

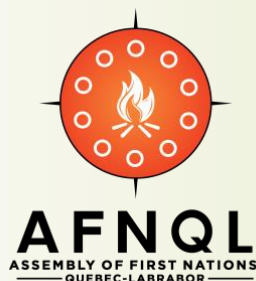


Bill C-35: An Act respecting early learning and child care in Canada

An Act That Must Respect OUR CULTURES AND FORMS OF GOVERNANCE

Brief submitted jointly by the AFNQL and the FNQLHSSC

March 17, 2023



FIRST NATIONS OF QUEBEC
AND LABRADOR HEALTH
AND SOCIAL SERVICES
COMMISSION



Credits

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Coordinator

Leila Ben Messaoud, Legal Advisor, FNQLHSSC

Principal drafters

Leila Ben Messaoud, Legal Advisor, FNQLHSSC

Patrice Lacasse, Early Childhood Services Manager, FNQLHSSC

Maude Ostiguy-Lauzon, Early Childhood Sector Team Leader, FNQLHSSC

Collaborators

Michel Deschênes, Policy Analyst-Advisor, FNQLHSSC

Joannie Gray Roussel, Research and Evaluation Support Agent, FNQLHSSC

Marjolaine Sioui, Executive Director, FNQLHSSC

Translator

EVOQ Communications

Graphic design and page layout

Mireille Gagnon, Graphics Technician, FNQLHSSC

Mélissa Picard-Arsenault, Administrative Assistant, FNQLHSSC

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All enquiries should be addressed to the FNQLHSSC:

First Nations of Quebec and Labrador Health and Social Services Commission

250 Place Chef-Michel-Laveau, Suite 102, Wendake, QC G0A 4V0

info@cssspnql.com

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Introduction

On December 8, 2022, Karina Gould, the Minister of Families, Children and Social Development, introduced Bill C-35, titled *An Act respecting early learning and child care in Canada*, in the House of Commons.

Bill C-35 builds on an engagement process undertaken by Employment and Social Development Canada (ESDC) in spring 2022 regarding the development of a Canada-wide early learning and child care (ELCC) system. At the time, the First Nations of Quebec and Labrador Health and Social Services Commission (FNQLHSSC) submitted a working document to ESDC for consideration during the ELCC bill drafting process.

We request that the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities also consider the recommendations made in this brief during its study of Bill C-35, so that the bill can best address the unique needs and realities of First Nations in Quebec.

1. About the Organizations

1.1 Assembly of First Nations Quebec-Labrador (AFNQL)

Created in 1985, the AFNQL is a political organization that brings together 43 Chiefs of the First Nations communities in Quebec and Labrador. It deals with numerous matters, including the defence of First Nations title, ancestral 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; all social, economic and cultural matters; and, in general, all matters relating to self-governance, international relations and national relations with the government.

1.2 First Nations of Quebec and Labrador Health and Social Services Commission (FNQLHSSC)

The FNQLHSSC is a non-profit association created by resolution of the AFNQL Chiefs in 1994. It is responsible for supporting the efforts of First Nations in Quebec to plan and offer culturally appropriate and preventive health and social services programs. The FNQLHSSC's mission is to accompany Quebec First Nations in achieving their health, wellness, culture and self-determination goals. Its principal scope of action is related to governance, early childhood, health, social services, social development, research and information resources.



2. The Unique Circumstances of First Nations

The *Constitution Act, 1867* gives Parliament exclusive jurisdiction over “Indians and lands reserved for the Indians.”¹ As a result, the federal government is involved in all aspects of First Nations communities, including basic health and social services, for which it provides funding and support in partnership with provinces and territories. Provincial laws of general application (e.g., those relating to educational child care, health and social services, and building safety and sanitation) are valid in First Nations communities so long as they do not replace or contradict an existing federal statute or regulation or a First Nation government has not already adopted a statute or regulation in this area.²

Exercising the powers granted to them by the *Indian Act*,³ local First Nations governments have assumed responsibility for services in several areas, such as early childhood (including child care), health, social services, public infrastructure, housing, public safety and education.

2.1 Access to high-quality early childhood education

In 1995, two years before Quebec launched its universal childcare system,⁴ the First Nations and Inuit Child Care Initiative⁵ was created to support the development of childcare programs in First Nations communities. In so doing, ESDC sought to provide First Nations members returning to the workforce with access to high-quality childcare services. The programs developed with the federal funding from this initiative have simple management structures and help provide young children with high-quality education in an environment where their languages and cultures are respected. The goal of these programs was and still is to give children a strong start in life while also promoting the languages and cultures of First Nations in Canada.

In 2021, children 5 years of age and under represented 5.5% of the total population of First Nations communities in Quebec.⁶ According to data from the First Nations Regional Early Childhood, Education and Employment Survey, approximately half (50.8%) of children in this age range were enrolled in childcare programs in 2014.⁷ The vast majority (88.2%) of children enrolled

¹ *Constitution Act, 1867*, R.S.C. 1985, Appendix II, No. 5, s. 91(24).

² Sébastien Grammond, *Aménager la coexistence. Les peuples autochtones et le droit canadien*, Brussels and Montreal, Bruylant and Éditions Yvon Blais, 2003, pp. 361–377.

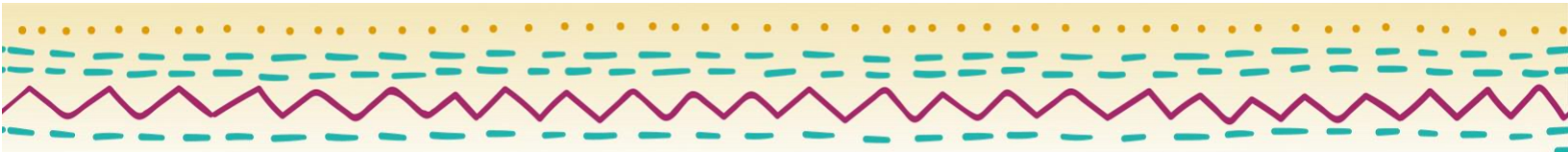
³ *Indian Act*, R.S.C. 1985, c. I-5.

⁴ Quebec’s childcare centres (CPEs) were created by *An Act respecting the Ministère de la Famille et de l’Enfance and amending the Act respecting child day care* (Bill 145) assented to on June 19, 1997 (S.Q. 1997, c. 58)

⁵ Government of Canada, *Audit of Social Infrastructure Funding – First Nations and Inuit Child Care Initiative*, online: < www.canada.ca/fr/emploi-developpement-social/ministere/rapports/verification/initiative-services-garde-premieres-nations-inuits.html > (accessed February 28, 2023).

⁶ This figure is for First Nations only, excluding the Cree Nation. Indigenous Services Canada, Indian Register, December 31, 2021.

⁷ FNQLHSSC, *First Nations Regional Early Childhood, Education and Employment Survey, 2017*, “Access to Childcare Services” chapter, p. 2, “Highlights” section, online: < <https://files.ccsspnl.com/index.php/s/1BMh6dVcklV2EZi#pdfviewer> > (accessed February 28, 2023). Hereafter called “Access to Childcare Services” in the footnotes.



in childcare or after-school programs received these services within their own communities.⁸ A significant majority of children receiving childcare services were enrolled in a childcare centre (CPE) or an affiliated daycare.⁹ That said, 1 out of 10 children was on a waiting list for a childcare centre or a daycare.¹⁰ Close to half (48.4%) of children between 0 and 5 years living in First Nations communities had a First Nations language as their primary language.¹¹ Additionally, approximately half of childcare service providers set aside time on a weekly basis for children to learn First Nations traditions.¹²

2.2 Delegation agreement with the Quebec government

In 2002, the AFNQL gave the FNQLHSSC the mandate to negotiate an agreement with the Ministère de la Famille (MFA) regarding the delegation of certain powers relating to childcare services.¹³ The MFA and the FNQLHSSC entered into an agreement in March 2015.¹⁴ The agreement allows the FNQLHSSC to coordinate and support the development of childcare services by issuing, renewing, suspending and revoking licenses for childcare centres, daycares and home childcare providers in First Nations communities.¹⁵ The FNQLHSSC also works with communities to ensure that the services are of high quality and managed effectively. It provides comprehensive guidance and technical support tailored to the specific needs of First Nations communities and childcare centres.¹⁶

The FNQLHSSC's role is that of an advisor that the Minister agrees to keep informed "on all measures and modifications made to laws, regulations and administrative rules that could have a significant impact on childcare centres and daycares in the Indigenous communities that have signed the agreement."¹⁷ In return, the FNQLHSSC submits recommendations to the Minister "on all aspects of early childhood development in Indigenous communities"¹⁸ as well as "on the application of and/or modifications to laws, regulations and administrative rules related to childcare services."¹⁹

⁸ Ibid.

⁹ Ibid

¹⁰ Ibid.

¹¹FNQLHSSC, *First Nations Regional Early Childhood, Education and Employment Survey, 2017*, "Identity, Language, and Culture" chapter, p. 3, "Highlights" section, online:

< <https://files.cssspnql.com/index.php/s/1BMh6dVckIV2EZi#pdfviewer> > (accessed March 1, 2023).

¹² Access to Childcare Services, p. 2.

¹³ At the time, the *Act respecting childcare centres and childcare services*, R.S.Q. c. C-8.2 was in force. It has since been replaced by the *Educational Childcare Act*, C.Q.L.R. C. S-4.1.1.

¹⁴ The *Entente relativement à la délégation de l'exercice de certains pouvoirs en matière de services de garde éducatifs à l'enfance et autres sujets* was entered into by the Quebec government (represented by the Minister of Families and the Minister Responsible for Relations with the First Nations and the Inuit) and the FNQLHSSC in March 2015. The agreement was based on the power of delegation set out in section 121 of the *Educational Childcare Act*. Hereafter called "Agreement" in the footnotes.

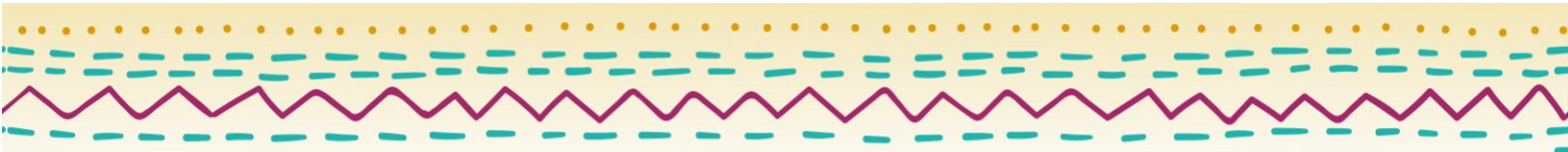
¹⁵ The agreement covers Indigenous childcare centres and daycares in Quebec, excluding those in the Atikamekw, Cree, Inuit, Mohawk and Wendat nations.

¹⁶ Agreement, para. 5.1. [translation]

¹⁷ Idem, para. 4.6. [translation]

¹⁸ Idem, sub-para. 5.1.8. [translation]

¹⁹ Idem, sub-para. 5.1.9. [translation]



This agreement to delegate powers is meant to help accelerate the development and upgrading of appropriate infrastructure for educational childcare services in First Nations communities. It also promotes the creation and maintenance of learning environments that are conducive to the healthy development of a growing number of children. That said, the agreement does not sufficiently address the needs and cultural realities of First Nations.²⁰ For example, in most communities, band councils have designated one or two weeks as “cultural weeks,” where regularly scheduled activities are interrupted or delayed to allow people to take part in cultural activities on the land. The agreement, however, does not allow childcare centres to schedule holidays (e.g., the National Day for Truth and Reconciliation) as best suits their context and the population they serve.

3. Recommendations

3.1 A distinct bill specific to Indigenous peoples

Bill C-35 sets out the Government of Canada’s vision for a Canada-wide early learning and child care system.²¹ It also affirms the government’s commitment to maintaining long-term funding relating to early learning and child care to be provided to the provinces and Indigenous peoples.²² Finally, it creates the National Advisory Council on Early Learning and Child Care.²³ By addressing all provinces and Indigenous peoples within one law, however, Bill C-35 glosses over the differences between the various needs and realities. These differences are significant — particularly with regard to access to services, geography, languages and cultures. A distinct bill, specific to Indigenous peoples, would therefore better meet Indigenous early learning and childcare goals.

Recently, the federal government has introduced and passed bills that address Indigenous peoples, specifically the *Act respecting First Nations, Inuit and Métis children, youth and families* (Bill C-92), the *United Nations Declaration on the Rights of Indigenous Peoples Act* and the *Indigenous Languages Act*. Additionally, the federal government is currently working with Indigenous partners as well as provinces and territories to develop new distinctions-based Indigenous health legislation, with a view to improving access to high-quality, culturally relevant services.²⁴

The growing need for childcare services and related issues in Indigenous communities are important and deserve more time and attention. It is essential that the way in which services are organized and funded by Indigenous governing bodies and other Indigenous organizations not be

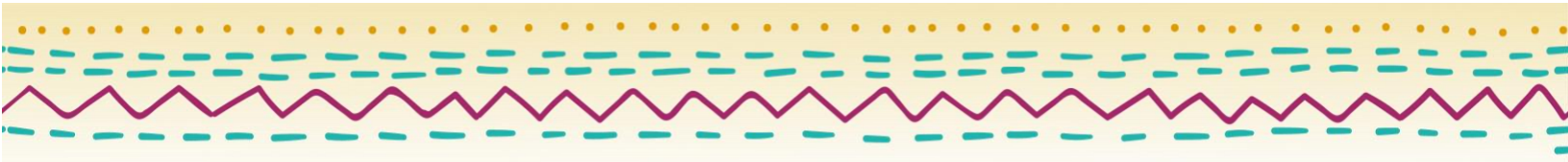
²⁰ It should be noted that section 121.1 of the *Educational Childcare Act* establishes a new framework that allows First Nations to negotiate special agreements with the Quebec government. The delegation agreement described here allows for the implementation of a specific, more autonomous system that takes Indigenous realities into consideration.

²¹ Bill C-35, Summary

²² Ibid.

²³ Ibid.

²⁴ Government of Canada, *Co-developing distinctions-based Indigenous health legislation*, online: < <https://www.sac-isc.gc.ca/eng/1611843547229/1611844047055> > (accessed March 27, 2023).



changed to conform to a framework established by provinces to respond to the realities and needs of the majority non-Indigenous population.

We recommend the development of a distinct bill on early learning and child care that is specific to First Nations, Inuit and Métis children so that the needs of Indigenous families and children can be addressed appropriately.

3.2 Recognition of First Nations' right to self-determination

Bill C-35 makes numerous references to the Indigenous Early Learning and Child Care Framework. This framework includes many cross-cutting and shared principles, one of the most important being the decision-making authority of First Nations, Inuit and Métis.²⁵ One of the stated goals of Bill C-35 is to contribute to the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP).²⁶ Bill C-35 could do this immediately by affirming First Nations' jurisdiction in the area of early learning and child care.²⁷ For example, the *Act respecting First Nations, Inuit and Métis children, youth and families* affirms First Nations' inherent right to self-government, including jurisdiction in relation to child and family services throughout First Nations territory.²⁸ We recommend, therefore, that Bill C-35 affirm Indigenous peoples' right to self-determination, including the right to control the design, delivery and administration of an early learning and childcare system for Indigenous children that reflects their unique needs, priorities and aspirations.

²⁵ “Acknowledging that First Nations, Inuit and the Métis are distinct peoples with rights to self-determination including the right to control the design, delivery and administration of an Indigenous ELCC system that reflects their unique needs, priorities and aspirations.”

²⁶ Bill C-35, s. 5.

²⁷ UNDRIP, arts. 3 and 4

²⁸ *Act respecting First Nations, Inuit and Métis children, youth and families*, s. 8.



3.3 Funding

Funding for childcare services in First Nations communities should facilitate the creation of early learning and childcare programs that not only provide children with stimulation and prepare them for school, but also immerse them in their culture and allow them to develop a strong sense of cultural identity. Early childcare services should be provided by qualified educators in a context of adequate infrastructure and resources. Funding should take into account socioeconomic factors such as poverty, employability, geographic remoteness, language (i.e., Indigenous languages, English and French) and the lack of ready access to health, social and educational services and professionals. Finally, funding should make it possible for educators to maintain and continue developing their skills, and also for new personnel to be recruited, hired and retained.

Sections 5 and 8 of Bill C-35 call for the federal government to commit to upholding long-term funding for provinces and Indigenous peoples to establish and maintain community early learning and childcare systems. This is insufficient. Like the *Act respecting First Nations, Inuit and Métis children, youth and families*,²⁹ Bill C-35 must provide for regular funding that is predictable, stable, sustainable, needs-based and consistent with the principle of substantive equality.

Additionally, the federal government must provide funding to First Nations that is separate and independent from that provided to provinces and territories.

Therefore, we recommend that Bill C-35 include a commitment by the federal government to provide for funding that is regular, predictable, stable, sustainable, needs-based and consistent with the principle of substantive equality for Indigenous peoples. Additionally, funding for First Nations should be separate and independent from that provided to provinces and territories.

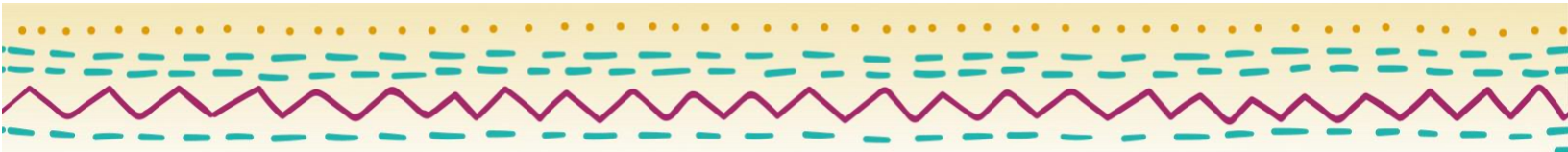
3.4 National Advisory Council on Early Learning and Child Care

We are concerned about the makeup of the National Advisory Council on Early Learning and Child Care. The role of the Council involves advising the Minister on programs, services, funding and support.³⁰ We wonder how the Council can adequately meet First Nations' goals when the Council members do not have the required knowledge of the specific realities and needs of Indigenous peoples in Canada. It is important to highlight that realities vary significantly even between regions. This is for many reasons, including differences in legislation, regulations, structures, services, geography, languages, cultures and varying degrees of interaction with provinces and territories.

We are not questioning the competence of the current members of the Council, but we would like to underscore the lack of a representative with knowledge of the distinct realities of Indigenous communities across the country. Given that the Council's advice and proposals stand to have an impact on First Nations communities in Quebec, it is essential that the Minister have access to someone with the requisite knowledge. We understand that the members of the Council are working on behalf of the Minister and the Canadian population; however, there must be

²⁹ See the preamble and subsection 20(2) of *Act respecting First Nations, Inuit and Métis children, youth and families*.

³⁰ Bill C-35, s. 14.



reciprocity — currently, under the Council’s procedures, no member is accountable to report to any Indigenous authorities or local First Nations governments.

We therefore recommend that a representative designated by an Indigenous authority recognized by First Nations political leadership be appointed to sit on the National Advisory Council on Early Learning and Child Care. Given the small size of the Council, it is also important that the Minister work with First Nations to implement a monitoring mechanism to ensure that the Council’s meetings and activities reflect the unique and specific needs of all First Nations.

Conclusion

We have written this brief with the principles of the *Declaration of the Rights of First Nations Children*³¹ in mind. In particular, we affirm that First Nations children have the right to high-quality, adequately funded and Nation- and community-controlled services and institutions for health care, education, recreation, and social and other services. First Nations are best placed to develop culturally relevant services for their populations. As stated in the *Declaration of the Rights of First Nations Children*³² and evidenced by traditions, caring for children is a central priority for First Nations. The goal of Bill C-35 is laudable, but it does not go far enough with regard to First Nations. In order to make tangible progress toward implementing UNDRIP, Bill C-35 must affirm First Nations’ exclusive jurisdiction over the provision of childcare services.

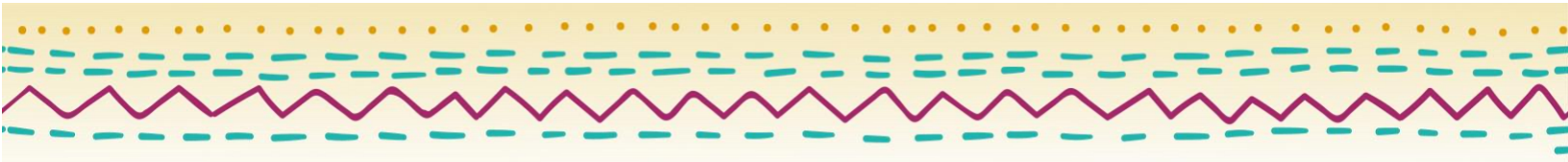
Bill C-35 must also establish separate funding for First Nations. This funding should be regular, predictable, stable, sustainable, needs-based and consistent with the principle of substantive equality for Indigenous peoples, so that First Nations communities can deliver childcare services that not only provide children with stimulation and prepare them for school, but also immerse them in their culture, thus allowing them to develop a strong sense of cultural identity.

Finally, in order to reflect the realities of First Nations in Canada and specifically Quebec, a bill on early learning and childcare services that is distinct from that of provinces and territories should be introduced in Parliament.

While we support the role of the National Advisory Council on Early Learning and Child Care, we note the lack of representation of Quebec First Nations in the Council’s membership. A representative should be designated by an Indigenous authority recognized by First Nations political leadership to sit on the National Advisory Council on Early Learning and Child Care.

³¹ Adopted by the Assembly of First Nations Quebec-Labrador (AFNQL), online: < <https://files.cssspnql.com/s/7zWkXqMAx6Q39Lo> > (accessed February 28, 2023).

³² Ibid.

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1. We recommend that a distinct bill on early learning and child care be developed that is specific to First Nations, Inuit and Métis.
 2. We recommend that Bill C-35 affirm Indigenous peoples' right to self-determination, including the right to control the design, delivery and administration of an early learning and childcare system for Indigenous children that reflects their unique needs, priorities and aspirations.
 3. We recommend that Bill C-35 include a commitment by the federal government to provide for funding that is regular, predictable, stable, sustainable, needs-based and consistent with the principle of substantive equality for Indigenous peoples.
 4. We recommend that Bill C-35 include a commitment by the federal government to provide funding to First Nations that is separate and independent from that provided to provinces and territories.
 5. We recommend that a representative be designated by an Indigenous authority recognized by First Nations political leadership to sit on the National Advisory Council on Early Learning and Child Care.