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Risk perception, regulation, and unlicensed child care: lessons from Ontario, Canada

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ABSTRACT

In 2014, the Province of Ontario, Canada undertook a number of legislative changes regarding child care. Part way through the process, a series of tragic focusing events occurred: a number of infants and children died in unlicensed child care over a short period of time. Despite these events, the Province chose to allow a portion of the family child care (FCC) sector to remain unlicensed and essentially unregulated in a sector that is otherwise subject to strict licensing and regulation. Drawing on research on risk regulation, we analyse FCC regulation in comparison to other sectors and find that FCC is surprisingly under-regulated, given the health and safety risks. Legislative debate analysis reveals a number of rationales for non-regulation. In addition to pragmatic political concerns such as costs associated with licensing, analysis reveals concerns about choice and accessibility over quality and safety. We conclude with a call for a research agenda to further examine parents' and policy-makers' perceptions of risk.

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Risk perception; regulation; licensing child care; legislation

Introduction

The emergence of unregulated service providers such as Airbnb, Uber and even marijuana dispensaries have drawn attention to variation in the regulatory rules that govern consumer products and service sectors as well as calls for greater regulation (Carpenter et al. 2012; Holmes and McGuinty 2015; Johal and Zon 2015; Kleiner 2015). Given that governments are creating an ever-growing list of occupations and services requiring licensing and regulation at the local, regional or national level in a number of countries, the choice to keep one portion of a sector unlicensed and unregulated – though not uncommon[1] – is puzzling to policy researchers. This paper explores why governments choose not to regulate a portion of the family child care (FCC) sector, while subjecting other portions of family and centre-based child care to strict licensing and regulation based precisely on public health and safety and quality concerns.

In this article, we examine the regulatory environment surrounding child care services in the Province of Ontario, Canada as a case study of a broader phenomenon of significant non-regulation of a portion of a sector that is otherwise strictly regulated. Drawing on literature on risk perception and risk regulation, the decision not to license and to only minimally regulate part of the child care sector appears puzzling from the perspective of a technical assessment of risk, given that this sector serves young children who are, by definition, a vulnerable population. Vulnerability is one of the factors that

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generally triggers increased sectoral regulation. Research on risk perception highlights a variety of other individual factors that affect perceptions of risk, including the voluntariness of the risk, one's ability to influence the risk (to amplify or attenuate it) and the catastrophic potential of the risk (Kasperson et al. 1988, 178). Cognitive psychologists and behavioural economists have identified a number of heuristics and biases that can affect policy-makers' and the public's perception of risk (Sunstein 1997; Tversky and Kahneman 1981). Political models of attention (Jones and Baumgartner 2005) and organizational studies on institutional attenuation (Rothstein 2003) demonstrate how decision making around risk regulation may deviate from comprehensively rational models of decision-making. Still other research notes that social context and culture, including value clashes, can affect perceptions of risk (Banchoff 2005; Irwin and Wynne 1996; Kasperson et al. 1988). Thus, in order to understand the regulatory scheme in a sector, it is important to scrutinize how policy-makers and the public articulate their views of risk.

The case of Ontario is especially instructive in tracking perceptions of risk in the FCC sector because in 2014, the Legislative Assembly of Ontario passed the Child Care Modernization Act,[2] making changes to the regulation of child care services. During the legislative review process, a great deal of policy attention was generated from the tragic deaths of four children in the Greater Toronto Area alone in unlicensed care over a seven-month period in 2013/2014 (e.g. Ballingall 2013; Ballingall and Oved 2014; Monsebraaten and Alamenciak 2013; Monsebraaten and Ballingall 2013; Tepper 2013). These events triggered an Ontario Ombudsman's (2014) report which revealed serious concerns about the health and safety of children in unlicensed child care in Ontario. While deaths in child care are unfortunately not uncommon in Canada and the United States (e.g. Cohn 2013; Fallis and Brittain 2014; OCBCC 2014; Wrigley and Dreby 2005) the short time span and the fact that the Province was undertaking a legislative review focused a great deal of media and public attention on the issue of unlicensed FCC in Ontario.

Yet, despite the highly publicized baby and toddler deaths and the window of opportunity created by the Liberal government's majority electoral win in 2014, the Province did not universalize the regulatory regime covering licensed FCC providers. This paper uses a content analysis of legislative and standing committee debates around the Child Care Modernization Act, supplemented by key informant interviews with policy officials, to understand the government's decision not to increase its regulation of FCC. Our systematic content analysis builds on existing research that has explored the oversight of FCCs in Ontario from a historical perspective (Perlman, Varmuza, and White 2017) and the social construction of risk. The approach allows us to track the prevalence of different policy frames present within the political discourse and to identify their use by relevant actors who are engaged in the policy debate. Our analysis reveals that in addition to pragmatic political concerns, policy debates focused on 'access' and 'choice' for parents and providers rather than focusing on concerns about quality of care and the risks attendant in non-licensing. The new legislation shored up the largely complaints-driven oversight of unlicensed FCC and did not go as far as even the unlicensed FCC providers were willing to accept in requiring registration or licensing. This policy response contrasts with other sectors where failures to regulate resulted in new regulatory regimes. Following from studies in other policy areas that document instances of neglected risk regulation (Rothstein 2003), we find evidence that the failure to increase regulation of FCC in Ontario is the result of inaccurate perceptions of risks associated with unlicensed FCC amongst parents and policy-makers.

The article begins with a review of what is known about unlicensed FCC in Ontario and Canada, and explores regulation in comparable sectors. It then uses a quantitative content analysis to review the policy debates that informed legislative changes related to child care in Ontario and explores the ways in which policy-makers and the broader policy community articulated risk.

Unlicensed family child care: definitions, prevalence, and quality

Child care researchers use a range of terms to refer to unlicensed or unregulated child care (see Bassok et al. 2016; CRRU 2013). We use the term unlicensed FCC to refer to any form of paid care by a non-family member that takes place outside the child's home and that does not require provincial or municipal licensing and other regulations to operate (Ferns and Friendly 2014, 1). Such care is typically situated in

a caregiver's home. We exclude nannies from this category as they are directly employed by parents and therefore are governed by provincial employment rules and/or federal immigration rules (Fudge 2011).

Next to nothing is known about the characteristics of the unlicensed FCC sector compared to the licensed FCC sector in Canada. Basic information such as the age composition of the children in care; the training and education providers have; the health and safety practices they follow; the fees they charge; and the overall quality of the programmes they deliver is lacking. Unlicensed care is legal, since provincial legislation allows providers to operate without a license as long as the caregiver abides by rules regarding the number and ages of children that can legally be cared for at one time. If providers violate those rules, they can be subject to penalties. Unlicensed providers otherwise operate without any other regulations.

Licensing provides minimum standards – as a way of preventing harm to children, if standards are enforced – but does not ensure programmes are of high-quality and developmentally appropriate (Blau 2003, 444; Phillips and Zigler 1987, 4). But those minimum standards can be quite rigorous. In Ontario, licensed FCC providers must adhere to a lengthy list of requirements including ensuring that their homes comply with municipal by-laws regarding health, fire, zoning requirements and 'where applicable, by-laws requiring enclosures for standing bodies of water/swimming pools (e.g. fence and a latched gate)' (Ontario Ministry of Education 2014, 30). Licensed FCC providers must have multiple working smoke alarms as well as comprehensive general liability insurance and personal liability insurance. They must submit to a criminal background check; abide by the *Smoke-Free Ontario Act*; and maintain sanitary conditions and abide by sanitary and safe procedures in food preparation, medicine, and other hazardous material storage.

In Canadian provinces and territories, FCC licensing standards are enforced through two main licensing and inspection systems: the agency model, where agencies are licensed and legally responsible for supervising individual providers; or direct licensing and monitoring by the province/territory of individual providers (Ferns and Friendly 2014). In the agency model, the agency holds the license and is responsible for ensuring that providers uphold licensing requirements. In direct licensing, provincial/territorial officials monitor providers. Agencies may be privately run or public – that is, operated by the municipality.

These licensing provisions are all reasonable measures to prevent risk of harm to children in care. However, many providers operate legally under the category of 'license not required'. These unlicensed FCC providers who are not part of an agency or who are not directly licensed are not overseen in any way and are 'unknown', since no jurisdiction in Canada has a mandatory unlicensed FCC registry. With the exception of BC, where a voluntary registry exists, these unlicensed and largely unregulated child care providers operate with no rules other than provincially or territorially mandated restrictions on the number of children who can be legally cared for at one time in the provider's residence (CRRU 2013). Unlicensed providers operate with no facility or building requirements, and no training requirements. Licensed FCC providers must undergo regular inspections; unlicensed FCC providers are free to operate with no such scrutiny. Licensed FCC providers are also required to report serious incidents to their licensing agency and to the Ministry, whereas deaths and injuries in unlicensed FCC are not tracked (Monsebraaten and Oved 2014). In Ontario, unlicensed FCC providers' premises are not inspected unless complaints arise about whether a provider is operating 'illegally' – that is, taking in more children than is permitted under provincial law, or caring for children in more than one location that is not the caregiver's home.

Studies in both Canada and the United States have found that while the quality of care is variable across both licensed and unlicensed FCCs, and that unlicensed FCC can be of good quality, regulated providers as a group are generally rated as providing higher quality care on standardized measures than unregulated providers (Bassok et al. 2016; Galinsky et al. 1994; Pence and Goelman 1991) and unlicensed providers have been shown to provide some of the worst care (Fiene and Isler 2007; Galinsky et al. 1994; Japel 2012; Japel, Tremblay, and Coté 2005). However, because it is very difficult to know anything about unlicensed FCC, it is also very difficult to conduct research on quality in this sector. Many of the studies are dated (e.g. Goelman et al. 1993; Pence and Goelman 1991) and/or focus exclusively on the United

States (e.g. Kontos et al. 1995; Walker 1992; Wrigley and Dreby 2005). Because unlicensed FCC provision is so informal, caregivers come and go and it is difficult to maintain contact with providers for research purposes. Many providers are reluctant to share any information because they are operating illegally and they do not wish to be studied (Fiene and Isler 2007, 105).

Comparing unlicensed family child care with other sectors

Our research reveals few other sectors in Ontario where such lack of scrutiny is permitted when the health and safety and quality concerns are so high. One comparator is private educational institutions and tutoring services. While the Ontario Ministry of Education does not 'regulate, licence, accredit or otherwise oversee the operation of private schools', under the Education Act, the Province stipulates some minimum structural and organizational requirements of all schools, such as having a principal in charge of a school, some kind of control over instructional quality and evaluation of student achievement, control of programme content, a common school-wide assessment and evaluation policy, and so on (Ontario Ministry of Education 2015b). The Province also stipulates that all private schools that wish to operate must complete and submit an annual Notice of Intention (NOI) to operate which allows the Ministry to know how many private schools are in operation. The Ministry is responsible for validating that NOI and for making one unannounced visit after a new school is operating to 'confirm that it meets the *Education Act* definition of a private school and that the information provided on the NOI is accurate' (Ontario Ministry of Education 2015a). Comparable oversight is not required in the case of unlicensed FCC, even though both sectors serve children.

In other sectors in Ontario, the typical policy response has been to impose stricter regulatory standards in the wake of highly publicized harms. For example, until recently, the Province permitted private clinics to perform surgical services in non-hospital settings without a great deal of regulatory oversight. Doctors not trained in cosmetic surgery, for example, were permitted to perform surgical procedures such as liposuction without special training. Media coverage of one high-profile patient death from a botched cosmetic surgery procedure led the Province to take action (Blatchford 2010; Cribb 2007). The Medical Act was amended to require the College of Physicians and Surgeons of Ontario (CPSO) to conduct quality assurance assessments of these independent health facilities (IHFs) which are licensed by the province and perform procedures covered under provincial medical insurance (OHIP). While Flood, Thomas, and Harrison-Wilson (2010, 53–55) argue the regulatory regime established for services delivered in independent facilities is not as rigorous as it could be, the CPSO's creation of mandatory accreditation and inspection certainly goes much further than what currently exists for unlicensed FCC providers. And it appears that the CPSO took action against poorly trained physicians after the high-profile death of just one patient (Talaga and Cribb 2007).

Even businesses that do not serve vulnerable populations or provide health care services are subject to regulation, typically overseen by municipalities. Under the City of Toronto Act, for example, hot dog carts and other food trucks, hair and nail salons, tattoo parlours and piercing shops, street buskers, second hand goods collectors and dealers, and 'body-rub' parlours – even the attendants – must all obtain a municipal license to operate and are subject to inspection.[3] Private fitness club instructors have to get a permit to hold a fitness class in a park; dog walkers walking between four and six dogs on a commercial basis must obtain a permit; yet child care providers can care for up to five children without any permit or inspection.

There is a great irony in the fact that one part of the child care sector is subject to an abundance of regulation, while the other part is subject to virtually none. Child care centres in the City of Toronto, for example, are licensed and regulated under the provincial Day Nurseries Act (now the Child Care and Early Years Act, 2014) which requires rigorous provincial inspections at least once per year (Ontario Ministry of Education 2014, 6). Centres must pass Toronto Public Health, Fire and Building inspections to be licensed (Ontario Ministry of Education 2014). The City of Toronto also conducts annual inspections for quality in all child care centres and family home care providers that have a service contract with the City to care for children who receive a child care subsidy (City of Toronto 2015). These annual

assessments are based on systematic observations of each classroom in a centre that capture both process and structural quality. Scores are used for quality improvement purposes and are also posted online on the City of Toronto's website to inform parents and other stakeholders. Licensed FCC providers are also subject to a host of provincial requirements spelled out in agency licensing requirements (Ontario Ministry of Education 2014, 28–35) as well as municipal requirements for those caring for children from low-income families who receive provincial subsidies.

Explaining non-regulation

Practical considerations regarding regulation: cost, supply

Research on risk regulation suggests a number of factors that can influence policy decision-making regarding regulation of a product or sector. Rational interest-based concerns can partly account for the government's decision not to require licensing or impose greater oversight and monitoring of child care. There is uncertainty about how many providers would fall under a new regulatory regime, and the impact of regulation on the cost and supply of FCC. Economic and policy research, drawing on the heavily market-driven US system, has demonstrated that stringent child–staff ratios and other regulations can affect supply and may also increase the price of child care (Blau 2003, 2006; Hofferth and Chaplin 1998; Hotz and Xiao 2011; Rigby, Ryan, and Brooks-Gunn 2007).

The regulation literature highlights the challenge of deciding whether to regulate a particular industry or market based on rational calculations of the market-dampening impact of particular regulations compared to calculations of the risk of harm. Interestingly, scholarly economic analyses provide little to no discussion of the risk of harm that results from *non-regulation* when calculating the costs of regulation on the sector. Those kinds of risk calculations *do* regularly enter into discussions about the regulation of other occupations and sectors (Bartle and Vass 2007; Klinke and Renn 2012; Vogel 2012). And in other sectors in Ontario, once a risk of harm was revealed, actions were taken to minimize those risks and the regulatory regime was altered, sometimes in a dramatic way. The lack of regulatory action in the child care sector is, thus, striking and suggests that other factors affect decision-making in this sector.

Parents as rational consumers and risk assessors

The presumption of parents as comprehensively rational purchasers of child care services is flawed. For markets to regulate quality and ensure minimum health and safety standards in the child care sector, consumers of these services must have full information so they can comprehensively weigh both cost and quality in choosing between care providers. Economic research characterizes the child care market as one of asymmetric information (Blau 2006, 514; Mocan 2007). Most parents are not well-informed about the range of child care options available, nor are they able to choose freely from amongst those options; rather, a number of constraints, including cost (relative to parental income), availability, scheduling and so on, limit parental options (Forry 2014; Gormley 1999; Sandstrom 2012). While some research has found that parents can accurately assess care arrangements for their children (Gamble, Ewing, and Wilhlem 2009), other research has found that parents have incomplete knowledge of their child's care experience (Howe et al. 2013; Mocan 2007). Research has also found that parents have difficulty comprehensively assessing risk for services they themselves do not receive (Blank 2000). Asymmetries in information make it difficult for parents to accurately assess quality as they may not know what qualities to look for in a provider. They also may not have the time or be permitted to closely monitor the child care providers or premises (Walker 1992).[4]

Walker (1992, 42) argues that even if parents use a provider over a long period of time they may still not be informed about the quality of care. Rather, Gormley (1999, 125) describes child care as a 'post-experience good', 'whose full consequences are not apparent until after it has been consumed'. Parents may not know whether the premises meet basic health and safety standards demanded of child care centres and licensed FCC homes. Parents may not know whether a provider is licensed and

instead may presume that, if it is in operation, it is licensed and legal. Even if parents are aware and concerned about health and safety, they may not be permitted to conduct their own health and safety inspections. Unlike in the USA where quality accountability systems that involve rating providers and making scores available (e.g. Quality Rating and Improvement Systems) are increasingly common and resource and referral agencies are available, these sorts of services exist in few localities in Canada.

In addition, quality considerations do not always factor in parents' decision to hire a FCC provider. Gable and Halliburton (2003, 188) report that parents tend to choose FCC because they provide 'a personal relationship with a consistent caregiver, and warm, individualized care in a home setting' (Weaver 2002, 266; see also Kontos et al. 1995). In contrast, parents tend to choose child care centres because they are perceived as more educational (Gable and Halliburton 2003, 188). Furthermore, since parents often make decisions about the type of care they choose for their child under constrained market conditions such as a shortage of centre spaces, it is unclear how accurately their choices or even stated preferences reflect the ones they would make if they were less constrained. Regardless, parents' choices or their stated preferences in terms of child care do not replace the need for oversight of FCC providers.

Provider incentives

Very little research exists on whether providers 'self-regulate' by voluntarily committing to some standard of best practice, either self-imposed or articulated by a professional network or association. A number of factors discourage providers from voluntary licensing. Providers in provinces that use voluntary agency licensing express concerns about agency fees and restrictions of the number of children that licensed providers can care for (Perlman, Varmuza, and White 2017). Until the Child Care Modernization Act, 2014, Ontario's legislative and regulatory environment was additionally unique in Canada: providers were incentivized away from licensing. The maximum number of children an unlicensed FCC provider could legally care for was five, *not* including the providers' own children, whereas a licensed FCC provider could care for five *including* the provider's own children under the age of six years (with further restrictions based on the children's age) (Ferns and Friendly 2014, 4).

Provincial labour laws also provide little assistance to providers affiliated with agencies. Even under the agency model, providers are considered self-employed (Taylor, Dunster, and Pollard 1999, 286) and are, therefore, not eligible for benefits. While providers affiliated with one agency in Ontario managed to unionize and a few others have successfully fought to be deemed employees of agencies, court rulings have generally not been enforced, or have been overridden by provincial legislation (Cox 2005).[5] Those court rulings have led agencies to back away from imposing requirements on providers such as mandatory training that would suggest an employer–employee relationship, and instead to offer voluntary professional development and other non-mandatory activities.

Even if unlicensed FCC providers are committed to quality improvements through ongoing training and professional development, the costs of those improvements are generally borne by providers themselves who face a variety of barriers such as scheduling (outside work time), cost, and their own personal child care needs (Gable and Halliburton 2003, 177). But since prices and provider incomes are relatively inelastic (Mocan 2007, 744), as parents may not be willing to pay more for a more highly trained FCC provider, providers have a hard time recouping the increased cost of training.

Summary: risk perception and risk regulation

Given that parents are not comprehensively rational purchasers of child care services, and given evidence about the lack of voluntary compliance with quality, health or safety standards on the part of some providers – and indeed incentives to maximize income through non-adherence – the lack of regulatory oversight of unlicensed FCC is puzzling. It may suggest that parents, providers and policy-makers do not regard care in a FCC setting in the same way as centre-based care, or that they do not regard this service as comparable to other services with health, safety and quality risks. It is thus important to

analyse further the perceptions of risk in this subsector. We do this by focusing on arguments made by policy-makers and other stakeholders in the debates around modernizing child care in Ontario.

The case study: Child Care Modernization Act, 2014

Over a seven-month period from July 2013 to February 2014, four children died in unlicensed FCC facilities in Ontario. The death of toddler Eva Ravikovich, in particular, received considerable media attention as it was revealed that the Ministry of Education had repeatedly failed to follow up on complaints about the unlicensed facility where she died. In light of this attention, the minority Liberal government accelerated its introduction of Bill 143, the Child Care Modernization Act (Ombudsman Ontario 2014, 7). The Bill was introduced on 3 December 2013, but died on the order paper when the legislature was dissolved for a general election. The proposed legislation was reintroduced as Bill 10 on 6 July 2014 shortly after the Liberals won re-election, this time with a majority government. It passed third reading and received Royal Assent on 4 December 2014.

The Child Care Modernization Act attempts to provide incentives to license by marginally reducing the number of young children who can legally be cared for in unlicensed FCC. Under the new Act, unlicensed providers are only allowed to care for five children under the age of 10 and two under the age of two, whereas licensed providers can care for six children.

The Act increases the Province's monitoring and inspection powers over unlicensed and licensed FCC. It authorizes inspectors to enter a location without a warrant in certain circumstances and to issue administrative penalties of up to $100,000 per infraction 'on the spot'. Increasing the Province's inspection capacity, the Act allows inspectors to examine records, demand documents, take photos and video recordings, question people, and to request criminal reference checks, amongst other measures. Providers are barred from providing FCC if they have been convicted of a Criminal Code offence or any conviction under the new Act or if they have been found guilty of professional misconduct under the Early Childhood Educators Act. However, as the system remains largely complaints-driven, it remains to be seen whether these powers will provide real oversight.

The Act also includes provisions to increase parent awareness and to help parents become savvier 'consumers' of child care services, outlining several 'truth in advertising' requirements. For example, providers cannot imply that they are licensed if they are not, they must keep a record of any disclosures of their licensing, and they must post a license if they have it. Additionally, providers cannot prevent parents from accessing the premises if their child is in the provider's care.

Despite these legislative changes, the Childcare Modernization Act falls well short of introducing a comprehensive regulatory regime for the child care sector in Ontario, as the new legislation and proposed regulations do not require providers to be registered or licensed and the regulatory system in place remains largely complaints-driven (Ontario Ministry of Education 2014). The new Act approaches licensing and enforcement through a combination of carrots and sticks: it attempts to encourage individual providers to license, while also strengthening enforcement provisions for bad provider behaviour.

Empirical analysis of debates over modernizing child care in Ontario

To better understand why the final legislation fell short of a comprehensive regulatory regime, we conducted a content analysis of the legislative proceedings (Ontario Legislative Assembly 2014) surrounding the Child Care Modernization Act. We developed an analytical framework to examine the appearance and frequency of words in legislative debates. This technique allowed us to determine variation not only in the way the policy is described, but in who is describing it, because we were as interested in the speech maker as the speech itself. The content analysis undertaken, therefore, builds on the analyses garnered through studies that adopt more interpretive techniques by beginning to quantify how policy-makers describe and thus, construct particular meanings of child care (Hardy, Harley, and Phillips 2004; Laver, Benoit, and Garry 2003).

We analysed the text of legislative debates on Bill 143 and Bill 10 and focused on three key elements of legislative proceedings: second reading debate, committee hearings, and third reading debate. Each of these stages of the legislative process are periods in which substantive argumentation and reason-giving are brought forward by legislators and stakeholders (Ontario Legislative Research Service 2011). As such, they offer the most robust pool of textual data for analysis and allowed the research team to assess the substance and argumentation of the policy debate. The text of these three elements of legislative proceedings was grouped into four sections of text for analysis: (1) second reading debate on Bill 143; (2) second reading debate on Bill 10[6]; (3) committee hearings on Bill 10 [7]; and (4) third reading debate on Bill 10. The total length of the text covering these four components of the legislative debate was 209,326 words (or 1,072,901 characters of text, no spaces) (see Table 1).

The text was randomly divided between two coders for analysis. Both coders used the qualitative analysis software NVivo to track argumentation. Based on the random assignment of documents, Coder 1 coded approximately 70% of the debate text, while Coder 2 coded approximately 60% of the debate text, meaning that 30% of the text was double-coded for comparison.[8] Based on the initial coding, the kappa coefficient measuring inter-coder reliability was 0.66 (good agreement). All disagreements in coding were resolved through discussion and consensus was reached.

To assess the patterns of argumentation in the policy debate, we developed a database of arguments used by legislators and stakeholders for and against the licensing of FCC providers, organized into 'nodes' or themes. To isolate arguments that focused specifically on the benefits or detriments of *licensing*, the coders reviewed the documents using the following search terms: license, licensing, home care, independent care provider and independent personal caregiver (the latter three terms serve as proxies for unlicensed care in Ontario). Paragraphs that included at least one of the relevant search terms were coded to the actor who was speaking and for argumentation on the benefits or detriments of licensing.[9] We categorized arguments as being broadly in favour of, and broadly opposed to licensing child care providers. Within these broad categories, arguments were coded along four dimensions: access, choice, quality and risk. Nodes reflecting more specific argumentation were added inductively as the two coders analysed the text of legislative debate and committee sessions (for a full breakdown of the coding matrix, see Appendix 1). Arguments that were not explicitly in favour of or opposed to licensing, such as those that focused on the need for better enforcement of the existing regulatory regime, were coded to neutral nodes.

Results

Of the total debate on the Child Care Modernization Act, 30.03% of debate coverage[10] related either to licensing specifically, or reflected discussions of unlicensed forms of care. As a portion of the total debate on the Act, the focus on licensing lost ground in each successive legislative debate period, despite a re-focus on licensing during committee hearings. Of the debate that was explicitly about licensing, nearly twice as many arguments were made against licensing as there were arguments made in favour of licensing (see Figures 1 and 2).

Arguments in favour of licensing focused primarily on questions of the ability of licensing to address or reduce the riskiness of child care settings. Meanwhile, arguments about access and choice increased over the course of legislative debate, likely in response to the overwhelming emphasis on these concerns by those who opposed licensing the child care market.

Table 1. Breakdown of total debate by legislative proceeding.

		Number of sittings	Length[a]	Proportion of total (%)
Bill 143	Second reading debate	3	134,164	12.50
Bill 10	Second reading debate	8	442,855	41.28
	Committee hearings	2	427,457	39.84
	Third reading debate	1	68,425	6.38

[a]Length is reported as a function of characters [no spaces] of relevant text.

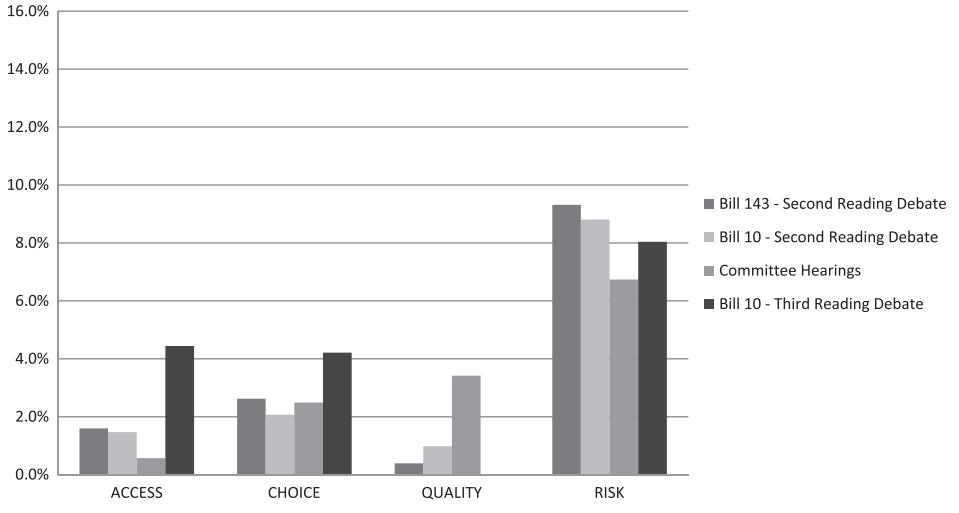

Figure 1. Licensing is Good (/Unlicensed FCC is Bad) – arguments as percentage of licensing debate.

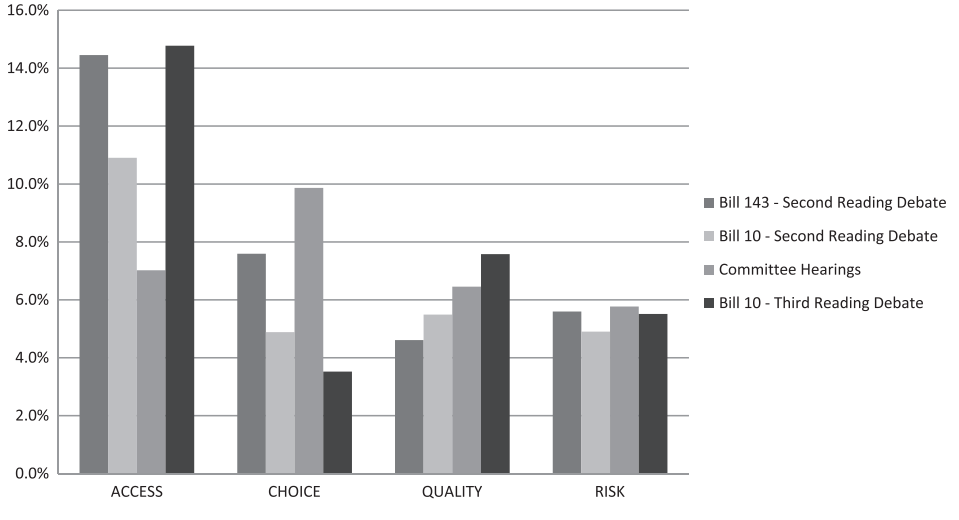

Figure 2. Unlicensed FCC is Good (/Licensing is Bad) – arguments as a percentage of licensing debate.

Patterns of argumentation varied by party. Members of Provincial Parliament (MPPs) from the New Democratic Party (NDP) were responsible for 18.6% of the total debate about licensing (see Figures 3 and 4) and favoured licensing, highlighting the risk of unlicensed care as the primary argument in support of licensing. The NDP was responsible for focusing much of the debate on the deaths that had occurred in unlicensed FCC. However, NDP members also highlighted the role of government failure to enforce regulation under the Day Nurseries Act as a source of the problem. This meant that while risk was a central focus for NDP members, they also downplayed the capacity of licensing to address risk by feeding into a narrative that implicitly supported the maintenance of unlicensed child care options.

Progressive Conservative (PC) MPPs (accounting for 31.8% of the total debate about licensing) actively argued against a more regulated child care system. PC MPPs focused particularly on questions of access and choice, both for providers and for parents, consistent with the argumentation from unlicensed FCC providers.

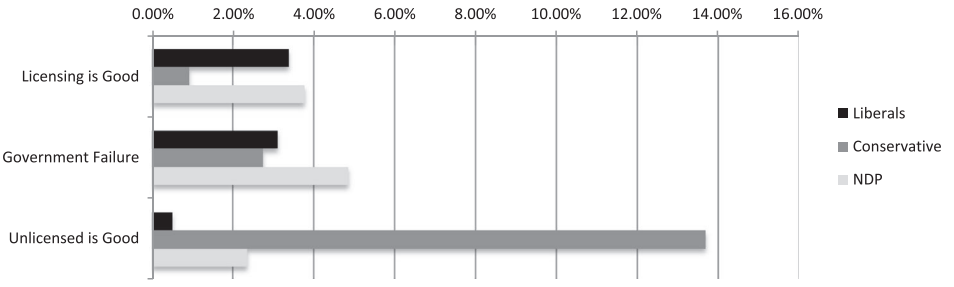

Figure 3. Breakdown of the licensing debate by political party (percent coverage).

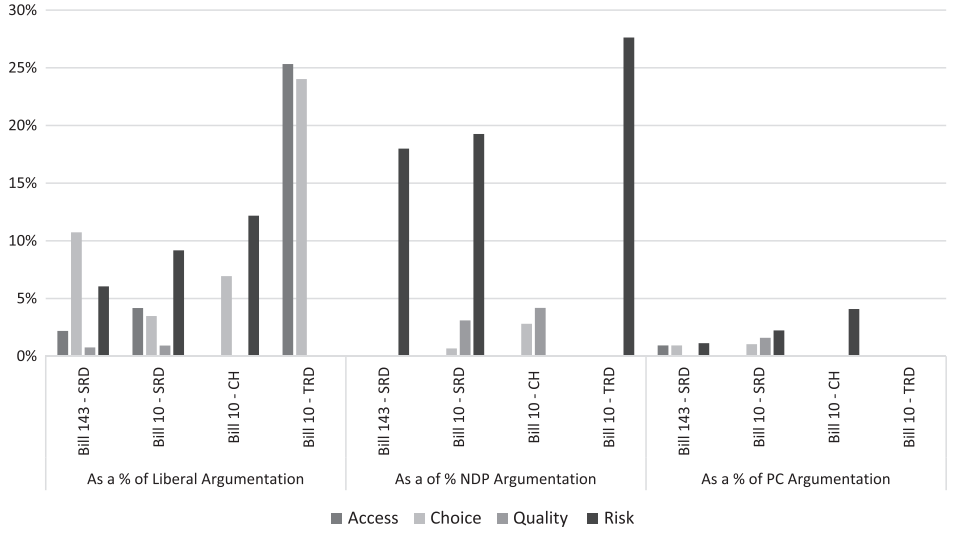

Figure 4. Licensing is Good (/Unlicensed FCC is Bad) – percent coverage of actor argumentation.

Meanwhile, Liberal MPPs (accounting for 19.4% of total debate about licensing) presented generally favourable views of licensing, although they maintained that unlicensed care would continue to be a part of the child care framework. They argued that greater enforcement of complaints against unlicensed FCC providers (as outlined in the Child Care Modernization Act) would address many of the problems that led to the child deaths. Although the risks of unlicensed care were consistently highlighted by party members, a major shift in Liberal argumentation can be seen in the third reading debate on Bill 10. At that point, Liberal MPPs attempted to address the barrage of concerns about provider and parent choice and access to the child care market under the new legislation. Risk was not raised by Liberal MPPs in that final session.

In addition to arguments that were clearly in favour of or opposed to licensing (see Figure 5) many debate participants identified the source of the 'problem' (i.e. the deaths of children in unlicensed FCC) as an issue of government failure, consisting of three related arguments:

(1) Government failure to properly respond to complaints using existing laws is the source of the problem;
(2) Greater oversight of (licensed and unlicensed) child care sites and enforcement of the legislation is needed to address the problem; and
(3) The oversight or enforcement mechanisms proposed in Bill 143/Bill 10 will effectively address the gaps that caused the problem.

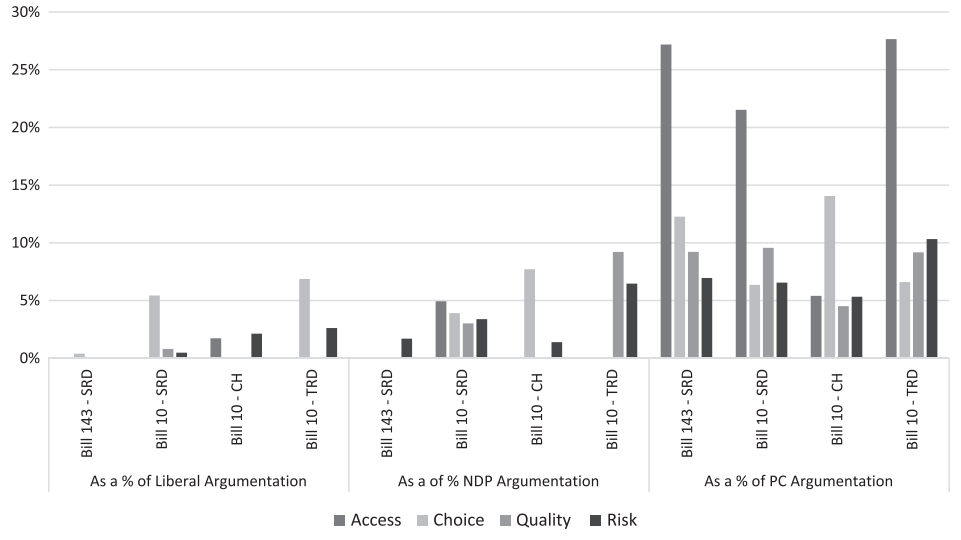

Figure 5. Unlicensed FCC is Good (/Licensing is Bad) – percent coverage of actor argumentation.

Each of the three arguments operated from the premise that unlicensed care should and would continue to exist as a part of the child care landscape in Ontario, thus undermining the relative strength of argumentation in favour of licensing in debate. In every session of legislative debate (excluding the committee hearings), the proportion of arguments pertaining to government failure was equal to or greater than the proportion of arguments in support of licensing.

Arguments were specific to the government's perceived failure in responding to complaints made against child care facilities (a failure to enforce existing regulations) and *not* with respect to a failure to license child care providers. The opposition PCs and NDP focused on the degree to which the Liberal government failed to protect children by failing to live up to the letter of what was required under the previous legislation. Meanwhile, although Liberal MPPs made arguments that fit under the broad heading of government failure, they focused their attention on the third component of this category, arguing that the new oversight and enforcement mechanisms provided for in the Bill would be able to effectively address the issues that led to the child deaths (argument 3). They agreed that more enforcement and oversight was required (argument 2), but generally took the stance that the new bill was sufficient to make up for past deficits (see Figure 6).

Arguments made by the broader policy community

Whereas second and third reading debates are only open to MPPs in the legislature, committee hearings invite testimony from interested outside parties. Throughout the legislative debate, Opposition PC MPPs dominated the discussion, accounting for 45% of the coverage devoted to questions of licensing. MPPs from the governing Liberal party and the third party NDP each accounted for 27.5% of the debate coverage devoted to questions of licensing (see Table 2).

In the committee hearings, elected officials took a back seat to stakeholders. During the two days of committee hearings, legislators heard from independent care providers, policy advocates and researchers, unions, and parent advocates. The two committee hearings account for just shy of 40% of the total debate on the Act (39.73%), and approximately 32% of the committee hearing discussions addressed licensing specifically. Child care providers and policy advocates and researchers contributed the majority of relevant licensing debate over the two days, together accounting for 71.9% of the licensing debate coded within the hearings.

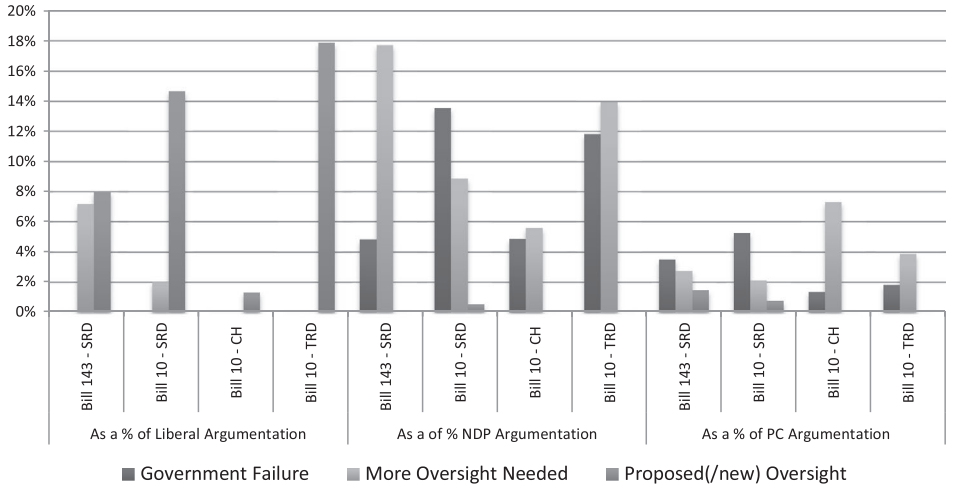

Figure 6. Government failure (to uphold existing rules) is the problem – percent coverage of actor argumentation.

Table 2. Breakdown of the licensing debate by actor type and session.

Policy actor	# of Speakers	% Legislative debate	% Committee hearing
Liberal MPPs	12	27.5	7.74
NDP MPPs	11	27.5	4.76
Conservative MPPs	16	45.0	11.69
Policy community	9	/	10.22
Care providers	27	/	61.68
Parent advocates	1	/	2.16
Unions	2	/	2.19

Child care providers overwhelmingly presented arguments against licensing. However, they also showed a general willingness to accept licensing, provided that the process was facilitated directly by the provincial government (rather than through child care agencies). Much of the debate focused on providers' dissatisfaction with the agency licensing model that was promoted in the bill. The argument made by providers combined two elements: (1) there was a general interest in and favourability towards being licensed but (2) there was also a clear rejection of the model being proposed by government. Child care providers giving testimony at this intersection point made statements such as: 'I implore you to allow daycare providers to be individually licensed for a reasonable fee' (Becky Kurz, November 18) and 'I'd like to have a license. I wouldn't like to be associated with a licensing agency in any way …' (Velvet LeClair, November 18).

Policy advocates and researchers contributed just over 10% of the discussion of licensing in the committee hearings. Unlike the child care providers themselves, the policy community was more evenly split on the question of licensing, raising concerns about both the licensed and the unlicensed system (see Figure 7). Again, however, concern about the effects of licensing on parent and provider choice received considerable attention in the committee hearings.

Discussion

The Ontario debate over the Child Care Modernization Act revealed several rationales against licensing – cost and supply, parents as rational consumers, and provider incentives – operating within the political debate. Opponents of licensing blamed regulatory agents for not upholding existing regulations. Government officials argued that increasing the number of children for whom providers could care at

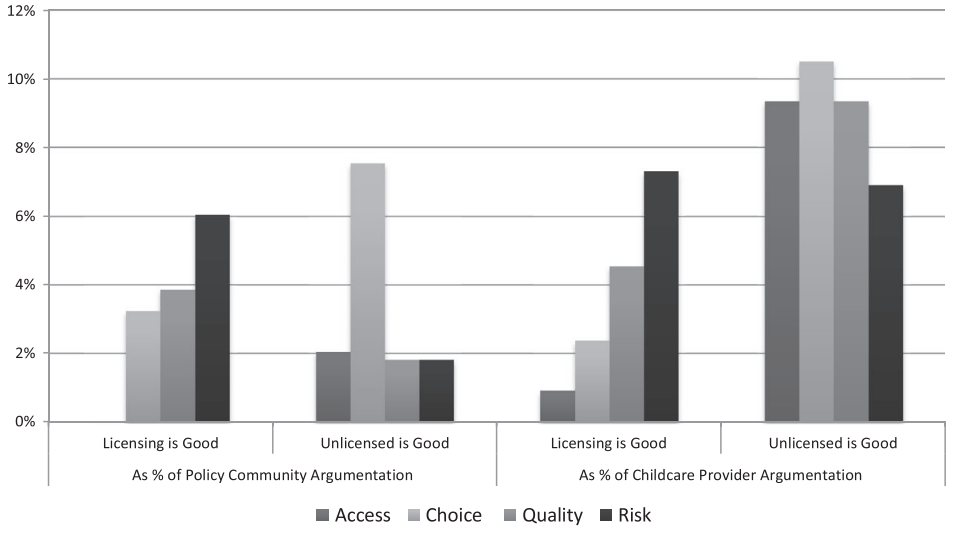

Figure 7. Committee hearing debate – percent coverage of actor argumentation.

any one time would incentivize providers to become licensed, and the increased penalties for violations of the law and regulations would discourage bad practices. All political actors engaged in the debate seemed concerned that regulations should not impede the market. Argumentation against licensing drew considerable attention to the uncertainty of continued parental access to a changing child care market under conditions of increased regulation (either in terms of the cost of care, or the number or flexibility of spaces available). Increasing regulation can reduce supply by driving poor performers from the market; regulations that require more staff per group of children or additional space per child also increase the operational costs of the remaining providers, which may increase prices charged by those providers or drive down quality as providers try to cut corners. Regulations that try to improve quality, such as mandatory licensing or registration of FCC providers, could drive those providers underground and away from any scrutiny. The key challenge for governments, then, is balancing access, cost and quality considerations in designing regulation. In the absence of a clear understanding of what the balance would be for the Ontario child care market, legislators opted to keep a large portion of the market legal but unlicensed.

Within this mix of legislative and stakeholder debate, the Coalition of Independent Childcare Providers of Ontario (CICPO) emerged as a key player at the Committee Hearings. The group, which advocates on behalf of the unlicensed FCC sector, was formed in direct response to the legislative review in advance of passage of the Act and adopted clear and consistent arguments. For example, where the Act attempted to incentivize licensing by allowing licensed providers to care for one more child than unlicensed providers, CICPO (2015) argued that the change would severely restrict supply, especially for children under the age of two.

CICPO advanced other arguments against the Act. It states that providers are in fact 'self-regulated' in that they voluntarily provide high levels of care.[11] The CICPO website argues that licensing does not guarantee quality, referring to the provincial Auditor-General's report, released 9 December 2014 that found more than 29,000 reports of serious occurrences in licensed child care centres and homes in Ontario over a five-year period (Ontario Office of the Auditor General 2014). The CICPO further argues that the choice not to be licensed has nothing to do with quality but rather the huge cost disincentive to licensing in Ontario: 'As small business owners, we welcome regulations that are appropriate and ensure quality and safety. Independents do not want to be forced to work through an agency that charges administrative fees of upwards of $1000 a month ($10/day/child)' (CICPO 2015). Instead, CICPO called

for a system of voluntary registry of Ministerial direct licensing. Together, these arguments made up the bulk of the independent care provider argumentation over the course of the two Committee Hearings.

Conclusion

Despite the window of opportunity that the legislative review and update provided, unlicensed FCC remains a uniquely under-regulated service in Ontario. As we illustrate in the comparative analysis, regulation in this sector is out of sync with regulation in comparable sectors. Child care is a service provided to arguably the most vulnerable population in society; the relative lack of focus on health and safety concerns is both concerning and puzzling. Despite evidence that demonstrates that parents are generally not well-informed consumers of child care (Blau 2006; Mocan 2007), the analysis reveals that argumentation about licensing during the legislative debate on child care modernization focused on choice and access – for both parents and providers – over health and safety and quality concerns.

Given the stakes involved, and the fact that the unlicensed providers themselves expressed a willingness to be licensed or at least registered, the legislative process could have yielded a much tougher regulatory regime. This article serves as a call for action to researchers and policy-makers, both in terms of increasing the availability of information about this sector, and in terms of exploring parents' and policy-makers' perceptions of risk associated with various types of child care.

The findings from this article first reveal the need for more research on risk perception in policy-making. Existing research on regulatory neglect highlights that there are important institutional factors at play, including institutional fragmentation, that divides regulatory responsibility amongst a large number of policy actors, or the misalignment of regulatory rules, provider incentives and monitoring costs (Rothstein 2003). In addition, this case study points to the importance of scrutinizing policy-makers' perceptions of risk and the kinds of biases and heuristics – about the family, about the nature of child care, and the market for care – that can inform regulatory cultures.

The findings from this article also reveal the need for more research on risk in unlicensed FCC settings. Existing research reveals that there are significant gaps in parents' knowledge about their children's care arrangements (Howe et al. 2013; Shpancer et al. 2002) and that parents are generally poor evaluators of child care centre quality (Cryer and Burchinal 1997; Cryer, Tietze, and Wessels 2002; Rentzou and Sakellariou 2013; Torquati et al. 2011). This research, however, is based almost exclusively on parents with children in centre-based care.

The very limited research in this area likely stems, at least in part, from the difficulty associated with gathering information about unlicensed FCC. As noted earlier, FCC providers may be inclined to remain under the radar for personal as well as legal reasons. This makes them difficult to recruit and retain in research studies and may also constrain the validity of their responses to questions even once they agree to participate.

More research about parents' understanding of regulation in and quality of FCC also needs to be collected. We do not know, for example, whether parents' use of unregulated care relates to ignorance about licensing, ambivalence about the need for licensing or choice limitations based on costs, time constraints, logistical considerations and/or availability of spaces. Parents may be aware of the greater risks in using unregulated care but are simultaneously limited in their ability to choose care in regulated settings, shifting the onus onto governments to provide that oversight. Parents' perceptions of quality and risk are likely constrained by their limited knowledge of FCC and their motivated reasoning regarding the care environment they have chosen for their child. These issues make conducting research in this area difficult, but not insurmountable.

If parents are choosing unregulated care out of lack of concern about the risks of unregulated settings, what interventions could encourage parents to gather useful information about their child's care arrangements so they can make more informed choices for their children? Do quality ratings systems, for example, help parents make more informed choices and increase use of care in regulated settings (thus 'voting with their feet')? If not, then policy interventions such as mandatory licensing could be combined with government supports for providers to achieve licensing standards as well as annual

operating grants to offset the costs of maintaining regulated status. Other incentives to license could be used to create resource and referral agencies, access to professional development, access to government-subsidized training, or cheaper rates on liability insurance (Fiene and Isler 2007, 105). Having access to income-enhancement grants may encourage providers to maintain regulated status (Gable and Halliburton 2003, 190). Alternatively, governments could cover the cost of licensing. Furthermore, mandatory licensing could be accompanied by grants to improve physical space, training subsidies, and wage subsidies, which can all offset stricter regulatory requirements.

Research demonstrating the dampening effect of regulation on child care markets, however, raises the question of how to appropriately design regulation so as not to affect supply or increase costs. Economic research (e.g. Blau 2003, 460) cautions against binding and strictly enforced regulations that impose costs on providers which are likely to be passed on to consumers or back onto the providers in the form of lower wages (Blau 2006). But, as discussed above, that research does not generally consider the potential risks associated with the lack of regulation.[12] The bottom line is that due to an over emphasis on access and choice, politicians in Ontario missed an opportunity to strengthen monitoring of FCC providers. They have left an unknown number of children in situations that are likely to be of higher risk than necessary. Awareness of these biases may help overcome barriers to regulation in the future.

Notes

1. Comparable examples include the non-regulation of independent schools in Ontario (Carville 2015) and the regulatory distinctions drawn between medicines and nutritional supplements.
2. Renamed the Child Care and Early Years Act, 2014 S.O. 2014, c. 11, Sched. 1 and came into effect 31 August 2015.
3. A complete list of businesses, trades, and professions that require municipal licences in the City of Toronto can be found at the City of Toronto's website: http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=529948f499a51410VgnVCM10000071d60f89RCRD&vgnextchannel=90168fb738780410VgnVCM10000071d60f89RCRD and in Chapter 545 of the Toronto Municipal Code. See also, e.g. Valverde (2009).
4. The Ontario Ombudsman's report (2014, 27) notes that some providers prevent parents from entering their homes and some have refused to allow inspectors access.
5. The Child Care Modernization Act states explicitly under section 2 (2) that providers are not agency employees, which means they are not covered under the provincial Employment Standards Act and are thus not eligible for employment and health benefits such as minimum wages, pensions, and maternity leave.
6. Includes debate on a motion on time allocation, a procedure in which debate is brought to a close. During a motion on time allocation the object of debate is not the bill itself, nonetheless, it is an extension of second reading debate and while the interventions made by MPPs are slightly more procedurally focused, the substantive content is broadly similar to second reading debate.
7. Analysis excludes clause by clause consideration of the bill. Clause by clause allows members to consider and vote on amendments to the bill, and is a primarily procedural venue in which minimal argumentation occurs.
8. Human coders are best suited to the task of interpreting argumentation through manual coding methods as they can interpret the substantive meaning embedded in the text and identify the ways in which policy actors constructed their arguments.
9. The complete coding scheme is included in Appendix 1.
10. The coding results are reported in percent coverage, a measure in NVivo determined by character count [no spaces] of a coded argument divided by the character count [no spaces] of the total text.
11. Bartle and Vass (2007, 888) define self-regulation as 'the regulation of the conduct of individual organizations, or groups of organizations, by themselves. Regulatory rules are self-specified, conduct is self-monitored and the rules are self-enforced'. The CICPO website lists no self-generated voluntary standards, though the Ontario-based Child Care Providers Resource Network (2015) lists the following best practices for unlicensed child care providers: 'First Aid/CPR training, Liability insurance, Daycare Ryder (extra car insurance) on your car (if you are taking children out in the car), a written contract and other business related papers; and a smoke-free, child-proofed home'.
12. It should be noted that regulation does not always significantly improve quality. A separate report from the Office of the Auditor General of Ontario's (2014, chapter 3) highlighted that significant incidents can occur in licensed facilities (see also e.g. Cribb and Brazao 2007); and, of course, some unlicensed settings do deliver high-quality programmes.

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Appendix 1. Argumentation coding

	# Nodes coded
Licensing is Good (/Unlicensed is Bad)	64
Access	40
Parent access will not decrease	2
Legislative changes will facilitate creation of child care spaces	32
Provider access will not decrease	1
Licensing will not push providers out of market	5
Choice	57
Parents will still have choice	4
Licensing helps parents make informed decisions	21
Providers will still have choice	/
Licensing does not mean centre-based care	19
Will not push providers into one-size-fits-all	13
Quality	36
Centre and agency care is more professional, reliable = good for kids	18
Licensing leads to better quality	18
Risk	219
Licensing will make kids safer	100
Unlicensed = high risk	119
More Licensed Child Care Spaces Needed	18
Unlicensed is Good (Licensing is Bad)	/
Access	317
Parent access better under unlicensed	11
Centre care too expensive	11
Licensing will make care more expensive (unaffordable)	44
More child care spaces with unlicensed care	102
Will push parents (women) out of the labour force	6
Provider access to market better under unlicensed	7
Cost of licensing will cause providers to shut down	51
Regulatory burden will cause providers to shut down	85
Choice	192
Unlicensed gives parents choice	55
Licensing will decrease the # of options	18
Unlicensed gives providers choice	/
Joining an agency limits provider choice	9
Proposed model doesn't allow individual providers to be licensed	76
Providers can choose how to structure business = flexibility	13
Providers not one-size-fits-all	21
Quality	150
Care is warmer, more supportive	14
Centre care is institutional = bad for kids	19
Unlicensed is just like home	22
Unlicensed does not mean low quality	44
Licensing does not mean better quality	11
Unlicensed does not mean illegal	40
Risk	136
A registry of unlicensed providers adequate to address safety concerns	24
Licensing does not lead to safer care	37
Licensing will result in high-risk options (underground daycares)	23
Parent's responsibility to assess safety	25
Unlicensed = low risk	27