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October 27, 2023

Via email: soci@sen.parl.gc.ca;

Senator Ratna Omidvar
Chair, Standing Committee
Social Affairs, Science and Technology
The Senate of Canada
Ottawa ON K1A 0A4

Dear Senator Omidvar:

Re: Bill C-35 — *Canada Early Learning and Child Care Act*

We write on behalf of the Aboriginal Law Section, Equality Subcommittee and Family Law Section of the Canadian Bar Association (CBA Sections) to comment on Bill C-35, the *Canada Early Learning and Child Care Act*.

The CBA is a national association of 37,000 members, including lawyers, notaries, academics and law students, with a mandate to seek improvements in the law and the administration of justice. The CBA Aboriginal Law Section is dedicated to practice issues, important cases and legislation related to Aboriginal peoples, Aboriginal and treaty rights, land claims, constitutional reform, administration of justice and traditional Aboriginal law. The CBA Equality Subcommittee is dedicated to achieving equality in the legal profession, in particular based on sex, gender, sexual orientation, gender identity, race, national or ethnic origin, colour, religion, language, age or disability. The CBA Family Law Section addresses substantive and practice issues in family law and promotes the fair, effective and efficient resolution of family matters.

The CBA Sections applaud the Government's vision for a Canada-wide early learning and child care (ELCC) system and its recognition of the gendered impacts of such legislation. We note the Government's commitment to maintain long-term funding relating to ELCC to provinces, territories and Indigenous Peoples, as well as the creation of the National Advisory Council on Early Learning and Child Care.

This letter recommends amendments to clarify the text of the Act using Two-Eyed Seeing Indigenous principles. "[Two-Eyed Seeing] refers to learning to see from one eye with the strengths of Indigenous knowledges and ways of knowing, and from the other eye with the strengths of

Western knowledges and ways of knowing ... and learning to use both these eyes together, for the benefit of all.”¹

Preamble

In keeping with the Government’s commitment to work in collaboration with Indigenous Peoples and to achieve reconciliation through nation-to-nation, Inuit-Crown and government-to-government relationships based on recognition of rights, respect, cooperation and partnership, The CBA Sections recommend that the following paragraph be added to the Preamble:

Whereas Two-Eyed Seeing, Etuaptmumk, aims to bring together different ways of knowing to motivate people, Indigenous peoples and non-Indigenous people alike, to use all our understandings so we may leave the world a better place and not compromise the opportunities for our children through our inactions.

Section 2 – Definitions

The term “Indigenous peoples”, as defined in the Act, creates ambiguity. Not all Indigenous Peoples live on their ancestral homelands. For example, some live in large city centres, and some live in small urban towns and cities around the country, those Indigenous Peoples do not reside on their specific ancestral homelands. We recommend that it be defined to clarify whether some dispositions are applicable only to Indigenous persons living inside or outside self-governing communities. Therefore, we propose the following wording, which is consistent with the words of Sherry Small, Nisga’a Elder:

“Indigenous Peoples” has the meaning assigned by the definition of aboriginal peoples of Canada in subsection 35(2) of the Constitution Act, 1982. (peuples autochtones), and includes Indigenous Peoples of Canada who live outside their ancestral homelands, in Canada.

At times, the Act refers to Indigenous child care and at times it does not include the term Indigenous. Therefore, the Act sometimes appears to exclude Indigenous child care. For consistency, the CBA Sections recommend using the acronym “ELCC”, with the following definition: “A Canada-wide, community-based, Indigenous and non-indigenous early learning and child care system”. This change would reduce ambiguity and increase inclusiveness.

We also recommend that a definition of “Two-Eyed Seeing” consistent with the teachings of Albert Marshall, Mi’kmaw Elder, be added:

“Two-Eyed Seeing” means learning to see from one eye with the strengths of Indigenous knowledges and ways of knowing and from the other with the strengths of Western knowledge and ways of knowing: learning to use both eyes together for the benefit of all.

Section 5 – Purpose of the Act

Section 5(a) of the Act appears to separate Indigenous Peoples out from others. Not all Indigenous Peoples live on a reserve environment, and we recommend the following changes to increase inclusiveness and ensure all Indigenous communities have equal access to ELCCs:

¹ Institute for Integrative Science & Health, Two-Eyed Seeing, [online](#).

- (a) set out the Government of Canada's vision and ongoing commitment to collaborate with provinces, territories, non-Indigenous and Indigenous Peoples to establish, support and maintain an inclusive ELCC that embraces diversity and equality;*

Section 6 – Declaration

The CBA Sections recommend that the proposed legislation be amended to be inclusive of Indigenous people living in urban areas who may live with less community structure and support. We recommend that the text of section 6 be amended as follows:

It is declared that

- (b) the Government of Canada has as a goal to support the establishment and maintenance of an ELCC where families have access to affordable, inclusive and high-quality culturally appropriate ELCC regardless of where they live;*
- (c) flexible ELCC that respond to the varying needs of children and families and foster children's development and are an important support for families and communities;*
- (d) access to affordable ELCC to enable parents and guardians and tutors, particularly mothers, to reach their full economic potential, which contributes to a strong economy and greater gender equality;*
- (e) the Government of Canada shall cooperate, collaborate, and work in partnerships to support all Canadians in their efforts to provide a culturally appropriate, and robust ELCC for all children in Canada;*
- (f) the Government of Canada shall collaborate to support all Indigenous Peoples in their efforts to provide a robust Indigenous-led ELCC in safe spaces, including Indigenous Peoples of Canada who live outside their ancestral homelands, in Canada.*

Section 7 – Guiding principles

Section 7 sets out four guiding principles. In keeping with the Truth and Reconciliation Commission of Canada Call to Action 12, for the federal, provincial, territorial and Indigenous governments to develop culturally appropriate early childhood education programs for Indigenous families, the CBA Sections recommend that a fifth guiding principle be added that Indigenous Peoples will be empowered to lead and inform the development of culturally appropriate early learning and child care materials. This recommendation is based on the “nothing about us without us” principle.

We also recommend that the text of the Act be inclusive of child care providers who may not be Indigenous. The proposed ELCC should also be inclusive of women, with or without young children, who may attend and volunteer or assist to develop their mothering skills, and potentially become child care providers themselves.

As such, we recommend that the text of section 7 (1) be amended as follows:

- 1) *Federal investments respecting the establishment and maintenance of an ELCC — as well as the efforts to enter into related agreements with the provinces, territories, Indigenous Peoples, and non-Indigenous people, and must be guided by the principles of accessibility, affordability, inclusivity, diversity, and equality and be of high quality and must, therefore, aim to*
- (a) facilitate access to ELCC – in particular, those that are provided by the public and not-for-profit child care providers – that meet the standards set by provincial or territorial*

governments or Indigenous governing bodies that respond to the varying needs of the children and their families;

- (b) enable families of varying incomes, relevant to their geographical areas, to benefit from affordable ELCC;*
- (c) support the inclusive provisions of an ELCC that is inclusive and that respects and value the diversity of all children and their families and respond to their varying needs; and*
- (d) support the provision of an ELCC that foster young children's social, emotional, physical, and cognitive development, including using a qualified, supported early childhood education workforce, with assistants, volunteers, and trainees;*
- (e) empower Indigenous communities to lead and inform the development of culturally appropriate ELCC materials.*

As it stands, s. 7(2) enables the Government to withhold funding if it deems the ELCC not adequately guided by the principles in the Indigenous Early Learning and Child Care Framework, in addition to the principles in s. 7(1). Indigenous Peoples, however, are not equally granted this power. We recommend that s. 7(2) be replaced by the following:

The principles in subsection (1) shall guide the Federal investments regarding ELCC and should be culturally relevant.

Section 8 – Funding commitments

Similar to previous recommendations, we recommend amending s. 8 to be inclusive of non-Indigenous entities and the wider definition of Indigenous Peoples who have been displaced or have chosen not to reside on their ancestral homelands. We recommend the following amendments:

The Government of Canada commits to maintaining long-term ELCC culturally relevant funding for non-Indigenous and Indigenous Peoples. The Government of Canada shall provide the funding through agreements with the provincial or territorial governments, Indigenous governing bodies and other Indigenous entities that represent the interests of all Indigenous Peoples.

Section 9 – Establishment (of National Advisory Council on Early Learning and Child Care)

Section 9 establishes the National Advisory Council on Early Learning and Child Care and outlines its membership. We propose the following amendments to ensure Indigenous Peoples are represented on the Council:

A Council is established, to be known as ELCC National Advisory Council, consisting of no fewer than 10 but no more than 18 members, including the Chairperson and the ex officio member, and at least one Indigenous person.

Section 14 – Council Functions

Section 14 instructs the Council to “conduct engagement activities on matters relating to the Canada-wide learning and child care system”. We believe that additional safeguards are needed to ensure that Indigenous Peoples are engaged and empowered to guide programs and services that support culturally appropriate early learning and child care in their communities, using the

“nothing about us without us” guiding principle. We recommend that the following paragraph be added:

- (d) empower Indigenous communities to lead and inform the development of culturally appropriate ELCC materials;*

The Council should also be required to give written feedback when rejecting proposals to demonstrate fairness, equality and transparency in the decision making process. We recommend that the following paragraph be added:

- (e) provide rationale for not accepting culturally relevant ELCC activities or advice, or for not providing such funding.*

Conclusion

A summary of our recommendations is appended to this letter. The CBA Sections appreciate this opportunity to comment. We trust our comments are helpful and would be pleased to offer further clarification.

Yours truly,

(original letter signed by Véronique Morissette for Pamela Large Moran, Audrey Boctor and Shelley Hounsell-Gray, KC)

Pamela Large Moran
Chair, Aboriginal Law Section

Audrey Boctor (she/her)
Chair, Equality Subcommittee

Shelley Hounsell-Gray, KC
Chair, Family Law Section

Encl. Appendix A – Table of proposed changes

Appendix A

Bill C-35 – *Canada Early Learning and Child Care Act*

Summary of CBA Sections' proposed amendments

Text of the Bill	CBA Proposed Amendment
Preamble	
(...) learning and childcare system; Now, therefore, His Majesty (...)	“(...) learning and childcare system;” Whereas Two-Eyed Seeing, Etuaptmumk, aims to bring together different ways of knowing to motivate people, Indigenous peoples and non-Indigenous people alike, to use all our understandings so we may leave the world a better place and not compromise the opportunities for our children through our inactions. “Now. Therefore, His Majesty (...)”
Definitions	
Indigenous peoples has the meaning assigned by the definition aboriginal peoples of Canada in subsection 35(2) of the Constitution Act, 1982. (peuples autochtones).	Indigenous Peoples has the meaning assigned by the definition of aboriginal peoples of Canada in subsection 35(2) of the Constitution Act, 1982. (peuples autochtones), and includes Indigenous Peoples of Canada who live outside their ancestral homelands, in Canada.
Nil.	ELCC means a Canada-wide, community-based, Indigenous and non-indigenous early learning and child care system. [Also replace every instance of “Early Learning and Child Care” with ELCC in all relevant aspects of the Act.]
Nil.	Two-Eyed Seeing means learning to see from one eye with the strengths of Indigenous knowledges and ways of knowing and from the other with the strengths of Western knowledge and ways of knowing: learning to use both eyes together for the benefit of all.
Purpose	
5 The purpose of this Act is to (a) set out the Government of Canada’s vision for a Canada-wide, community-based early learning and child care system and its commitment to ongoing collaboration with the provinces and Indigenous peoples to support them in their efforts to establish and maintain such a system;	5 The purpose of this Act is to (a) set out the Government of Canada’s vision and ongoing commitment to collaborate with provinces, territories, non-Indigenous and Indigenous Peoples to establish, support and maintain an inclusive ELCC that embraces diversity and equality;

Declaration	
<p>6 It is declared that</p> <p>(a) the Government of Canada has as a goal to support the establishment and maintenance of a Canada-wide early learning and child care system where families have access to affordable, inclusive and high quality early learning and child care programs and services regardless of where they live;</p> <p>(b) 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;</p> <p>(c) access to affordable early learning and child care programs and services enable parents and guardians and tutors, particularly mothers, to reach their full economic potential, which contributes to a strong economy and greater gender equality;</p> <p>(d) it is important for the Government of Canada to cooperate, collaborate and work in partnership with the provinces and Indigenous peoples and support them in their efforts to provide those programs and services; and</p> <p>(e) First Nations, Inuit and Métis children and families are best supported by early learning and child care programs and services that are culturally appropriate and that are led by Indigenous peoples.</p>	<p>6 It is declared that</p> <p>(a) the Government of Canada has as a goal to support the establishment and maintenance of an ELCC where families have access to affordable, inclusive and high-quality culturally appropriate ELCC regardless of where they live;</p> <p>(b) flexible ELCC that respond to the varying needs of children and families and foster children’s development and are an important support for families and communities;</p> <p>(c) access to affordable ELCC to enable parents and guardians and tutors, particularly mothers, to reach their full economic potential, which contributes to a strong economy and greater gender equality;</p> <p>(d) the Government of Canada shall cooperate, collaborate, and work in partnerships to support all Canadians in their efforts to provide a culturally appropriate and robust ELCC for all children in Canada;</p> <p>(e) the Government of Canada shall collaborate to support all Indigenous Peoples in their efforts to provide a robust Indigenous-led ELCC in safe spaces, including Indigenous Peoples of Canada who live outside their ancestral homelands, in Canada.</p>
Guiding principles	
<p>7 (1) Federal investments respecting the establishment and maintenance of a Canada-wide early learning and child care system as well as the efforts to enter into related agreements with the provinces and Indigenous peoples must be guided by the principles by which early learning and child care programs and services should be accessible, affordable, inclusive and of high quality and must, therefore, aim to</p> <p>(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;</p>	<p>7 (1) Federal investments respecting the establishment and maintenance of an ELCC — as well as the efforts to enter into related agreements with the provinces, territories, Indigenous Peoples and non-Indigenous people, and must be guided by the principles of accessibility, affordability, inclusivity, diversity and equality and be of high quality and must, therefore, aim to</p> <p>(a) support the provision of, and facilitate equitable access to, high-quality ELCC 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;</p>

<p>(b) enable families of all income levels, including low incomes, to benefit from affordable early learning and child care programs and services;</p> <p>(c) support the provision, including in rural and remote communities, of early learning and child care programs and services that are inclusive of children from systematically marginalized groups, including children with disabilities, and of children from English and French linguistic minority communities, that respect and value the diversity of all children and families and that respond to their varying needs; and</p> <p>(d) support the provision of high-quality early learning and child care programs and services that foster the social, emotional, physical and cognitive development of young children, including through the recruitment and retention of a qualified and well-supported early childhood education workforce, recognizing that working conditions affect the provision of those programs and services.</p>	<p>(b) enable families of varying incomes levels, including low incomes relevant to their geographical areas, to benefit from affordable ELCC;</p> <p>(c) support the provision, including in rural and remote communities, of ELCC programs and services that are inclusive of children from systematically marginalized groups, including children with disabilities, and of children from English and French linguistic minority communities, that respect and value the diversity of all children and families and that respond to their varying needs; and</p> <p>(d) support the provision of high-quality ELCC programs and services that foster the social, emotional, physical and cognitive development of young children, including through the recruitment and retention of a qualified and well-supported early childhood education workforce, including assistants, volunteers and trainees recognizing that working conditions affect the provision of those programs and services;</p> <p>(e) empower Indigenous communities to lead and inform the development of culturally appropriate ELCC materials.</p>
Other Guiding principles – Indigenous Peoples	
<p>(2) Federal investments in respect of early learning and child care programs and services for Indigenous peoples</p> <p>— as well as the efforts to enter into related agreements with Indigenous peoples — must be guided by the principles set out in the Indigenous Early Learning and Child Care Framework, in addition to the principles set out in subsection (1).</p>	<p>(2) The principles in subsection (1) shall guide the Federal investments regarding ELCC and should be culturally relevant.</p>
Funding Commitments	
<p>8 The Government of Canada commits to maintaining long-term funding for early learning and child care programs and services, including early learning and child care programs and services for Indigenous peoples. The funding must be provided primarily through agreements with the provincial governments, Indigenous governing bodies and other Indigenous entities that represent the interests of an Indigenous group and its members.</p>	<p>8 The Government of Canada commits to maintaining long-term ELCC culturally relevant funding for non-Indigenous and Indigenous Peoples. The Government of Canada shall provide the funding through agreements with the provincial or territorial governments, Indigenous governing bodies and other Indigenous entities that represent the interests of all Indigenous Peoples.</p>
Establishment	
<p>9 A Council is established, to be known as the National Advisory Council on Early Learning and Child Care, consisting of no fewer than 10 but no more than 18 members, including the Chairperson and the <i>ex officio</i> member.</p>	<p>9 A Council is established, to be known as ELCC National Advisory Council, consisting of no fewer than 10 but no more than 18 members, including the Chairperson and the <i>ex officio</i> member, and at least one Indigenous person.</p>

Functions	
<p>14 The Council must</p> <ul style="list-style-type: none"> (a) provide advice to the Minister respecting early learning and child care, including with respect to programs and services, funding and activities that support early learning and child care; (b) consult broadly with individuals and organizations that have an interest in early learning and child care, including parents, the early childhood education workforce, child care providers, advocates and policy and research specialists, on matters relating to the Canada-wide early learning and child care system; and (c) undertake any other activity related to its functions under paragraph (a) or (b) that is specified by the Minister. 	<p>14 he Council must</p> <ul style="list-style-type: none"> (a) provide advice to the Minister respecting ELCC, and funding and activities that support ELCC; (b) consult broadly with individuals and organizations that have an interest in ELCC, including parents, the early childhood education workforce, child care providers, advocates and policy and research specialists, on matters relating to the Canada-wide early learning and child care system; and (a) undertake any other activity related to its functions under paragraph (a) or (b) that is specified by the Minister; (b) empower Indigenous communities to lead and inform the development of culturally appropriate ELCC materials; (c) provide rationale for not accepting culturally relevant ELCC activities, or advice, or for not providing such funding.