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BY EMAIL AND FAX

September 10, 2014

**Me Zachary Davis**  
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**SUBJECT:** *Assembly of First Nations of Quebec and Labrador & al. vs. AANDC*  
Court File No. : T-448-14

Dear confrere:

Further to your Request for Material under Rule 317 of the *Federal Courts Rules* in the above-mentioned file, we wish to provide you with a copy of the attached document entitled Bill C/S-X, First Nations Control of First Nations Education Act.

Yours truly,

**Me Éric R. Gingras**  
Senior Counsel

Encl.

## BILL C/S-X, FIRST NATIONS CONTROL OF FIRST NATIONS EDUCATION ACT

This document identifies the substantive amendments to the October 2013 draft of the First Nations education legislative proposal. Sections identified as having "No changes from the October 2013 draft bill" will not be subject to substantive amendments to the wording or intent of the section. This does not preclude minor adjustments to wording or tone.

**Long Title (No change from the October 2013 draft bill):** An Act to establish a framework for First Nations governance of elementary and secondary education and to provide for related funding and to make related amendments to the *Indian Act*.

**Short Title (Amended):** First Nations Control of First Nations Education Act

**Preamble (New addition):** to be drafted jointly with the AFN.

**Interpretation (Amended to include the Joint Council)**

"Joint Council of Education Professionals" to be defined specifically by the drafters, but will be an appointed council (ranging between five and nine appointees) of education professionals, including First Nation educators, who are responsible for advising the Minister on regulation development, reviewing annual reports and recommending corrective action, where needed.

**General (No change from the October 2013 draft bill)**

This section includes the non-derogation clause, which acknowledges the protections for Aboriginal and treaty rights that exist under section 35 of the *Constitution Act, 1982*. It provides an exemption from the act for self-governing First Nations that have jurisdiction over education.

This section also clarifies that the council of a First Nation has legal personhood for the purpose of this Act. This will ensure that a council of a First Nation has the legal capabilities to meet their obligations under this Act.

**Access to Education (No change from the October 2013 draft bill)**

This section requires the council of a First Nation to provide free access to elementary and secondary education to all individuals living on-reserve between ages six and 21 and clarifies that where access is given to junior or senior kindergarten it must be offered for free to all eligible children. It requires parents of children between six and 16 who live on-reserve to register their children for school and requires that the parents of all children who are required to be registered ensure that their children attend school regularly.

This section ensures that the certificate or diploma issued to First Nation students is one that will be widely recognized by universities, colleges and employers.

This section allows First Nations to pass bylaws extending the mandatory attendance ages and sets a default date of December 31 to determine age of student registration.

This section summarizes the three education governance options available to councils of First Nations under this act in order to comply with the obligation to provide access to education to all children ordinarily resident on-reserve: (a) community-operated schools; (b) joining a First Nation education authority; and (c) entering into an agreement with a provincial school board.

## Governance

### Administration by the Council of a First Nation (Amended to reflect transition period)

This section clarifies that a council of a First Nation may administer one or more schools located on its reserve and lays out the duties of a responsible authority for administering a school. It will allow responsible education authorities to develop education programs that incorporate Aboriginal language and culture studies that align with minimum education standards. This section also lays out the basic standards for service delivery, core instruction and other necessary student supports.

Appropriate transition periods will be defined in legislation or by regulation.

### Agreements respecting Tuition and Administration of Schools (No change from the October 2013 draft bill)

This section allows a responsible authority to enter into tuition agreements with other certified education authorities and allows the Minister to ensure that provincial tuition rates charged to First Nations are reasonable. This section also outlines where clauses of a provincial act apply to the governance of a school on-reserve, duplicative clauses in this act would not apply.

In drafting the legislation options will be considered to increase provincial disclosure of education outcomes.

### Community Participation (Amended)

This section will require that elders, parents and students be meaningfully involved in the decision making processes in their community's education.

### Optional Activities (No change from the October 2013 draft bill)

This section allows the education authority to require payment of reasonable fees for participation in optional activities or a deposit of a reasonable amount for using educational materials and school equipment.

### Administration by a First Nation Education Authority (Amended to reference the role of the Joint Council)

This section allows First Nations to aggregate education administration to benefit from economies of scale associated with larger capacity organizations. The section also details the requirements that must be met in order for an education authority to be recognized under the act. The Joint Council will advise the Minister on the recognition of an education authority.

### Persons Not Ordinarily Resident On Reserve (No change from the October 2013 draft bill)

This section allows a First Nation to create bylaws allowing non-residents to attend schools on-reserve.

### Home Schooling (No change from the October 2013 draft bill)

This section allows parents to home school their children in accordance with the requirements under this act.

## School Operations

### Services (No change from the October 2013 draft bill)

This section requires the responsible education authority to maintain property and liability insurance and to provide services prescribed by regulation.

### Director of Education (No change from the October 2013 draft bill)

This section requires a responsible education authority to employ a director of education, and details the roles and responsibilities of the director. It clarifies that an education director cannot sit as a member of a council of a First Nation that is involved in the administration of the school.

### Principal (No change from the October 2013 draft bill)

This section lays out the duties of a principal and clarifies that a principal cannot sit as a member of a council of a First Nation that is involved in the administration of the school. As part of their duties, this section requires that the principal prepares and implements a school success plan that sets out how the school will meet the standards set out in this legislation.

### School Inspector (Amended to reference the role of the Joint Council)

This section requires annual school inspections take place and details how these inspections should be carried out and their results reported. It also requires responsible education authorities to address problems identified by the inspections. The legislation will clarify that the inspector's report be provided to the Joint Council and the Minister.

### Joint Council of Education Professionals (New addition)

This section will detail the role and responsibilities of the Joint Council, including its responsibilities to oversee and advise the Minister on regulatory development, mandatory reporting requirements and compliance activities.

### Compliance with Act (Amended to reflect the role of the Joint Council)

This section allows the Minister to require, with the advice of the Joint Council, a responsible education authority to hire a special advisor to develop and implement a plan to address deficiencies identified by the Inspector's report.

This section allows the Minister to appoint, as a last resort, and with the advice of the Joint Council, a qualified temporary administrator under specific circumstances.

This section also requires that appropriate staff cooperate with the temporary administrator in carrying out their mandate.

This section requires the temporary administrator to submit a report to the Joint Council, the education authority, and the Minister at the end of the administrator's mandate and recommend further action as necessary. The Joint Council will oversee and advise the Minister regarding implementation of these actions.

This section allows the Minister, with the advice of the Joint Council, to revoke a designation of a First Nation education authority.

**Funding (Amended to reference language and culture funding)**

This section requires that a statutory funding regime be implemented that will establish formulas and mechanisms that deliver stable, predictable and adequate funding for First Nation education. Funding will account for language and culture programming.

**Liability (No change from the October 2013 draft bill)**

This section prevents the federal crown from being sued as a third party for any act or omission performed as part of the implementation of this act.

**Bylaws (No change from the October 2013 draft bill)**

This section requires the council of a First Nation to publish its bylaws publicly, requires the council to provide any person with a copy of the bylaw on request, and allows the court to take judicial notice of a bylaw.

**Regulations (Amended to clarify that First Nations will participate in developing the regulations, and include and reflect the role of the Joint Council)**

This section outlines the regulations that will be developed with First Nations to support this act. The section will be amended to include the Joint Council.

**Review (Amended to reflect the role of the Joint Council)**

This section requires a review of the implementation and effectiveness of the legislation every five years. The review will be led by the Joint Council.

**Transitional Provisions (No change from the October 2013 draft bill)**

This section exempts First Nations who receive education and related services from the First Nation Education Steering Committee or the First Nation Schools Association under the Tripartite Education Framework Agreement from this act until the end of 2016-2017.

This section would ensure the Minister has the power to continue to administer and operate existing federal schools, with the same standards as other First Nation schools under this act, until such a time as the community selects another option for school administration. The Minister will not assume control of any additional First Nation schools under these provisions.

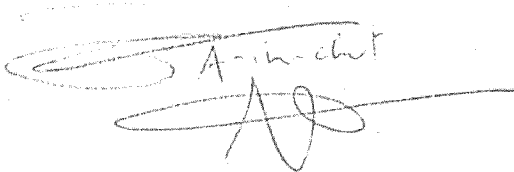
This section also details the provisions of the *Indian Act* that will continue to apply for the purpose of self-governing First Nations.

**Related Amendments to the *Indian Act* (No change from the October 2013 draft bill)**

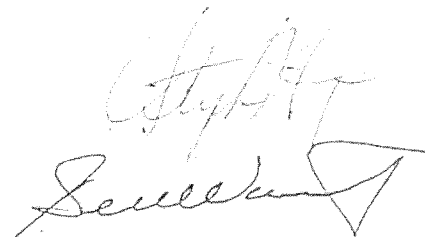
This section will repeal provisions of the *Indian Act* related to residential schools.

**Coming-Into-Force (No change from the October 2013 draft bill)**

This section allows for the Act to come into force as established by Order in Council.



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