

EN : Response to follow up questions- SOCI- October 18, 2023

- 1. Question from Senator Cormier:** Clarification on the interpretation of section 8 of Bill C-35 and the terms used in section 7 and in the FR version, more specifically “notamment”.

Response:

Section 7 of the Bill sets out the principles by which the federal government should be guided when making investments in early learning and child care. Inclusion is one of the guiding principles and the Bill specifies the need for inclusive access for children from systematically marginalized groups such as official language minority communities and children with disabilities. Section 7 also notes that federal investments via bilateral agreements with provinces and territories must be guided by the *Official Languages Act* (in its entirety).

Section 8 then specifies that the Government of Canada will provide long-term funding for early learning and child care, including funding for Indigenous early learning and child care, and that this funding will be provided primarily through agreements with provincial, territorial and Indigenous partners.

The legislation was drafted in a manner that respects provincial and territorial jurisdiction and Indigenous rights, including the right to self-determination. The difference in the terminology used for both sections can be explained by the different, yet complementary, purpose they both serve in the legislation.

Section 7 describes how federal funding should be invested, while section 8 commits the federal government to the provision of long-term funding to provincial, territorial and Indigenous partners, who are responsible for the design and delivery of early learning and child care programs and services for all young children.

While the legislation prescribes at a high level the federal vision, goal and guiding principles, the bilateral agreements then set out clear commitments, targets and details around the investments as well as how these achievements will be reported on.

There are a number of instances in the Bill where the term “including” is used in English and “notamment” is used in French. As noted in the testimony provided by Michelle Lattimore on October 18, 2023, legally, “notamment” is synonymous to the English terms “including” in section 8. This terminology respects legal precedent set by other pieces of legislation (for example, C-13, the *Official Languages Act*).

2. **Question from Senator Greenwood:** Clarification on the implication of a definition of early learning and child care and the applicability of PT standards and regulations in an Indigenous context

Response:

As noted in the testimony provided by Michelle Lattimore on October 18, 2023, the term “early learning and child care programs and services” was not legally defined in C-35 so as to not restrict the interpretation of the Act and consistent with legal precedents and conventions to not reproduce the meaning of a word or expression in terms of the common usage recorded in dictionaries or to constitute an artificial definition.

The guidance to the Government of Canada for where federal investments for ELCC must be directed can instead be found in section 7 of the Act. In particular, Section 7 (1) a) indicates that the federal government must support access to ELCC programs and services that meet the standards set by provincial governments or Indigenous governing bodies, in particular those that are provided by public and not for profit child care providers.

The terminology “that meet standards set” is used in 7(1) a) instead of “regulated” or “licensed” to adhere to legal requirements and to be more inclusive of the Indigenous context while still conveying the same legal intent.

As noted in the testimony of Cheri Reddin on October 18, 2023, feedback from Indigenous governments and/or their technical representatives suggests that they see standards as ‘provincial/territorial plus.’ This has been described by Indigenous representatives as aspiring to meet the same licensing and regulatory standards as their provincial/territorial counterparts in terms of high quality early learning and child care. In addition, Indigenous governments may also elect to impose standards that advance their interests in ensuring access to culturally appropriate early learning and child care, the transfer of Indigenous knowledge and support for linguistic revitalization. Defining ELCC as being limited to programs and services subject to provincial/territorial licensing regimes may have the unintended consequence of excluding some Indigenous ELCC programs and services.

Finally, in federal statutes the terminology “regulated” or “regulations”, per the *Statutory Instruments Act*, refers to the federal Government of Canada’s regulatory making powers and not provincial regulations. Given ELCC programs and services fall under provincial/territorial regulations 7(1) a) refers to “standards” instead.