

PRELIMINARY VERSION

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Legislative Summary

BILL C-35: AN ACT RESPECTING EARLY LEARNING AND CHILD CARE IN CANADA

44-1-C35-E

30 January 2023

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Parliamentary Information, Education and Research Services

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Legislative Summary of Bill C-35
(Preliminary version)

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LEGISLATIVE SUMMARY OF BILL C-35: AN ACT RESPECTING EARLY LEARNING AND CHILD CARE IN CANADA

1 BACKGROUND

Bill C-35, An Act respecting early learning and child care in Canada (short title: Canada Early Learning and Child Care Act),¹ was introduced in the House of Commons on 8 December 2022 by the Honourable Karina Gould, Minister of Families, Children and Social Development and given first reading the same day.

Bill C-35 provides guiding principles for federal investments meant to establish and maintain a Canada-wide early learning and child care (ELCC) system that is accessible, affordable, inclusive and of high quality. It indicates continued commitment to implement the Multilateral Early Learning and Child Care Framework² and the Indigenous Early Learning and Child Care Framework,³ and to meet various international obligations and commitments undertaken by Canada in the areas of human rights and development, as discussed below. The bill also establishes a National Advisory Council on Early Learning and Child Care to provide advice and conduct engagement activities with respect to the ELCC system, among other responsibilities. Finally, the bill requires the federal government to report to the public on related federal investments and on progress being made regarding the ELCC system.⁴

With respect to Indigenous early childhood education, the bill's preamble highlights Call to Action Number 12 made by the Truth and Reconciliation Commission of Canada (TRC), calling "upon the federal, provincial, territorial, and Aboriginal governments to develop culturally appropriate early childhood education programs for Aboriginal families."⁵ The bill is also intended to contribute to the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* (the Declaration),⁶ the application of which is affirmed in Canadian law under the *United Nations Declaration on the Rights of Indigenous Peoples Act*.⁷

1.1 EARLY LEARNING AND CHILD CARE IN CANADA

1.1.1 Impacts of Affordable Early Learning and Child Care

In Canada, as a result of section 93 of the *Constitution Act, 1867*,⁸ constitutional authority to make "laws in relation to education," with some limited exceptions, rests with the provincial governments. Accordingly, the establishment and administration of early learning and child care has traditionally fallen under provincial and territorial

jurisdiction. The federal government can nevertheless fund areas of provincial jurisdiction, including education, under the federal spending power.⁹

Throughout Canada, there are a variety of types of child care spaces available, including private, public and not for profit. Costs vary across the country. In 2020, median child care fees for toddlers were as low as \$181 per month in Québec, in the mid-range \$990 per month in Yellowknife, and as high as \$1,578 per month in Toronto.¹⁰

Access to affordable child care enables parents to participate in the workforce or access education. Parents, particularly mothers, are the least likely to work, and are most likely to work part-time. This is especially the case for women with younger children; in 2022, 77.5% of women 25 years and older with one or more children under age 3 were in the labour force, compared to 96.3% of men of the same age with one or more children under the age of 3, and 85.9% of women of the same age whose youngest child was 13–17 years.¹¹ When Quebec introduced its childcare program in 1997, it was accompanied by a marked increase in the labour force participation of mothers in that province. Notably, the largest share of labour force participation increases occurred for single mothers with preschool-aged children, accompanied by a decrease in the relative poverty rate of single-mother families.¹²

1.1.2 Recent Federal Government Initiatives

In 2017, the Multilateral Early Learning and Child Care Framework (the Multilateral Framework) was established. The Multilateral Framework's objective was to set the foundation for federal, provincial and territorial governments to work toward a shared, long-term vision for ELCC. The Multilateral Framework includes five principles to guide the work: that child care should be high-quality, accessible, affordable, flexible and inclusive. This framework was accompanied by bilateral agreements with provinces and territories targeting the principles.¹³

In 2018, the Government of Canada indicated that it co-developed the Indigenous Early Learning and Child Care Framework (the Indigenous Framework) with Indigenous peoples¹⁴ that included separate First Nations, Inuit and Métis Nation sections. Overall, the Indigenous Framework situates ELCC as a component of Indigenous self-determination. The document provides guidance to communities and individuals that deliver services and develop policy related to Indigenous ELCC. The Indigenous Framework's implementation should be based on the rights, unique contexts and circumstances of First Nations, Inuit and the Métis Nation. It included nine principles that:

- realize the importance of Indigenous languages, knowledge and cultures;

- acknowledge that First Nations, Inuit and the Métis have rights to self-determination including the right to design and deliver an Indigenous ELCC system;
- ground quality programs and services in Indigenous cultures;
- prioritize child and family-centred involvement with supports to heal from trauma;
- include and take into account diverse abilities, geographic locations and socio-economic circumstances;
- support flexible and adaptable ELCC programs and services;
- support accessible and affordable ELCC programs and services;
- support delivering funding in an accountable and transparent way; and
- recognize respectful and collaborative partnerships.¹⁵

Federal funding commitments for ELCC have increased notably over the last number of years, beginning in 2017 to present. Budget 2017 announced \$7.5 billion over 11 years, starting in 2017–2018, with \$1.7 billion of this total for Indigenous children and families.¹⁶ Most recently, Budget 2021 committed up to \$30 billion over five years, most of which is being delivered through bilateral agreements with provinces and territories. Among other things, these funds are intended to achieve: an average of \$10 a day fees by 2026 for all regulated child care spaces in Canada; an increase in quality affordable child care spaces; and a growing, qualified ELCC workforce.¹⁷ This funding included allocations for Indigenous ELCC, divided between First Nations (\$1.02 billion), Inuit (up to \$111 million) and the Métis Nation (up to \$450 million).¹⁸

Finally, in 2022, a 16-member National Advisory Council on ELCC was established, with a three-year mandate to provide third-party advice and a forum for consultation on issues and challenges facing the ELCC sector.¹⁹

The Government of Canada also administers three programs related to Indigenous childhood development and education: the First Nations and Inuit Child Care Initiative, through Employment and Social Development Canada; Aboriginal Head Start on Reserve (for First Nations children living on reserve), via Indigenous Services Canada; and Aboriginal Head Start in Urban and Northern Communities program (for Indigenous preschool children), via the Public Health Agency of Canada.

1.1.3 Canada's International Commitments

Canada has undertaken a number of international commitments and obligations that relate to ELCC. In particular:

- The *Sustainable Development Goals (SDG) of the United Nations*,²⁰ which aim to improve the lives of all people while protecting the planet and creating a more inclusive society.²¹
- The *United Nations Declaration on the Rights of Indigenous Peoples*.²² Canada subsequently enacted legislation which affirms the Declaration's application in Canadian law and sets out a framework for the Government of Canada to ensure consistency of federal laws with the Declaration.²³
- The *Convention on the Rights of the Child*,²⁴ which protects civil, political, economic, social and cultural rights of children under international law.²⁵
- The *Convention on the Elimination of all Forms of Discrimination Against Women*,²⁶ which defines and prohibits all forms of discrimination against women and sets an agenda for ending it.²⁷
- The *Convention on the Rights of Persons with Disabilities*,²⁸ which protects rights to equality and non-discrimination for persons with disabilities.²⁹

2 DESCRIPTION AND ANALYSIS

2.1 GENERAL MATTERS RELATING TO THE BILL

2.1.1 Preamble

The preamble of the bill sets out the rationale for the legislation. It highlights the federal government's commitment to supporting the establishment and maintenance of a Canada-wide ELCC system, including before- and after-school care, in collaboration with the provinces and Indigenous peoples.

The preamble acknowledges the beneficial impact that ELCC can have on child development, the well-being of children and families, gender equality, the economic participation and prosperity of women, as well as Canada's economy and social infrastructure. It also recognizes that Indigenous knowledge, cultures and languages are foundational to a culturally appropriate Indigenous ELCC system, as called for in the Truth and Reconciliation Commission's *Calls to Action*.

The preamble also emphasizes the federal government's commitment to continuing to work on a Canada-wide ELCC system that contributes to meeting the *Sustainable Development Goals of the United Nations*; to implementing the *United Nations Declaration on the Rights of Indigenous Peoples*; and to meeting international human rights obligations, such as those set out under the *Convention on the Rights of the Child*, the *Convention on the Elimination of all Forms of Discrimination Against Women*, and the *Convention on the Rights of Persons with Disabilities*. The preamble also highlights the federal government's

commitment to continuing to implement the Multilateral Early Learning and Child Care Framework and the Indigenous Early Learning and Child Care Framework at the national level.

In addition, the preamble reiterates the federal government's commitment to achieving reconciliation with First Nations, Inuit and Métis peoples. It also acknowledges the importance of engaging with civil society (including parents, guardians, tutors and other stakeholders) with respect to the establishment and maintenance of a Canada-wide ELCC system.

2.1.2 Short Title and Interpretation (Clauses 1 to 4)

Clause 1 of Bill C-35 provides the short title of the bill, namely, the Canada Early Learning and Child Care Act.

Clause 2 is an interpretation provision that sets out definitions for various terms used in the bill. Notably, the bill defines the term “Indigenous governing body” as a “council, government or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.”³⁰ The term “Indigenous peoples” is also defined in accordance with the definition of “Aboriginal peoples of Canada” in section 35(2) of the *Constitution Act, 1982*, which includes First Nation, Inuit and Métis peoples.

Clause 3 is a non-derogation clause, typically included to indicate that the intent of a particular law is not to infringe on Aboriginal or treaty rights as established by section 35 of the *Constitution Act, 1982*.

Clause 4 allows the Governor in Council to designate a member of the King's Privy Council for Canada as the Minister for the purposes of this bill.

2.2 PURPOSE AND DECLARATION (CLAUSES 5 AND 6)

Clause 5 states that the purpose of the bill is to set out the federal government's vision for “a Canada-wide, community-based” ELCC and its commitment to ongoing collaboration with, and long-term funding for, the provinces and Indigenous peoples to establish and maintain an ELCC system. According to clause 5, the purpose of the bill is also to set out the principles to guide ongoing federal investments respecting the establishment and maintenance of the ELCC system. Another purpose of the bill is the establishment of the National Advisory Council on Early Learning and Child Care. Finally, the bill is also designed to contribute to the realization of the right to

benefit from child care services, as recognized in the *Convention on the Rights of the Child*, and to contribute to the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*.

Clause 6 of the bill is a declaratory provision setting out the federal government's goal to support the establishment and maintenance of an ELCC system, where all families have access to "affordable, inclusive and high-quality" ELCC programs and services, in collaboration with the provinces and Indigenous peoples. Clause 6 also highlights the importance that an ELCC system can have on fostering children's development, on supporting families and communities, and on enabling the full economic participation of parents, guardians, and tutors, particularly mothers. Finally, clause 6 establishes the principle that the provision of culturally appropriate ELCC that is led by Indigenous peoples best supports the needs of First Nations, Inuit and Métis children and families.

2.3 FUNDING (CLAUSES 7 AND 8)

Clause 7(1) of the bill indicates that federal investments, and efforts to enter into related agreements with the provinces and Indigenous peoples, with respect to the establishment and maintenance of a Canada-wide ELCC system must be guided by the principles that ELCC programs and services should be accessible, affordable, inclusive and of high quality. Federal investments and efforts to enter into related agreements must therefore aim to:

- facilitate access to ELCC programs and services (particularly those offered by public and not-for-profit providers) that meet the standards set out by provincial governments or Indigenous governing bodies;
- enable families of different incomes to benefit from affordable ELCC programs and services;
- support the provision of ELCC programs and services that are inclusive, value diversity, and respond to the varying needs of children and families; and
- support the provision of high-quality ELCC programs and services aimed at fostering "the social, emotional, physical and cognitive development" of young children, including through the use of a qualified early childhood education workforce.

Clause 7(2) states that, in addition to the above-noted guiding principles, any federal investments around ELCC programs and services for Indigenous peoples, as well as any efforts to enter into related agreements with Indigenous peoples, must also

be based on the principles established in the Indigenous Early Learning and Child Care Framework.³¹

Clause 8 of the bill sets out a commitment by the Government of Canada to maintain long-term funding for ELCC programs and services, provided primarily through agreements made with the provincial governments, Indigenous governing bodies and other Indigenous entities.

2.4 NATIONAL ADVISORY COUNCIL ON EARLY LEARNING AND CHILD CARE (CLAUSES 9 TO 15)

Clause 9 of the bill establishes the National Advisory Council on Early Learning and Child Care, consisting of 10 to 18 members and including the Chairperson and the *ex officio* member. Clauses 10(1) and 10(2) indicate that the *ex officio* member is the Minister's Deputy Minister or an alternate person designated in writing by the Deputy Minister to perform their duties and functions regarding the Council. Clause 11(1) stipulates that the other members of the Council are to be appointed by the Governor in Council on the recommendation of the Minister and hold office during pleasure for up to three years with the possibility of reappointment.³²

The importance of appointing members who represent the diversity of Canadian society is also recognized in this clause. Pursuant to clause 11(2), the *ex officio* member and the Chairperson are the only members that may have full-time membership to the Council.

Clause 12(3) of the bill states that Council members, other than the *ex officio* member, are deemed to be employees for the purposes of the *Government Employees Compensation Act*,³³ which sets out the workers' compensation benefits scheme for federal employees who are injured or become ill as a result of their work. They are also deemed to be employees of the federal public administration for the purposes of regulations made under section 9 of the *Aeronautics Act*,³⁴ which may establish compensation payable for the death or injury of an employee while undertaking a flight in the course of their duties. In addition, where the Chairperson is a full-time member, the Chairperson is deemed to be employed in the public service for the purposes of the *Public Service Superannuation Act*.³⁵ This Act sets out the pension benefits scheme for eligible federal public servants and their dependants.

Clauses 12(1) and 12(2) provide that Council members, other than the *ex officio* member, are to be paid the remuneration that may be fixed by the Governor in Council and are entitled to be reimbursed for related travel, living and other expenses.

Clause 13(1) of the bill stipulates that the Chairperson has supervision over and direction of the work of the Council. Clause 13(2) provides that, in the event of absence or incapacity of the Chairperson, or if this office is vacant, the Minister may

authorize another member of the Council to act as the Chairperson for a term of up to 90 days, after which point the Governor in Council's approval must be sought.

Clause 14 indicates that the Council must provide advice to the Minister on ELCC matters (such as programs, services, and funding), conduct engagement activities related to the ELCC system, and undertake any other related activity that is specified by the Minister.

Clause 15 states that the Council must meet a minimum of four times in a fiscal year unless specified otherwise by the Minister.

2.5 ANNUAL REPORT (CLAUSE 16)

Clause 16 requires the Minister to prepare and make public an annual report on the progress being made regarding the Canada-wide ELCC system, including related federal investments.

2.6 COMING INTO FORCE (CLAUSE 17)

Clause 17 of the bill indicates that the provisions regarding the establishment and operation of the National Advisory Council on Early Learning and Child Care (clauses 9 to 15) come into force on a day to be fixed by order of the Governor in Council.

NOTES

1. [Bill C-35, An Act respecting early learning and child care in Canada](#), 44th Parliament, 1st Session.
2. Employment and Social Development Canada (ESDC), [Multilateral Early Learning and Child Care Framework](#), 2017. The Framework indicates:

While the Government of Québec supports the general principles of the Early Learning and Child Care Framework, it does not adhere to the Framework as it intends to preserve its sole responsibility in this area on its territory. The Government of Québec expects to receive its share of the federal funding and will continue to invest significantly toward programs and services for families and children.
3. ESDC, [Indigenous Early Learning and Child Care Framework](#), 2018.
4. ESDC, [Backgrounder](#).
5. In its Final Report, the Truth and Reconciliation Commission (TRC) called for additional measures on childhood education including "fair and adequate" funding of Indigenous education, for Indigenous control over the education of their children and that education be provided in accordance with Indigenous cultures and languages. See TRC, [Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada](#), 2015, p. 152; and TRC, [Truth and Reconciliation Commission of Canada: Calls to Action](#), 2015, p. 2.

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6. United Nations, [United Nations Declaration on the Rights of Indigenous Peoples](#).
7. The [United Nations Declaration on the Rights of Indigenous Peoples Act](#), S.C. 2021, c. 14, came into force on 21 June 2021. Under the Act, the Government of Canada will work with Indigenous peoples to take all measures necessary to ensure the laws of Canada are consistent with the *United Nations Declaration on the Rights of Indigenous Peoples* (the Declaration); prepare and implement an action plan to achieve the goals of the Declaration; and report annually on its progress. The first [annual progress report](#) was made available in June 2022. The Action Plan referred to in the Act is due 21 June 2023.
8. Justice Laws Website, [The Constitution Acts, 1867 to 1982](#).
9. Peter W. Hogg, [Constitutional law of Canada](#), 5th ed., Vol. I, 2016, p. 33-2. See also Karine Richer, [The Federal Spending Power](#), Publication no. PRB 07-36E, Library of Parliament, 13 November 2007, p. 1.
10. Department of Finance Canada, [A Recovery Plan for Jobs, Growth, and Resilience](#), Budget 2021, p. 99.
11. Statistics Canada, "[Table 14-10-0396-01: Labour force characteristics by family structure, annual, unadjusted for seasonality](#)," database, accessed January 2023.
12. Pierre Fortin, Luc Godbout and Suzie St-Cerny, [Impact of Quebec's Universal Low Fee Childcare Program on Female Labour Force Participation, Domestic Income, and Government Budgets](#), Working Paper 2012/02, École de gestion de l'Université de Sherbrooke, May 2012, p. 6.
13. Government of Canada, [Early Learning and Child Care Agreements](#). Quebec does not adhere to the Framework, but has an asymmetrical agreement toward supporting programs and services for families and children.
14. ESDC, [Indigenous Early Learning and Child Care Framework](#).
15. *Ibid.*, pp. 10–11.
16. Department of Finance Canada, [Building a Strong Middle Class](#), Budget 2017, pp. 131–132.
17. ESDC, [Federal Secretariat on Early Learning and Child Care](#).
18. ESDC, [Indigenous Early Learning and Child Care](#).
19. Government of Canada, [National Advisory Council on Early Learning and Child Care](#).
20. Government of Canada, [Canada and the Sustainable Development Goals](#).
21. See, for example, Sustainable Development Goal 4, which focuses on quality education.
22. United Nations, [United Nations Declaration on the Rights of Indigenous Peoples](#).
23. [United Nations Declaration on the Rights of Indigenous Peoples Act](#), S.C. 2021, c. 14.
24. United Nations, Office of the High Commissioner for Human Rights(OHCHR), [Convention on the Rights of the Child](#), 20 November 1989.
25. See, for example, Article 2, which establishes no discrimination; Article 3, which provides that decisions should be made in the best interests of children; and Article 4, which states that governments must do all they can to ensure every child in their jurisdiction enjoy all the rights of the Convention.
26. OHCHR, [Convention on the Elimination of All Forms of Discrimination against Women](#), 18 December 1979.
27. See, for example, Article 10 on equal rights in education; and Article 11 on the equal right to employment opportunities.
28. OHCHR, [Convention on the Rights of Persons with Disabilities](#), 13 December 2006.
29. See, for example, Articles 5 and 7 on equality and non-discrimination for persons and children with disabilities.
30. Justice Laws Website, [The Constitution Acts, 1867 to 1982](#).
31. ESDC, [Indigenous Early Learning and Child Care Framework](#), pp. 10–11.
32. According to a Government of Canada publication, "[a]ppointees who hold office during pleasure may be removed from office at the discretion of the Governor in Council." See Government of Canada, [Terms and conditions applying to Governor in Council appointees](#).



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33. [Government Employees Compensation Act](#), R.S.C. 1985, c. G-5. See also Government of Canada, [Federal Workers' Compensation Service](#).
34. [Aeronautics Act](#), R.S.C. 1985, c. A-2.
35. [Public Service Superannuation Act](#), R.S.C. 1985, c. P-36.

