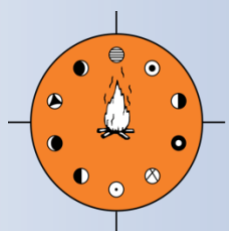


So that all First Nations children **MAY HAVE THEIR RIGHTFUL PLACE**

Joint brief by **the AFNQL and the FNQLHSSC**

November 2021



Assembly of First Nations
Quebec-Labrador



FIRST NATIONS OF QUEBEC
AND LABRADOR HEALTH
AND SOCIAL SERVICES
COMMISSION



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1. Introduction

On October 21, 2021, Minister of Families Mathieu Lacombe introduced Bill 1, entitled *An Act to amend the Educational Childcare Act to improve access to the educational childcare services network and complete its development*, before the National Assembly. Following the introduction of the Bill, the Committee on Citizen Relations invited the Assembly of First Nations Quebec-Labrador (AFNQL) and the First Nations of Quebec and Labrador Health and Social Services Commission (FNQLHSSC) to contribute to public hearings during the special consultations on the Bill.

This joint brief lays out some specific legal aspects of the context in which the First Nations live and provides an overview of the delegation agreement between the FNQLHSSC and the Government of Quebec. It also identifies specific issues that must be addressed in the Bill and makes recommendations to better respond to them.

2. About the organizations

Created in 1985, the AFNQL is a political organization that brings together 43 Chiefs of the First Nations communities¹ in Quebec and Labrador. It deals with many issues, including the defence of title held by First Nations, as well as their Indigenous rights and treaty rights; federal and provincial government policies and laws that compromise First Nations customs and ways of life; funding levels; government decisions and relations with governments; economic development and all social, economic and cultural matters; and, in general, all matters relating to self-governance, international relations and national relations with the government.

Created in 1994 by resolution of the Chiefs of the AFNQL, the FNQLHSSC is a non-profit organization responsible for supporting the efforts of First Nations in Quebec to plan and provide culturally appropriate and preventive health and social services programs. Its mission is to accompany Quebec First Nations in achieving their health, wellness, culture and self-determination goals. Its primary areas of action relate to governance, early childhood, health, social services, social development, research, and information resources.

3. Unique situation of the First Nations

The *Constitution Act, 1867* gives the federal Parliament exclusive jurisdiction over “Indians and lands reserved for the Indians.”² The federal government is involved in all spheres of activity in First Nations communities, including funding and support for basic health and social services, in collaboration with the provinces and territories. Provincial laws of general application (educational childcare services, health and social services, building safety and sanitation, etc.) are valid within communities provided that they do not replace or contradict an existing federal law or regulation and so long as the First Nations governments have not already adopted a regulation or law in this area.³

¹ In this brief, the term “community” is used instead of “reserve” or “Indian settlement.”

² *Constitution Act, 1867*, R.S.C. 1985, Schedule II, No. 5, s. 91(24).

³ Sébastien Grammond, *Aménager la coexistence. Les peuples autochtones et le droit canadien* (Brussels: Bruylant & Yvon Blais, 2003) at 361–377. See also s. 88 of the *Indian Act*, R.S.C. (1985), c. 1985, c. 1-5.



To exercise the powers conferred on them by the *Indian Act*,⁴ local governments have taken charge of a number of services in a variety of areas, including childcare, health, social services, public infrastructure, housing, public safety, and education.

To ensure the sustainability of the federal commitment to services for Indigenous children, the Government of Canada has committed to introduce federal legislation on First Nations, Inuit and Métis early childhood education and childcare. It also plans discussions on this subject with provincial, territorial and Indigenous stakeholders and partners, with a view to furthering the goals of Indigenous self-determination and Indigenous oversight and governance of early education and care for Indigenous children.

4. Delegation agreement between the FNQLHSSC and the Government of Quebec

In 2002, the AFNQL tasked the FNQLHSSC with developing a draft delegation agreement with the Ministère de la Famille concerning certain powers over childcare services.⁵ In March 2015, after several years of negotiations, the Ministère de la Famille and the FNQLHSSC signed an agreement delegating certain powers respecting educational childcare services.⁶ The Agreement allows the FNQLHSSC to coordinate and support the development of participating childcare services by issuing, renewing, suspending and revoking licences for childcare centres and day care centres in communities.⁷ The FNQLHSSC also works alongside communities to ensure the quality and the efficient management of the services being offered. It also provides additional assistance and technical support adapted to the realities of communities and childcare services.⁸

The FNQLHSSC plays an advisory role with the Ministère de la Famille. The Minister undertakes to inform it of [TRANSLATION] “any measure or any amendment to laws, regulations or administrative standards that may have significant impact on childcare centres and day care centres in Indigenous communities adhering to the Agreement.”⁹ The FNQLHSSC, in turn, submits its recommendations [TRANSLATION] “on all aspects related to early childhood development in Indigenous communities”¹⁰ and [TRANSLATION] “on applying and/or amending the laws, regulations and administrative standards governing early childhood development”.¹¹

The Agreement is an instrument that can accelerate the update and development of the proper infrastructure for early childhood education services in First Nations communities. It also helps create and maintain conditions that provide a growing number of children with access to learning environments

⁴ R.S.C. (1985), c. 1985, c. 1-5.

⁵ At the time, the *Act respecting childcare centres and childcare services*, RSQ, c C-8.2 was in force. It has since been replaced by the ECA.

⁶ *Entente relativement à la délégation de l'exercice de certains pouvoirs en matière de services de garde éducatifs à l'enfance et autres sujets* (Agreement regarding the delegation of the exercise of certain powers respecting educational childcare services and other matters), between the Government of Quebec, represented by the Minister of the Family and the Minister Responsible for Indigenous Affairs, and the First Nations of Quebec and Labrador Health and Social Services Commission, March 2015 (the Agreement). The Agreement is based on the power of delegation in s. 121 of the ECA.

⁷ The Agreement covers Indigenous early childcare centres and day care centres in Quebec, with the exception of those of the Atikamekw, Cree, Inuit, Mohawk and Wendat nations.

⁸ *Agreement* at para. 5.1.

⁹ *Ibid.* at para. 4.6.

¹⁰ *Ibid.* at subpara. 5.1.8.

¹¹ *Ibid.* at subpara. 5.1.9.



that are conducive to their development, which in turn helps partially offset the adverse effects of difficult living conditions due to socioeconomic circumstances.

In this brief, the AFNQL and the FNQLHSSC speak on behalf of the communities adhering to the Agreement. A list of these communities is presented in Schedule 1.

5. Considerations related to the Bill

a. Assessment of needs and priorities for development and the allocation of spaces

Regarding the assessment of childcare service needs and development priorities in Indigenous communities, the Bill provides that “the Minister consults the community concerned only.”¹² This provision does not take into account the situation that has prevailed for several years, whereby the majority of Indigenous communities are represented by Indigenous organizations which, like the FNQLHSSC, have all entered into a delegation agreement with the Minister. Indeed, the delegation agreement between the Minister and the FNQLHSSC states that the Minister [TRANSLATION] “undertakes to consult the FNQLHSSC on needs and priorities with respect to the allocation of subsidized spaces in Indigenous communities adhering to the Agreement.”¹³ In the interests of clarity and consistency, we ask that the provisions of the *Educational Childcare Act* (ECA) and those amended by the Bill that contain the statement “the Minister consults the community only”¹⁴ be amended to add the following underlined passage: “community concerned or, if appropriate, the Indigenous organization representing the community in such matters under a delegation agreement with the Minister.”

Moreover, the amendments in the Bill to section 93 of the current *Act* do not set out any terms for the Ministère de la Famille’s consultation with the community concerned in the space allocation process,¹⁵ as the current *Act* does. It is essential, however, to preserve this obligation of consultation between the Minister and the community or, if appropriate, the Indigenous organization representing the community in such matters under a delegation agreement with the Minister and in accordance with the Consultation Protocol of the First Nations,¹⁶ in accordance with the provisions of the agreement between the Minister and the FNQLHSSC.

These amendments in the Bill will ensure that, in the coming years, the ECA will clearly recognize the role of Indigenous organizations that are signatories to delegation agreements under section 121. This will enable a more complete implementation of these agreements, until their potential replacement by agreements based on section 121.1 in the Bill. (*See Recommendation 1*)

¹² Bill No. 1, s. 11 amending s. 11.2, see final paragraph.

¹³ *Agreement*, article 4.7.

¹⁴ ECA, s. 11.1, final paragraph; Bill No. 1, s. 11 amending s. 11.2, final paragraph.

¹⁵ See Bill No. 1, s. 37 replacing s. 93.

¹⁶ This addition could be made in a final paragraph at the end of s. 93.0.1, in s. 37 of Bill No. 1.



b. Process for consultation with First Nations

The Bill makes no provisions regarding the process for the Ministère de la Famille's consultation with First Nations communities or organizations, who consequently find themselves dealing with a consultation framework that is unilaterally imposed by the Ministère de la Famille. This denies the wish of First Nations to debate among themselves, through the representatives they have chosen, so that they may arrive at a consensus on a fair solution. Such a consensus would be established on the basis of the needs and priorities of all the communities, whether or not they are parties to delegation agreements, and their representatives would subsequently submit their decision to the Minister for discussion and approval.¹⁷ (See *Recommendation 2*)

c. Single window

The current law exempts First Nations from the obligation to register for the single window. We applaud this openness. However, some of the amendments in the Bill may cause confusion and be interpreted as subjecting First Nations to the obligation. We recommend that the Bill be amended accordingly. (See *Recommendation 3*)

d. Educational childcare service supply advisory committee

During discussions, Ministère de la Famille representatives have on occasion invoked the contents of Chapter VIII.2 of the *Act* on the role of the advisory committee as an obstacle to requests by the FNQLHSSC.¹⁸ We recommend that the Bill be amended to prevent such occurrences. (See *Recommendation 4*)

e. Agreements establishing a special regime and representative organizations

In section 66, the Bill introduces a new provision that is of great interest to First Nations. If enacted, section 121.1 will establish a new framework allowing First Nations to negotiate various special agreements with the government. These agreements will make it possible to establish a more autonomous special regime that takes the realities of Indigenous life into account. It is important to note that, at the end of the second paragraph of section 121.1, the notion of “any other Indigenous group” as a representative body in the absence of band councils lacks precision. Moreover, the term “Indigenous organization” is absent, even though it better reflects the reality of the AFNQL and the FNQLHSSC,

¹⁷ The Minister's process for consultation with Indigenous communities and organizations must take into account the consultation processes established by First Nations. It may draw inspiration from the protocol for consultations of the First Nations of Quebec and Labrador: Assembly of First Nations of Quebec and Labrador, *Consultations Protocol of First Nations of Quebec and Labrador* (Wendake, Que.: AFNQL, 2005) online: <https://fnqlsdi.ca/wp-content/uploads/2013/05/protocole_consultation_2005_en.pdf> (consulted November 18, 2021).

¹⁸ For example, holders of delegation agreements with the Ministère de la Famille made a recommendation to the Ministère de la Famille to set up an Indigenous consultation committee representing the First Nations and the Inuit of the territory to present the need regarding the development of Indigenous spaces. On the basis of a legal opinion from the Ministère de la Famille, the request to establish a consultation committee in a manner other than under the terms provided in the *Act* was refused. The Ministère de la Famille unilaterally designated the members to sit on the Indigenous consultation committee, but the process was never completed. As a result, requests for proposals have been delayed by several years.



since the latter is currently a mandatory for 21 communities under the delegation agreement it has signed. The notion of “Indigenous group” should be replaced by “Indigenous organization recognized by Indigenous governing bodies”¹⁹ to reflect reality and ensure the accountability of these organizations to the First Nations political leaders. (See *Recommendation 5*)

f. Amendments difficult to reconcile with First Nations realities and cultures

We have drawn up a list of certain amendments that have the potential to cause undesired effects on our populations due to their cultural and socioeconomic situations.

Among such amendments is the one **prohibiting permit holders from providing childcare to school-age children**.²⁰ This prohibition could undermine initiatives aiming to ensure a continuum of services between childcare centres and school. Learning challenges are common in communities. Time shared between a childcare centre and school not only lets children pursue their overall development with support from qualified educators, it also facilitates their transition to school, while also respecting a holistic approach to child development that is specific to First Nations. The lack of infrastructure in communities also makes the application of this new rule more complex. (See *Recommendation 6*)

The prohibition against childcare from non-recognized home providers²¹ also raises concerns. The organization of childcare in households is culturally very significant. It is imperative that the decision to oversee home childcare in communities be made jointly with band councils or the organizations they designate. (See *Recommendation 7*)

Last, we applaud the government’s aim to ensure that the rights of underprivileged children are respected by requiring that these children be given **priority in admission policies**.²² However, it should be noted that a significant number of children admitted to our services live in precarious socioeconomic situations simply because of their place of residence. To ensure a response adapted to First Nations needs and realities, admission policies must be established by service providers according to the needs identified by the community or the organization it designates. Deprivation assessed on the basis of parameters that reflect the situation of the general population is not necessarily the most important criterion to be given priority. Other elements, such as the placement of children in foster families, should be sufficient to trigger priority admission. (See *Recommendation 8*)

If enacted, section 121.1 will open the way to agreements adapting the standards set out in the *Act* and its regulations. It is nevertheless important to consider the elements we are bringing to light during the Bill’s enactment process, because they will eliminate some of the restrictions the Bill imposes that will affect First Nations or communities as they wait for agreements to be reached under 121.1.

¹⁹ An Indigenous governing body can be defined as follows: a council, government or other entity authorized to act on behalf of a community, a group of communities, or an Indigenous nation holding rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.

²⁰ Bill No. 1, s. 2 amending s. 2 of the *Act* and introducing s. 2.2. to the *Act*. See also Bill No. 1, ss. 7 and 9.

²¹ Bill No. 1, s. 5 replacing s. 6.

²² Bill No. 1, s. 30 proposing the addition of s. 59.7 to the *Act*.



6. Recommendations

Listed below are the recommendations discussed in this brief regarding the amendments proposed by the Bill.

1. That the Bill be amended so that it provides that, for the evaluation of the needs and of the priorities for development and the allocation of spaces in an Indigenous community, the Minister consults the community concerned only or, if appropriate, the Indigenous organization that represents it in such matters under a delegation agreement with the Minister, according to a consultations protocol adopted by all the nations.
2. That the Bill state that, when the Minister consults a community or, if appropriate, the Indigenous organization representing it, the terms of such consultation must first be determined jointly with the communities and Indigenous organizations concerned. The Minister must also provide for a sufficient time period during which the consultation will take place.
3. That section 30 of the Bill be amended by adding, to proposed section 59.3, the following (underlined): “Despite section 59.2 and the second paragraph of section 2, childcare providers...”.
4. That a reference be added to section 103.5, as replaced in section 45 of the Bill, stating that chapter VIII.2 does not apply to Indigenous communities and that any opinion rendered by an advisory committee under section 103.5 will have no effect on an Indigenous community.
5. That the new section 121.1 added by section 66 of the Bill be amended by replacing “by any other Indigenous group” by “by any Indigenous organization recognized by Indigenous governing bodies” at the end of paragraph 2.
6. That the Bill allow service providers located in Indigenous communities to provide childcare to school-age children.
7. With respect to the oversight of home childcare providers, that the Bill provide for an obligation on the part of the Minister to consult communities or, if appropriate, the Indigenous organization that represents it in such matters under a delegation agreement with the Minister.
8. That admission policies and the criteria to be given priority for access to services be entirely established by the service providers, in accordance with the needs identified by the communities or the organizations they have designated.



We would also like to recall certain recommendations that the First Nations hold dear. These recommendations were made in the past but have still not received the attention they deserve.²³

9. To ensure cultural continuity, that First Nations children access educational childcare services in their home community or in another community, notwithstanding their place of residence in a neighbouring province.
10. That the *Act to facilitate the establishment of a pension plan for employees working in childcare services* (CQLR, c. E-12.011) be amended to allow childcare centres in communities to have a choice between the company Solutions Mieux-être LifeWorks and the Native Benefits Plan for their retirement, while continuing to receive the grant from the Ministère de la Famille.
11. That the community be able to choose the governance model for their educational childcare services (cooperation of childcare service and band council).
12. That the ECA recognize the model First Nations curriculum so that it may be implemented in First Nations childcare services.

²³ For the justifications for these recommendations and their context, please see the brief filed by our organizations with the Ministère de la Famille in June 2021: First Nations of Quebec and Labrador Health and Social Services Commission (FNQLHSSC), *Brief – A Necessary Change: Adapting Educational Services to our Communities' Cultures and Realities* (Wendake, Que.: FNQLHSSC, 2021) online: <https://files.cssspnql.com/s/J6GkhYtKV5rvBGm> (last visited November 27, 2021).



Appendix 1 – Table of communities adhering to the delegation agreement between the FNQLHSSC and the Government of Quebec

Nation	Community/region	Name of body
Abenaki	Odanak	CPE Aw8ssisak
Abenaki	Wôlinak	Garderie Asban
Algonquin	Kebaowek (Eagle Village)	Kebaowek Childcare Centre
Algonquin	Lac-Simon	CPE Takinagan
Algonquin	Winneway (Long Point)	Amosesag Childcare Center
Algonquin	Kitcisakik	CPE Misipison
Algonquin	Kitigan Zibi	Wazoson Childcare Centre
Algonquin	Pikogan	CPE Mokaam
Algonquin	Timiskaming	Pidaban
Innu	Mingan (Ekuanitshit)	CPE Mikupishakan
Innu	Mashteuiatsh	CPE Auetissatsh
Innu	Matimekosh (Matimekush)	CPE Uatikuss
Innu	Natashquan (Nutashquan)	CPE Uapukun
Innu	Pakua Shipu	Garderie chez Nukum
Innu	Pessamit	CPE Nuitsheuakan
Innu	Uashat mak Mani-Utenam	CPE Auassis
		CPE Metuetau
Innu	Unamen Shipu	CPE Nussum
Mi'gmaq	Gesgapegiag	Gesgapegiag Early Childhood Center
Mi'gmaq	Listuguj	Mawo'ltijig Mijjuaji'g Child Care Centre
Naskapi	Kawawachikamach	CPE Sachidun