of preschool-age children cared for through the private school system.
- 443** Under the *Education Act*, private schools must file annual notices of intention to operate with the Ministry's Field Services Branch. For the school years 1991-92 to 2001-2002, the Ministry required private schools to indicate on the notice form how many pupils were enrolled who were under age 4 and between 4-6 years old. However, the Ministry did not actually share this information with officials from the other ministries then responsible for administration of the *Day Nurseries Act*. By the 2002-2003 school year, the branch simply stopped asking private schools for details about student age groups.
- 444** It was not until the 2010-2011 school year that the Ministry reintroduced the requirement that private schools report enrollment of children under junior kindergarten age. According to an internal email from August 2012, the amendment was a direct result of growing concern about a "proliferation of private schools that claimed to be exempt from the *DNA* because they are grandfathered." That same year, private schools were also asked to indicate on the form if they were licensed under the *Day Nurseries Act*.
- 445** From 2001-2002 until 2009-2010, the Ministry asked for information about private school campuses on its "notice of intention to operate" forms. This

question was inexplicably dropped for the 2010-2011 year, but was added back for the 2013-2014 school year.

- 446** The Ministry should continue to collect detailed information on the number and ages of children enrolled in Ontario’s private school system. It should also ensure that it has a complete and accurate understanding of the child care services provided in conjunction with private schools. Although private schools will no longer qualify for grandfathering under the Ministry’s revised policy, the policy will not be fully implemented until January 2016, and the Ministry should be aware of every campus of a private school where child care services for younger children may potentially be provided.

Recommendation 94

The Ministry of Education should continue to collect detailed information from private schools about the number and ages of children they serve.

Recommendation 95

The Ministry of Education should ensure the form it uses for notices of intention to operate a private school requires that private schools list all locations at which they operate, as well as the number of children from various age groups served at each location.

Lessons in Sharing

- 447** Although the Ministry’s concern about the health and safety of young children in the private school system prompted it to start collecting more information about student ages for the 2010- 2011 school year, it did not share it with the Ministry of Children and Youth Services, which was then responsible for enforcing the *Day Nurseries Act*. Remarkably, even when the Ministry took over responsibility for oversight of day nurseries in January 2012, its Field Services Branch did not regularly communicate this information to the Ministry’s own Child Care Quality Assurance and Licensing Branch. This might well have allowed child care operations associated with private schools to continue to contravene the *Day Nurseries Act* with impunity.
- 448** Given this lack of information, program advisors sometimes lose valuable time attempting to confirm the status of individual schools. For instance, in March 2013, program advisors conducted two inspections, the first joined by an education officer from the Field Services Branch, and issued two letters of non-compliance against a private school, only to learn in July 2013 that it had

grandfathered status under the 1993 policy, and was exempt from the *Day Nurseries Act* licensing requirements.

- 449** Another school that opened in 1988 was considered to be a grandfathered school exempt from the licensing requirements. However, when the school failed to file a notice of intention to operate a private school with the Ministry's Field Services Branch in September 2011, the branch issued a notice under the *Education Act* directing that the school cease operations. Unfortunately, it never followed up to confirm the status of the school and neglected to inform the Child Care Quality Assurance and Licensing Branch of this situation. In April 2013, the licensing branch received a complaint that the private school was operating in violation of the *Day Nurseries Act*. An inspection found 14 children under age 10 registered in the school, including three preschoolers. The operator openly admitted the school had been serving young children for well over a year, although it was no longer registered as a private school or grandfathered under the *Day Nurseries Act* policy.
- 450** As of September 2013, the Ministry's internal directives state that when a complaint is received about a private school operating an unlicensed day nursery, a manager from the Child Care Quality Assurance and Licensing Branch is required to confirm with the Field Services Branch whether:
- the school has filed a notice of intention and is currently operating;
 - the notice of intention indicates that the school serves children of junior kindergarten age and younger;
 - the school is exempted under the grandfathering policy; and
 - additional campuses have been identified in the notice of intention.
- 451** If the private school is grandfathered, no inspection is undertaken. The Field Services Branch must share relevant information from "notice of intention to operate" forms with the Child Care Quality Assurance and Licensing Branch. However, there is no similar requirement to provide status updates on private schools to the licensing branch throughout the school year.
- 452** In future, the Ministry should ensure that its Field Services Branch regularly shares relevant information about private schools with the Child Care Quality Assurance and Licensing Branch to assist with enforcement of the *Day Nurseries Act*, including information about any directions to cease operating that are issued to private schools under the *Education Act*. This information should be linked to the Ministry's new case management system to track the age groups served by private schools and their registration status.

453 In addition, if the Ministry does direct a private school to cease operating, a parallel notice should be sent from the Child Care Quality Assurance and Licensing Branch, advising the operator of the requirements of the *Day Nurseries Act*. The Child Care Quality Assurance and Licensing Branch should conduct site inspections in conjunction with the Field Services Branch to confirm that the private school has stopped operating.

Recommendation 96

The Ministry of Education’s Field Services Branch should regularly share with the Child Care Quality Assurance and Licensing Branch the information it collects from private schools about the number and ages of children enrolled.

Recommendation 97

The Ministry of Education should direct the Field Services Branch to notify the Child Care Quality Assurance and Licensing Branch of all directions to private schools to cease operating under the *Education Act*.

Recommendation 98

The Ministry of Education should link information about private schools to the new case management system to assist with enforcement of the *Day Nurseries Act* or successor legislation.

Recommendation 99

The Ministry of Education’s Field Services Branch and Child Care Quality Assurance and Licensing Branch should conduct joint inspections to confirm that private schools which have been directed to cease operations under the *Education Act*, and which have served children under age 10, are in compliance with that Act, as well as the *Day Nurseries Act* or successor legislation.

Inadequate ‘Private School’ Education

454 Lack of understanding of the interaction between the *Education Act* and *Day Nurseries Act* on the part of operators and Ministry staff also acts as a barrier to effective enforcement. If a complaint is received about a private school that does not appear to come within the grandfathering policy, program advisors will attempt to inspect the school. But it is not uncommon for private school operators to object and deny access to program advisors, based on the belief that they are only subject to the *Education Act*. Similarly, some Ministry staff lack sufficient knowledge about the proper application of the *Day Nurseries Act* in the private school context to address challenges to their authority. For instance,

when program advisors responded to a complaint about a private school in July 2013, they found several children of preschool age. The school director insisted that as a private “Montessori” school, the facility did not require a licence under the *Day Nurseries Act*. Uncertain of the licensing requirements, the program advisors simply recorded in the informal care log:

We decided that we did not have enough information about private schools to be able to agree or disagree with the director...

- 455** We discovered that some private schools flagrantly disregard the requirements of both the *Education* and *Day Nurseries Acts*. In May 2012, program advisors found 26 children under the age of 10 at a private school in Toronto. The Ministry had no record of the institution registering as a private school. The school closed, but its staff began running another private school at a new location. This second school was registered with the Ministry, but it did not indicate that it would be enrolling children younger than junior kindergarten age. In January 2013, the Ministry received a complaint that preschool children were enrolled at the school. Program advisors inspected and found 23 children and six staff in a building under construction. Seven children aged from 4 to 9 years were in an unfinished, unheated room on the upper level, while 16 identified as being “3.8-4 years old” were found on the main floor. The school administrator refused to provide details of the children’s birthdates.
- 456** After the inspection, the Ministry contacted local authorities who confirmed that the building was not approved for occupancy, and posted an order to comply. The operator continued to care for children at the site in contravention of this order. Begrudgingly, the school later provided some birthdate information to the Ministry, indicating that eight of the children were younger than junior kindergarten age. On February 12, 2013, the Ministry wrote the school, formally advising that it was in violation of the *Day Nurseries Act*.
- 457** When the Ministry attempted to conduct a follow-up inspection, it found the school had closed and moved to yet another location without notice, in contravention of the procedures applying to private schools. A follow-up inspection of the relocated school was completed on February 20, 2013, and 16 children were found in attendance, eight appearing to be preschoolers. The operator refused to provide the birthdates for these children, several of whom had been pupils at the previous location. She claimed that some of the birthdates she had provided earlier were wrong, and that the children were older than she had originally advised. The Ministry wrote to the operator that day and again on March 7, 2013, requesting further birthdate information.

- 458** The operator eventually provided a list of children’s names and birthdates. But suspiciously, the ages of four children differed from the information she provided in January 2013. This revised information suggested that the school was in compliance with the *Day Nurseries Act*. In April 2013, the Ministry attempted to obtain birth certificates to confirm the ages of the children. While it was waiting for a response, on May 13, 2013, it received another complaint about the same provider in connection with three different home daycare operations. Ministry staff were scheduled to follow up with the operator in fall 2013, but no steps were taken to compel production of the birth certificates, on the basis that there was no requirement under the *Education Act* to produce this information, and there was insufficient evidence to obtain a search warrant. Although the Ministry had contact information for the parents of the children attending the school, no attempt was made to confirm the ages of their children with them.
- 459** Although they are part of the same Ministry, there is no structured relationship or clear line of communication between the Ministry’s Field Services Branch and the Child Care Quality Assurance and Licensing Branch to ensure a co-ordinated enforcement response to daycare issues involving private schools. The Ministry needs to cross-train staff in both branches to ensure they have sufficient knowledge about their respective regulatory areas to enable them to identify and co-operatively follow up on cases involving problematic private school operators. The Ministry should encourage joint branch inspections of private schools that care for young children and develop communication and enforcement protocols to effectively leverage the expertise of these two branches.
- 460** The Ministry should also take steps to educate private school administrators about the requirements of the *Day Nurseries Act*. It should prepare materials to distribute to new registrants, established schools, and (in cases where schools have been ordered to cease operations) to encourage and reinforce compliance with the legislation.

Recommendation 100

The Ministry of Education should cross-train Field Services Branch and Child Care Quality Assurance and Licensing Branch staff to ensure effective enforcement of *Education Act* and *Day Nurseries Act* (or successor legislation) requirements in the private school sector.

Recommendation 101

The Ministry of Education should develop communication and enforcement protocols to encourage the Field Services Branch and Child Care Quality Assurance and Licensing Branch to co-ordinate enforcement efforts.

Recommendation 102

The Ministry of Education should provide information about the licensing requirements under the *Day Nurseries Act* or successor legislation to all private schools, including prior to initial registration.

Recommendation 103

The Ministry of Education should send information about licensing requirements under the *Day Nurseries Act* or successor legislation to all private schools that have been directed to cease operating under the *Education Act*.

Building a Better System

Sharpening Enforcement Tools

- 461** The *Day Nurseries Act* presents limited enforcement options to address concerns about unlicensed child care operators. A Ministry briefing note of March 14, 2013 identified that inadequate licensing and compliance tools were a key deficiency with the Act. At one end of the enforcement spectrum, the Ministry tries to educate, persuade and then cajole unlicensed caregivers to comply with the Act through inspections and correspondence. At the other end, it can initiate prosecution or, in extreme cases, attempt to obtain an injunction, but these options are time-consuming, unwieldy, and resource-intensive. There are no effective intermediate steps available.
- 462** During our investigation, Ministry staff remarked on the limited deterrent effect of prosecution. The Act provides for maximum fines per day from \$2,000 to \$5,000 and imprisonment of not more than one year to not more than two years, depending on the nature of the offence. Historically, illegal operators have only received minimal fines. Even when a child has died in an illegal child care setting, the sentences have been quite light. In the case of the caregivers connected with Jérémie Audette’s drowning, one was fined \$2,000 and the other \$750. Both were subject to probation orders that they not care for more than five children in their homes for 12 months.
- 463** One manager suggested to us that the fines levied by the courts to date “might even be regarded as a cost of doing business” for some operators. In one case, a

caregiver who was twice caught deliberately violating the Act – she was found caring for six children at an initial inspection, and seven at a follow-up visit – was fined only \$200 and given six months to pay it. A program advisor involved with the case told us:

The providers went out, like, high-fiving their way out of the court. It was really sad when you think of the amount of time and hours and cost and our legal people... we were supposed to send a message out into the community that we're really tough...

- 464** Bill 10, the *Child Care Modernization Act, 2014*, proposes new statutory tools to provide Ministry staff with enhanced ability to enforce the Act. These powers include the ability to levy administrative penalties in amounts up to \$100,000.⁷² Fines for offences under the Act would also be increased. Under the proposed legislation, a person convicted of an offence would be liable to a fine of not more than \$250,000, imprisonment for a term of not more than one year, or both.⁷³
- 465** The Ministry and the Government of Ontario should continue to seek amendment to the law to ensure that Ministry staff have adequate legislative tools to effectively protect the interests of children in Ontario's unlicensed child care sector.

Recommendation 104

The Ministry of Education and the Government of Ontario should continue to seek revision and/or replacement of the *Day Nurseries Act* to provide the Ministry with sufficient tools to allow for effective enforcement of licensing requirements, including the ability to levy administrative penalties and increasing penalties for convictions under the Act.

Preventing Tragedy Through Public Awareness

- 466** The recent spate of child deaths in the unlicensed child care sector has focused attention on health, safety and welfare concerns arising from illegal operations. Lack of public awareness of the difference between various child care options and surrounding the licensing requirements has contributed to challenges in enforcing the *Day Nurseries Act*. Many unlicensed caregivers are genuinely unfamiliar with the rules; the Ministry found one who operated for 11 years in

⁷² ss 75-77.

⁷³ s 78.

contravention of the Act without a clue that she was doing so. On the other hand, some illegal daycare operators flagrantly disregard the Act, and unsuspecting parents entrust children to their care without any understanding of the associated risks.

467 One of the recommendations issued by the coroner’s jury in December 2012 after the inquest into the drowning of Jérémie Audette was that the Ministries of Education and Health and Long-Term Care publicize information about the differences between licensed and unlicensed care – on appropriate websites, in public libraries and in medical facilities. In August 2013, the provincial cabinet also directed, as part of the child care modernization initiative, that the Ministry develop a “visual identity” to differentiate licensed facilities from unlicensed ones.

468 Unfortunately, by July 2013, when Eva Ravikovich died in the illegal daycare in Vaughan, little progress had been made to educate the public. In fact, immediately after Eva’s death, the Ministry defended its practice of not disclosing safety-related information about specific unlicensed daycares, citing privacy law requirements. Ontario’s Information and Privacy Commissioner soon debunked this position, emphasizing that:

Privacy laws are not meant to protect individuals who break the law, or to prevent the enforcement of safety requirements.⁷⁴

469 Chastened by this response, the Ministry consulted with the Information and Privacy Commissioner’s Office and undertook to develop an online registry that would allow parents and the public to search for unlicensed child care providers by caregiver name, business name and address, and show the status of any complaints against a particular daycare. It was originally scheduled to be launched on the Ministry’s website in February 2014, but was implemented in August 2014. The Ministry also planned to introduce a 1-800 telephone number for complaints and inquiries about unlicensed child care providers, which went live in August 2014.

470 In addition, the Ministry is developing a public education campaign. This included writing an article to raise public awareness, which was translated into numerous languages and distributed to media outlets in the Greater Toronto Area

⁷⁴ “Ontario must stop hiding inspection reports on unlicensed daycares”, Editorial, *Toronto Star* (July 22, 2013). Online:
<http://www.thestar.com/opinion/editorials/2013/07/22/ontario_must_stop_hiding_inspection_reports_on_unlicensed_daycares_editorial.html>.

in January 2014. It intends to add educational materials to its website and its home page now has a prominent link to information for parents at the top. The Ministry also plans to use existing local networks of daycare agencies, municipalities, child development resource centres, and family support programs to distribute new materials explaining various child care options.

- 471** The Ministry is also considering marketing projects and media advertising to raise awareness among parents about child care choices. One senior official told us the advertising campaign will likely not be as intensive as that for full-day kindergarten, but would likely concentrate on online advertising (e.g., Google ads). The Ministry is also considering issuing news releases, publishing additional articles in local and ethnic newspapers, and using Twitter.
- 472** It is also preparing to introduce a logo to allow the public to easily identify licensed child care operations. Alberta currently uses a “smiling red door” logo for its approved home daycare providers. Bill 10, the *Child Care Modernization Act, 2014* would reinforce the Ministry’s branding initiative by requiring posting of licences, restricting the use of terms such as “child care centre” and “licensed child care,” and requiring unlicensed child care providers and some recreational programs to proactively disclose that they are not licensed.⁷⁵
- 473** The Ministry and the Government of Ontario should continue to seek amendments to the legislation to differentiate various child care options. However, the Ministry should not wait for legislative change before increasing its efforts to raise public awareness about the unlicensed child care sector, which has operated outside of public view for far too long. The Ministry needs to concentrate additional and sustained efforts to spotlight the risks to the health, safety and welfare of children in illegal child care environments. Accordingly, the Ministry should devote significant attention to its public education campaign. To achieve maximum impact, it should design a multimedia, multi-pronged program, using a combination of traditional and new media. It should employ its website, television, radio, print media, social media (e.g., Facebook, Twitter, YouTube) as well as other creative avenues to get the word out. It should also look to schools, municipal offices, hospitals, libraries and other public organizations to distribute outreach materials. Towards this goal, it should consult with other interested ministries, public sector partners, and community stakeholders. In April 2014, the Ontario Early Years Centres and Parent and Family Literacy Centres moved from the Ministry of Children and Youth Services to the Ministry of Education, as the government rolls out its plan to integrate many early childhood services into “Best Start Child and Family

⁷⁵ ss 11, 12, 14, 16, 17.

Centres.” This initiative could provide an excellent opportunity to explain child care options to the public.

Recommendation 105

The Ministry of Education and the Government of Ontario should continue to seek revision and/or replacement of the *Day Nurseries Act* to restrict the use of terms associated with licensed child care operations.

Recommendation 106

The Ministry of Education should, in consultation with stakeholders, design and implement a widespread multimedia campaign, including traditional and social media, online resources and distribution of materials to various public sector and community organizations, to promote awareness of the available child care options and the prevention of illegal unlicensed operations.

Universal Licensing

474 Traditionally, the government’s view has been that informal child care is a private arrangement between parents and caregivers, and the Ministry’s role in the unlicensed child care sector is limited to counting children and ensuring the legislated maximum is respected. Some Ministry officials acknowledged that the system does not provide safeguards similar to those the public has come to expect in other fields. A September 2012 Ministry policy paper observed:

Many professions in Ontario are regulated to protect consumers... 23 health professions and mortgage brokers, lawyers, teachers, accountants, real estate agents, insurance and travel agents and others are regulated. However, there is a regulatory gap regarding consumer protection for children in home-based care outside of the licensed sector...

475 In June 2012, the Ministry released a discussion paper on child care. One of the options it sought feedback on was the creation of a registry to help the government communicate with caregivers in the informal/unregulated sector and provide them with information about program quality, health and safety.⁷⁶ The coroner’s jury in the Audette inquest in December 2012 called, as have several child care advocates, for a mandatory registry of informal caregivers that could be used to provide information about the legislation, safety notices and training, as well as allow for unscheduled safety inspections of unlicensed facilities.

⁷⁶ Ministry of Education, *Modernizing Child Care*, *supra* para 89, note 26.

- 476** Every jurisdiction in Canada permits unlicensed caregiving, depending on the number of children and ages served. While there are no mandatory provincial registries of unlicensed child care providers, there are some voluntary ones. In British Columbia, unlicensed caregivers can join an optional registry established by the Ministry of Children and Family Development, upon payment of a nominal fee (\$15-20), and fulfillment of the following requirements:
- Criminal record check (for everyone over age 12 living in the home);
 - Character references;
 - Home safety assessment;
 - Physician’s report on the operator’s physical and emotional capacity to care for children;
 - First aid training; and
 - Participation in child care training courses or workshops.
- 477** In that province, registration has many benefits – e.g., parents who place children with registered providers are eligible for an enhanced child care subsidy, and caregivers may receive referrals from non-profit agencies funded by the government.
- 478** In Quebec, parents who place their children with home daycare operators who are recognized by a co-ordinating office qualify to pay only \$7 a day for each child in care. Co-ordinating offices inspect these operators three times a year under contract with the Ministère de la Famille.
- 479** Some jurisdictions in the United States – e.g., Connecticut, Delaware and Washington – require all daycare operations to be licensed. In the United Kingdom, registration is mandatory for anyone who cares for children aged 7 and under, with limited exceptions (care for less than two hours a day, for related children or a friend’s children with no compensation, and evening babysitting). There are three categories of child care providers with different requirements. Typically, home-based caregivers are considered “childminders.” Before qualifying for registration, a childminder must demonstrate that the premises and everyone residing there are suitable. They must also complete a first aid and “early years” training course and meet specific standards relating to the safeguarding, welfare and development of children.
- 480** In evaluating the feasibility of a provincial registry, the Ministry consulted with an early childhood professional at an Ontario college of applied arts and technology, who provided a history of informal child care registries in the

province. She noted that some Ontario Early Years Centres – which provide programs and activities for children under age 6 with their parents and/or caregivers – have voluntary online registries, and suggested one option would be to merge them into one entity. She also observed that creating a provincewide child care registry would be a major and costly undertaking.

- 481** We reviewed a briefing document for the Minister, dated November 1, 2012, that notes mixed support for registries of informal daycare. It indicates that while many stakeholders, including child care organizations and municipalities, have promoted universal licensing of child care providers, others want the government to focus on encouraging providers to be licensed and educate parents about the difference between licensed and informal care. The briefing document discusses the option of creating a legislated mandatory provincial registry for informal care providers as well as prescribing minimum requirements for registrants, such as criminal reference checks. However, it rejects this approach. The document identifies a number of risks associated with maintaining a child care registry, including that it would create a false sense of security for parents, duplicate local registries, be difficult to enforce, have financial and resource implications and increase licensing staff workload. It also suggests it could result in even more caregivers going “underground” to avoid registration.
- 482** In July 2013, the Ministry revisited its position on regulating all caregivers. It considered the option of licensing all child care providers through the existing model of child care centres and private-home daycare agencies, as well as creating a new category to license home-based providers directly. Several factors were canvassed, including the diversity of stakeholder views, the prospect that child care options would be reduced, and the substantial additional funding and human resources that would be required, particularly for direct licensing.
- 483** Ministry officials told us the main obstacle to a provincial child care registry is the immense resource investment that would be necessary to monitor and respond to complaints about the informal child care sector.
- 484** The latest government policy in this area is reflected in Bill 10, the *Child Care Modernization Act, 2014*. The bill proposes measures to encourage more informal caregivers to register with licensed agencies, but falls short of implementing universal licensing or a mandatory register.
- 485** The bill would also allow a director or inspector to require operators applying for licensing to undergo a criminal reference check. The Minister would also have the authority to issue regulations to ensure screening measures are conducted, including criminal reference checks. However, caregivers in the unlicensed

sector would only have to undergo criminal reference checks if the Ministry believes they were previously convicted of certain offences or professional misconduct, or if future regulations are made under legislation, imposing this requirement.⁷⁷

- 486** The four recent deaths of young children in unlicensed care settings, as well as the shocking news about the former home daycare provider who pleaded guilty in April 2014 to poisoning children in her care,⁷⁸ have increased public concern about health, safety and welfare issues in the informal child care sector. However, licensing is not necessarily a fail-safe solution. While serious injuries and deaths are rare in the licensed sector, they do happen from time to time. For instance, a child died in an accident in a regulated home daycare in May 2011, and another death was reported in a licensed setting in 2013.
- 487** The Ministry and the Government of Ontario should continue to pursue amendments introducing more safety controls such as criminal reference checks for child care providers. It is also too early to close the door on other options such as developing a comprehensive voluntary or mandatory registry, extending the licensing scheme to informal caregivers and/or establishing universal standards for first aid and safety training, and criminal records screening. The overriding consideration in deciding whether to adopt such measures should be the health, safety and welfare of Ontario's children.
- 488** The Ministry's research to date has shown there is no generally accepted formula for child caregiver ratios or system for ensuring minimum standards in informal child care settings. It has signaled that it will continue to conduct research in this area. However, there are some additional steps the Ministry should undertake to ensure that the province's approach to informal child care is built on a solid evidentiary foundation and adopts a risk-based approach.
- 489** The Ministry should conduct media scans and seek information from local municipalities, police services, children's aid societies, health providers and school authorities about serious injuries, deaths, and other concerns relating to unlicensed child care settings. It should also obtain information about the various voluntary child care registries throughout Ontario and conduct further research into amalgamating this system into a provincial resource, be it mandatory or optional.

⁷⁷ ss 35, 80.

⁷⁸ "Christine Allen, who poisoned 4 children, gets 6-year sentence", *CBC News* (April 16, 2014). Online: <<http://www.cbc.ca/news/canada/kitchener-waterloo/christine-allen-who-poisoned-4-children-gets-6-year-sentence-1.2612393>>.

490 In addition, the Ministry should carefully monitor and analyze its own records to determine the rates and nature of serious incidents occurring in unlicensed care. It should also build capacity to track these occurrences into its new case management system, and regularly compile and review this information. Finally, there is no specific coding allowing the Office of the Chief Coroner to track how often, or under what circumstances, children die in child care environments. The Ministry should consult with the Chief Coroner about introducing a system for identifying such cases to enable it to better evaluate the safety risks in the unlicensed child care sector, and plan for additional reforms.

Recommendation 107

The Ministry of Education and the Government of Ontario should continue to seek revision and/or replacement of the *Day Nurseries Act*, to require increased standards in child care settings such as criminal reference checks.

Recommendation 108

The Ministry of Education should obtain and review information from various sources relating to serious incidents compromising the health, safety and welfare of children in unlicensed child care settings.

Recommendation 109

The Ministry of Education should track incidents involving risks to child health, safety and welfare in unlicensed care, using its new case management system.

Recommendation 110

The Ministry of Education should review the existing voluntary child care registries and consider the feasibility of adopting a centralized provincial registry, with registration on either a voluntary or mandatory basis.

Recommendation 111

The Ministry of Education should consult with the Office of the Chief Coroner about introducing a system for identifying child deaths in unlicensed child care settings.

Recommendation 112

The Ministry of Education should monitor the effects of changes to policy, legislation and regulations in the child care sector and assess the risks to children associated with unlicensed child care arrangements, with a view to introducing additional protective measures in future.

Opinion

491 In January 2012, the Ministry of Education became responsible for a child care licensing program plagued by historical maladministration. Given its experience with private schools, the Ministry already had some inkling of the enforcement challenges it would face in dealing with unlicensed child care operations. However, it soon learned that there were many operational deficiencies demanding urgent remedy. Although the Ministry has taken many positive and solid steps towards moving the *Day Nurseries Act* and the enforcement program into the 21st century, its progress has been slow and uneven. The stakes in the child care system are high. Mistakes put the lives and welfare of young children at risk. It is my opinion that the Ministry of Education's delayed, inconsistent and incomplete response to complaints and concerns relating to unlicensed daycare providers was unreasonable and wrong under the *Ombudsman Act*.

Recommendations

492 Accordingly, I am making the following recommendations to reduce the risk to the health, safety and welfare of children in the unlicensed child care sector:

Committing to Reform

Recommendation 1

The Ministry of Education should take all necessary steps to support reform to improve the system for monitoring unlicensed child care operators.

Recommendation 2

The Government of Ontario should continue to seek reform of the system for regulating unlicensed child care services in Ontario.

Recommendation 3

The Ministry of Education should implement its stated plans to establish a dedicated enforcement unit, a 1-800 complaint line and an online search tool to improve oversight of unlicensed child care operations as soon as possible.

Adequate Planning

Recommendation 4

The Ministry of Education should ensure that it has adequate resources to properly administer and effectively enforce the *Day Nurseries Act*.

Recommendation 5

The Ministry of Education should ensure that, prior to assuming responsibility for any new program area, it conducts sufficient research to ensure it is aware of and can plan for any serious issues and deficiencies, which may compromise the effectiveness and efficiency of program administration.

Recommendation 6

The Government of Ontario should use the *Day Nurseries Act* licensing program and its transition to the Ministry of Education as a learning example for Ontario Public Service administrators.

Responding to and Handling Complaints

Recommendation 7

The Ministry of Education should conduct periodic audits of its informal care logs to ensure compliance with its directions regarding record keeping and supervisory review of records.

Recommendation 8

The Ministry of Education should adopt a proactive approach to enforcement that reflects the fundamental importance of protecting children in informal care arrangements.

Recommendation 9

The Ministry of Education should direct enforcement staff to conduct media and Internet searches to identify potential illegal unlicensed child care arrangements for inspection, and to conduct inspections when their own observations or research identify potentially illegal child care arrangements.

Recommendation 10

The Ministry should adopt pre-emptive investigative techniques, such as the “secret shopper” method, and train its staff to encourage active enforcement of the *Day Nurseries Act* and any successor legislation.

Recommendation 11

The Ministry of Education should provide additional direction to staff conducting complaint intake to ensure that names and addresses relating to complaints are searched and recorded on complaint intake forms, along with information about past contraventions, enforcement steps and results.

Recommendation 12

The Ministry of Education should direct that enforcement staff responsible for conducting inspections routinely search Ministry records to confirm compliance history.

Recommendation 13

The Ministry of Education should direct enforcement staff, to confirm details when they receive complaints that do not contain specific information about the number of children in care in unlicensed child care operations, including contacting the complainant for further information, reviewing Ministry records for prior complaints, searching the Internet, and also conducting site inspections.

Case Management

Recommendation 14

The Ministry of Education should implement additions to its new case management system to allow for tracking of complaints and enforcement relating to unlicensed child care providers on an expedited basis.

Recommendation 15

The Ministry of Education should ensure that program staff have access to search the case management system for records relating to unlicensed child care throughout the province and can search for information using multiple identifiers.

Recommendation 16

The Ministry of Education should ensure that its new case management system has capacity to generate statistical information, to effectively track cases and complaint trends and allow for effective enforcement and program improvement.

Recommendation 17

The Ministry of Education’s case management system should incorporate security features that minimize the risk of data being lost or misplaced as a result of multiple users.

Recommendation 18

The Ministry of Education should ensure that complete historical data relating to complaints, inspections, and prosecutions is incorporated into its case management system in an easily searchable format.

Recommendation 19

The Ministry of Education should direct enforcement staff to search all available historical complaint records, including information generated before January 1, 2012.

Recommendation 20

The Ministry of Education should ensure that all regional offices maintain organized electronic and paper files in a consistent manner.

Timely Inspections

Recommendation 21

The Ministry of Education should require that the Director of the Child Care and Quality Assurance and Licensing Branch review, approve and keep track of all decisions not to undertake site inspections in response to complaints.

Recommendation 22

The Ministry of Education should arrange for periodic audits of its informal care logs to ensure timely inspections and supervisory review of records are being conducted.

Consistent and Clear Forms

Recommendation 23

The Ministry of Education should revise or replace its “Complaint Intake” and “Information about Children Receiving Care” forms to ensure that the following information is captured:

- How many children were found on site;
- How many children found on site were under 10 years of age and their specific ages;
- Details of any other children not found on site who appear to be scheduled to attend the child care operation;
- The source of information about children’s ages and attendance, e.g., caregiver records, interviews with caregivers or parents;

- The full schedule of attendance of all children for the week of the visit, and for a longer period if it appears that the schedule varies; and
- A clear explanation of the basis on which the caregiver has been found to be compliant or non-compliant.

Recommendation 24

The Ministry of Education should train enforcement staff to ensure that its “Complaint Intake” and “Information about Children Receiving Care” forms are consistently, clearly and accurately completed.

Co-ordinating with Other Agencies

Recommendation 25

The Ministry of Education should direct its staff to prioritize inspection of complaints received by municipal officials, children’s aid societies, police services, and school officials.

Recommendation 26

The Ministry of Education should enter into protocols with outside agencies such as municipalities, children’s aid societies, police services, and schools to ensure effective follow-up and information sharing relating to concerns about unlicensed child care operations.

Recommendation 27

The Ministry of Education should take steps to educate municipal, children’s aid society, police and school officials, about the Ministry’s role in ensuring unlicensed child care operations comply with the *Day Nurseries Act* requirements and its successor legislation.

Recommendation 28

The Ministry of Education should develop outreach materials for local authorities, including information on how to readily communicate with its enforcement staff, and encouraging them to come forward with concerns about unlicensed child care operations.

Preventing Premature File Closure

Recommendation 29

The Ministry of Education should ensure that complaint files are not closed unless positive evidence of compliance with the Act has been obtained through inspection.

Recommendation 30

The Ministry should expressly prohibit enforcement staff from closing complaint files based on information obtained through telephone conversations with caregivers.

Rigorous Inspection and Effective Enforcement

Recommendation 31

The Ministry of Education should ensure that enforcement staff do not directly or indirectly alert individuals who are the subject of a complaint prior to carrying out an initial or follow-up inspection.

Recommendation 32

The Ministry of Education should direct staff to take all reasonable steps to determine the correct address when responding to complaints, including contacting complainants for clarification, searching the Internet, and using independent observation.

Recommendation 33

The Ministry of Education should ensure that advisory and enforcement duties relating to unlicensed child care complaints remain separate and that enforcement expertise is promoted in its new dedicated enforcement unit.

Recommendation 34

The Ministry of Education should ensure that staff responsible for enforcing the *Day Nurseries Act* or successor legislation in the unlicensed sector are referred to as inspectors, investigators, enforcement officers or similar titles, to reinforce their enforcement responsibilities.

Recommendation 35

The Ministry of Education should replace the five-day standard for responding to complaints and concerns about unlicensed child care operators with a more expedient and flexible approach, recognizing that some cases require immediate reaction.

Developing Enforcement Expertise

Recommendation 36

The Ministry of Education should develop and train its enforcement staff on a process for triaging and prioritizing cases for enforcement.

Recommendation 37

The Ministry of Education should revise its internal directives and guidelines to clarify that the third site inspection, as opposed to immediate escalated enforcement steps, must be approved by the Director on an exceptional basis, and to provide clear guidance as to the circumstances warranting a third inspection rather than escalated enforcement steps.

Recommendation 38

The Ministry of Education should direct staff to exercise due diligence and expediency in collecting relevant evidence in order to preserve enforcement options.

Recommendation 39

The Ministry of Education should institute a process for conducting spot inspections, to address caregivers in the unlicensed child care sector who have a history of compliance problems, e.g., serial contraventions of the *Day Nurseries Act* or successor legislation, significant violations, unhealthy, unsafe premises or practices, and dishonesty and/or obstruction in the inspection process.

Recommendation 40

The Ministry of Education should generate statistics and monitor and identify trends relating to illegal child care operators, to assist in planning proactive enforcement activities.

Recommendation 41

The Ministry of Education should train its enforcement staff on the significance of the limitation period for prosecutions under the *Provincial Offences Act* and clarify that it does not prevent staff from considering historic incidents when determining how to respond to new complaints.

Recommendation 42

The Ministry of Education should provide clear direction to its enforcement staff that previous violations by an unlicensed caregiver of the *Day Nurseries Act* or successor legislation, regardless of when they occurred, should be considered in assessing how to respond to new complaints.

Recommendation 43

The Ministry of Education should provide direction to enforcement staff that a caregiver's refusal to co-operate with an inspection is to be considered when deciding on the appropriate level of enforcement to address a violation of the *Day Nurseries Act* or successor legislation.

Recommendation 44

The Ministry of Education should ensure its enforcement staff receive comprehensive training on how to carry out effective inspections, including investigative planning, collection and recording of physical evidence, interviewing witnesses, assessing evidence, and report-writing best practices.

Improving Inspection Powers and Practices

Recommendation 45

The Ministry of Education and the Government of Ontario should continue to promote legislative amendment to revise or replace the *Day Nurseries Act*, to provide the additional inspection powers contemplated by Bill 10, the *Child Care Modernization Act, 2014*.

Recommendation 46

The Ministry of Education should direct enforcement staff to make every reasonable effort during inspections to obtain information about child attendance and fees charged for child care services, and to copy and/or photograph relevant records.

Recommendation 47

The Ministry of Education should reinforce that enforcement staff should routinely photograph and/or video record the exterior and interior of premises used for unlicensed child care operations, including physical items that may demonstrate a caregiver is operating an illegal day nursery.

Recommendation 48

The Ministry of Education, in consultation with the Information and Privacy Commissioner, should change its policy to allow for photographing/video recording of children in unlicensed day nursery settings, in appropriate circumstances.

Recommendation 49

The Ministry of Education should train enforcement staff on communication techniques and strategies to encourage caregiver cooperation with its inspections.

Recommendation 50

The Ministry of Education should direct enforcement staff to make all reasonable attempts to view all external and interior areas of a residence under inspection.

Recommendation 51

The Ministry of Education should direct staff to ask whether a caregiver under inspection owns or uses property adjacent to the site being inspected or elsewhere and uses that premises to provide child care.

Putting Parents Back In the Picture

Recommendation 52

The Ministry of Education should direct enforcement staff, as a standard practice, to attempt to obtain information from parents about children’s care schedules, ages and child care operations to verify evidence obtained from child care providers.

Recommendation 53

The Ministry of Education should direct enforcement staff to record information obtained from parents relating to children receiving unlicensed care on the “Complaint Intake” and “Information about Children Receiving Care” forms.

Recommendation 54

The Ministry of Education should direct enforcement staff that whenever possible, and in all cases involving a health, safety, or child welfare concern, they should wait until all the children being cared for in an illegal child care operation have been retrieved by parents, before leaving the site.

Recommendation 55

The Ministry of Education should direct enforcement staff, as a standard practice, to contact parents directly to notify them that their children were in an illegal child care operation and educate them on the *Day Nurseries Act* or successor legislation.

Recommendation 56

The Ministry of Education should train enforcement staff in dispute resolution and conflict de-escalation techniques.

Recommendation 57

The Ministry of Education should develop reference materials that can be provided to parents to assist them in locating alternative and legal child care spaces.

Inspection Roles and Records

Recommendation 58

The Ministry of Education should set out clear written expectations and roles for enforcement staff carrying out complaint inspections.

Recommendation 59

The Ministry of Education should direct all enforcement staff acting as seconds during an inspection to actively assist in the collection of evidence and record their observations independently, and as soon as possible.

Recommendation 60

The Ministry of Education should ensure that if an official from another organization assists in carrying out an inspection, that individual is required to supply an independent and contemporaneous record of his or her inspection observations.

Recommendation 61

The Ministry of Education should avoid relying on officials from other organizations to carry out inspections and ensure that its new enforcement unit is adequately resourced to meet the requirement of two staff at each inspection.

Recommendation 62

The Ministry of Education should direct its enforcement staff to independently, thoroughly, and accurately complete all inspection records as soon as possible during and after an inspection.

Recommendation 63

The Ministry of Education should audit inspection records to ensure they are thorough, accurate and completed in a timely manner.

Recommendation 64

The Ministry of Education should direct that one of the two staff members carrying out an inspection is to have primary responsibility for recording the results during the inspection.

Recommendation 65

The Ministry of Education should provide further direction and training for enforcement staff on recording the results of site inspections using the electronic tablets they have been issued.

Recommendation 66

The Ministry of Education should assess the adequacy of its electronic tablets and whether it should employ alternative recording devices in site inspections.

Recommendation 67

The Ministry of Education should consider using audio/video recording during inspections to ensure the best evidence available is obtained.

Surveillance, Warnings and Search Warrants

Recommendation 68

The Ministry of Education should regularly train enforcement staff on surveillance and search warrant techniques.

Recommendation 69

The Ministry of Education should generate statistics on the use and outcome of surveillance and execution of search warrants, to identify trends, caregivers and locations requiring further monitoring, and training gaps.

Recommendation 70

The Ministry of Education should direct its supervisory staff to ensure that correspondence to unlicensed child care operators is accurate and sent out in a timely manner.

Recommendation 71

The Ministry of Education should audit complaint files to ensure that correspondence meets time standards.

Recommendation 72

The Ministry of Education should incorporate electronic alerts and reminders into its case management system to encourage sending of correspondence to unlicensed child care operators within established time frames.

Recommendation 73

The Ministry of Education should review and revise the standard correspondence it sends to illegal child care operators to ensure that the language used reflects the seriousness of violating the *Day Nurseries Act* and successor legislation and is tailored to match the severity of the breach.

Recommendation 74

The Ministry of Education should direct staff that if they send a third warning letter to an illegal child care operator, it must be accompanied by additional escalated enforcement action, such as referral for prosecution.

Injunctions and Prosecutions

Recommendation 75

The Ministry of Education and Government of Ontario should continue to seek revision or replacement of the *Day Nurseries Act* to provide the Ministry with the authority to seek injunctions and issue protection orders to address health, safety and child welfare issues in the unlicensed child care sector.

Recommendation 76

The Ministry of Education should seek injunctions more frequently to address unlicensed child care operators who flout the law or pose risks to children’s health, safety and welfare.

Recommendation 77

The Ministry of Education should, as a priority, develop a comprehensive enforcement framework for its work in the unlicensed child care sector to guide staff in assessing the appropriate enforcement response, including situations warranting prosecution.

Recommendation 78

The Ministry of Education should train staff on the enforcement continuum from warnings to prosecution, including providing precedent cases to ensure more rational, consistent and coherent enforcement in the unlicensed child care sector.

Screening

Recommendation 79

The Ministry of Education should screen all applicants for licensing under the *Day Nurseries Act* or successor legislation to determine whether they have previously operated an illegal unlicensed daycare in contravention of the Act.

Recommendation 80

The Ministry of Education should change its licensing policies to reflect that, absent extenuating or compelling circumstances, individuals who have a history of

violating the *Day Nurseries Act* or successor legislation should not be granted a licence to operate under the Act.

Clarifying Terms

Recommendation 81

The Ministry of Education and Government of Ontario should continue to seek legislative change to the *Day Nurseries Act* to eliminate the reference to “common parentage” in the definition of “day nursery.”

Camps

Recommendation 82

The Ministry of Education and Government of Ontario should continue to seek revision or replacement of the *Day Nurseries Act* to restrict the circumstances in which camps may operate without child care licensing.

Recommendation 83

The Ministry of Education should, in consultation with the Ministry of Tourism, Culture and Sport and other stakeholders, require summer camps to be licensed under the *Day Nurseries Act* or successor legislation unless they are accredited by the Ontario Camping Association or otherwise subject to satisfactory health and safety standards.

Recommendation 84

The Ministry of Education should limit the summer camp exemption to providers who only serve children over the age of 4, and do not operate out of private homes.

Recommendation 85

The Ministry of Education should require that summer camp operators obtain licences under the *Day Nurseries Act*, if they ran an unlicensed child care with similar hours and programming prior to establishing the camp.

Recreational and Tutoring Programs

Recommendation 86

The Ministry of Education and Government of Ontario should continue to seek legislative amendment to clarify and restrict the circumstances in which

recreational, tutoring and similar programs may operate without child care licensing.

Recommendation 87

The Ministry of Education should revise its guidelines and provide clear direction to the public and its enforcement staff as to what recreational, tutoring and similar programs qualify for exemption from the *Day Nurseries Act* licensing requirements.

Recommendation 88

The Ministry of Education, in consultation with the Ministry of Tourism, Culture and Sport and other stakeholders, should impose additional restrictions on the types of recreational, tutoring and similar programs qualifying for exemption from licensing, to ensure that their primary purpose is not child care.

Recommendation 89

The Ministry of Education should require that programs that have an element of child care but which also offer complementary recreational activities, are not exempt from licensing under the *Day Nurseries Act* if they are home-based or serve children under the age of 6.

Recommendation 90

The Ministry of Education should conduct research in consultation with other ministries, including the Ministry of Children and Youth Services and the Ministry of Tourism, Culture and Sport, and consider imposing additional safeguards to ensure that the health, safety and welfare needs of children are appropriately addressed in situations involving unlicensed recreational, tutoring, or similar programs.

Commercial Premises

Recommendation 91

The Ministry of Education and Government of Ontario should continue to seek to eliminate the distinction between private residences and commercial premises reflected in the definition of “private-home day care agency” in the *Day Nurseries Act*.

Private Schools

Recommendation 92

The Ministry of Education should proactively enforce the *Day Nurseries Act* or successor legislation in respect of day nurseries operating in or affiliated with private schools, regardless of whether they were in existence prior to 1993 and previously subject to exemption through ministerial policy.

Recommendation 93

The Ministry of Education and the Government of Ontario should continue to promote legislative revision to the child care licensing system to ensure that private schools providing child care to children of preschool age are subject to licensing requirements.

Recommendation 94

The Ministry of Education should continue to collect detailed information from private schools about the number and ages of children they serve.

Recommendation 95

The Ministry of Education should ensure the form it uses for notices of intention to operate a private school requires that private schools list all locations at which they operate, as well as the number of children from various age groups served at each location.

Recommendation 96

The Ministry of Education’s Field Services Branch should regularly share with the Child Care Quality Assurance and Licensing Branch the information it collects from private schools about the number and ages of children enrolled.

Recommendation 97

The Ministry of Education should direct the Field Services Branch to notify the Child Care Quality Assurance and Licensing Branch of all directions to private schools to cease operating under the *Education Act*.

Recommendation 98

The Ministry of Education should link information about private schools to the new case management system to assist with enforcement of the *Day Nurseries Act* or successor legislation.

Recommendation 99

The Ministry of Education’s Field Services Branch and Child Care Quality Assurance and Licensing Branch should conduct joint inspections to confirm that

private schools which have been directed to cease operations under the *Education Act*, and which have served children under age 10, are in compliance with that Act, as well as the *Day Nurseries Act* or successor legislation.

Recommendation 100

The Ministry of Education should cross-train Field Services Branch and Child Care Quality Assurance and Licensing Branch staff to ensure effective enforcement of *Education Act* and *Day Nurseries Act* (or successor legislation) requirements in the private school sector.

Recommendation 101

The Ministry of Education should develop communication and enforcement protocols to encourage the Field Services Branch and Child Care Quality Assurance and Licensing Branch to co-ordinate enforcement efforts.

Recommendation 102

The Ministry of Education should provide information about the licensing requirements under the *Day Nurseries Act* or successor legislation to all private schools, including prior to initial registration.

Recommendation 103

The Ministry of Education should send information about licensing requirements under the *Day Nurseries Act* or successor legislation to all private schools that have been directed to cease operating under the *Education Act*.

Enforcement and Awareness Tools

Recommendation 104

The Ministry of Education and the Government of Ontario should continue to seek revision and/or replacement of the *Day Nurseries Act* to provide the Ministry with sufficient tools to allow for effective enforcement of licensing requirements, including the ability to levy administrative penalties and increasing penalties for convictions under the Act.

Recommendation 105

The Ministry of Education and the Government of Ontario should continue to seek revision and/or replacement of the *Day Nurseries Act* to restrict the use of terms associated with licensed child care operations.

Recommendation 106

The Ministry of Education should, in consultation with stakeholders, design and implement a widespread multimedia campaign, including traditional and social media, online resources and distribution of materials to various public sector and community organizations, to promote awareness of the available child care options and the prevention of illegal unlicensed operations.

Universal Licensing

Recommendation 107

The Ministry of Education and the Government of Ontario should continue to seek revision and/or replacement of the *Day Nurseries Act*, to require increased standards in child care settings such as criminal reference checks.

Recommendation 108

The Ministry of Education should obtain and review information from various sources relating to serious incidents compromising the health, safety and welfare of children in unlicensed child care settings.

Recommendation 109

The Ministry of Education should track incidents involving risks to child health, safety and welfare in unlicensed care, using its new case management system.

Recommendation 110

The Ministry of Education should review the existing voluntary child care registries and consider the feasibility of adopting a centralized provincial registry, with registration on either a voluntary or mandatory basis.

Recommendation 111

The Ministry of Education should consult with the Office of the Chief Coroner about introducing a system for identifying child deaths in unlicensed child care settings.

Recommendation 112

The Ministry of Education should monitor the effects of changes to policy, legislation and regulations in the child care sector and assess the risks to children associated with unlicensed child care arrangements, with a view to introducing additional protective measures in future.

Follow-Up

Recommendation 113

The Ministry of Education should report back to my Office in six months' time on the progress in implementing my recommendations, and at six-month intervals thereafter until such time as I am satisfied that adequate steps have been taken to address them.

Response

- 493** The Ministry of Education was provided with an opportunity to review and respond to my preliminary findings, opinion, and recommendations. The comments and clarifications provided by Ministry officials were taken into consideration in the preparation of this final report.
- 494** The Deputy Minister also provided a detailed response to my recommendations and shared the steps that the Ministry is undertaking to address them. A copy of this response is appended to this report.
- 495** The Deputy Minister reported that most (more than 95) of my recommendations are already being addressed. Some 35 will be addressed through Bill 10, the *Child Care Modernization Act, 2014*, and approximately 60 will be resolved through the establishment of the new enforcement unit and internal policy changes.
- 496** In the past year, the Ministry has made genuine and focused efforts to rise to the challenge of ensuring that Ontario has a proactive, timely, risk-based, and effective system for monitoring unlicensed child care operations. It has committed to provide my Office with semi-annual status updates, and I will continue to assess its progress in implementing my recommendations.



André Marin
Ombudsman of Ontario

Appendix: Response from the Ministry of Education

Ministry of Education

Deputy Minister

Mowat Block
Queen's Park
Toronto ON M7A 1L2

Ministère de l'Éducation

Sous-ministre

Édifice Mowat
Queen's Park
Toronto ON M7A 1L2



August 22, 2014

Mr. André Marin
Ombudsman
Office of the Ombudsman of Ontario
10th Floor, South Tower
483 Bay Street
Toronto, ON
M5G 2C9

Dear Mr. Marin,

Thank you for the opportunity to review your preliminary report on the "Investigation into how the Ministry of Education responds to complaints and concerns relating to unlicensed daycare providers." I am pleased to provide a detailed response to your recommendations and share the steps we are taking to address them.

Over the past year, the ministry has taken solid steps to strengthen our approach to responding to complaints and concerns related to unlicensed child care. In July, Bill 10, the *Child Care Modernization Act, 2014* was introduced. If passed, this legislation would expand the Ministry of Education's powers to support compliance and strengthen oversight of unlicensed child care settings.

The ministry has also:

- Established a dedicated enforcement unit to investigate violations of the *Day Nurseries Act* and take the appropriate enforcement action when needed; recruitment for this unit is currently underway.
- Launched an online Searchable Registry of Unlicensed Child Care Violations, which will allow parents to verify if an unlicensed child care provider has previously been found to have violated the *Day Nurseries Act*.
- Launched a toll-free number for unlicensed child care complaints to facilitate the reporting of violations to the Ministry.
- Introduced a revised internal directive to better guide staff in administering and enforcing the *Day Nurseries Act*.

We are pleased to report that over ninety-five (95) of your recommendations are already being addressed:

- Over thirty-five (35) addressed through the introduction of Bill 10, the *Child Care Modernization Act, 2014*.
- Approximately sixty (60) through the establishment of the new enforcement unit and through internal policy changes.

In addition, work is underway or planned for the remaining recommendations.

Thank you again for the opportunity to review your preliminary report.

Sincerely,

A handwritten signature in cursive script that reads "George Zegarac".

George Zegarac
Deputy Minister

Enclosure

Number	Recommendation	Response
1	<p>The Ministry of Education should take all necessary steps to support reform to improve the system for monitoring unlicensed child care operators.</p>	<p>The ministry has established a new dedicated enforcement unit to respond and follow up on complaints and information regarding unlicensed child care providers. Recruitment of staff is underway. In August 2014, the ministry launched an online searchable registry which allows parents to access information about violations and convictions of unlicensed child care providers, and a designated toll free number report a complaint regarding an unlicensed provider.</p> <p>In addition, the proposed legislation, Bill 10, the <i>Child Care Modernization Act, 2014</i> if passed, would expand the ministry's powers to support compliance and strengthen oversight of unlicensed child care settings.</p>
2	<p>The Government of Ontario should continue to seek reform of the system for regulating unlicensed child care services in Ontario.</p>	<p>Reform of the system with respect to unlicensed child care in Ontario is proposed under Bill 10, the <i>Child Care Modernization Act, 2014</i>.</p>
3	<p>The Ministry of Education should implement its stated plans to establish a dedicated enforcement unit, a 1-800 complaint line, and an on-line search tool, to improve oversight of unlicensed child care operations, as soon as possible.</p>	<p>If passed, this legislation would expand the Ministry of Education's powers to support compliance and strengthen oversight of unlicensed child care settings.</p> <p>The ministry has established a new dedicated enforcement unit to respond and follow up on complaints and information regarding unlicensed child care providers. Recruitment of staff is underway. In August 2014, the ministry launched an online searchable registry which allows parents to access information about violations and convictions of unlicensed child care providers, and a designated toll free number report a complaint regarding an unlicensed provider.</p>
4	<p>The Ministry of Education should ensure that it has adequate resources going forward to properly administer and effectively enforce the <i>Day Nurseries Act</i>.</p>	<p>The ministry has provided additional resources for enforcement and inspection to administer and enforce the <i>Act</i>. The ministry has allocated nine new additional full-time staff positions for the new dedicated Enforcement Unit which is currently under recruitment. Additional staff positions have been put in place to address workload in the licensed sector as well.</p>

Number	Recommendation	Response
5	<p>The Ministry of Education should ensure that, prior to assuming responsibility for any new program area, it conducts sufficient research to ensure it is aware of and can plan for any serious issues and deficiencies, which may compromise the effectiveness and efficiency of program administration.</p>	<p>The Ministry of Education will conduct research prior to the transfer of any new program responsibilities.</p>
6	<p>The Government of Ontario should use the <i>Day Nurseries Act</i> licensing program and its transition to the Ministry of Education as a learning example for Ontario Public Service administrators.</p>	<p>The Ministry of Education will share information about lessons learned in the child care licensing transfer within the Ontario Public Service.</p>
7	<p>The Ministry of Education should conduct periodic audits of its informal complaint logs to ensure compliance with its directions concerning record-keeping and supervisory review of records.</p>	<p>Regular audits have been in place since July 2013. This audit regime will continue. The Child Care Quality Assurance and Licensing (CCQAL) Branch Internal Directive, "Internal Directive: Investigation and Enforcement Related to Unlicensed Child Care" (referred to as "Internal Directive" for the duration of this document) includes the requirement for staff to review on a weekly basis the unlicensed complaint logs and supporting documentation in the complaint file to ensure appropriate follow-up action, including timely, consistent information collection. Regional managers review and sign off on the logs on a weekly basis. Quarterly reviews are completed by Internal Audit.</p>
8	<p>The Ministry of Education should adopt a proactive approach to enforcement that reflects the fundamental importance of protecting children in informal care</p>	<p>Bill 10, the <i>Child Care Modernization Act, 2014</i> would, if passed, expand the Ministry of Education's powers to support compliance and strengthen oversight of unlicensed child care settings.</p> <p>This includes expanded prohibitions and duties for child care providers as well as a range of enforcement tools including compliance orders, protection orders, administrative penalties and restraining orders.</p>

Number	Recommendation	Response
	arrangements	The CCQAL Enforcement Unit is moving towards adopting a more proactive, risk-based approach to unlicensed child care providers.
9	<p>The Ministry of Education should direct enforcement staff to conduct media and Internet searches to identify potential illegal unlicensed child care arrangements for inspection and to conduct inspections when their own observations or research identifies potentially illegal child care arrangements.</p>	<p>The ministry is adopting a more proactive approach to information about unlicensed child care providers. The risk based approach to proactive enforcement will include the tactical use of media and internet, when appropriate, to identify unlicensed child care providers who may be providing care to more than five children without a licence.</p> <p>The ministry has clarified in the Internal Directive that, where the ministry learns, observes, or is provided with, any information about an unlicensed child care provider who may be providing care to more than five children, the ministry follows up on this information with a site visit using the standard follow-up procedure.</p> <p>An internal process was developed for reporting and referring information about potentially non-compliant unlicensed child care providers to Enforcement Unit staff. Information about the referral process was distributed to all <u>Early Years Division staff</u> and other relevant ministry partners.</p> <p>The ministry is moving towards adopting a more proactive, risk-based approach to unlicensed child care providers.</p> <p>Enforcement staff will incorporate pre-emptive investigative techniques in order to encourage the active enforcement of the DNA and any successor legislation that may be passed. The staff of the new dedicated enforcement unit will be trained on how to effectively use these techniques once recruited.</p>
10	<p>The Ministry of Education should adopt pre-emptive investigative techniques, such as "the secret shopper" method, and train its staff to encourage active enforcement of the <i>Day Nurseries Act</i> and any successor legislation.</p>	<p>The Internal Directive includes the direction that CCQAL staff are to search available ministry records by the provider name and site address, to identify relevant historical information about an unlicensed child care provider after a new complaint is received. The ministry will reinforce this requirement through training.</p>
11	<p>The Ministry of Education should provide additional direction to staff conducting complaint intake to ensure that both names and addresses relating to complaints are searched and recorded on complaint intake forms, along with information about past contraventions, enforcement</p>	

Number	Recommendation	Response
	steps and results.	
12	<p>The Ministry of Education should direct that enforcement staff responsible for conducting inspections routinely search Ministry records to confirm compliance history.</p>	<p>The Internal Directive states that CCQAL staff are required to search for an unlicensed child care provider's compliance history and record the historical information in the Complaint Intake Form. The ministry will reinforce this requirement through training.</p>
13	<p>The Ministry of Education should direct enforcement staff, when they receive complaints which do not contain specific information about the number of children in care, to take positive steps to confirm details relating to unlicensed child care operations, including contacting the complainant for further information, reviewing its records for prior complaints, searching the Internet, and also conducting site inspections.</p>	<p>The ministry has specified in its Internal Directive that, in a situation where the ministry learns, or is provided with, information about an unlicensed child care provider who may be providing care to more than five children, but the exact number of children is unknown (i.e. the available information does not support that there are five or fewer children), the ministry follows up on this information with a site visit using the standard follow-up procedure. Ministry staff are to take positive steps to confirm the missing details such as contacting the complainant where possible, reviewing available records for historical information, and searching online for additional information.</p>
14	<p>The Ministry of Education should implement additions to its new case management system to allow for tracking of complaints and enforcement relating to unlicensed child care providers on an expedited basis.</p>	<p>A complaints management system to automate tracking of complaints and enforcement is currently in development and will be deployed in Fall 2014 with ongoing enhancements.</p>

Number	Recommendation	Response
15	<p>The Ministry of Education should ensure that program staff have access to search the case management system for records relating to unlicensed child care throughout the province and can search for information using multiple identifiers.</p>	<p>The complaints management system will be accessible to staff and will have multiple search features.</p>
16	<p>The Ministry of Education should ensure that its new case management system has capacity to generate statistical information to effectively track individual cases and complaint trends to allow for effective enforcement and program improvement.</p>	<p>The ability to generate statistical reporting and analytics from the complaints management system will be available in 2015.</p>
17	<p>The Ministry of Education's case management system should incorporate security features that minimize the risk of data being lost or misplaced as a result of multiple users.</p>	<p>Security features are included in the complaints management system's design.</p>
18	<p>The Ministry of Education should ensure that complete historical data relating to complaints, inspections and prosecutions is incorporated into its case management system in an easily searchable format.</p>	<p>The ministry will begin converting historical paper copies into a digital format that is easily searchable this Fall.</p>

Number	Recommendation	Response
19	<p>The Ministry of Education should direct enforcement staff to search all available historical complaint records including information generated before January 1, 2012.</p>	<p>The Internal Directive directs CCQAL staff to search available ministry records for previous complaints, by the provider name and site address, to identify relevant historical information about an unlicensed child care provider. This requirement was reinforced through training.</p>
20	<p>The Ministry of Education should ensure that all regional offices maintain organized electronic and paper files in a consistent manner.</p>	<p>The Internal Directive includes requirements for hard copy and digital file retention related to unlicensed child care. The ministry will continue to communicate the requirements for maintaining organized electronic and digital files to CCQAL staff as part of regular training and ongoing communication.</p> <p>Once implemented, the new complaints management system for unlicensed child care will centralize the process of collecting information about unlicensed child care providers, increasing the efficiency and consistency of data collection practices.</p>
21	<p>The Ministry of Education should require that the Director of the Child Care and Quality Assurance and Licensing Branch review, approve and keep track of all decisions not to undertake site inspections in response to complaints.</p>	<p>The ministry has put in place the requirement for the Director at corporate office to receive regular reports and briefings from the Enforcement Unit including on all decisions to not conduct a site visit and the rationale behind the decision. This requirement has been added to the Internal Directive.</p>
22	<p>The Ministry of Education should arrange for periodic audits of its informal complaint logs to ensure timely inspections and supervisory review of records are being conducted.</p>	<p>Regular audits have been in place since July 2013. This audit regime will continue. Staff will review the unlicensed care logs and supporting documentation on a weekly basis to support compliance with the Internal Directive. Regional managers review and sign off on the logs on a weekly basis. Quarterly reviews are completed by Internal Audit.</p>

Number	Recommendation	Response
23	<p>The Ministry of Education should revise or replace its Complaint Intake and Information about Children Receiving Care forms to ensure that the following information is captured:</p> <ul style="list-style-type: none"> • How many children were found on site; • How many children found on site were under 10 years of age and their specific ages; • Details of any other children, not found on site, which appear scheduled to attend the child care; • The source of information about children's ages and attendance (e.g. caregiver records, interviews with caregivers or parents); • The full schedule of attendance of all children for the week of the visit, and for a longer period, if it appears that the schedule varies; and • A clear explanation of the basis on which the caregiver has been found to be compliant or non-compliant. 	<p>The ministry has reviewed and revised the Complaint Intake and Information about Children Receiving Care forms to include the information specified in the recommendation.</p> <p>The Internal Directive has been updated to include these revisions, and these changes have been communicated to all CCQAL staff.</p>

Number	Recommendation	Response
24	<p>The Ministry of Education should train enforcement staff to ensure that its Complaint Intake and Information about Children Receiving Care forms are consistently, clearly and accurately completed.</p>	<p>The ministry will train CCQAL staff in ensuring that standardized forms are used in a consistent, effective manner, through training and ongoing communication in fall 2014.</p>
25	<p>The Ministry of Education should direct its staff to prioritize inspection of complaints received by municipal officials, children's aid societies, police services, and school officials.</p>	<p>The ministry met with other ministries and has added a requirement to the Internal Directive that, when planning follow-up action, ministry staff are to prioritize complaints that are referred to the ministry by another regulatory authority, within the context of a risk-based approach.</p>
26	<p>The Ministry of Education should enter into protocols with outside agencies such as municipalities, children's aid societies, police services and schools to ensure effective follow-up and information sharing relating to concerns about unlicensed child care operations.</p>	<p>The ministry has drafted information sharing protocols with the Ministry of Children and Youth Services and the Ministry of Health and Long Term Care and is actively involved in discussions regarding the development of similar protocols with the ministries of Municipal Affairs and Housing and Ministry of Community Safety and Correctional Services for the purpose of sharing information relating to concerns about unlicensed child care providers.</p> <p>Bill 10, the <i>Child Care Modernization Act, 2014</i>, if passed, would set out that persons designated by regulation (which could include public health officials, children's aid society officials, etc.) have a duty to report child care situations, including in unlicensed settings, where they observe in the course of their employment that a child's safety is at risk.</p> <p>In addition, the proposed legislation sets out a duty to cooperate between the Minister of Education and service managers (i.e. municipalities), which includes sharing information related to child care and early years programs.</p> <p>The proposed legislation also includes provisions around the collection and use of personal information by the ministry for certain purposes having to do with child care and early years programs and services which could support effective information sharing about unlicensed child care</p>

Number	Recommendation	Response
27	<p>The Ministry of Education should take steps to educate municipal, children's aid society, police and school officials, about the Ministry's role in ensuring unlicensed child care operations comply with the <i>Day Nurseries Act</i> requirements and its successor legislation.</p>	<p>programs. Information sharing protocols with other ministries and agencies will be accompanied by information campaigns on the ministry's role in ensuring unlicensed child care providers comply with the <i>Day Nurseries Act</i> requirements and any successor legislation that may be passed.</p>
28	<p>The Ministry of Education should develop outreach materials for local authorities, including information on how to readily communicate with its enforcement staff, and encourage them to come forward with concerns about unlicensed child care operations.</p>	<p>The ministry will develop outreach materials for local authorities and distribute these products to local authorities.</p>
29	<p>The Ministry of Education should ensure that complaint files are not closed unless positive evidence of compliance with the Act has been obtained through inspection.</p>	<p>The ministry has specified in its Internal Directive that, in order to close a complaint file, ministry staff must have direct, first-hand information that an unlicensed child care provider is in compliance with the <i>Day Nurseries Act</i>, such as through a site visit or conducting surveillance.</p>
30	<p>The Ministry of Education should expressly prohibit enforcement staff from closing complaint files</p>	<p>The Internal Directive states that in no circumstances can ministry staff correspond with the unlicensed child care provider by telephone, email or by letter as a substitute for carrying out an in-person unannounced site visit. The Directive has been clarified to state that a site visit is required to confirm the number of children in care, and that information provided by the provider, through a</p>

Number	Recommendation	Response
	<p>based on information obtained through telephone conversations with caregivers.</p>	<p>telephone call or a written correspondence, is not sufficient evidence to close a complaint.</p>
31	<p>The Ministry of Education should ensure that enforcement staff do not directly or indirectly alert individuals, who are the subject of a complaint, prior to carrying out an initial or follow-up inspection.</p>	<p>Regular audits and review processes are in place and will continue to confirm that complaint files are only closed based on sound information that the child care provider is compliant. The Internal Directive states that all site visits to unlicensed child care providers are to be unannounced. The ministry will reinforce this requirement through training.</p>
32	<p>The Ministry of Education should direct staff to take all reasonable steps to determine the correct address when responding to complaints, including contacting complainants for clarification, searching the Internet, and using independent observation.</p>	<p>The Internal Directive states that, where ministry staff are unable to locate the site address because the address provided by the complainant is incorrect or incomplete, ministry staff contact the complainant, if possible, to ask for correct information about the site address. The Internal Directive has been strengthened to require that ministry staff take all reasonable steps to determine the correct address including using online resources and searching ministry records for historical information about the provider.</p>
33	<p>The Ministry of Education should ensure that advisory and enforcement duties relating to unlicensed child care complaints remain separate and that enforcement expertise is promoted in its new dedicated enforcement unit.</p>	<p>The new Enforcement Unit will focus on enforcing the <i>Day Nurseries Act</i> regarding unlicensed child care and will develop the skills and capacity required to carry out its responsibilities.</p>
34	<p>The Ministry of Education should ensure that staff</p>	<p>The new Enforcement Unit continues to recruit staff members who will serve as enforcement professionals. Staff titles for the new Unit include "Investigators" and "Senior Investigators."</p>

Number	Recommendation	Response
	<p>responsible for enforcing the <i>Day Nurseries Act</i> or successor legislation in the unlicensed sector are referred to as "inspectors," "investigators," "enforcement officers" or similar titles to reinforce their enforcement responsibilities.</p>	<p>Bill 10, the <i>Child Care Modernization Act, 2014</i>, if passed, would provide the Minister of Education with authority to appoint "inspectors" and issue certificates of appointment for inspectors to use when conducting their duties.</p>
35	<p>The Ministry of Education should replace the "five day" standard for responding to complaints and concerns about unlicensed child care operators, with a more expedient and flexible approach which recognizes some cases require immediate reaction.</p>	<p>The Internal Directive states that ministry staff conduct an initial site visit within five business days and immediately (on the same business day) if there is a health, safety or child welfare concern. The ministry has clarified in the Internal Directive that initial and follow-up site visits are conducted as soon as possible within the maximum timelines.</p>
36	<p>The Ministry of Education should develop and train its enforcement staff on a process for triaging and prioritizing cases for enforcement.</p>	<p>Enforcement Unit staff will be trained in adopting a risk-based approach in following up on unlicensed child care providers and prioritizing cases for enforcement.</p>
37	<p>The Ministry of Education should revise its Internal Directives and Guidelines to clarify that the "third" site inspection, as opposed to immediate escalated enforcement steps, must be approved by the Director on</p>	<p>The Internal Directive has been revised to specify that third site visits are authorized only in exceptional cases. The Director of the CCQAL corporate office will review all instances where a third visit has been recommended in lieu of progressive enforcement action after a provider has been found to be non-compliant at a second site visit.</p>

Number	Recommendation	Response
	<p>an exception basis, and to provide clear guidance as to the circumstances warranting a third inspection rather than escalated enforcement steps.</p>	
38	<p>The Ministry of Education should direct staff to exercise due diligence and expediency in collecting relevant evidence in order to preserve enforcement options.</p>	<p>The ministry will adhere to timelines to ensure that the prosecution of contraventions does not become statute barred.</p>
39	<p>The Ministry of Education should institute a process for conducting spot inspections, to address caregivers in the unlicensed child care sector with a history of compliance problems e.g. serial contraventions of the <i>Day Nurseries Act</i> or successor legislation, significant violations, unhealthy, unsafe premises or practices, dishonesty and/or obstruction in the inspection process.</p>	<p>The ministry will analyze historical data and conduct inspections of child care providers who have a history of non-compliance. The Ministry is investigating moving to a more risk-based inspection and enforcement approach.</p>
40	<p>The Ministry of Education should generate statistics, and monitor and identify trends relating to illegal child care operators to assist in planning proactive enforcement activities.</p>	<p>The new Enforcement Unit will generate statistics and monitor trends to assist in informing and planning more proactive, risk-based enforcement activities, based on the new complaints management system for unlicensed child care, which is currently in development.</p> <p>Once implemented, the complaints management system will strengthen the ministry's data collection practices and improve the ministry's ability to generate and monitor statistics related to the unlicensed sector.</p>

Number	Recommendation	Response
41	<p>The Ministry of Education should train its enforcement staff on the significance of the limitation period for prosecutions under the <i>Provincial Offences Act</i> and clarify that it does <u>not</u> prevent staff from considering historic incidents when determining how to respond to new complaints.</p>	<p>Currently, the Manager of the Enforcement Unit is providing this direction. Staff will be trained regarding the use of previous enforcement history, including use in subsequent prosecution.</p>
42	<p>The Ministry of Education should provide clear direction to its enforcement staff that previous violations of the <i>Day Nurseries Act</i> or successor legislation by an unlicensed caregiver, regardless of when they occurred, should be considered in assessing how to respond to new complaints.</p>	<p>The Manager of the Enforcement Unit currently provides this direction. Enforcement Unit staff will be directed to consider previous violations as part of progressive enforcement. The Ministry is also moving toward a more risk-based inspection and enforcement approach.</p>
43	<p>The Ministry of Education should provide direction to enforcement staff that a caregiver's refusal to cooperate with an inspection is to be considered when deciding on the appropriate level of enforcement to address a violation of the <i>Day Nurseries Act</i> or successor</p>	<p>The ministry has strengthened its Internal Directive to state that enforcement staff should consider a risk-based approach when determining appropriate follow-up action based on perceived level of health and safety risk to children. Obstruction charges will be considered where warranted (e.g. In case where there is improper resistance).</p>

Number	Recommendation	Response
44	<p>The Ministry of Education should ensure its enforcement staff receive comprehensive training on how to carry out effective inspections, including investigative planning, collection and recording of physical evidence, interviewing witnesses, assessing evidence, and report-writing best practices.</p>	<p>The ministry will conduct comprehensive training on investigations for all Enforcement Unit staff in fall 2014.</p>
45	<p>The Ministry of Education and the Government of Ontario should continue to promote legislative amendment to revise or replace the <i>Day Nurseries Act</i> to provide the additional inspection powers contemplated by Bill 10, the <i>Child Care Modernization Act, 2014</i></p>	<p>Bill 10, the <i>Child Care Modernization Act, 2014</i>, if passed, would clarify and strengthen the Ministry of Education's powers of inspection.</p> <p>The proposed legislation would include authority to conduct inspections without a warrant for premises that are operating under the authority of a licence, and premises where there are reasonable grounds to believe that the proposed act or regulations are not being complied with (including unlicensed providers in a private dwelling).</p> <p>The proposed legislation would also expand the Ministry of Education's powers to support compliance and strengthen oversight of unlicensed child care settings. This includes expanded prohibitions and duties for child care providers.</p>
46	<p>The Ministry of Education should direct enforcement staff to make every reasonable effort during inspections to obtain information about child attendance and fees charged for child care services, and to copy and/or photograph relevant records</p>	<p>The Internal Directive includes the direction that ministry staff ask for attendance records and fee payment information during site visits. The ministry has reinforced in its Internal Directive routine practices of collecting information during a site visit to determine compliance. These practices include asking if attendance and fee payment records are retained by the provider and taking pictures or making photocopies of these records, if it is reasonable and possible to do so.</p> <p>Bill 10, the <i>Child Care Modernization Act, 2014</i>, if passed, would clarify the Ministry of Education's powers of inspection. This includes clarifying that an inspector may examine a record that is relevant to the inspection and may copy the record.</p>
47	<p>The Ministry of Education</p>	<p>The Internal Directive includes the direction that ministry staff take photographs, use cameras and</p>

Number	Recommendation	Response
	<p>should reinforce that enforcement staff should routinely photograph and/or video record the exterior and interior of premises used for unlicensed child care operations, including physical items, which may demonstrate a caregiver is operating an illegal day nursery</p>	<p>recording devices during a site visit as needed, where it is reasonable and possible to do so.</p> <p>Bill 10, the <i>Child Care Modernization Act, 2014</i>, if passed, would clarify the Ministry of Education's powers of inspection. This includes providing that an inspector may take photographs, video recordings or other visual or audio recording of the interior or exterior of a premise.</p>
48	<p>The Ministry of Education, in consultation with the Information and Privacy Commissioner, should change its policy to allow for photographing/video-recording of children in unlicensed day nursery settings in appropriate circumstances</p>	<p>The Ministry of Education will explore the feasibility of providing authority to allow for photographing/video-recording of children in unlicensed child care settings where appropriate and will consult with the Information Privacy Commissioner.</p>
49	<p>The Ministry of Education should train enforcement staff on communication techniques and strategies to encourage caregiver cooperation with its inspections.</p>	<p>Enforcement Unit staff will be trained in techniques to encourage child care provider communication and cooperation during site visits.</p>
50	<p>The Ministry of Education should direct enforcement staff to make all reasonable attempts to view all external and interior areas of a residence under inspection.</p>	<p>The ministry has added direction to its Internal Directive to confirm that during the site visit, enforcement staff should observe all interior and exterior areas of the premises, where it is reasonable and possible to do so.</p> <p>Enforcement staff will be trained to conduct full perimeter scans and to conduct a full inspection of all interior rooms whenever possible. Enforcement staff will document any refusals by the child care provider to allow them to inspect certain areas of the property. The ministry will consider obtaining a search warrant, if applicable.</p>

Number	Recommendation	Response
51	<p>The Ministry of Education should direct staff to inquire into whether a caregiver under inspection owns or uses property adjacent to the site being inspected or elsewhere, and uses that premises to provide child care.</p>	<p>The ministry has added to its Internal Directive that, during a site visit where it is relevant to do so, enforcement staff should ask the child care provider if they use any of the adjacent properties in order to provide unlicensed child care.</p> <p>Where necessary, ministry staff collect third-party information regarding the owner of adjacent properties.</p>
52	<p>The Ministry of Education should direct enforcement staff, as a standard practice, to attempt to obtain information from parents about children's child care schedules, ages and child care operations to verify evidence obtained from child care providers.</p>	<p>The ministry's practice has been to collect children's child care schedules and ages, parents' names and contact addresses during a site visit. The ministry has revised its Internal Directive to state that, following a site visit, ministry staff will, where necessary, contact parents to verify information obtained from the child care provider.</p>
53	<p>The Ministry of Education should direct enforcement staff to record information obtained from parents relating to children receiving unlicensed care on the Information about Children Receiving Care and Complaint Intake forms.</p>	<p>The Internal Directive was revised to include that, any information obtained from parents relating to children receiving unlicensed care will be recorded on the Information about Children Receiving Care and Complaint Intake forms.</p>
54	<p>The Ministry of Education should direct enforcement staff that whenever possible, and in all cases involving a health, safety, or child welfare concern, they</p>	<p>The Internal Directive includes the direction that where there are concerns about children's health and safety, enforcement staff determine, in consultation with their regional manager, whether to remain on site until the number of children has been reduced. The Directive also states that where the health or safety of children is at risk, inspectors will contact the lead agency to report the issues. The Directive has been clarified to state that where a third party agency has been contacted regarding children's health and safety, inspectors will remain on site as directed until the lead agency</p>

Number	Recommendation	Response
	<p>should wait until all the children being cared for in an illegal child care operation have been retrieved by parents, before leaving the site.</p>	<p>arrives.</p>
55	<p>The Ministry of Education should direct enforcement staff, as a standard practice, to contact parents directly to notify them that their children have been attending illegal unlicensed child care operations and educate them on the <i>Day Nurseries Act</i> or successor legislation</p>	<p>Bill 10, the <i>Child Care Modernization Act, 2014</i>, if passed, would permit the Director to post information on any enforcement tools applied to child care providers (e.g. compliance orders, protection orders, administrative penalties, conviction of an offence under the Act) where child care is provided or publish this information in any manner or medium considered appropriate.</p> <p>In addition, the proposed legislation would require unlicensed child care providers to disclose their unlicensed status to parents and retain a record of this disclosure.</p> <p>The Ministry of Education intends to provide information directly to parents with children attending non-compliant unlicensed child care programs where contact information is available.</p>
56	<p>The Ministry of Education should train enforcement staff in dispute resolution, and conflict de-escalation techniques.</p>	<p>The new Enforcement Unit's staff will be trained in dispute resolution and conflict avoidance.</p>
57	<p>The Ministry of Education should develop reference materials that can be provided to parents to assist them in locating alternative legal child care spaces</p>	<p>Currently, the ministry provides information and resources about <i>Day Nurseries Act</i> requirements and licensed child care options to the unlicensed child care provider to distribute to parents, and directly to parents where they are on site. The ministry also provides information on its website and provides information about licensed child care options in its standard correspondence template when responding to parents who inquire to the ministry about their unlicensed child care provider.</p> <p>The Ministry of Education intends to provide information directly to parents with children attending non-compliant unlicensed child care where contact information is available.</p> <p>Ministry staff will provide information about child care, including the licensed child care websites, child care fact sheets, and the registry of unlicensed child care violations.</p> <p>The ministry has added additional information regarding both noted areas to its Internal Directive to clarify expectations for enforcement staff carrying out inspections.</p>
58	<p>The Ministry of Education should set out clear written</p>	<p>The ministry has added additional information regarding both noted areas to its Internal Directive to clarify expectations for enforcement staff carrying out inspections.</p>

Number	Recommendation	Response
59	<p>expectations and roles for enforcement staff carrying out complaint inspections.</p> <p>The Ministry of Education should direct all enforcement staff, acting as seconds during an inspection, to actively assist in the collection of evidence and record their observations independently, and as soon as possible.</p>	<p>The ministry has strengthened its Internal Directive to set out clear expectations for both enforcement staff carrying out site inspections. This includes responsibility for the second PA to assist in the collection of records, information and/or evidence during the site visit and formally record their own observations during the visit.</p>
60	<p>The Ministry of Education should ensure that if enforcement staff is assisted by an official from another organization in carrying out an inspection, that individual is required to supply an independent and contemporaneous record of their inspection observations.</p>	<p>The Internal Directive was revised to add the requirement that both individuals conducting the site visit are required to maintain an independent set of notes with records of their own observations.</p>
61	<p>The Ministry of Education should avoid relying on officials from other organizations to carry out inspections, and ensure that its new enforcement team is adequately resourced to meet the requirement of two staff attending at each inspection.</p>	<p>The use of external officers as the second person conducting site visits is discouraged in the Internal Directive unless it is part of a joint inspection.</p>

Number	Recommendation	Response
62	<p>The Ministry of Education should direct its enforcement staff to independently, thoroughly and accurately complete all inspection records as soon as possible during and following an inspection.</p>	<p>The ministry has added to the Internal Directive that ministry staff should make every effort to transcribe their observations in the Children Receiving Care Form and Complaint Intake Form as soon as possible during, or immediately following the site visit, in order to ensure that the information is independently, thoroughly and accurately completed.</p>
63	<p>The Ministry of Education should audit inspection records to ensure they are thorough, accurate and completed in a timely manner.</p>	<p>Regular audits have been in place since July 2013. This audit regime will continue. Ministry staff will review on a weekly basis the informal complaint logs and supporting documentation in the complaint file, and monitor whether documentation of site visits is adequate and timely. Regional managers review and sign off on the logs on a weekly basis. Quarterly reviews are completed by Internal Audit.</p>
64	<p>The Ministry of Education should direct staff that one of the two staff members carrying out an inspection is to have primary responsibility for recording the results during the inspection.</p>	<p>The ministry has added to the Internal Directive the specific direction that the lead Enforcement staff member should assume responsibility for interviewing the child care provider and collecting evidence, while the second ministry staff maintains primary responsibility for recording formal observations on the Children Receiving Care Form and Complaint Intake Form. The ministry has added to the Directive the requirement that both staff conducting the inspection are required to maintain an independent set of records with their own observations.</p>
65	<p>The Ministry of Education should provide further direction and training for enforcement staff on recording the results of site inspections using the electronic tablets they have been issued.</p>	<p>Enforcement Unit staff will be provided with specific training on note taking and all equipment to be used when conducting an inspection.</p>
66	<p>The Ministry of Education</p>	<p>The ministry will continue to evaluate and adopt new investigative tools and techniques, including</p>

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	<p>should assess the adequacy of its electronic tablets and whether it should employ alternative recording devices during site inspections.</p>	<p>equipment, to gather evidence while conducting inspections.</p>
67	<p>The Ministry of Education should consider using audio/video recording during inspections to ensure the best evidence available is obtained</p>	<p>The new Enforcement Unit's staff will be trained in the use of digital recording devices when conducting investigations.</p> <p>Bill 10, the <i>Child Care Modernization Act, 2014</i>, if passed, would clarify the Ministry of Education's powers of inspection. This includes clarifying that an inspector may take photographs, video recordings or other visual or audio recording of the interior or exterior of a premises.</p>
68	<p>The Ministry of Education should regularly train enforcement staff on surveillance and search warrant techniques.</p>	<p>The ministry is in the process of recruiting staff with specific enforcement skills and experience. Enforcement staff will undergo regular training in obtaining and the use of search warrants and other investigative techniques.</p>
69	<p>The Ministry of Education should generate statistics on the use and outcome of surveillance and execution of search warrants, to identify trends, specific locations and caregivers requiring further monitoring, and training gaps.</p>	<p>The Enforcement Unit will generate and use statistics to identify risks and plan future operations.</p>
70	<p>The Ministry of Education should direct its supervisory staff to ensure that correspondence to unlicensed child care operators is accurate and sent out in a timely manner.</p>	<p>The Internal Directive includes clear timelines for sending correspondence to unlicensed child care providers following a site visit. Future training and ongoing oversight will reinforce these expectations.</p>
71	<p>The Ministry of Education should audit complaint files</p>	<p>Regular audits have been in place since July 2013. This audit regime will continue. Staff will review on a weekly basis the informal complaint logs and supporting documentation in the complaint file.</p>

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72	<p>to ensure that correspondence meets time standards.</p> <p>The Ministry of Education should incorporate electronic alerts and reminders into its case management system to encourage sending of correspondence to unlicensed child care operators within established time frames</p>	<p>and monitor whether correspondence is completed and sent to unlicensed child care providers in accordance with ministry established timelines. Regional managers review and sign off on the logs on a weekly basis. Quarterly reviews are completed by Internal Audit.</p> <p>Electronic reminders will be included in the ministry's complaints management system.</p>
73	<p>The Ministry of Education should review and revise the standard correspondence it sends to illegal child care operators to ensure that the language used reflects the seriousness of violating the <i>Day Nurseries Act</i> and successor legislation and is tailored to match the severity of the breach.</p>	<p>The correspondence template letters have been revised to reflect the severity of non-compliance and contravention of the <i>Day Nurseries Act</i>.</p> <p>Bill 10, the <i>Child Care Modernization Act, 2014</i>, if passed, would provide the Ministry of Education with a range of enforcement tools that support progressive compliance and can be used based on the severity of the violation and the history of the provider.</p> <p>This includes compliance orders, protection orders, administrative penalties, restraining orders and offences.</p>
74	<p>The Ministry of Education should direct staff that if they send a third warning letter to an illegal child care operator, it must be accompanied by additional escalated enforcement actions, such as referral for prosecution.</p>	<p>The second non-compliance letter has been revised to indicate that failure to comply with the DNA could result in enforcement proceedings being carried out, and that based on the history of non-compliance, the Ministry will consider whether to refer the matter to prosecution.</p> <p>The third letter has been removed from the Directive, as it will no longer be used on a regular basis. Instead, third site visits will be considered in relation to other possible enforcement actions, and are reviewed and approved by the manager and director.</p> <p>Bill 10, the <i>Child Care Modernization Act, 2014</i>, if passed, would provide the Ministry of Education with a range of enforcement tools that support progressive compliance and can be used based on the severity of the violation and the history of the provider.</p>

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75	<p>The Ministry of Education and Government of Ontario should continue to seek revision or replacement of the <i>Day Nurseries Act</i> to provide the Ministry with the authority to seek injunctions and issue protection orders to address health, safety and child welfare issues in the unlicensed child care sector.</p>	<p>This includes compliance orders, protection orders, administrative penalties, restraining orders and offences.</p> <p>Under the <i>Day Nurseries Act</i>, the Ministry of Education currently has the ability to seek an injunction against a child care provider who is improperly operating without a licence.</p> <p>Bill 10, the <i>Child Care Modernization Act, 2014</i>, if passed, would provide the Ministry of Education with the authority to seek restraining orders from the courts and issue protection orders where there are reasonable grounds to believe there is an imminent threat to the health, safety and welfare of a child, including in unlicensed settings.</p>
76	<p>The Ministry of Education should seek injunctions more frequently to address unlicensed child care operators, who flaunt the law, or pose risks to children's health, safety and welfare.</p>	<p>When regular progressive enforcement measures including possible prosecutions have failed to bring the child care provider into compliance, the ministry will consider the use of injunctive measures. The Internal Directive was revised to direct that in these instances, the regional office must consult with corporate office and Legal Services regarding next steps including the possibility of prosecution or possible injunctive measures.</p> <p>Bill 10, the <i>Child Care Modernization Act, 2014</i>, if passed, would provide the Ministry of Education with the authority to seek restraining orders from the courts and issue protection orders where there are reasonable grounds to believe there is an imminent threat to the health, safety and welfare of a child, including in unlicensed settings.</p>
77	<p>The Ministry of Education should, as a priority, develop a comprehensive enforcement framework for its work in the unlicensed child care sector to guide staff in assessing the appropriate enforcement response, including situations warranting prosecution.</p>	<p>A comprehensive, risk-based enforcement framework is under development to support the new Enforcement Unit.</p>
78	<p>The Ministry of Education</p>	<p>The ministry will implement a progressive enforcement model to guide staff and promote compliance</p>

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	<p>should train staff on the enforcement continuum from warnings to prosecution, including providing precedent cases to ensure more rational, consistent and coherent enforcement in the unlicensed child care sector.</p>	<p>with the <i>Day Nurseries Act</i> and any successor legislation that may be passed, and will train enforcement staff on this model</p> <p>Bill 10, the <i>Child Care Modernization Act, 2014</i> would, if passed, expand the Ministry of Education's powers to support compliance and strengthen oversight of unlicensed child care settings.</p> <p>This includes expanded prohibitions and duties for child care providers as well as a range of enforcement tools including compliance orders, protection orders, administrative penalties and restraining orders. Staff will be trained on the Ministry's expanded powers.</p>
79	<p>The Ministry of Education should screen all applicants for licensing under the <i>Day Nurseries Act</i> or successor legislation to determine if they have previously contravened the Act through operating an illegal unlicensed daycare.</p>	<p>Under the <i>Day Nurseries Act</i>, a Director may refuse to issue a licence based on the past conduct of the applicant or any employee of the applicant. A Director may also refuse to renew/revoke a licence if the licensee or employee of the licensee has contravened any provision of the Act or regulations, or any other Act applying to the establishment and operation of a day nursery or private home day care agency.</p> <p>The Ministry will screen all applicants for <i>Day Nurseries Act</i> licences to determine if they have previously contravened the DNA.</p> <p>Bill 10, the <i>Child Care Modernization Act, 2014</i>, if passed, would prevent an individual from providing child care based on their past conduct including conviction of an offence under the new Act. The proposed legislation also includes regulation-making authority to expand these grounds.</p> <p>In addition, under the proposed legislation, a Director may refuse to issue/renew or revoke a licence based on past conduct.</p> <p>The Ministry of Education intends to develop a framework/criteria for considering how to exercise the discretion to refuse to issue/renew or revoke a licence based on a provider's history of violating the <i>Day Nurseries Act</i> or the proposed <i>Child Care and Early Years Act, 2014</i>.</p>
80	<p>The Ministry of Education should change its licensing policies to reflect that absent extenuating or compelling circumstances, individuals who have a history of violating the <i>Day Nurseries Act</i> or successor</p>	<p>Bill 10, the <i>Child Care Modernization Act, 2014</i>, if passed, would prevent an individual from providing child care based on their past conduct including conviction of an offence under the new Act.</p> <p>In addition, under the proposed legislation, a Director may refuse to issue/renew or revoke a licence based on past conduct.</p> <p>The Ministry of Education intends to develop a framework/criteria for considering how to exercise the discretion to refuse to issue/renew or revoke a licence based on a provider's history of violating the</p>

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	legislation should not be granted a licence to operate under the Act	Day Nurseries Act or the proposed <i>Child Care and Early Years Act, 2014</i> .
81	The Ministry of Education and Government of Ontario should continue to seek legislative change to the <i>Day Nurseries Act</i> to eliminate the reference to "common parentage" in the definition of "day nursery"	<p>Bill 10, the <i>Child Care Modernization Act, 2014</i>, if passed, would no longer refer to "common parentage."</p> <p>Child care provided at a premises would meet the definition of unlicensed child care if care is provided to no more than five children (or a lesser number prescribed by regulation), there is no agreement with a home child care agency, there are no more than two children under the age of two, and the providers own children under the age of six are counted.</p>
82	The Ministry of Education and Government of Ontario should continue to seek revision or replacement of the <i>Day Nurseries Act</i> to restrict the circumstances in which camps may operate without child care licensing	<p>Bill 10, the <i>Child Care Modernization Act, 2014</i>, if passed, would clarify which programs require a licence and which programs are exempt.</p> <p>The proposed legislation would set specified criteria for camps that are exempt from the Act and would not require a licence, including:</p> <ul style="list-style-type: none"> o That it is not operated for more than 13 weeks in a calendar year. o That it is not operated on days on which instruction is typically provided in schools. o That it is not operated at a person's home. o Where the care is provided only for children who are four years old or older (or if the care is provided on or after September 1, will attain the age of four in that year).
83	The Ministry of Education should, in consultation with the Ministry of Tourism and Culture and other stakeholders, require summer camps to be licensed under the <i>Day Nurseries Act</i> or successor legislation unless they are accredited by the Ontario Camping Association or otherwise subject to satisfactory health and safety standards	<p>Bill 10, the <i>Child Care Modernization Act, 2014</i>, if passed, would set specified criteria for camps that are exempt from the Act and would not require a licence, including:</p> <ul style="list-style-type: none"> o That it is not operated for more than 13 weeks in a calendar year. o That it is not operated on days on which instruction is typically provided in schools. o That it is not operated at a person's home. o Where the care is provided only for children who are four years old or older (or if the care is provided on or after September 1, will attain the age of four in that year). <p>If passed, under the proposed legislation, regulations could be developed to prohibit a provider from holding out as an accredited child care service and using certain accredited terms.</p> <p>The Government of Ontario recognizes the need to support the safety, well-being and quality experience of children in camp settings. The government will work collaboratively with stakeholders to consider what standards and associated elements (e.g. accreditation) may be appropriate.</p>
84	The Ministry of Education should limit the summer	Bill 10, the <i>Child Care Modernization Act, 2014</i> , if passed, would set specified criteria for camps that are exempt from the Act and would not require a licence.

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	camp exemption to providers, who only serve children over the age of 4 years, and do not operate out of private homes	Criteria necessary for an exemption would include that the camp is not operated at a person's home and the care is provided only for children who are four years old or older (or if the care is provided on or after September 1, will attain the age of four in that year).
85	The Ministry of Education should require that summer camp operators obtain licences under the <i>Day Nurseries Act</i> , if prior to establishing the camp, they ran an unlicensed child care with similar hours and programming.	Bill 10, the <i>Child Care Modernization Act, 2014</i> , if passed, would prevent programs from operating as camps that are exempt from the Act if the program is operated by a person who stopped operating a child care centre at a premises for the purpose of operating the camp.
86	The Ministry of Education and Government of Ontario should continue to seek legislative amendment to clarify and restrict the circumstances in which recreational, tutoring and similar programs may operate without child care licensing	<p>Bill 10, the <i>Child Care Modernization Act, 2014</i>, if passed, would clarify that recreational programs and academic programs (e.g. tutoring) are exempt from the Act and would not require a licence where the primary purpose of the program is not to provide temporary care for or supervision of children.</p> <p>It is anticipated that further clarification around what constitutes the primary purpose of the program as being to provide temporary care for or supervision of children will be provided by regulation and/or policy.</p>
87	The Ministry of Education should revise its guidelines and provide clear direction to the public and its enforcement staff as to what recreational, tutoring and similar programs qualify for exemption from the <i>Day Nurseries Act</i> licensing requirements	<p>Bill 10, the <i>Child Care Modernization Act, 2014</i>, if passed, would clarify that recreational programs and academic programs (e.g. tutoring) are exempt from the Act and would not require a licence where the primary purpose of the program is not to provide temporary care for or supervision of children.</p> <p>It is anticipated that further clarification around what constitutes the primary purpose of the program as being to provide temporary care for or supervision of children will be provided by regulation and/or policy.</p>
88	The Ministry of Education, in consultation with the Ministry of Culture and	Bill 10, the <i>Child Care Modernization Act, 2014</i> , if passed, would clarify that recreational programs and academic programs (e.g. tutoring) are exempt from the Act and would not require a licence where the primary purpose of the program is not to provide temporary care for or supervision of

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	<p>Tourism and other stakeholders, should impose additional restrictions on the types of recreational, tutoring and similar programs qualifying for exemption from licensing to ensure that their primary purpose is not child care</p>	<p>children.</p> <p>It is anticipated that further clarification around what constitutes the primary purpose of the program being to provide temporary care for or supervision of children may be provided by regulation and/or policy.</p>
89	<p>The Ministry of Education should require that programs that have an element of child care, but which also offer complementary recreational activities, are not exempt from licensing under the <i>Day Nurseries Act</i>, if they are home-based or serve children under the age of six years</p>	<p>Bill 10, the <i>Child Care Modernization Act, 2014</i>, if passed, subject to regulations, would provide authority for authorized recreational and skill-building programs that would be subject to the Act but would not require a licence.</p> <p>These programs would have a primary purpose of providing child care and a complementary purpose of promoting recreational, artistic, musical or athletic skills or to provide religious, cultural or linguistic instruction.</p> <p>These programs would be required to meet specified criteria including that the program is not operated at a person's home and that care is provided only for children who are six years old or older (or if the care is provided on or after September 1, will attain the age of six in that year).</p> <p>Regulations are required for these sections under the proposed legislation related to authorized recreational and skill building programs to be in effect. Under the proposed <i>Child Care and Early Years Act, 2014</i>, all regulations made under the Act are subject to public consultation (unless the situation is urgent or the proposed regulation is of a minor or technical nature).</p>
90	<p>The Ministry of Education should conduct research in consultation with other Ministries, including the Ministries of Children and Youth Services, and Culture and Tourism, and consider imposing additional safeguards, to ensure that the health, safety and welfare needs of children are currently appropriately</p>	<p>Under Bill 10, the <i>Child Care Modernization Act, 2014</i>, if passed, and subject to regulations, authorized recreational and skill-building programs would be subject to the Act but would not require a licence. These programs would be required to meet specified criteria including any criteria prescribed by regulations.</p> <p>It is anticipated that the Ministry of Education, working with the Ministry of Tourism, Culture and Sport will conduct research and set out additional criteria for authorized recreational and skill-building programs.</p> <p>Under the proposed legislation, recreational and academic programs (e.g. tutoring) that do not have child care as the primary purpose of the program would be exempt from the Act.</p>

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	<p>addressed in situations involving unlicensed recreational, tutoring, or similar programs</p>	<p>The Ministry of Education, working with partner Ministries, will review current funding arrangements in other Ministries and other public safety requirements (e.g. fire code, building code) to assess opportunities to provide greater clarity around current health and safety standards in facilities where these programs are offered.</p> <p>The proposed legislation sets out a requirement for a review of the Act within five years of the review section coming into force.</p> <p>The Ministry of Education will monitor the changes to the child care and early years system resulting from the implementation of Bill 10, if passed, and the Government of Ontario will use this information and input from stakeholders and the public through the statutory review to determine what additional changes to support the health and safety of children should be sought.</p>
91	<p>The Ministry of Education and Government of Ontario should continue to seek to eliminate the distinction between private residences and commercial premises, and currently reflected in the definition of "private-home day care agency" in the <i>Day Nurseries Act</i></p>	<p>Bill 10, the <i>Child Care Modernization Act, 2014</i>, if passed, would eliminate the distinction between private residences and commercial premises with regard to home child care.</p> <p>The proposed legislation would also prohibit the operation of multiple unlicensed premises which could include both private residences and commercial premises.</p>
92	<p>The Ministry of Education should proactively enforce the <i>Day Nurseries Act</i> or successor legislation in respect of day nurseries operating in or affiliated with private schools regardless of whether they were in existence prior to 1993 and previously subject to exemption through ministerial policy.</p>	<p>In March 2014, the Ministry of Education re-issued a policy memorandum indicating that all private schools serving children under junior kindergarten (JK) age must become licensed under the <i>Day Nurseries Act</i> if they wish to continue providing care to more than five children under JK age.</p> <p>These private schools must become licensed by January 1, 2016 and are required to initiate the licensing process by January 1, 2015 (if the licensing process is not initiated by this date, a licence would be required by July 1, 2015).</p> <p>Under Bill 10, the <i>Child Care Modernization Act, 2014</i>, if passed, all private schools serving more than five children under JK age must be licensed.</p>
93	<p>The Ministry of Education and the Government of Ontario should continue to</p>	<p>Under Bill 10, the <i>Child Care Modernization Act, 2014</i>, if passed, all private schools serving more than 5 children under JK age must be licensed.</p>

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94	<p>promote legislative revision to the child care licensing system to ensure that private schools providing child care to pre-school children are subject to licensing requirements</p> <p>The Ministry of Education should continue to collect detailed information from private schools about the number and ages of children they serve.</p>	<p>The <i>Education Act</i> requires all private schools to submit the <i>Notice of Intention to Operate a Private School (NOI)</i> by September 1 of each year. Through the NOI, Field Services Branch collects self-reported information from private schools on the actual and projected student enrolment at all ages, including those under junior kindergarten age. Information is also collected regarding any additional locations operated by a school, and the ages and actual/projected enrolment of all students and children under JK age.</p>
95	<p>The Ministry of Education should ensure its notice of intention to operate a private school form requires that private schools list all locations at which they operate as well as the number of children, from various age groups, that are served by each campus.</p>	<p>This information is collected through the NOI submitted each year by all private schools.</p> <p>The current NOI states that the operator is to provide information regarding additional locations it operates including the age groups and the number of children served at each location.</p> <p>Note that the operation of additional locations by inspected private schools (that is, those schools with the authority to offer credits toward the OSSD) is no longer permitted as of the 2014-2015 school year. The NOI requires that these operators declare that they are submitting the NOI for a single location only.</p>
96	<p>The Ministry of Education's Field Services Branch should regularly share information collected from private schools about the number and ages of children enrolled with the Child Care Quality Assurance and Licensing Branch.</p>	<p>The ministry has put a process in place for the Private Schools and International Education Unit to inform CCQAL staff of any private schools projecting or reporting actual enrolment of more than five children under JK age, based on the NOI submitted by September 1.</p> <p>When new private schools are visited by Field Services inspectors as part of the validation process, Field Services inspectors record any instances where more than five children under JK age are observed in attendance, and this information is shared with CCQAL staff.</p>
97	<p>The Ministry of Education</p>	<p>The ministry is in the process of developing a new protocol between Field Services Branch and</p>

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	<p>should direct the Field Services Branch to notify the Child Care Quality Assurance and Licensing Branch of all directions to private schools to cease operating under the <i>Education Act</i>.</p>	<p>CCQAL staff, which will include processes for information-sharing and coordination of joint visits, where relevant. This protocol will be communicated and shared with CCQAL and FSB staff, once finalized.</p> <p>The protocol will include the notification of CCQAL in the existing procedure followed by the Private Schools and International Education Unit, in situations where a private school is ordered to cease operations.</p>
98	<p>The Ministry of Education should link information about private schools to the new case management system to assist with enforcement of the <i>Day Nurseries Act</i> or successor legislation.</p>	<p>The ministry will link information provided about children under JK age who are receiving care in private schools in the complaints management system for unlicensed child care.</p>
99	<p>The Ministry of Education's Field Services Branch and Child Care Quality Assurance and Licensing Branch should conduct joint inspections to confirm that private schools, which have previously served children under 10 years of age, have ceased operations as directed under the <i>Education Act</i> and are in compliance with that Act as well as the <i>Day Nurseries Act</i> or successor legislation.</p>	<p>The Ministry's Field Services Branch and CCQAL Branch will conduct joint inspections, where feasible, to confirm that private schools, or entities that were previously private schools, have come into compliance with the relevant legislation.</p>
100	<p>The Ministry of Education should cross-train Field Services Branch and Child</p>	<p>Field Services Branch staff and Enforcement Unit staff will be trained on the requirements of the <i>Education Act</i> and <i>Day Nurseries Act</i> as they relate to private schools to support effective enforcement.</p>

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101	<p>Care Quality Assurance and Licensing Branch staff to ensure effective enforcement of the <i>Education Act</i> and <i>Day Nurseries Act</i> (or successor legislation) requirements in the private school sector.</p> <p>The Ministry of Education should develop communication and enforcement protocols to encourage the Field Services Branch and Child Care Quality Assurance and Licensing Branch to coordinate enforcement efforts.</p>	<p>The ministry is in the process of developing a new protocol between Field Services Branch and CCQAL staff, which will include processes for information-sharing and coordination of joint visits, where relevant. This protocol will be communicated and shared with CCQAL and FSB staff, once finalized.</p>
102	<p>The Ministry of Education should provide information about the licensing requirements under the <i>Day Nurseries Act</i> or successor legislation to all private schools, including prior to initial registration.</p>	<p>In 2014, the ministry reissued a policy memorandum indicating that all private schools serving children under JK age will require a licence under the DNA, by January 2016.</p> <p>Information regarding licensing requirements under the DNA for private schools is already included in the regular communications sent to all private schools each Fall and Spring. The Spring 2014 Memorandum included information about licensing requirements under the DNA, for private schools serving more than five children under junior kindergarten age.</p> <p>In addition, the Private Schools Policy and Procedures Manual on the ministry website is being revised for 2014-2015 and will include this information. The manual is available on the ministry website, at: http://www.edu.gov.on.ca/eng/general/elemsec/privscho/PrivateSchools_PolicyManual.pdf</p> <p>The ministry will facilitate a provincial webinar and develop additional communications to support all new applicants, including private schools, in becoming licensed under the DNA or any successor legislation that may be passed.</p>
103	<p>The Ministry of Education</p>	<p>The ministry will provide information about licensing requirements under the DNA, and any</p>

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	<p>should send information about licensing requirements under the <i>Day Nurseries Act</i> or successor legislation to all private schools, which have been directed to cease operating under the <i>Education Act</i>.</p>	<p>successor legislation that may be passed, to all private schools that have been directed to cease operation.</p> <p>Information regarding licensing requirements under the DNA or any successor legislation that may be passed will be added to the communication package sent to private schools that have their Board School Identification number (BSID) removed. Removal of the BSID means that the school is no longer able to operate legally.</p> <p>The procedure for and consequences of removal of a private school's BSID is outlined in the Private Schools Policy and Procedures Manual, available on the ministry website. The Manual is being revised for the 2014-2015 school year and information regarding the DNA licensing requirements will be added to this section.</p> <p>The manual is available on the ministry website, at: http://www.edu.gov.on.ca/eng/general/elemsec/privsch/PrivateSchools_PolicyManual.pdf</p>
104	<p>The Ministry of Education and the Government of Ontario should continue to seek revision and/or replacement of the <i>Day Nurseries Act</i> to provide the Ministry with sufficient tools to allow for effective enforcement of licensing requirements, including the ability to levy administrative penalties and increasing penalties for convictions under the Act</p>	<p>Bill 10, the <i>Child Care Modernization Act, 2014</i>, if passed, would set out the authority for a range of new enforcement tools including administrative penalties.</p> <p>The proposed legislation would also increase the maximum penalty for convictions of an offence under the Act to \$250,000, imprisonment for a term of not more than one year, or both.</p>
105	<p>The Ministry of Education and the Government of Ontario should continue to seek revision and/or replacement of the <i>Day Nurseries Act</i> to restrict the use of terms associated with licensed child care</p>	<p>Bill 10, the <i>Child Care Modernization Act, 2014</i>, if passed, would prohibit the use of terms related to licensed child care unless the program is licensed.</p> <p>Specified terms are set out under the proposed legislation including child care centre, licensed child care, home child care agency, licensed home child care, etc. Additional terms may be prescribed by regulation.</p>

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106	<p>operations</p> <p>The Ministry of Education should, in consultation with stakeholders, design and implement a widespread multi-media campaign, including traditional and social media, on-line resources, and distribution of materials to various public sector and community organizations, to promote awareness of the different child care options available in Ontario and prevention of illegal unlicensed child care operations</p>	<p>To support the implementation of the proposed new legislation and other Ministry of Education child care related initiatives, the Ministry of Education will develop and launch a public education campaign to raise awareness regarding child care options in Ontario and develop and launch a visual identity for licensed child care settings.</p>
107	<p>The Ministry of Education and the Government of Ontario should continue to seek revision and / or replacement of the <i>Day Nurseries Act</i> to require increased standards in child care settings such as criminal reference checks.</p>	<p>Under the <i>Day Nurseries Act</i>, there is a policy that requires applicants for child care licences to submit criminal reference checks when applying for a licence. In addition, licensees are required to conduct criminal reference checks on all employees.</p> <p>As part of Bill 10, the <i>Child Care Modernization Act, 2014</i>, if passed, the director or inspector may require a criminal reference check from licensed child care providers and any person prescribed by regulation.</p> <p>The proposed legislation also provides authority for a director or inspector to require a criminal reference check from any person, including unlicensed child care providers, where there are reasonable grounds to believe the person has been convicted of specified offences set out in the Act.</p> <p>In addition, the proposed legislation includes regulation-making authority to require child care providers to ensure that screening measures such as criminal reference checks and regular declarations are conducted for staff and volunteers.</p> <p>The proposed legislation sets out a requirement for a review of the Act within five years of the review section coming into force.</p>

Number	Recommendation	Response
108	<p>The Ministry of Education should actively obtain and review information from various sources relating to serious incidents compromising the health, safety and welfare of children in unlicensed child care settings.</p>	<p>The Ministry of Education will monitor the changes to the child care and early years system resulting from the implementation of Bill 10 (pending passage), and the Government of Ontario will use this information and input from stakeholders and the public through the statutory review to determine what additional changes to support the health and safety of children should be sought.</p> <p>Bill 10, the <i>Child Care Modernization Act, 2014</i>, if passed, would set out that persons designated by regulation (which could include public health officials, children's aid society officials, etc.) have a duty to report child care situations, including in unlicensed settings, where they observe in the course of their employment that a child's safety is at risk.</p> <p>The ministry has drafted information sharing protocols with the Ministry of Children and Youth Services and the Ministry of Health and Long Term Care and is actively involved in discussions regarding the development of similar protocols with the ministries of Municipal Affairs and Housing and Ministry of Community Safety and Correctional Services for the purpose of sharing information relating to concerns about unlicensed child care operations.</p>
109	<p>The Ministry of Education should track incidents involving risks to child health, safety and welfare in unlicensed child care using its new case management system.</p>	<p>Currently, under the <i>Child and Family Services Act (CFSA)</i>, if a person, including a person who performs professional or official duties with respect to children, has reasonable grounds to suspect that a child is in need of protection, the person shall immediately report the suspicion and the information on which it is based to a child welfare society.</p> <p>Through information sharing protocols with other agencies, the Ministry of Education will seek to actively obtain and review information about serious incidents occurring in unlicensed child care.</p> <p>The ministry will track unlicensed child care providers' non-compliances in unlicensed child care using its new complaints management system. The ministry is working with other ministries to develop and implement information sharing protocols.</p>

Number	Recommendation	Response
110	<p>The Ministry of Education should review the existing voluntary child care registries and consider the feasibility of adopting a centralized provincial registry with registration on either a voluntary or mandatory basis</p>	<p>Bill 10, the <i>Child Care Modernization Act, 2014</i> would, if passed, provide a flexible legislative framework and includes regulation-making authority which could be used to impose standards and requirements to be met by child care providers. This could include unlicensed providers.</p> <p>The proposed legislation sets out a requirement for a review of the Act within five years of the review section coming into force.</p> <p>The Ministry of Education will monitor the changes to the child care and early years system resulting from the implementation of Bill 10, if passed, and the Government of Ontario will use this information and input from stakeholders and the public through the statutory review to determine what additional changes to support the health and safety of children should be sought.</p>
111	<p>The Ministry of Education should consult with the Office of the Chief Coroner about introducing a system for identifying child deaths in unlicensed child care settings</p>	<p>As part of initial steps to support information sharing, the Office of the Chief Coroner (OCC), working with the Ministry of Education, has tracked and analyzed child deaths for 2012.</p> <p>The Ministry of Education is working with the OCC to explore a process for information sharing on child deaths in unlicensed child care settings as well as tracking of de-personalized information on child deaths in all child care and early years settings.</p>
112	<p>The Ministry of Education should monitor the effects of policy, regulatory and legislative changes in the child care sector, and, assess the risks to children associated with unlicensed child care arrangements, with a view to introducing additional protective measure in future</p>	<p>The proposed legislation sets out a requirement for a review of the Act within five years of the review section coming into force.</p> <p>The Ministry of Education will monitor the changes to the child care and early years system resulting from the implementation of Bill 10, if passed. The Government of Ontario will use this information and input from stakeholders and the public through the statutory review to determine what additional changes to support the health and safety of children should be sought.</p> <p>The proposed legislation also includes powers related to the collection and use of personal information for the purpose of planning, delivering, evaluating and monitoring child care and early years programs and services.</p>
113	<p>The Ministry of Education should report back to my Office in six months' time on the progress in implementing my recommendations and at</p>	<p>The Ministry of Education would be pleased to share an update on the ministry's progress in implementing these recommendations at regular six month intervals.</p>

Number	Recommendation	Response
	six-month intervals thereafter until such time as I am satisfied that adequate steps have been taken to address them.	

