

## MEMORANDUM

**TO:** Members of the Standing Committee on Social Affairs, Science and Technology, Senate of Canada

**FROM:** Peter Jon Mitchell, Family Program Director, Cardus  
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**DATE:** October 25, 2023

**SUBJECT: SOCI Committee’s Study of Bill C-35: An Act respecting early learning and child care in Canada**

### ISSUE

The Senate of Canada is studying Bill C-35: *An Act respecting early learning and child care in Canada*. The bill articulates the Government of Canada’s vision of a universal, Canada-wide child care program. It also articulates the principles that guide how the government will direct the funds. The bill establishes in law the National Advisory Council on Early Learning and Child Care and sets out its terms of membership and remuneration. Finally, the bill commits the Minister to issue an annual report on the implementation progress of the Canada-wide child care program.

### POSITION AND RECOMMENDATIONS

Cardus maintains that the Canada-wide early learning and child care program is “unfair because it covers only the federal government’s preferred form of care, not the many forms of care families actually use. Funding parents directly would be fairer and give families more flexibility to meet their needs.”<sup>1</sup> Bill C-35 is redundant, unnecessary, and enshrines an inequitable program. However, if Senators support Bill C-35 to the next legislative stage, Cardus recommends the following amendments to begin the process of making the legislation more equitable. These amendments would:

- Recognize the primacy of parents in their children’s development;
- Strengthen the commitment to flexible care options by supporting all forms of care, and avoiding preferential treatment of public and not for profit providers; and
- Strengthen the federal reporting requirements within the bill.

### BACKGROUND

The Canada-wide program is fundamentally flawed. Bill C-35 discriminates against caregivers and legislates inequitable treatment of families based on the type of care they use. Further, it is anticipated that the program will not create enough spaces to meet demand, and the costs of creating a Canada-wide program will come at the expense of quality care for children.

**Discriminates against caregivers:** Bill C-35 outlines a clear preference for federal investment into “public and not for profit child care providers.”<sup>2</sup> This discriminates against licensed providers who operate their child

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<sup>1</sup> Cardus, “STATEMENT Regarding Bill C-35: An Act Respecting Early Learning and Child Care in Canada,” December 8, 2022, <https://www.cardus.ca/news/news-releases/statement-regarding-bill-c-35-an-act-respecting-early-learning-and-child-care-in-canada/>.

<sup>2</sup> Bill C-35, *An Act Respecting Early Learning and Child Care in Canada*, 1st Sess, 44th Parl, 2022, s 7(1)(a), <https://www.parl.ca/DocumentViewer/en/44-1/bill/C-35/third-reading>.

care services as a business. It also discriminates against parents who do not use licensed care, including those who use in-home care, unlicensed home care, or those who choose to have relatives care for their children. Further, the program discriminates against families of the 40 percent of children under six who are cared for by a parent.<sup>3</sup> Instead of adapting policies to the existing preferences of families, the approach enshrined in Bill C-35 builds a program and expects parents to adapt to it. Child care should not be envisioned as a system or program, but should instead be understood as the care of a child, no matter who provides that care.

**Legislates inequality:** Bill C-35 legislates inequitable treatment of families based on the type of care they use. A minority of families use the type of child care funded by the agreements. This is particularly discriminatory for families at a lower socioeconomic level. Researchers note that:

A family's ability to access regulated child care and other services is strongly related to their socioeconomic status. Parents with lower socioeconomic status (e.g. with lower income and lower education levels) are less likely to enroll their children in regulated child care compared to parents with higher socioeconomic status. Even in Québec and the relatively generous welfare states of Western Europe, the benefits of government spending on social policy disproportionately accrue to the middle- and upper-class relative to other social groups. Sociologists refer to this phenomenon as the 'Matthew Effect'. This can lead to families with lower socioeconomic status receiving the least support, while families who are already more advantaged receive more support.<sup>4</sup>

**Anticipated shortage of spaces:** Even for those families who wish to access the subsidized care, there will not be enough spaces to meet demand. Warnings about future shortages have already been issued in Ontario where the Financial Accountability Office of Ontario (FAO) states:

However, even if the Province is able to create and enrol 375,111 \$10-a-day licensed child care spaces by 2026, the FAO estimates that there may still be significant excess demand for the \$10-a-day program. The FAO estimates that by 2026, Ontario families of approximately 602,257 children under age six will wish to have access to \$10-a-day child care. With only 375,111 \$10-a-day licensed child care spaces planned, the families of 227,146 children under age six (25 percent of the projected under age six population of 919,866 children in 2026) would be left wanting but unable to access \$10-a-day child care.<sup>5</sup>

**Costs will balloon at the expense of quality:** Cardus published a cost estimate of what a national child-care system would likely cost in the spring of 2021 before agreement details were released to the public. Our modelling considered several variables including Quebec's staff-to-child ratios (which are the highest in the country, meaning lower levels of personalized care for children), capital spending for space creation, and growth in Early Childhood Educator wages. We estimated the cost of maintaining the national daycare program for provinces (excluding territories) would far exceed the federal commitment of \$30 billion over five years and \$9.2 billion after year five.<sup>6</sup> The Office of the Parliamentary Budget Officer's estimate

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<sup>3</sup> P. J. Mitchell and A. Mrozek, "Child Care by the Numbers – Canada," Cardus, February 2021, <https://www.cardus.ca/research/family/reports/child-care-by-the-numbers-canada/>.

<sup>4</sup> D. S. Lero et al., "Non-standard Work and Child Care in Canada: A Challenge for Parents, Policy Makers, and Child Care Provision," Childcare Resource and Research Unit and University of Guelph, December 2019, 26, [https://childcarecanada.org/sites/default/files/Non%20standard%20work%20and%20child%20care%20in%20Canada\\_Final%5BPDF\\_pp\\_227%5D\\_0.pdf](https://childcarecanada.org/sites/default/files/Non%20standard%20work%20and%20child%20care%20in%20Canada_Final%5BPDF_pp_227%5D_0.pdf).

<sup>5</sup> M. Gordon and B. Segel-Brown, "Ministry of Education: Spending Plan Review," Financial Accountability Office of Ontario, November 2022, 3, <https://www.fao-on.org/en/Blog/Publications/2022-education-estimates>.

<sup>6</sup> A. Mrozek, P. J. Mitchell, and B. Dijkema, "Look Before You Leap: The Real Costs and Complexities of National Daycare," Cardus, May 2021, <https://www.cardus.ca/research/family/reports/look-before-you-leap/>.

published in February 2022 also concluded that the federal government underestimated the cost of the program.<sup>7</sup>

## DETAILS FOR AMENDMENTS

As noted in the preamble to Bill C-35, the Multilateral Early Learning and Child Care Framework and the Indigenous Early Learning and Child Care Framework already articulate the Government of Canada's principles for child care policy. These frameworks were established in 2017 and 2018.<sup>8</sup> Further, funding agreements with the provinces and territories preceded this bill by at least five years, with the first of these agreements being signed in 2017.<sup>9</sup> This demonstrates that the government had a pre-existing legal authority to set out a vision and enter into funding agreements with provinces and territories before the introduction of Bill C-35. Even the purported establishment of a National Advisory Council is a misnomer, as the council was appointed in November 2022, prior to the introduction of this bill.<sup>10</sup> In short, Bill C-35 is unnecessary.

Cardus maintains that the best solution to the high cost of child care is to fund families directly. As we note in our report "Look Before You Leap: The Real Costs and Complexities of National Daycare":

If the federal money alone were allocated to children rather than to spaces, the per-child amount would be **\$3,869** annually. If the federal and provincial monies allocated in our low estimate went to children under age six, each could receive **\$5,626** annually. If the monies allocated in our high estimate went to children under age six, each could receive **\$13,667** annually. If the payments were allocated via a means-tested vehicle like the Canada Child Benefit, those with the lowest incomes would stand to receive *significant* benefit.<sup>11</sup>

**We recognize there are challenges to making fundamental changes to Bill C-35, especially considering the existing federal-provincial agreements expire in 2026. If Senators support Bill C-35 to the next legislative stage, the bill should be amended to recognize the primacy of parents in their children's development in section 5, strengthen the commitment to flexible care options and the families who use them in section 7(1)(a), and strengthen the reporting requirements in section 16.**

## AMENDMENT TO SECTION 5 (PURPOSE)

Parents are responsible for their children's development and are best positioned to determine the kind of care their children need, whether that is through a paid caregiver or at home. Section 5(e) of the bill references Article 18(3) of the Convention on the Rights of the Child which calls for "all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible." The same article of the convention recognizes the primary role of parents in the lives of

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<sup>7</sup> K. Michalyshyn and C. Nicol, "Cost Estimate of the Federal National Child Care Plan," Office of the Parliamentary Budget Officer, February 2022, <https://www.pbo-dpb.ca/en/publications/RP-2122-028-S--cost-estimate-federal-national-child-care-plan--estimation-couts-plan-national-garde-enfants>.

<sup>8</sup> Government of Canada, "Multilateral Early Learning and Child Care Framework," 2017, [https://www.canada.ca/content/dam/canada/employment-social-development/programs/early-learning-child-care/reports/2017-multilateral-framework/MEL\\_and\\_CCF-EN.pdf](https://www.canada.ca/content/dam/canada/employment-social-development/programs/early-learning-child-care/reports/2017-multilateral-framework/MEL_and_CCF-EN.pdf); Government of Canada, "Indigenous Early Learning and Child Care Framework," 2018, [https://www.canada.ca/content/dam/canada/employment-social-development/programs/indigenous-early-learning/1352-IELCC\\_Report-EN.pdf](https://www.canada.ca/content/dam/canada/employment-social-development/programs/indigenous-early-learning/1352-IELCC_Report-EN.pdf).

<sup>9</sup> Government of Canada, "Early Learning and Child Care Agreements," October 2022, <https://www.canada.ca/en/early-learning-child-care-agreement/agreements-provinces-territories.html>.

<sup>10</sup> Government of Canada, "Government of Canada Announces Members of New National Advisory Council on Early Learning and Child Care," News Release, November 2022, <https://www.canada.ca/en/employment-social-development/news/2022/11/government-of-canada-announces-members-of-new-national-advisory-council-on-early-learning-and-child-care.html>.

<sup>11</sup> Mrozek, Mitchell, and Dijkema, "Look Before You Leap," 3.

children. Article 18(1) reads in part, “Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.”<sup>12</sup>

Therefore, we recommend the following amendment (underlined text to be added):

Section 5(e) further the progressive realization of the right to benefit from child care services and the recognition that parents and guardians, as those who have the primary responsibility for the upbringing and development of the child, are best positioned to make child care decisions for their children as recognized in the Convention on the Rights of the Child

#### **AMENDMENT TO SECTION 7 (GUIDING PRINCIPLES)**

Section 6(b) states that “flexible early learning and child care programs and services that respond to the varying needs of children and families foster children’s development and are an important support for families and communities.” Yet section 7(1)(a) hinders the provision of flexible early learning and child care by prioritizing public and not for profit providers to the exclusion of private licensed care. All public, not for profit and private licensed providers are bound by the same provincial licensing standards, yet Bill C-35 discriminates against private licensed providers and the families that rely on them.

To remedy this, we recommend the following amendment (underlined text to be removed):

Section 7(1)(a) support the provision of, and facilitate equitable access to, high-quality early learning and child care programs and services — in particular those that are provided by public and not for profit child care providers — that meet standards set by provincial governments or Indigenous governing bodies, that are reflective of other evidence-based best practices in high-quality service provision and that respond to the varying needs of children and families

#### **AMENDMENT TO SECTION 16 (ANNUAL REPORT)**

Bill C-35 should hold the government accountable for the stated objectives outlined in any provincial-federal child care agreement, and make it binding upon the Minister to publicly report with more specificity for this nationwide program.

Presently, inconsistent reporting requirements make it challenging to assess the progress of the program at a national level. Language in the agreements varies, with some agreements stating that provinces or territories “may include” certain results or “investigate the production of these indicators over the course of the agreement.” Instead of these soft reporting requirements, the proposed amendment would ensure that all data provided to the federal government are publicized. For example, most agreements include provisions related to the number of flexible spaces (e.g., spaces with irregular hours) and the geographic breakdown of these spaces. The majority of agreements also call for reporting on wait lists, income thresholds of parents, and staff-to-child ratios.<sup>13</sup> This data must be reported in detail to demonstrate if the program meets parental demand, serves the diverse needs of Canadian families, and is being provided at a high quality.

To ensure transparency, Bill C-35 should be strengthened to legislatively require regular publication of all

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<sup>12</sup> Office of the United Nations High Commissioner for Human Rights, “Convention on the Rights of the Child,” November 1989, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

<sup>13</sup> Government of Canada, “Early Learning and Child Care Agreements.” Note: While the language varies slightly between agreements, the majority of 2021–2026 ELCC Agreements contain these provisions under Section 5.

results collected under the federal-provincial agreements through the following amendment (underlined text to be added):

Section 16 (d) detailed expenditures and specific reporting results as per agreements with the provinces, territories, and Indigenous peoples on an annual basis, including audited financial statements from the provinces, territories, and Indigenous peoples related to federal funding provided for the Canada-wide program.