

# Quebec's law governing daycare permits deemed unconstitutional <sup>[1]</sup>

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## EXCERPTS:

A daycare owner fought the law and won.

Maddalena Borrega wanted to open four government-subsidized daycares last year. She was exactly the kind of candidate Quebec looks for in a public daycare operator: she holds a bachelor's degree in Business and Administration from Université de Québec à Montréal, she graduated from UQAM's early childhood education certificate program and had years of experience as an administrator at a private daycare owned by her mother, Mona-Lisa Farinacci-Borrega.

The UQAM grad even incorporated four companies that would have formed the fiduciary infrastructure of her new business.

Despite her qualifications, Farinacci-Borrega was rejected last year when she applied for a permit to obtain 300 publicly-subsidized spots for her daycares. Under Quebec law, relatives of those who already own daycare permits are automatically considered their business partners. Bill 126 states no one family can own more than five daycare permits or serve more than 300 publicly-subsidized customers.

Last week, three Superior Court judges deemed the law unconstitutional and gave Quebec one year to remedy the situation with Farinacci-Borrega.

"It's a law that treats families like tribes," said Mona-Lisa, who appealed the rejection with her daughter and the help of renowned civil rights lawyer Julius Grey. "The assumption is that no matter what your relationship is to an uncle or a grandparent or a sister-in-law, you're somehow all in business together. It's absurd."

Mona-Lisa has 18 aunts and uncles, all of whom would be severely restricted from applying for a daycare permit because of Bill 126. Further complicating matters, Mona-Lisa's estranged sister-in-law is a daycare operator and her 80 subsidized spots also count against the family limit of 300.

"I don't want to get into family fights, but we're not really talking to my sister-in-law," Mona-Lisa said. "So how can I collude with her if we don't speak. And why would the government assume that just because we're in the same family through marriage, we're up to no good? If I really wanted to break the law, why not just have a secret deal with a friend or a business associate?"

There are about 1,600 publicly-funded daycares in Quebec that serve more than 210,000 children. Six hundred of those are privately-owned but receive a subsidy so that families only have to pay \$7-a-day for child care. Mona-Lisa and her husband bought a daycare in east Montreal 11 years ago after her husband retired from Canadian National Railway.

"We were visiting a daycare that was for sale and I just fell in love," Mona-Lisa said. "I had the 'coup-de-foudre' as they say in French. I was working in human relations at a law firm, but I quit that so I could do what I love."

Adopted by the Liberal government in 2010, Bill 126 was designed to crack down on daycare "chains" by restricting permits. The law targeted families because of the possibility that an owner uses a relative as a straw man while secretly building a chain of daycares.

In a decision rendered on Sept. 13, Justice Jacques Lévesque said Bill 126 violates Article 15 of the Charter of Rights and Freedoms, which states that a person cannot be discriminated against because of their ethnicity, race, religion, gender or age. Lévesque claims that while the Farinacci-Borregas certainly weren't the victims of any racially-motivated injustice, they were discriminated against because they're family members - which is a factor neither person can control.

"(The provincial government's) decision was not based on the merit of the individual but rather on a personal characteristic that is unchangeable," Lévesque wrote in his decision. "(The government) cannot reasonably expect people to change that in order to be equal in the eyes of the law."

Sylvain Lévesque, who heads the province's notoriously combative union of private daycare operators, applauded the judges' decision.

"The families ministry is so rigid and this sends them a strong message," he said. "The law made no sense. Let's say I'm a daycare operator and I get a divorce and remarry another daycare operator. What happens? No one among our uncles, aunts, nephews, nieces and in-laws can own a daycare because we do? It's silly."

-reprinted from the Montreal Gazette

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