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**Brief by the Québec Ombudsman
presented to the Committee on Citizen Relations**

*concerning Bill 27 – An Act respecting the optimization of subsidized
educational childcare services*

Québec City, January 15, 2015

The Québec Ombudsman's mission

The Québec Ombudsman ensures that the rights of citizens are upheld by intervening with regard to Québec government departments and agencies and the various bodies within the health and social services network to remedy situations that are prejudicial to a person or group of persons. Appointed by the elected members from all political parties and reporting to the National Assembly, the Québec Ombudsman acts independently and impartially, whether an intervention is undertaken in response to a complaint or series of complaints or on the institution's own initiative.

The respect of users and their rights, and preventing harm to them, is at the heart of the Québec Ombudsman's mission. Its preventive role is exercised in particular through its systemic analysis of situations harmful to large numbers of citizens.

Pursuant to the powers conferred upon it, it can propose amendments to acts and regulations and changes to directives and administrative policies with a view to improving them in the best interest of the people concerned.

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Introduction

The Québec Ombudsman thanks the Committee on Citizen Relations for its invitation to participate in the consultations on Bill 27 – *An Act respecting the optimization of subsidized educational childcare services*.

First, the Québec Ombudsman subscribes to the need for optimization of the provision of subsidized childcare services, by, among other things, ensuring that all spaces paid for out of the public coffers are filled, which is one of the bill's goals. However, the Québec Ombudsman considers that the ways and means that the bill proposes for achieving this will not yield the expected benefits and will generate adverse effects for parents, children and subsidized childcare services.

In the Québec Ombudsman's opinion, one of the bill's repercussions will be to exacerbate the lack of flexibility of the subsidized educational childcare services program, thereby maintaining its maladjustment to the needs of a great many families.

Based on its analysis of the factors behind the phenomenon dubbed "ghost" spaces, the Québec Ombudsman has made recommendations aimed at better adapting the subsidized educational childcare services program to demand and, as a result, optimizing it.

1 Context

1 Since passage of the *Act respecting childcare centres and childcare services* in 1997, demand for subsidized spaces has grown tremendously, with the number of reduced contribution spaces made available because of the program nearly tripling, from 75,500 (1997-1998) to 224,369 (September 30, 2014).¹

2 The program's positive impact on child development and greater labour market participation by mothers was quick to be felt.

► Children

3 A review of the work by UQAM researchers² highlights compelling findings concerning, among other things, beneficial effects, particularly for children from underprivileged backgrounds, and improved cognitive outcomes in correlation with childcare service quality and intensity.

► Mothers

4 According to a study by Université de Sherbrooke's Chair on taxation and public finances, the availability of reduced contribution spaces in Québec has been the catalyst that has enabled some 70,000 more mothers to enter the workforce.³ For 2008, the net cost of the

¹ *Rapport de la Commission de la révision permanente des programmes*, November 2014, p. 76. (Robillard Report) [Online]. <https://revisiondesprogrammes.gouv.qc.ca/fileadmin/documents/RAPPORT_PDF_version_finale.pdf>.

² Bigras, N., Lemay, L. et al. *Petite enfance, services de garde éducatifs et développement des enfants : État des connaissances*, Presses de l'Université du Québec, 2012 [Online]. <<http://www.puq.ca/catalogue/livres/petite-enfance-services-garde-educatifs-developpement-1700.html>>.

³ Fortin, P. Godbout, L. and S. St-Cerny. *L'impact des services de garde à contribution réduite au Québec sur le taux d'activité féminin, le revenu intérieur et les budgets gouvernementaux*. Chaire de recherche en fiscalité et en finances publiques, Université de Sherbrooke, April 2012. P. IV [Online]. <http://www.usherbrooke.ca/chaire-fiscalite/fileadmin/sites/chaire-fiscalite/documents/Cahiers-de-recherche/Etude_femmes_travail.pdf>.

childcare subsidy issued by the Government of Québec was slightly more than \$1.6 billion. This expenditure generated a positive budget adjustment of \$2.4 billion for both levels of government (Québec and federal), \$1.7 billion for Québec and \$0.7 billion for Ottawa.⁴

- 5 Even though this study shows that the reduced contribution program has positive net fiscal spinoffs, growing program costs deserve attention. For the period from 1997-1998 to 2013-2014:
 - ▶ while the number of spaces tripled (from 75,500 to 224,369), the cost of the program increased eight-fold from the initial cost (from \$289 million to \$2.348 billion);⁵
 - ▶ in percentages, the rise in cost was 166% higher than the increase in the number of spaces;
 - ▶ the consumer price index accounts for only 36% of this increase;
 - ▶ the residual portion is due in large part to improved salary conditions for childcare services employees, notably because of pay equity provisions.⁶
- 6 The importance of recruiting qualified personnel and the benefits associated with reduced contribution spaces are well established facts, but the extent of today's childcare services transfer budget prompted the authors of the Boisvert (December 2013) and Robillard (November 2014) reports to call for a review of service funding and optimization of service management.
- 7 Parallel to consideration of cost, it warrants pointing out that 25,000 spaces will have to open up in order to meet demand.⁷ The objective will be achieved progressively for final delivery by 2021.
- 8 Childcare services is therefore a market in which the demand for reduced contribution spaces exceeds supply, notably for "atypical childcare," which for the purposes of this brief means part-time childcare or childcare outside usual hours. In 2009, about four workers out of ten had an atypical job, fathers and mothers alike. Insofar as the demand for full-time reduced contribution spaces is not being met, part-time spaces are necessarily very limited, even nonexistent.
- 9 This set of circumstances leaves parents who would take a part-time space no choice but to apply and pay for a full-time space, even if the allocated period exceeds or is not consistent with their needs. Hence the emergence of the "ghost" space phenomenon.
 - ▶ **In figures:**
- 10 The Boisvert Report specifies that "CPEs do very well in terms of occupancy rates, which increased from 92.4% in 2001-2002 to 97.8% in 2012-2013. However, during the same period,

⁴ *Op. cit.* note 3, p. 27.

⁵ *Rapport du Chantier sur la qualité et la pérennité des services de garde et sur l'optimisation de leur financement*. December 2013, p. 2 (hereinafter the Boisvert Report) (Update for 2013-2014 taken from *op. cit.* note 1, p. 78). [Online]. <<http://www.mfa.gouv.qc.ca/fr/publication/Documents/Rapport-Chantier-CPE-BC.pdf>>.

⁶ *Op. cit.* note 1, p. 81.

⁷ This figure is established according to the childcare services needs estimation model used by the Ministère de la Famille.

the attendance rate dropped from 83.6% in 2001-2002 to 78.3%, a decrease that bears further probing.⁸ [translation]

- 11 From this, the Québec Ombudsman concludes that in the past decade, the occupancy rate (reserved places) increased by some 5% while the attendance rate (number of spaces really occupied) decreased by the same percentage.
- 12 In such a context, the solution proposed by Bill 27 is not, in the Québec Ombudsman's opinion, an appropriate solution to a complex problem which the bill's passage into law will not solve.

2 A bill that makes the government program even more ill-suited to atypical demand

- 13 The ultimate goal of Bill 27 is to optimize educational childcare services financing and attendance by curbing the phenomenon of what are called "ghost" spaces. From this point on, it is important that the causes of this unwanted effect of the program be addressed. The intention, which is commendable, is to free up spaces among those that are underused and, at the same time, obtain a better return on each dollar invested. However, the means put forward are ill-suited to the situation of parents.
- 14 For one, the notion of false or misleading information remains vague, despite its being central to the new provisions. Under section 5 of the bill, the *Educational Childcare Act* is amended by inserting section 101.21. This section provides that the minister may bar a parent who has provided false or misleading information from having access to a reduced contribution childcare space for a period of three months. The bill does not define what is meant by false or misleading information.
- 15 The second paragraph of section 101.21 provides that a parent who allegedly provided such information may submit observations. The bill says nothing about the parent's burden of proof in such a situation.
- 16 The bill fails to provide any further indication as the number of authorized days of absence (vacation or sick days) even though this is an important piece of information in determining whether a statement is false or misleading.
- 17 Bill 27 also prescribes penalties for subsidized childcare providers that enter false or misleading information or that consent to such information being entered. Under section 9, these would be considered offences and offenders would be liable to a fine of \$250 to \$1,000. For parents, the consequences are dire—they could be barred from having access to subsidized childcare services for a period of three months and their agreement with the childcare provider could be cancelled.

► The litmus test – three typical situations

- 18 In order to better assess the impact of Bill 27, the Québec Ombudsman has extrapolated application of the bill to three situations to which the new provisions would likely apply. The cause of the facts and the parents' probable response, should the bill become law, is described for each scenario. The impact of the net subsidized childcare services supply is also gauged, this impact being one of the bill's main focuses.

⁸ *Op. cit.* note 5, p. 8.

- 19 Situation 1 – The services agreement of a parent who works part time indicates that the period chosen is from Monday to Friday but, in fact, his child attends childcare (according to the attendance sheet) only three days a week, on the parent’s work days.
- 20 What is the explanation for this parent’s actions and the fact that he pays for two days’ childcare without using them? Furthermore, why does this parent have the government foot the bill for this unnecessary expense? The answer is simple: he has no other choice. This is the first challenge that the Boisvert Report brings out—that of “accessibility through the availability of spaces and the response to the needs of families, notably for atypical childcare.”⁹ [translation]
- 21 Let us suppose that Bill 27 becomes law. What does the parent do? He probably continues to pay for five days a week, and so as not to be served a penalty, takes his child to the childcare centre or daycare centre full-time. It is safe to assume that very few parents would want to risk losing their reduced contribution space. The result? There is no impact on available spaces, just as there is no impact on public finances or on the parent himself (apart from the daily cost of travel to the childcare service two extra days a week).
- 22 Situation 2 – The services agreement indicates that the childcare period chosen by a parent is Monday to Friday from September 1 to August 31, but in fact, her child stops attending in July and August, which is often the case with parents who are teachers.
- 23 Again, supposing that Bill 27 becomes law, the parent in this situation has no choice but to comply with the new requirements and take his child to childcare the number of days indicated in the agreement. The result? The same as for the previous scenario. There is no impact on available spaces, just as there is no impact on public finances or on the parent himself (apart from the daily cost of travel to the childcare service in July and August).
- 24 Situation 3 – In the agreement, the parent of a newborn child commits to using the childcare service from Monday to Friday from September 1 to August 31, but in fact, her child will start attending only three months later (on December 1).
- 25 Here, the problem is one of synchronization. Because school begins in September, childcare spaces often open up then. Once again, the parent has no choice but to drive her infant to childcare regardless of the family’s real needs. Again this time, there will be no impact on the number of available spaces, public finances or the parent’s budget (apart from the daily cost of travel to the childcare service). To this is added a secondary effect that is not insignificant in cases that include that of parents of infants, because here we are talking about a loss of quality time with one’s baby during parental leave.
- 26 The presentation of these three situations clearly shows that the system’s lack of flexibility makes it ill-suited to the needs of a great many parents.

⁹ *Op. cit.* note 5, p. 3.

► **Client profile in figures:**

- 27 According to a survey by the Institut de la statistique du Québec,¹⁰ 46.7% of families say that they have an irregular schedule. Of this 46.7%, 30.4% have untraditional childcare arrangements because of their work or the fact that they attend school.
- 28 The answer to the problem of the system's lack of adaptation to the reality of parents' childcare needs proposed in Bill 27 amounts to a penalty for parents and childcare providers, without taking into account the root causes of the problem of "ghost" spaces. The Québec Ombudsman notes that neither the authors of the Boisvert Report nor those of the Robillard Report recommend such a course of action.
- 29 Lastly, in a context in which reduced contribution spaces are scarce, parents adjust to the system. And chances are that they will continue to do so even if Bill 27 is passed into law in its current form. Hence, no or virtually no benefits. The bill therefore proposes a response ill-adapted to the complex problem it aims to solve. Genuine solutions lie elsewhere.

3 The Ombudsman's recommendations

- 30 Section 1 of the *Educational Childcare Act*¹¹ states that the development of childcare services must take into account the needs of parents, particularly their need to reconcile their parental and professional responsibilities and their right to choose their childcare provider.
- 31 The Québec Ombudsman, while conceding that supply organization in such a context is complex, would nonetheless point out that the demand for atypical childcare has remained strong since passage of the above act. Bill 27 is based on the principle that demand should be adjusted to supply and proposes penalties in an attempt to channel it. This seems counterproductive in a free-market economy, even if spaces are subsidized.
- 32 Would it not be more appropriate to provide for requirements so that subsidized childcare services develop practices that enable them to fill underused spaces? With this in mind, the Québec Ombudsman is making recommendations and a proposal.

¹⁰ Institut de la statistique du Québec. *Enquête sur l'utilisation, les besoins et les préférences des familles en matière de garde*, 2009 : Portrait québécois et régional, p. 251. [Online].

<<http://www.stat.gouv.qc.ca/statistiques/education/milieu-garde/utilisation-services-garde-2009.pdf>>.

¹¹CQLR, c. S-4.1.1.

Whereas it is fitting to seek optimization of the funding of reduced contribution spaces and their real occupation;

Whereas this optimization must be carried out in a realistic manner by taking into account the needs of parents, especially the need for irregular schedules or atypical formats;

Whereas the demand for reduced contribution spaces still exceeds available supply, especially for atypical childcare;

Whereas the problem of “ghost” spaces stems from the lack of flexibility of the public educational childcare services program.

The Québec Ombudsman recommends:

R-1 That the provisions that impose penalties on parents or subsidized childcare services in Bill 27 – *An Act respecting the optimization of subsidized educational childcare services* or that refer to these provisions be removed, namely, sections 2 and 3, section 101.2.4 introduced by section 4, section 101.21 introduced by section 5, and sections 6.8 and 10;

R-2 That funding of the program for subsidized educational childcare services (CPES and other subsidized childcare services) be established on the basis of the real overall attendance rate of children;

R-3 That the minister require that CPEs and other subsidized childcare services offer spaces partly available for occasional or part-time childcare with a view to meeting atypical childcare needs.

- 33 Conscious of the fact that the third recommendation responds to only a portion of the demand for atypical childcare, the Québec Ombudsman is making an additional recommendation.

Whereas the full slate of subsidized childcare services should be rolled out by 2021 and services entering a consolidation phase;

Whereas section 10 of the *Educational Childcare Act* provides that the minister may issue a permit to a CPE based on the needs and priorities determined by the minister;

Whereas paragraph 2 of section 11 of the *Educational Childcare Act* empowers the minister to issue day care centre permits to applicants who meet the conditions prescribed by regulation;

Whereas Bill 27 expresses the will to optimize the performance of educational childcare services;

The Québec Ombudsman recommends:

R-4 That within the framework of consolidation of the reduced contribution spaces program, funding mechanism requirements be provided for in response to the demand for atypical childcare.

- 34 Whereas it is entirely feasible to have the same requirements as to the quality of private day care centres, whether subsidized or not, as for public childcare services, the Québec Ombudsman considers that if there were an opening for unsubsidized day care centres to have reduced contribution spaces, this would generate substantial savings on implementation costs (immovables, leasehold improvements, purchase of equipment, etc.).
- 35 Therefore, in order to secure a better fit between subsidized childcare space supply and demand, the Québec Ombudsman suggests that private unsubsidized day care centres be allowed to apply to become subsidized, with the same requirements as to quality.
- 36 In fact, the Québec Ombudsman commented on this approach in recent Annual Reports.¹²

Conclusion

- 37 The Québec Ombudsman repeats that the problem of what are called “ghost” spaces stems from a situation beyond the control of parents, namely, a limited supply of part-time childcare or untraditional childcare arrangements. It seems counterproductive to ask parents to adapt to supply or to face penalties if they do not.
- 38 Instead, the Québec Ombudsman advocates an approach:
- ▶ in which funding of subsidized childcare services is based on real attendance rates;
 - ▶ in which subsidized childcare services are given incentives for offering partly available spaces to meet a portion of the demand for occasional or part-time childcare;
 - ▶ that is as cost-effective as possible and that better meets both regular and atypical demand alike.

¹² Québec Ombudsman, *2012-2013 Annual Report*, pp. 49-50; *2011-2012 Annual Report*, pp. 56-57.

List of recommendations

The Québec Ombudsman recommends:

- R.1** That the provisions that impose penalties on parents or subsidized childcare services in Bill 27 – *An Act respecting the optimization of subsidized educational childcare services* or that refer to these provisions be removed, namely, sections 2 and 3, section 101.2.4 introduced by section 4, section 101.21 introduced by section 5, and sections 6.8 and 10;
- R-2** That funding of the program for subsidized educational childcare services (CPES and other subsidized childcare services) be established on the basis of the real overall attendance rate of children;
- R-3** That the minister require that CPEs and other subsidized childcare services offer spaces partly available for occasional or part-time childcare with a view to meeting atypical childcare needs;
- R.4** That within the framework of consolidation of the reduced contribution spaces program, funding mechanism requirements be provided for in response to the demand for atypical childcare.

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