



## **Risky business**

**The NAFTA consequences of foreign corporations investing in the Canadian child care sector**

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### **What's the situation?**

A corporation with US connections that's also closely linked to Australian multinational ABC Learning is looking to buy up existing Canadian child care operations – we know of BC, ON and AB so far.

It could pose significant threat to future establishment of a pan-Canadian, public child care program.

The recent financial instability of ABC illustrates how quickly a company's makeup can change, bringing new trade rules into play.

### **What do international trade rules have to do with child care services?**

Both the North American Free Trade Agreement (NAFTA) and the World Trade Organization's General Agreement on Trade in Services (GATS) apply to public services and social programs.

NAFTA gives corporations unprecedented power to directly challenge policies, practices and laws they see getting in the way of their ability to make a profit. These investment rules allow foreign corporations to challenge government policy, law or practice, and to claim damages for future profits lost when governments enact new regulations or otherwise change their "business environment".

The WTO's General Agreement on Trade in Services (GATS) could also come into play if the Canadian government puts child care on the table – something which has not happened to date. Doing this in future rounds of trade talks could prevent Canada from introducing a public, not-for-profit program because the GATS' market access rules outlaw any monopoly provision of a service, effectively paving the way for foreign corporations to flood the Canadian child care 'market'.

### **Aren't Canadian public services and social programs protected?**

Yes and no. There are some protections – but they are limited, and are at risk if a foreign, for-profit corporation gets a significant stake in the Canadian child care sector. Under NAFTA, Canada has reserved the right to expand social programs or establish new ones. The wording of this exception, known as a “reservation” says Canada can introduce or expand a number of services, including child care – as long as they are “services established or maintained for a public purpose.”

The US government argues this reservation only applies where services are provided by the public sector. The American government's interpretation means that allowing widespread commercial, for-profit provision of child care services ends any protection from NAFTA's investment and services rules. Right now there isn't significant foreign investment in Canada's child care sector. This is good news, and leaves the door open to rebuilding the fledgling pan-Canadian program cancelled by the Conservative government.

### **What happens if trade deals no longer exempt child care?**

If a foreign child care corporation makes significant headway in Canada, the entire child care system is more likely to fall under very restrictive NAFTA rules.

Once foreign investment in the child care sector is permitted, the rights of such investors become vested under the North American Free Trade Agreement (NAFTA), and these include the right to make damage claims where government measures impinge on those investments, as for example is likely to occur if the Ontario government implements a full-day kindergarten program for four and five-year-olds. The more foreign investment in the sector, the greater the risk of a claim for damages.

Moreover, if foreign investors establish a commercial presence in the sector, Canada's claim to the protection afforded by a key NAFTA exception for social services is weakened. This would further expand the potential scope for NAFTA based claims challenging government child care policies, laws, programs and regulations.

If NAFTA rules are engaged, governments could be denied the right to prevent foreign child care companies from acquiring a dominant position in the child care sector.

### **We already have for-profit care in Canada. Does this mean it's too late, even if this current threat is averted?**

No. While Canada has for-profit delivery, corporations don't play a substantial role in Canadian child care and there is little if any foreign investment in the sector. The greater the foreign investment the greater the risk - However, it is

difficult to predict what the tipping point will be for corporations to argue that Canadian child care should be considered a commercial venture open to NAFTA rules. Overall, the best protection Canada has is to make child care a not-for-profit public program.

### **What can provincial governments do?**

Provincial governments can restrict or regulate foreign investment in the child care sector without running afoul of international trade rules. Provincial governments can restrict funding and licensing to not-for-profit child care providers. But their right to do so is put at risk if they allow foreign investment in the child care sector.

### **What can the federal government do?**

The federal government can use its legislative and spending power to establish a new pan-Canadian child care program modeled on Bill C-303, the Early Learning and Childcare Act.

The federal government must not put child care on the table at any future trade talks. This includes any discussion of “non-public education” services under the GATS.

### **Can't we allow some foreign corporate involvement in child care and see what happens?**

Once a public service or program becomes a for-profit corporate venture the door is open to foreign investment. Once there is significant foreign investment, NAFTA makes it extremely difficult to go back. Future governments will be locked into a bad decision, leaving them very few options to regulate, change or end a market-driven child care sector.

It is absolutely critical that all levels of government in Canada avoid these serious consequences by focusing on public, not-for-profit delivery. Allowing for-profit child care corporations to establish a significant stake in the system means that we are very likely to lose control of many critical aspects of child care.

Establishing the program as a public system is an important safeguard. Any new pan-Canadian child care program would be sheltered from foreign corporations seeking to provide child care – so long as it provides little or no room for commercial providers.