

**Quebec Community Groups Network**  
**Brief**  
**Senate Standing Committee on Social Affairs, Science and Technology**  
**Study on Bill C-35, *An Act respecting early learning and child care in Canada***  
*October 2023*

*Acknowledgement*

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*Introduction*

C-35<sup>1</sup> will establish a national vision for early learning and child care in Canada. Early learning and child care fall within the legislative authority of the provinces, like health. Like health, C-35 seeks to create a Canada-wide system to ensure access to “affordable, inclusive and high quality early learning and child care programs and services regardless of where they live.”<sup>2</sup> And like the *Canada Health Act*<sup>3</sup>, C-35 “set[s] out the principles” that will guide federal transfers to the provinces and territories to meet national goals.<sup>4</sup>

Indeed, federal investments and the intergovernmental agreements that will affect the national system “must be guided” by these principles, including the aim of providing support to the provision of “services that are inclusive of children... from English and French linguistic minority communities”.<sup>5</sup> Moreover,

Federal investments in respect of early learning and child care programs and services subject to an agreement entered into with a province must be guided by the commitments set out in the Official Languages Act, in addition to the principles set out in subsection (1).<sup>6</sup>

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<sup>1</sup> Bill C-35, *An Act respecting early learning and child care in Canada*, 1<sup>st</sup> Sess, 44<sup>th</sup> Parl, 2023 (as passed by the House of Commons 19 June 2023) [C-35].

<sup>2</sup> *Ibid*, s 6(a).

<sup>3</sup> *Canada Health Act*, RSC 1985, c C-6.

<sup>4</sup> C-35, *supra* note 1 at s 5(c).

<sup>5</sup> *Ibid*, s 7(1).

<sup>6</sup> *Ibid*, s 7(3).

## *Government of Canada Commitments under the Official Languages Act*

The *Official Languages Act* (OLA)<sup>7</sup> was recently modernized by C-13 *An Act for the Substantive Equality of Canada's Official Languages*<sup>8</sup>. There are four Government of Canada commitments to advance the equality and status and use of English and French laid out in Part VII of the Act:

1. The enhancement of the vitality of the English and French linguistic minority communities in Canada and fostering the full recognition and use of both English and French in Canadian society;
2. The protection and promotion of French;
3. Advancing formal, non-formal and informal opportunities for members of English and French linguistic minority communities to pursue quality learning in their own language throughout their lives, including from early childhood to post-secondary education; and,
4. The estimation of the number of children of s.23 right holders.<sup>9</sup>

These are not competing commitments, nor should one commitment be understood as invalidating another. The underlying policy scheme addressed by these commitments remains the achievement of the principle of linguistic duality within a multicultural society. Federal support for example to the English linguistic minority in Quebec does not exist in competition with the goal of protecting and promoting French. English-speaking Quebec is after all Canada's most bilingual English cohort, and there is no evidence that support to this official language minority community threatens the use of French in Quebec.

Section 41(5) of the Act also imposes a duty on federal institutions to take positive measures to meet the Government of Canada's aforementioned commitments. These positive measures must be "concrete and taken with the intention of having a beneficial effect" and consider the "specific needs" of the official language minority communities.<sup>10</sup> The Act specifies that positive measure "may support sectors that are essential to enhancing the vitality of English and French linguistic minority communities, including the culture, education — from early childhood to post-secondary education..."<sup>11</sup>.

Federal institutions must now "on the basis of analysis... take the necessary measures to promote, when negotiating agreements with the provincial and territorial governments, including funding agreements, that may contribute to the implementation of the commitments under subsections (1) to (3), the inclusion in those agreements of provisions establishing the parties' duties under the agreements respecting official languages" and "consider the

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<sup>7</sup> *Official Languages Act*, RSC 1985, c.31 (4<sup>th</sup> Supp.) [OLA].

<sup>8</sup> *An Act for the Substantive Equality of Canada's Official Languages*, SC 2023, c 15.

<sup>9</sup> OLA, *supra* note 7 ss 41(1)—(4).

<sup>10</sup> *Ibid*, s 41(6)(a).

<sup>11</sup> *Ibid*, s 41(6)(c)(v).

possibilities for avoiding, or at least mitigating, the direct negative impacts that its structuring decisions may have on the commitments”.<sup>12</sup>

Moreover, the analysis referred to in s.41(7) of the OLA, must be founded on the result of consultation with the English and French linguistic minority communities, and be based on research and evidenced-based findings and the priorities of the two official language minority communities. Finally, the federal partner is now obligated to establish evaluation and monitoring mechanisms within regarding their duties towards the English and French linguistic minority communities within intergovernmental agreements.<sup>13</sup> Failure on the part of the Government of Canada to meet these obligations risks a court ordered termination of the agreement, as we saw in the Federal Court of Appeal’s remedy in *Canada (Commissioner of Official Languages) v. Canada (Employment and Social Development)*, 2022 FCA 14<sup>14</sup>.

### *Canada, Quebec and Early Learning and Child Care*

Quebec’s early childhood education program has been praised in Canada and been globally influential, inspiring similar approaches in Japan, Sweden, Denmark, Norway and Australia.<sup>15</sup> It has been particularly impactful on increasing the participation of women in the labour force, although as we will see, not equitably so for the English-speaking minority.

The policy that is typically praised refers to the 1996 low-fee universal childcare program, which caps fees at a current daily price of \$10. These are Les Centres Petite Enfance (CPEs) which are not-for-profit or cooperative, low-fee, and directly funded by the province.<sup>16</sup>

However, these comprise only around a 1/3 of the early childcare centers in Quebec.<sup>17</sup> In practice, the system is a mix of public and private administration and profit and non-profit funding models. There are also un-regulated private profit-seeking day cares that has exploded in popularity in recent years, which now make up 39% of the system.<sup>18</sup>

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<sup>12</sup> *Ibid*, s 41(7).

<sup>13</sup> *Ibid*, s 41(10).

<sup>14</sup> *Canada (Commissioner of Official Languages) v. Canada (Employment and Social Development)*, 2022 FCA 14 at para 195.

<sup>15</sup> Molly McCluskey, “The Global Legacy of Quebec’s Subsidized Child Daycare”, *Bloomberg* (31 December 2018), online: <[bloomberg.com/news/articles/2018-12-31/affordable-daycare-and-working-moms-the-quebec-model](https://www.bloomberg.com/news/articles/2018-12-31/affordable-daycare-and-working-moms-the-quebec-model)>.

<sup>16</sup> Ministère de la Famille, “Childcare Centres” (28 April 2023), online: <[mfa.gouv.qc.ca/en/services-de-garde/parents/types/centres-petite-enfance/Pages/index.aspx](https://mfa.gouv.qc.ca/en/services-de-garde/parents/types/centres-petite-enfance/Pages/index.aspx)>.

<sup>17</sup> Ministère de la Famille, “Sommaire 2023-2024 – Ensemble du Québec” (31 August 2023), online (pdf) : <[mfa.gouv.qc.ca/fr/publication/Documents/Sommaire-Quebec-2023-08-31.pdf](https://mfa.gouv.qc.ca/fr/publication/Documents/Sommaire-Quebec-2023-08-31.pdf)>.

<sup>18</sup> Gordon Cleveland, Christa Japel & Sophie Mathieu, “What is ‘the Quebec model’ of early learning and child care?”, *Policy Options* (18 February 2021), online: <[policyoptions.irpp.org/magazines/february-2021/what-is-the-quebec-model-of-early-learning-and-child-care/](https://policyoptions.irpp.org/magazines/february-2021/what-is-the-quebec-model-of-early-learning-and-child-care/)>.

Despite the clear success of the initial CPE policy, there are challenges. The quick implementation of the policy and continued resource shortfalls has led to major wait times, which accounts for the growth of private sector alternatives. This is despite numerous studies showing both the private regulated and unregulated private day-cares to be a lesser quality than CPEs.<sup>19</sup>

Quebec is not opting into the national program envisioned by C-35. Instead, it has negotiated a separate funding agreement with Ottawa, the *2021 to 2026 Asymmetrical Agreement on the Canada-Wide Early Learning and Child Care Component*<sup>20</sup>. The estimated federal transfer to Quebec under this agreement is just under \$6 billion over five years. Quebec “intends to use a significant portion of the contributions made under this agreement to fund further improvements to its early learning and child care system” and to provide “public reports about its educational child care system”<sup>21</sup>. The Agreement’s preamble notes that “Quebec is already making significant investments in this area and will continue to offer child care services to its population, including the English-speaking community.” The preamble also recognizes that “the field of early learning and child care falls under the exclusive jurisdiction of Quebec and Canada recognizes that the allocation of its funding must comply with this exclusive jurisdiction.”

#### *English-speaking Quebec and Early Learning and Childcare*

Is Quebec providing affordable, inclusive and high-quality early learning and child care programs and services to the English-speaking community of Quebec in a substantively equal way to the Francophone majority? The provincial government and the Community Health and Social Services Network commissioned studies conducted by the Institut national de santé publique du Québec (INSQ) that suggest that more effort is needed both in terms of funding and accessibility.

In 2016, the population of English-speaking Quebec was 1.1 million people, of which there were 61,400 children under the age of 5.

Poverty remains a stubborn challenge within English-speaking Quebec. Among English-speaking couple parents, 10% were living under the Low Income Cut Off (LICO), a proportion

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<sup>19</sup> Pierre Fortin, “Twelve Flawed Statements of the Fraser Institute on Quebec’s Childcare Program” (April 2017), online (pdf):

<[childcarecanada.org/sites/default/files/12\\_Flawed\\_Statements\\_Fraser\\_Institute\\_QC\\_Childcare%5B1%5D.pdf](http://childcarecanada.org/sites/default/files/12_Flawed_Statements_Fraser_Institute_QC_Childcare%5B1%5D.pdf)>.

<sup>20</sup> *2021 to 2026 Asymmetrical Agreement on the Canada-Wide Early Learning and Child Care Component* (6 August 2021), online: <[canada.ca/en/early-learning-child-care-agreement/agreements-provinces-territories/quebec-canada-wide-2021.html](http://canada.ca/en/early-learning-child-care-agreement/agreements-provinces-territories/quebec-canada-wide-2021.html)> [*Agreement*].

<sup>21</sup> *Agreement*, *ibid* ss 4–6.

much higher than that of French-speaking couples (3.9%).<sup>22</sup> Among English-speaking lone parents with at least one child aged 0 to 5, this proportion was much higher (23.6%) than that of French-speaking lone parents. Among English-speaking parents, 8.5% were unemployed, a much higher proportion than among French-speaking couples (4.7%). In addition, among English-speaking lone parents with at least one child aged 0 to 5, 14.1% were unemployed.<sup>23</sup>

The vulnerability of English-speaking children of kindergarten age is of concern to the English-speaking Community of Quebec and was the target of an analysis of the [2017 Quebec Survey on Child Development in Kindergarten \(EQDEM\)](#)<sup>24</sup> commissioned by the Community Health and Services Network. Kindergarten students whose mother tongue is English are proportionately more likely than their French mother tongue counterparts to be vulnerable in four of the five developmental areas featured in standard provincial testing. In fact, 16% of English-speaking children are vulnerable in the “Physical health and well-being” area, compared to approximately 10% of French mother tongue children. The proportion of kindergarten students who are vulnerable in the “Social competence” area is 14% among English speakers and 10% among French speakers. For the “Language and cognitive development” area, 13% of English-speaking children are in a vulnerable situation, compared to 10% of French speaking children. Results also present a statistically significant difference between both linguistic groups for “Communication skills and general knowledge”. In this area, the proportion of vulnerable English mother tongue children is much higher than that of French mother tongue children (21% compared to 8%).<sup>25</sup>

Data from the [2017 Quebec Survey on the Preschool Pathway of Kindergarten Children \(EQPPEM\)](#)<sup>26</sup> showed that the use of regular childcare before entering kindergarten was less frequent, proportionally speaking, among children with English as their mother tongue than among those with French as their mother tongue (87.9% vs. 93.7%). Among children who attended daycare, English-speaking children were more likely to have started daycare at age 3 or older than French-speaking children (17.4% vs. 8%). English-speaking parents expressed concerns about not understanding important information (that is only available in French)

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<sup>22</sup> Low-income cut-offs refers to income thresholds, defined using 1992 expenditure data, below which economic families or persons not in economic families would likely have devoted a larger share of their after-tax income than average to the necessities of food, shelter and clothing. More specifically, the thresholds represented income levels at which these families or persons were expected to spend 20 percentage points or more of their after-tax income than average on food, shelter and clothing (Statistics Canada).

<sup>23</sup> For additional information, see sources annexed at the end of the brief.

<sup>24</sup> Institut de la statistique du Québec, *Les enfants d'expression anglaise et la vulnérabilité à la maternelle*, commissioned by the Community Health and Social Services Network (Quebec: Institut de la statistique du Québec, 2019) online: <[statistique.quebec.ca/fr/fichier/les-enfants-d'expression-anglaise-et-la-vulnerabilite-a-la-maternelle-analyse-des-donnees-de-lenquete-quebecoise-sur-le-developpement-des-enfants-a-la-maternelle-2017-2019.pdf](http://statistique.quebec.ca/fr/fichier/les-enfants-d'expression-anglaise-et-la-vulnerabilite-a-la-maternelle-analyse-des-donnees-de-lenquete-quebecoise-sur-le-developpement-des-enfants-a-la-maternelle-2017-2019.pdf)>.

<sup>25</sup> Community Health and Social Services Network (CHSSN), "A portrait of vulnerable English-speaking Communities in Quebec" (1 May 2023) at 6–7, online (pdf): <[sencanada.ca/Content/Sen/Committee/441/OLLO/briefs/2023-04-28\\_OLLO\\_SS-3\\_Brief\\_CHSSN\\_e.pdf](http://sencanada.ca/Content/Sen/Committee/441/OLLO/briefs/2023-04-28_OLLO_SS-3_Brief_CHSSN_e.pdf)>.

<sup>26</sup> Institut de la statistique du Québec, “Québec Survey on the Preschool Path of Kindergarten Students 2017 (QSPPKS)”, online: <[statistique.quebec.ca/en/document/enquete-quebecoise-sur-le-parcours-prescolaire-des-enfants-de-maternelle-2017-eqppem](http://statistique.quebec.ca/en/document/enquete-quebecoise-sur-le-parcours-prescolaire-des-enfants-de-maternelle-2017-eqppem)>.

about childcare and finding themselves in an unwelcoming environment as reasons for this gap. It is also very concerning to note that 60% of parents' cited the inability to find a child care space for their English-speaking children as affecting their ability to find work, with women being most heavily affected.<sup>27</sup>

We bring these facts to the Committee's attention to demonstrate that the federal government has an opportunity through an amendment to the Asymmetrical Agreement to mitigate the challenges English-speaking Quebecers face accessing affordable, inclusive and high-quality early learning and child care programs and services. And we suggest that under the newly amended Official Languages Act, the federal partner has a duty to do so. Although clearly within provincial jurisdiction, the federal spending power carries with it federal obligations; in this case the *Official Languages Act*. To argue that these obligations do not apply only undermines the law, but federal policy objectives.

### *Community Capacity*

This brief has outlined the new duties imposed on federal institutions to consult with English and French linguistic minority communities. There are significant new obligations on the part of federal institutions to consult with the English and French linguistic minority communities. Consultation means more than simply meeting with community representatives. It means meeting with informed representatives, with the policy and research capacity to sit at the consultation table as informed participants. It also means participating as an informed and educated voice during the negotiation on intergovernmental agreements that transfer federal resources to provincial early childhood programs.

The same principle applies to community participation on the National Advisory Council on Early Learning and Child Care.

### *National Advisory Council on Early Learning and Child Care*

English-speaking Quebec expects to have a representative on this council, with the policy support to participate fully in the national discussion.

We are concerned that the Act assigns the Governor in Council — on the recommendation of the Minister — the power to appoint members. English-speaking Quebec has some experience in participating in consultative councils appointed by the executive branch of government. This type of system places all the power in the hands of the Minister, who is free to appoint (and remove) who he or she wishes. This obviously effects the body's independence and discourages criticism of government policy. The Minister should be required to consult with representatives of the diversity of Canadian society, including Indigenous peoples and official language minority communities on who will represent them on the council. If the Minister rejects the recommended representative, he or she should have to provide reasons in written public communication.

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<sup>27</sup> For additional information, see sources annexed at the end of the brief.

## *Conclusion*

The Government of Canada has new obligations under the *Official Languages Act* to consult with and take more clearly defined positive measures to enhance the vitality of Canada's English and French linguistic minority communities. These new duties apply to intergovernmental agreements involving the federal spending power. Federal obligations are attached to federal taxpayer money.

Quebec is a proud national and international leader in early learning and child care. It has demonstrated the societal benefits of providing affordable services. However, not all segments of Quebec society have benefitted equally from these programs. English-speaking Quebecers, especially those who can least afford it, continue to face challenges accessing inclusive and high-quality early learning and child care programs and services regardless of where they live. The Government of Canada has a responsibility to assist Quebec in closing these gaps, especially as they affect the populations identified in C-35's guiding principles, including the English-speaking Community of Quebec.

It takes significant resources for communities of interest to participate in consultative mechanisms like the National Advisory Council on Early Learning and Child Care. Compensation should be provided by the federal partner to ensure the policy capacity exists in communities to engage in evidenced-based discussions. Moreover, the governance of consultative mechanisms must share power, not further bolster the immense power of the executive branch of government.

## Annex

### Other Data Sources

Institut de la statistique du Québec, *Les enfants d'expression anglaise et la vulnérabilité à la maternelle, commissioned by the Community Health and Social Services Network* (Quebec : Institut de la statistique du Québec, 2019) online: <[statistique.quebec.ca/fr/fichier/les-enfants-dexpression-anglaise-et-la-vulnerabilite-a-la-maternelle-analyse-des-donnees-de-lenquete-quebecoise-sur-le-developpement-des-enfants-a-la-maternelle-2017-2019.pdf](http://statistique.quebec.ca/fr/fichier/les-enfants-dexpression-anglaise-et-la-vulnerabilite-a-la-maternelle-analyse-des-donnees-de-lenquete-quebecoise-sur-le-developpement-des-enfants-a-la-maternelle-2017-2019.pdf)>.

Joanne Pocock, "Sociodemographic profile of children aged 0 to 5 and their parents, province of Quebec, according to the 2016 Census of Canada" (2021), online (pdf): <[chssn.wpenginepowered.com/wp-content/uploads/2021/08/0-to-5-Profile-Quebec.pdf](http://chssn.wpenginepowered.com/wp-content/uploads/2021/08/0-to-5-Profile-Quebec.pdf)>.

La Boîte de Comm., "Services à la petite enfance en anglais, Sondage d'opinion mené auprès de parents anglophones résidant au Québec" (2022), online (pdf):<[chssn.wpenginepowered.com/wp-content/uploads/2022/03/CHSSN\\_report\\_E%CC%81tude\\_Parents\\_2021\\_FRANCAIS.pdf](http://chssn.wpenginepowered.com/wp-content/uploads/2022/03/CHSSN_report_E%CC%81tude_Parents_2021_FRANCAIS.pdf)>.

Community Health and Social Services Network (CHSSN) & Care Research Group (Childhood Anxiety and Regulation of Emotion), "Explorer les effets de la langue comme obstacle à l'accès aux soins, à l'utilisation des services et au bien-être pour les familles anglophones du Québec" (2022), online (pdf) : <[chssn.wpenginepowered.com/wp-content/uploads/2022/12/McGill\\_CHSSN-Language-Barrier-Report\\_TR\\_FR.pdf](http://chssn.wpenginepowered.com/wp-content/uploads/2022/12/McGill_CHSSN-Language-Barrier-Report_TR_FR.pdf)>.

Institut de la statistique du Québec, "Québec Survey on the Preschool Path of Kindergarten Students (QSPPKS) 2017" (2019), online: <[statistique.quebec.ca/en/document/enquete-quebecoise-sur-le-parcours-prescolaire-des-enfants-de-maternelle-2017-eqppem](http://statistique.quebec.ca/en/document/enquete-quebecoise-sur-le-parcours-prescolaire-des-enfants-de-maternelle-2017-eqppem)>.