Yukon Ombudsman
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Early learning and childcare compliance and complaints processes

Investigative Report



Early learning childcare compliance and complaints processes
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Pursuant to section 11 of the *Ombudsman Act*
Authority: Department of Education

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Summary

The Ombudsman's office received a complaint about the Early Learning and Child Care unit (ELCC), a branch of the Department of Education (the Authority).

The complaint alleged that ELCC failed to investigate complaints and did not follow up with complainants. They also alleged that childcare programs that were repeatedly non-compliant with the Regulation did not face consequences or penalties.

As well, the complainant reported that ELCC was not ensuring that childcare programs were following regulatory standards like staff-to-child ratios, accurate child attendance lists, and properly conducted and recorded fire drills.

The Ombudsman decided to investigate pursuant to his authority under section 11 of the *Ombudsman Act*.

The following issues were considered:

> Issue 1: Does the Authority have a fair process for inspecting and monitoring licensed childcare programs?
>
> Issue 2: Does the Authority have a fair enforcement process to address non-compliance?
>
> Issue 3: Does the Authority have a fair process for complaint investigations?

Our investigation found the following:

On the issue of whether the Authority has a fair process for inspecting and monitoring licensed childcare programs (Issue 1) we found the Authority's inspection and monitoring process to be adequate, fair, and in line with the *Child Care Act* and the *Child Care Centre Program Regulation*.

On Issue 2, we found that the Authority has an adequate process for enforcement of non-compliance which generally aligns with the principles of fairness, however, the Authority's process for addressing repeat non-compliance by childcare programs could be improved upon. In our view, the process is not consistent or predictable. For instance, the Authority lacks a publicly known standard of when and how statutory enforcement measures will be implemented.

Similarly, we found that the Authority's complaint investigations process (Issue 3), while adequate, could be improved upon to become a fairer process. For example, we noted that the Authority lacks a publicly available complaints and investigation policy and process. Also, the Authority does not accept or consider complaints from third parties or anonymous complaints.

Our findings indicate practices that are not always aligned with administrative fairness principles; therefore, we made eight recommendations to the Authority.

We recommend that the Authority create a new method of documenting how childcare programs specifically address and enforce compliance, and to improve their complaints process. Our recommendations include creating and publicizing policies, standardizing forms used by the Authority, as well as tracking and compiling holistic, industry wide trends of non-compliances and complaints across all childcare programs.

I recognize that a new *Early Learning and Child Care Act* has been passed and is soon to be in force and that regulations must be developed before the new Act is implemented. My recommendations are meant to guide the development of new regulations and support the Authority in providing fair service to Yukoners.

This investigation reviewed the Authority's processes and oversight functions and is not a review of child safety, wellbeing, or standards of care provided at individual childcare programs in the Yukon. Therefore, we neither reviewed nor found any risk to child safety and wellbeing due to the Authority's oversight.

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Complaint

An individual (Complainant) submitted a complaint to our office alleging that the Department of Education (Authority) does not investigate complaints or follow up with complainants. They also alleged that non-compliant childcare centres (childcare programs) do not face any penalties or consequences when they violate the *Child Care Act* and *Child Care Centre Program Regulation* (Complaint).

Jurisdiction

Section 11 authorizes the Ombudsman to investigate a complaint received, subject to subsection 12(1). Having considered subsection 12(1), the Ombudsman has the necessary jurisdiction.

Explanatory Note

All references to an 'authority' mean an authority as set out in Schedule A of the *Ombudsman Act*.

About Fairness

Ombudsman complaints are analyzed through a prism of fairness when looking at the issues and circumstances that make up each matter. As such, our office and other members of the Canadian Council of Parliamentary Ombudsman (CCPO) use the CCPO publication *Fairness by Design: An Administrative Fairness Assessment Guide* (Fairness by Design) to help determine whether a program's decision-making process is administratively fair in design and delivery.

'Fairness' is generally comprised of three facets: fair process, fair decisions, and fair service. Depending on the complaint, these components may overlap, or only certain ones may be relevant. Fairness by Design provides the following public administrative context and standard for each component.

Fair Process

"Public organizations must follow fair decision-making processes when making decisions that directly impact a person, group of people or organization. This includes meeting the duty of procedural fairness owed to those impacted by a decision."

Fair Decisions

"Public organizations must make fair decisions. Fair decisions follow the applicable rules, consider the individual circumstances and case, are equitable and reflect a fair exercise of discretion. An organization should ensure it has policies and processes that support making fair decisions."

Fair Service

"Public organizations must treat people fairly. Fair service is about how people are treated when they access public programs and services. It includes ensuring [the] organization provides respectful, accessible and responsive service and is accountable to the public it serves."

Statutes and Regulations Cited

Child Care Act, RSY 2002, c 30 RSY 2002, c 30

Child and Family Services Act, SY 2008, c 1

Early Learning and Child Care Act, SY 2025, c 3

Child Care Centre Program Regulation, YOIC 1995/87, (Child Care Act)

Ombudsman Act, RSY 2002, c.163

Documents Cited

Child Care in Yukon: Policy and Procedures Manual

Guidelines and Policies for Child Care and Family Day Home Programs

Regulatory Guidelines for Child Care and Family Day Home Programs

Fairness by Design, Canadian Council of Parliamentary Ombudsman

Background

[1] The Authority's Early Learning and Child Care branch (ELCC) licences, monitors, and enforces regulatory standards at licensed childcare programs in the Yukon. It is responsible for ensuring that childcare programs comply with the *Child Care Act* and the *Child Care Centre Program Regulation*.

[2] Early learning and childcare programs in the Yukon include family day homes, after school programs, and childcare programs.

[3] The ELCC has a director, one supervisor, and five childcare inspectors who oversee licensing, inspections, and compliance enforcement of childcare programs.

[4] The ELCC's services and programs, decisions, policies, and procedures are overseen by the Yukon Child Care Board.

Methodology

[5] For this report we reviewed the Authority's inspection and complaint investigation reports for the 66 licensed childcare programs in the Yukon between 2023 to 2026. We believe this timeframe provides a fair outlook on the Department's current administration of licensed childcare programs.

[6] We also reviewed documents relating to licenced childcare programs such as operating licences, applications, correspondence, inspection reports, and complaint investigations.

[7] We evaluated how the Authority followed up on non-compliance identified during inspections and how they investigated complaints. Non-compliances occur when a childcare program does not follow a requirement or standard of the Regulation.

[8] We also reviewed the Authority's internal childcare policy manuals and guidelines, and interviewed Authority staff.

[9] We evaluated the Authority's inspection process, its process for investigating complaints, and its enforcement process to ensure compliance with the legislation. Our report evaluates these processes through the lens of fair service, fair process, and fair decisions.

[10] Family day homes and unlicensed childcare programs did not form a part of our review.

Issues

[11] There are three issues for investigation:

1) Does the Authority have a fair process for inspecting and monitoring licensed childcare programs?

2) Does the Authority have a fair enforcement process to address non-compliance?

3) Does the Authority have a fair process for complaint investigation?

Discussion of the Issues

Issue 1 – Does the Authority have a fair process for inspecting and monitoring licensed childcare programs?

Relevant Law

[12] Yukon licensed childcare programs are governed by the *Child Care Act* (Act) and the *Child Care Centre Program Regulation* (Regulation).

[13] The Act gives the Director broad powers, including the power to designate inspectors, make compliance orders, and issue, suspend, and revoke licences.

[14] The Act also sets out protections for childcare program operators, including the right to appeal licensing decisions made by the Director to the Yukon Child Care Board.

[15] The Regulation sets out detailed minimum standards that all licensed childcare programs must meet in areas including staffing ratios, staff qualifications, physical environment, health and hygiene, nutrition, behaviour management, administration, and record keeping.

[16] ELCC has also created guidelines for childcare program operators: Guidelines and Policies for Child Care and Family Day Home Programs and Regulatory Guidelines for Child Care and Family Day Home Programs.

[17] The Act and Regulation set out clear requirements for inspection and monitoring to ensure that childcare services across the Yukon meet a standard of quality that supports the healthy development and safety of Yukon children.

[18] The Act gives the Director the power to designate inspectors who are empowered to conduct investigations, including entering childcare program premises without consent.

[19] In addition, inspectors can request the production of any document or item and may remove those items from a childcare program if they deem it necessary to do so.

[20] The Regulation sets out detailed standards for childcare operators that inspectors must enforce during inspections.

[21] The publicly available guidelines are documents published by the Authority which also outline the minimum standards childcare programs must meet to achieve compliance.

Inspections

[22] The Authority currently employs five childcare inspectors, and one supervisor. Each inspector is responsible for approximately sixteen childcare programs.

[23] During interviews, inspectors stated when they were hired, they received approximately six months of on-the-job training from more experienced colleagues.

[24] The Authority conducts an annual inspection of every licensed program to ensure the program is meeting regulatory requirements. This inspection is a general check of all statutory licensing requirements including staffing, program quality, hygiene, safety, child welfare practices, and documentation.

[25] As part of the annual inspection, childcare programs must also pass inspections by Environmental and Health Services and Fire Safety before the childcare programs can be licensed for another year.

[26] If the childcare program does not pass the annual inspection, the Authority may issue a conditional licence or could, in cases of serious non-compliance, revoke a licence.

[27] Although the Act only mandates one annual inspection, the Authority conducts at least four inspections a year for each program, one of which is the annual inspection. The remaining three inspections are spot inspections conducted without prior notice to the childcare programs.

[28] The Authority has created standardized checklists for inspectors to use, including a ten-page inspection checklist. This checklist includes all the standards and requirements for childcare programs as outlined in the Regulation. The Authority has also created a one-page summary inspection checklist.

[29] During an inspection, inspectors utilize both checklists to evaluate compliance with the requirements including staff-to-child ratios, group sizes, staff qualifications, safety protocols, indoor and outdoor space requirements, toilet and washroom facilities, equipment and furnishings, health and medical standards, nutritional standards, program of activities, night care arrangements, behaviour management, administration and records keeping, parental involvement, and other general requirements.

[30] It is also the Authority's practice for the inspectors to observe program activities and offer guidance to the program staff during inspections.

[31] After completing an inspection, inspectors meet with the program operator or supervisor to address questions and concerns and record any violations on the inspection checklist summary sheet.

[32] The inspectors review the 10-page inspection checklist, the one-page summary inspection checklist, and any inspection notes with their supervisor and finalize a Non-compliance and Action Required form where applicable.

[33] The Non-compliance and Action Required form details the non-compliance(s) found during the inspection; what sections of the Regulation have been violated and any required action the program must take to remedy this.

[34] The form also states the timeline within which the specified non-compliance should be rectified failing which an "order to comply" may be issued at the Director's discretion.

[35] The form is signed by the childcare inspector who inspected the childcare program as well as their supervisor. A copy of the signed form is then forwarded to the program operator electronically and by mail.

[36] To confirm that the non-compliances have been remedied, the childcare program operator is required to initial the Non-compliance and Action Required form to confirm that all non-compliances have been rectified.

[37] The Authority may specify a timeline for the childcare program to comply with the Regulation, but this is not always the case. Timelines for rectification may vary based on the inspector's discretion. Inspectors decide on a case-by-case basis when and how to follow-up with childcare programs to ensure non-compliances have been rectified.

[38] The Authority requires childcare programs to display the inspection summary checklist, which includes a summary of all non-compliance(s) found during an inspection on a prominent wall in the program, so that staff and parents or visitors can read it.

[39] However, the Non-compliance and Action Required form is not required to be displayed or made publicly available. This form specifies what a childcare program must do to rectify the non-compliance.

Inspection guidelines, policies, and procedures

[40] The Authority has internal guidelines, policies, and procedures including Guidelines and Policies for Child Care and Family Day Home Programs and Regulatory Guidelines for Child Care and Family Day Home Programs.

[41] These documents serve as foundational tools for licensing, daily operations, compliance, quality improvement, and accountability. They translate legislation into actionable and practical standards to protect children's health, safety, and development.

[42] The documents also provide guidance to childcare programs to create their own required written policies and procedures on regulatory standards such as health and hygiene, safety and emergency, programming and supervision, maintenance, nutritional standards, administration and records keeping, and personnel and communication.

[43] These policies and guidelines may be used to direct childcare programs on how to educate their staff or orient new staff. The information may also be used in staff manuals to support professional development and create codes of conduct.

Analysis

[44] In assessing whether the Authority's processes for inspecting and monitoring licensed childcare programs are fair, it is helpful to first describe how a fair inspection and monitoring system should ideally function.

[45] In our view, inspectors should visit every program often enough that no program goes unmonitored for an extended period of time. Inspectors should conduct unannounced visits without giving childcare program operators prior knowledge or warning so that inspectors can truly assess how a program operates on a day-to-day basis.

[46] Where there is evidence that a program might be at an elevated risk of non-compliance, there should be a quick response by the regulatory authority.

[47] A fair inspection and monitoring system should ensure that all childcare programs are treated fairly, with the same standards and scrutiny applied consistently regardless of who the inspector is, where the program is located, or how long the program has been operating.

[48] We found that the Authority's inspection and monitoring system is effectively meeting the areas described above.

Conclusion Issue 1

[49] We conclude that the Authority appears to have a fair process for inspecting and monitoring licensed childcare programs, for the reasons that follow.

[50] The Authority conducts regular and unannounced visits to all licensed childcare programs under its mandate. This approach includes at least four inspections each year – one annual licensing inspection and three unannounced spot inspections. This prevents any one program from operating without oversight for an extended period of time.

[51] If the Authority finds an elevated risk of non-compliance at a specific childcare program, they perform additional inspections and escalate monitoring until they deem the risk mitigated. This proactive approach ensures that the Authority supports a childcare program to identify and address potential non-compliance and violations before they become harmful.

[52] Inspectors use standardized forms when carrying out all inspections, which ensures consistency across all inspectors. Further, inspectors use detailed checklists to measure whether childcare programs are complying with the Regulation. They record any non-compliance(s) on standardized inspection and non-compliance forms which are all reviewed by a supervisor.

[53] The Authority's inspectors all hold a level three early childhood education certification[1]. Each newly hired inspector receives at least six months of on-the-job mentoring from senior inspectors. As well, the Authority ensures inspectors take courses via Yukon Learn or Yukon University to fulfill their responsibilities and keep their skills current.

[54] We found the Authority's inspection process was consistent amongst inspectors in ensuring that regulatory standards are upheld and there was sufficient quality assurance with supervisory review of inspectors.

Issue 2 – Does the Authority have a fair enforcement process to address non-compliance?

Relevant Law

[55] The Act gives the Director the power to issue written orders to remedy violations if the Director is satisfied that a childcare program or premises is not being operated and maintained in compliance with the legislation or is being operated or maintained in a manner that is hazardous to the health, safety, or well-being of children.

[56] The Director also has the power to suspend or revoke licences in the situations outlined above or if a licensee has violated an enforcement order or any provision of the Act, Regulation, or any condition of a licence.

[57] The Director may also suspend or revoke a licence if satisfied that the childcare program operator has made a false statement in a licencing application or in any document in support of such an application.

[58] In the event of a suspension or revocation of a licence, a childcare program operator may appeal to the Yukon Child Care Board.

[59] A childcare program or licensee may also appeal an enforcement order to the Yukon Child Care Board, and the Act sets out the method of appeal, procedure, and the Director's role as a party to the appeal. The Yukon Child Care Board has the power to confirm, vary, or rescind the order.

[1] Level three early childhood education certificates are the highest standard of qualification for childcare providers.

[60] The Act states that anyone who contravenes a provision of the Act, a Regulation, or an order made under the Act is guilty of an offence and liable upon summary conviction to a fine of up to $1000 for each day the offence continues, imprisonment for up to six months, or both.

[61] The Act also places an obligation on childcare programs to inform the Director of any material change in the program or its premises, or any staffing changes since the childcare program was last licensed.

[62] Prior to commencing employment in a childcare program, the Regulation states that all workers must have had a vulnerable sector police check and be approved by the Director for employment in the childcare program.

Analysis

[63] Enforcement is a critical part of the Authority's regulatory function. Without a credible, consistent, proportionate and publicly accessible enforcement process, the Act and Regulation cannot achieve their protective purposes.

[64] In our view a fair enforcement process should include the following:

- clear written standards that are publicly accessible and consistently applied across all childcare programs;
- routinely scheduled inspections that includes ones that are unannounced;
- an established complaints process that investigates allegations of non-compliance;
- consistent timelines for follow-ups after non-compliance is found, verifying that corrective actions have been implemented and are being sustained;
- a proportionate response to non-compliances where inspectors distinguish between low, medium, and high-risk non-compliances that threaten child health and safety;
- a standardized and publicly available process outlining when specific enforcement measures will be used and in what circumstances;
- publicly accessible compliance records to ensure accountability and transparency to the public about Authority decision-making relating to enforcement action;
- an internal registry of qualified early childhood educators and childcare program employment history maintained by the Authority; and

- tracking of non-compliance(s) trends to identify systemic or recurring non-compliance patterns across childcare programs and to allow the Authority to adjust enforcement priorities and policy accordingly.

Authority enforcement process if non-compliance is found

[65] The Authority uses a tiered enforcement approach when inspectors discover non-compliance.

[66] First, inspectors may issue a Non-compliance and Action Required form to a childcare program. This form specifies the non-compliance found and provides the childcare program operator with notice and a timeline to rectify it.

[67] Where a non-compliance persists, the Director may issue an order to comply that specifies actions the childcare program must take and a timeline for completion.

[68] The Director also has power to impose conditions on childcare program licences or to suspend or revoke a licence.

Non-compliance and Action Required form

[69] During our investigation, we found inspectors use a standardized Non-compliance and Action Required form as a first step in dealing with non-compliance. This form specifies the non-compliance(s) found, what sections of the Act or Regulation has been contravened, and may include a date that the non-compliance is expected to be rectified.

[70] Childcare program operators must sign the form and return it to the Authority after confirming they have rectified all non-compliance. Sometimes the Authority requires childcare programs to provide documentation confirming that they have rectified the non-compliance.

[71] The Non-compliance and Action Required form is not required to be displayed publicly in a childcare program, unlike the Inspection Checklist Summary Sheet, which must be displayed in a prominent public facing area of the childcare program's premises.

[72] The Authority informed us that sometimes the Non-compliance and Action Required form contains details about staff or children, and due to confidentiality concerns it is not appropriate for this form to be posted publicly.

Orders to comply and licence suspension or revocation

[73] The Director issues an order to comply to a childcare program with repeated non-compliances. The order states the actions the childcare program must take to rectify the non-compliance.

[74] The order to comply also states when a childcare program must complete the actions required.

[75] Since assuming regulatory oversight of childcare programs in 2019, the Authority has issued at least one order to comply and has revoked one licence.

[76] The Director may suspend or revoke a childcare program's licence when there is a significant non-compliance that threatens the health and safety of a child, or where an order to comply has not been followed.

[77] The Authority confirmed that when a licence is revoked, the operator cannot obtain another licence to operate a childcare program in the Yukon.

Does the Authority adequately follow up after a non-compliance is found?

[78] We observed that after inspections are completed, inspectors follow-up with childcare program operators to confirm how the non-compliance will be rectified.

[79] This follow up often consists of emails between the childcare program operator and the inspector. The inspector will often ask for photos confirming the non-compliance has been rectified and may ask for the childcare program to create an action plan that would prevent reoccurrence.

[80] To evaluate whether the Authority has a fair process to ensure childcare programs rectify non-compliance, we reviewed the Authority's files on specific childcare programs.

[81] In some files, it was not possible to determine whether the childcare program had fully rectified the non-compliances, or what specific actions they took, and when they took them. However, this did not appear to be due to an inspector's lack of follow up, but rather a lack of the Authority's standardized documentation of whether non-compliances had been rectified.

Repeated non-compliance(s)

[82] The complainant in our investigation reported that the Authority does not ensure that repeatedly non-compliant childcare programs receive appropriate consequences and penalties.

[83] During our investigation, we found that multiple childcare programs were non-compliant in similar and specific aspects of the Regulation which in our view suggest systemic issues. Some of the areas with repeated non-compliances are laid out below:

Staff qualifications

[84] Our investigation showed that one of the most repeated non-compliance found during inspections is regarding staff qualification. Staff at childcare programs are required to have vulnerable sector and criminal record checks, as well as valid first aid and Cardiopulmonary Resuscitation (CPR).

[85] Staff are also required to provide medical clearance, including negative tuberculosis tests, proof of immunization status, and confirmation from a doctor that they are in a state of health suitable to care for children.

[86] After reviewing inspection reports, it became clear that staff in several childcare programs did not have current records of vulnerable sector and criminal record checks, medical clearance, or first aid and CPR qualifications at the time of inspections. This is a common area of non-compliance that inspectors must deal with both systemically and at individual childcare programs.

[87] We discovered that staff without valid or up-to-date qualifications provide care to children attending the childcare program.

[88] Although this may be due to their qualifications lapsing while already in employment at the childcare program, it is our view that the Authority needs to ensure that childcare program staff always have valid qualification records as mandated by the Regulation.

Fire and evacuation drills

[89] The complainant expressed concerns that the Authority was not enforcing compliance with the routine fire and evacuation drill requirements of the Regulation.

[90] The Regulation states that each childcare program must conduct monthly fire evacuation drills between the months of April to November.

[91] We found that during the quarterly inspections, some childcare programs had not done any fire drills in the preceding months.

[92] It is only through an inspection that the lack of fire and evacuation drills by a childcare program would be discovered and cited as non-compliances.

Ratio and group sizes

[93] The complainant expressed concerns that the Authority was not enforcing staff-to-child ratios at childcare programs.

[94] The Authority's Guidelines and Policies for Child Care and Family Day Home Programs and Regulatory Guidelines for Child Care and Family Day Home Programs explain the importance of staff-to-child ratios. The document outlines research that shows that maximum group size is an important indicator of quality childcare. Smaller groups increase the chances that each child's needs will be met.

[95] Adhering to mandated group sizes mean that staff are more likely to positively interact and participate with children and be more aware of each child's individual development and needs. In emergencies, adequate adherence to group sizes also ensure that childcare program staff can effectively evacuate or provide aid to all children under their supervision.

[96] A lack of adherence to staff-to-child ratios may also lead to inconsistencies in group sizes. When staff-to-child ratios are not followed, a staff member may have to supervise more children than are allowed under the Regulation stipulating group sizes.

[97] Staff-to-child ratios determine how many children a staff member may supervise, and group size sets a limit on the total number of children that may be in one class or playroom. Thus, even when the staff to child ratio is met, the group sizes can not legally be exceeded. Rather, a new group should be created subject to licensing.

[98] During interviews, one staff member suggested that operators do not consistently group children according to their exact ages and instead will sometimes group them by birth year due to a lack of understanding of the Regulation.

[99] This is contrary to the Regulation, which states that children attending childcare programs are to be grouped according to their ages.

[100] Upon review of our draft report, the Authority clarified that non-compliance related to staff-to-child ratios is taken seriously and is rectified at the time of inspection, or shortly thereafter. If a non-compliance of this nature is noted, the ELCC may require a program to submit daily staff and child attendance records to the branch and/or all staff to complete a review of regulations, facilitated by ELCC staff.

[101] The Authority further explained that children's date of birth was added to the monthly attendance sheets which inspectors regularly review to ensure that programs are grouping children by the correct age. Any discrepancy results in a discussion with the operator as well as a follow up during inspections.

[102] Staff-to-child ratios are legislated safety requirements which should be treated as the minimum standards and the norm in childcare programs.

Tracking of trends

[103] To ensure it is meeting its enforcement obligations, it is imperative that the Authority can definitively identify where systemic issues lie and what the appropriate response or approach may be. This is why identifying and tracking trends in non-compliance is essential.

[104] Without tracking trends from all childcare programs in the Yukon, the Authority is unable to determine where resources are most needed or if policy changes are required to ensure compliance with the legislation.

[105] Historically, the Authority did not track trends relating to non-compliance. When a program applies for relicensing, the inspectors would submit a history chart outlining non-compliance and complaints recorded during the previous licensing period, but these historical charts were not used to track trends across all childcare programs in the Yukon.

[106] The Director currently tracks trends across all childcare programs. They stated that they compiled all non-compliances found in the 2025-2026 fiscal year and conducted an analysis in April 2026. The Authority stated their intention to continue this practice going forward. This is a welcome development, and we are in support of this action by the Authority.

Conclusion Issue 2

[107] Interviews with Authority staff revealed that all inspectors possess extensive field experience and a profound commitment to and passion for childcare, which informs their approach to the oversight functions.

[108] In our conversations with the inspectors, they believe their roles and duties are to help childcare programs grow and provide better, safer care for children.

[109] However, we found that the Authority could improve its enforcement process to address non-compliance or prevent the existing widespread recurrence to be more administratively fair. We believe that the lack of a predictable and understood enforcement regimen may directly relate to the frequency of incidents recorded.

[110] The enforcement measures in the legislation include orders to comply, licence suspension and revocation, imprisonment, and fines when a conviction is entered. So far, the Authority has not had cause to use these measures except on one or two occasions where they have had to issue orders to comply and once revoke a licence.

[111] Consequently, we concluded that the Authority does not fairly address the occurrence of repeated widespread and systemic non-compliances, such as adequately enforcing staff

qualifications and staff-to-child ratios and ensuring fire and evacuation drills are performed as specified by the legislation.

Issue 3 – Does the Authority have a fair process for complaints investigations?

Authority's complaints procedure

[112] The Authority has a complaints investigation process detailed in its policy and procedures manual.

[113] The complaints investigation policy states that the Authority will consider any complaint made against a licensed childcare employee, operator, or program if the complaint is related to a violation of the Act or Regulation.

[114] The policy confirms that the Authority does not have jurisdiction to address complaints about dissatisfaction with individual childcare programs' internal policies and procedures such as operating hours, sick policies, and communication preferences. Instead, a complainant will be advised to communicate their concerns to the childcare program owner, operator, or chair of the board where applicable.

[115] The Authority does not accept third-party complaints[2]. The complaints investigation policy explains that these types of complaints aren't considered as the third-party does not have personal knowledge of the issue or concern being reported and they could be based on rumour, gossip, hearsay, or innuendo.

[116] When an employee receives a third-party complaint, they are expected to encourage the third-party to direct the impacted individual to contact the Authority directly.

[117] The Authority may accept anonymous complaints, but the complaints investigation policy advises that the Authority may only take limited action depending on what evidence is available to investigate the complaint.

[118] The policy confirms that the Authority's complaint investigation strategy may vary depending on the complaint. The Authority may observe the reported area of non-compliance, interview the

[2] Defined by the Authority as complaints passed on through intermediaries who do not have direct first-hand knowledge of the concern or issue.

head of the childcare program, staff or parents, or seize documents and liaise with other departments as may be necessary.

[119] If a complaint involves allegations of child abuse the Authority will contact the Manager of Family and Children's Services, a department of the Yukon government, and potentially the Royal Canadian Mounted Police (RCMP).

[120] Inspectors are expected to use their professional judgment when deciding how and when to inform a childcare program operator of a complaint and investigation, taking care that the investigation is not compromised.

[121] The policy states that inspectors should follow up with a complainant at the end of an investigation and confirm that their concern has been investigated. The outcome of complaint investigations is never to be made public, except where legislative action[3] has been taken.

[122] The Authority does not provide information to anyone other than the childcare program operator about investigation outcomes of complaints.

[123] Although the Authority has its Child Care in Yukon Policy and Procedures Manual which inform their practices, this document is internal and the Authority does not have any publicly available material that outlines the Authority's complaints investigation procedures.

Receiving complaints

[124] During interviews, we were informed that the Authority receives complaints by telephone, email, or in person. Any Authority employee may receive complaints if an inspector or the supervisor is not present.

[125] Once a complaint is received, inspectors fill out a complaint intake form based on information obtained from the complainant. This form outlines what sections of the childcare Regulation may have been contravened to determine if the Authority has jurisdiction to investigate that complaint.

Investigating complaints

[3] Legislative Action refers to disciplinary penalties outlined in the *Act.* These can be licence suspensions and revocations, fines, and/or imprisonment.

[126] If the Authority determines it has jurisdiction, one or two inspectors will be assigned to investigate depending on the gravity of the complaint. We heard from staff that two investigators are generally assigned to a complaint.

[127] The inspectors attend the childcare program, or any place where the allegation is reported to have occurred to observe the situation. The inspectors may also interview educators who have relevant information. The Authority supervisor pre-approves all interview questions before inspectors proceed with interviews.

[128] It is also the Authority's practice to send an opening letter from the Director to the childcare program operator stating that they have received a complaint and are beginning an investigation.

Conclusion of complaint process

[129] At the conclusion of the investigation, inspectors in conjunction with their supervisor, determine if the complaint was unfounded, unsubstantiated, or confirmed[4].

[130] The Director then sends a closing letter to the program, stating that an investigation has been carried out to determine if specific sections of the Regulation were breached. The letter also advises the childcare program operator whether the complaint was unfounded, unsubstantiated or confirmed. If non-compliance is found, the letter outlines any actions required to remedy the non-compliance, and the deadline to complete these actions.

Analysis

[131] A complaint investigation function is a critical component of any regulator's mandate. While an inspection and monitoring process serves to provide a structured and planned mechanism for assessing program compliance, a complaint investigation process provides the mechanism by which, parents and guardians, staff, and members of the public can raise concerns for the Authority to address.

[132] In our view, a fair complaint process involves the following:

- a widely accessible and clearly understood means for any person with concerns relating to a childcare program to bring that concern to the attention of the Authority;

[4] Unfounded means the allegation could not have occurred and unsubstantiated means the allegation could have occurred but the inspectors could not determine that it had occurred.

- impartial and prompt investigation of complaints;
- a fair opportunity for the complainant and the subject of the complaint to participate in the investigation process;
- the subject of the complaint should be appropriately informed of the outcome of the investigation;
- a publicly available complaints policy that outlines what constitutes a complaint, how to make a complaint, what criteria will be used to receive or reject complaints, how long the complaint investigation process will take, what a complainant can expect during the process, what type of compliance measures the Authority may take if a complaint is confirmed, and what avenues the complainant may have to challenge the investigation outcome, if any;
- creation of a procedure to protect the confidentiality of the complainant and of any witnesses in the investigation; and
- the complainant should be notified that their complaint has been investigated.

[133] Based on the above criteria, our investigation found some concerns with the Authority's complaint investigation process:

No publicly available information about the complaint process

[134] Authority staff stated that the complaints process for childcare programs was well communicated because they routinely received complaints from the public.

[135] However, we found that there is no publicly available information in childcare program buildings or on the Authority's website regarding how employees or other individuals may report complaints, including how individuals should report when they believe a child is in need of protective intervention, as required by the *Child and Family Services Act*.[5]

[136] We found that childcare programs are not required by legislation to provide publicly accessible information about how to complain to the Authority and therefore they do not do so.

[137] In our view, the lack of public awareness about how and where to make a complaint may explain why, of the 66 childcare programs we reviewed, very few programs recorded complaints

[5] s.22 Child and Family Services Act

between 2023 to 2025. In some cases, childcare programs have only two complaints for that entire duration.

[138] Although we found that the Authority has a fair inspection and monitoring process, complaint investigations are another mechanism for the Authority to ensure that childcare legislation is being followed, and childcare programs are compliant.

[139] If people do not know how and where to complain, the Authority may be missing out on opportunities to identify incidents of non-compliance and safety risks.

[140] Although the Authority has a complaints policy, this policy is not publicly available or easily accessible. This means that both a complainant and subject of a complaint may not be well informed about the complaint investigation process, the criteria that will be used to make determinations, and what potential outcomes and appeal mechanisms may exist, before going into the process.

[141] We found that other jurisdictions have informative websites where the public is advised on how to make complaints, what can be expected during a complaints process, and statements about complainant's privacy and confidentiality.

[142] Jurisdictions such as the Northwest Territories and Ontario provide a public complaint portal on their websites where they do not differentiate between types of complainants and receive all types of complaints.

Complaints from educators not investigated

[143] The complainant in our investigation alleged that complaints from educators are not investigated.

[144] During our investigation we were informed of an instance where several educators had informally made the same complaints regarding the childcare programs they had previously been employed at.

[145] Our review of childcare program files found that these specific concerns were never recorded, the educators were never contacted to provide further information regarding the concerns, and there were no investigations carried out by the Authority.

[146] This situation suggests that the educators were unaware of the appropriate channel or manner in which a complaint should be made.

Lack of procedural fairness to complainants

[147] The Complainant in our investigation alleged that the Authority does not follow up with complainants during the complaint investigation process and after an investigation has been closed.

[148] In reviewing the Authority's records on childcare programs, it was apparent that the Authority does not rely on a standard policy or practice in how it communicates with complainants during an investigation.

[149] We were informed that the Authority provides very limited information to complainants. Generally, complainants are only told that the complaint is being investigated, but once the investigation is completed, complainants are not contacted to inform them that the investigation has been concluded.

[150] Due to the minimal information a complainant receives when they call for feedback, it is understandable why complainants may believe their complaints were never investigated as they do not receive any information about whether a complaint was investigated or substantiated.

[151] This erodes public trust and confidence in the Authority's complaints investigation process.

[152] We find that the Authority's lack of consistent follow up with a complainant after the conclusion of an investigation is unfair.

[153] We found that other jurisdictions, like British Columbia, provide a public summary of complaints received and the outcome of investigations, while in Alberta and Ontario violations and non-compliances are publicly posted.

[154] Providing a summary of complaints and investigation outcomes ensures that the public receive adequate information to make informed childcare decisions and that the childcare programs are held accountable for the services they provide.

[155] Similarly, providing the complainant with a summary of the investigation related to their complaint ensures they are an active participant in the process as prescribed by the principles of administrative fairness.

Lack of protection for complainants

[156] The complainant in our investigation alleged that there is a lack of protection from employer retaliation for educators who make complaints about the programs they work in. The Ombudsman office does not have jurisdiction over private childcare programs and therefore is not investigating whether programs retaliate against educators who complain.

[157] However, we find that it is important for the Authority to have a complaint process that encourages educators to make complaints. This is because educators are most aware of any non-compliances or safety risks that might be occurring at their respective childcare programs.

[158] There are no provisions in the current *Child Care Act* that would, for example, prevent a childcare program from retaliating against or terminating an employee whom they believe has made a complaint about them.

[159] We heard that many educators in childcare programs may be on the path to securing immigration status through their employment at childcare programs and loss of employment or loss of favour of an employer may mean that these educators lose their immigration status.

[160] As such, we understand why individuals and educators may be apprehensive about making a complaint to the Authority. If an employer becomes aware an educator has made a complaint, this could have serious adverse consequences to their jobs and/or immigration status.

[161] It should be noted that the issues discussed above relating to confidentiality and reprisal protections are addressed in the new *Early Learning and Child Care Act,* which received Royal Assent on May 1, 2025, and will come into force when its Regulation is created.

[162] This new Act will allow the Director to take steps to protect a complainant's identity from the subject of the complaint if it is deemed necessary, to prevent retaliation. In our view, this will foster an environment where educators may feel more comfortable reporting concerns or making complaints to the Authority, thereby encouraging a culture of accountability and transparency.

Conclusion Issue 3

[163] The Authority's lack of a publicly available and easily accessible complaints investigation procedure creates an unfair complaints process as it lacks transparency and accountability. The public should be able to easily locate and navigate a complaints process and be informed of such things as the expected timeline for investigation and what other avenues may be available to them should they be unsatisfied with an outcome.

[164] Similarly, only advising a complainant that their complaint is being investigated is not procedurally fair and is not always consistent with the Authority's own policy and procedures manual. The manual states that a summary of the investigation outcome should be available to a complainant following the conclusion of a complaint investigation.

[165] The categorical rejection of third-party and the inconsistent acceptance of anonymous complaints may limit the Authority from becoming aware of a matter of non-compliance or safety

risk. Given the vulnerability of children, the Authority should encourage the reporting of complaints rather than discouraging individuals from making complaints.

[166] We observed no instances of the Authority seeking supplemental information from complainants. Complaint investigations we reviewed were based entirely on initial submissions from the complainant.

[167] Given this limited engagement with complainants, the Authority's emphasis on being able to identify complainants in order to proceed with an investigation is difficult to justify. Anonymous or third-party reports do not, by their nature, make it impossible to obtain further details.

[168] We also find unfair the lack of publicly available information about how and where to report complaints as well as details about the entire process from beginning to the final outcome.

[169] In conclusion, we find that the Authority does not have a fair complaints process.

Conclusions

In summary, we provide the following opinions:

Issue 1: Does the Authority have a fair process for inspecting and monitoring licensed childcare programs?

[170] Having reviewed the Authority's inspection and monitoring process, we concluded that the Authority does have a fair and adequate process for the inspection and monitoring of childcare programs. The Authority's process for inspection and monitoring includes the following practices:

a) The Authority employs the use of a comprehensive ten-page inspection checklist which covers the major regulatory standards prescribed in the Regulation.

b) The Authority conducts four inspections for each childcare program in each year, even though the Act prescribes only one. Three of the four inspections are unannounced which is consistent with a sound monitoring regime.

c) The Authority maintains good oversight and quality assurance by ensuring a supervisory review and sign off process and ensures a public posting of non-compliance sheets which ensures transparency and accountability.

Issue 2: Does the Authority have a fair enforcement process to address non-compliance?

[171] Our review of the Authority's enforcement process found that despite continued monitoring, some regulatory standards were not being complied with across several childcare programs, leading to repeated non-compliances.

[172] Enforcement mechanisms, including orders to comply, licence suspensions, and revocations have rarely been used by the Authority.

[173] The Authority has not implemented a consistent approach for verifying compliance after an inspection. We found that reports of rectification were inconsistently received by inspectors, through varying methods ranging from verbal confirmations, independent confirmation by inspectors, and initialing on the non-compliance and action-required forms.

[174] While we found the Authority's enforcement process to be adequate, we noted some instances that could amount to unfairness and have made recommendations on how the Authority could improve their enforcement process.

Issue 3: Does the Authority have a fair process for complaints investigation?

[175] Our investigation found that the Authority does not have a publicly available documented process outlining the steps, timelines, and criteria for receiving and investigating complaints.

[176] Similarly, the Authority does not effectively publicize how and where complaints or concerns should be made, nor require the childcare programs publicize this information. This prevents public accountability and transparency.

[177] The Authority's lack of an accessible and anonymous complaints avenue discourages concerned individuals from making complaints and reporting concerns.

[178] The Authority does not consistently inform complainants of the complaints process and investigation outcome after receiving a complaint.

[179] The lack of a central complaints registry or tracking of trends resulting from complaints across all childcare programs in the Yukon is unfair as it could lead to inconsistent outcomes as well as systemic and regulatory violations.

[180] For these reasons, we find that while the Authority's complaints and investigations process is adequate, we noted some practices that amount to administrative unfairness and have made recommendations on how the Authority could improve their complaints and investigations process in this regard.

Recommendations

[181] We recommend that the Authority create a new method of documenting how childcare programs specifically address and enforce compliance, and to improve their complaints process. Our concerns may be addressed by implementing the following recommendations:

Enforcement of compliance

[1] The Authority should create a standardized form that outlines when and what actions have been taken to remedy non-compliance.

[2] The Authority should make summaries of inspection and investigation outcomes available for the public or publish the summaries on its website, making sure to protect confidential information, to promote public accountability and transparency.

[3] The Authority should create a policy that addresses how the Director is approving staff prior to their employment at childcare programs, in line with the requirements in the *Regulation*.

[4] The Authority should consider avenues to ensure that childcare programs are consistently performing fire and evacuation drills as required by the Regulation, prior to an inspection.

The Authority may achieve this by requiring that childcare programs confirm to the Authority each time they perform a fire or evacuation drill. In the alternative, the Authority may specify a particular day each month during which all childcare programs must perform these drills and require they submit confirmation of completion.

[5] The Authority should track childcare program staff hiring and turnover. This would identify trends that would allow the Authority to prioritize enforcement.

Authority's complaints process

[6] The Authority should create a publicly available complaints and investigations policy that outlines information about where and how people can make complaints about childcare educators or programs. This policy should include a means of informing the complainant about the outcome or a summary of the investigation outcome without revealing confidential information.

[7] The Authority should make available all its complaints and investigations policies on its website and at its office, as well as at childcare programs.

[8] The Authority should recommend including confidential reporting and reprisal protections in the Regulation currently being drafted.

Report regarding Investigation of Complaint

[161] As per section 23 of the *Ombudsman Act*, I am providing our Report to the Deputy Minister in their capacity as the chief executive of the affected Authority.

[162] As per section 24, I request to be advised by the Authority of the steps that have been or are proposed to be taken to give effect to my recommendations, or if no steps have been or are proposed to be taken, the reasons for not following the recommendations.

[163] The Authority has 15 business days from the date of this amended report to provide such information to the office of the Ombudsman located at 3162 Third Avenue, Whitehorse, Yukon, Y1A 1G3. For greater certainty, the due date is on or before Monday, October 5, 2026, by 4:30 pm.

Report of the Ombudsman if no suitable action taken

[164] As per section 25, if the Ombudsman believes that the Authority has taken no suitable action within a reasonable time in response to the opinions, reasons, and recommendations made under section 23, then the Ombudsman may, after considering any reasoned response by the Authority, submit a report to the Commissioner in Executive Council and later to the Legislative Assembly about the matter as the Ombudsman considers appropriate.

Complainant to be informed if no suitable action taken

[165] As per section 26, if the Ombudsman makes recommendations and then believes that the Authority has taken no adequate or appropriate action within a reasonable time, then the Ombudsman shall inform the Complainant of the recommendations and may make any additional comments that they consider appropriate. In any event, the Ombudsman shall inform the Complainant within a reasonable time about the result of the investigation.

[redacted]

Jason Pedlar, BA, MA
Ombudsman



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