



On March 17, 2021, Bill-35 was introduced by Minister Cardy that would amend the *Education Act*. Proposals set out in *An Act Respecting Empowering the School System* are intended to support teachers in managing their classrooms and to ensure schools offer a positive learning and working environment.

### **The Problem**

There are two aspects of this legislation that are incredibly concerning:

*11.1 (1) A teacher who holds a master's degree approved by the Minister and completes the training approved by the Minister may administer a test prescribed by regulation, score the test and interpret and apply the results of the test, for the purpose of developing a personalized learning plan for a pupil.*

*11.1 (2) This section and the regulations made under paragraph 57(1)(o.1) shall supersede all other provisions in the Psychologists Act and any regulation made under that Act.*

### **Some Background**

When done correctly, psychological and psychoeducational assessments using tests created and researched by psychologists (such as the ones targeted by 11.1 above) can identify neurodevelopmental disorders (such as Specific Learning Disorder, ADHD, and Intellectual Disability) and other problems in need of intervention, and help a child get access to the resources and support they need to live a fulfilling life. When done incorrectly, misdiagnosis or missed diagnoses can result in inappropriate medical, educational, or psychological interventions, negatively impact a child's cognitive, academic, social, and emotional development, and leave families in turmoil. To properly conduct psychoeducational assessments and prevent malpractice, one must be very familiar with the many psychometric tests used and have a thorough understanding of child psychopathology, child development, mental health, and diagnosis. This is NOT a simple process. After over 8 years of formal university training in psychopathology, ethics, interviewing, assessment, diagnosis, and the biological, cognitive, and social bases of behaviour, psychologists must complete another year of supervised practice to qualify for the written and oral exams required to become a member of the College of Psychologists of NB (CPNB), which holds them accountable for ethical and competent practice.

### **Concerns**

**Lack of consultation of key stakeholders.** The first reading of Bill-35 occurred without any prior consultation with key stakeholders such as CPNB, NB Teachers Association, the Learning Disabilities Associations, etc., and without appropriate collaboration with the Department of Health that would house expertise related to psychological/psychoeducational assessments. There was no due diligence, especially given NB would be the first province to constitute this type of legislation.

**Lack of understanding of assessment illustrated in the legislation.** The description of psychoeducational assessment in the proposed legislation as to “*administer a test prescribed by regulation, score the test and interpret and apply the results of the test... 25.1 For the purposes of section 11.1 of the Act, the test that may be administered is the Wechsler Intelligence Scale for Children (WISC).*” demonstrates the Department of Education's ignorance of the exact process it is trying to legislate. First, psychoeducational assessments are in no way as simple as administering, scoring, and interpreting a test. Second, mental health problems can affect learning and results on these tests. An individual with symptoms of anxiety, depression or autism, for example, might also

struggle with schoolwork, test-taking, attention and concentration, behaviour in the classroom, etc. Teachers are not qualified to assess mental health problems and providing them with the tools to do only part of a psychoeducational/psychological assessment creates more problems than it solves. It is a recipe for incorrect conceptualizations of a child's existing challenges and their cause, and therefore a recipe for harm to children.

**Significant risk to the public.** Contrary to psychologists, teachers – even those with a master's degree – do not have the multi-year university training and supervision required in psychological and psychoeducational assessment. Asking them to do an activity that they are not sufficiently trained and supervised to do poses risk to them (liability) and to their students by creating situations that (a) increase the likelihood of misinterpretation of information, (b) leave prescribing physicians and parents/guardians with only partial information (strengths and weaknesses that may or may not be accurate, lack of attention to other mental health factors that might have impacted the results), and (c) encourage teachers to suggest diagnoses, which is well beyond what they are qualified to do and increases the risk for misdiagnosis. At a time when the government is under scrutiny for their lack of sufficient attention to mental health, it is unwise to further dilute the quality of mental health care being provided.

**Alienation of psychologists.** This legislation represents a clear disrespect for the training, knowledge, and skills of psychologists. The province is facing a labor market shortage in psychologists; this is not the time to further alienate this important professional group. This lack of respect for psychologists' scope of practice is exactly what drives psychologists out of the public system, and, even further, out of the province. These concerns have been well-documented in CPNB's *Working Conditions Report* (2018). The lack of psychologists in the province and in the public sector creates further risk to the public.

**Lack of clarity in legislation.** The lack of clarity in this legislation also raises significant concerns. What is the approved training that would be involved in learning how to do these assessments? The only people qualified to administer this training are psychologists, and they are prohibited from teaching non-psychologists how to use these tests without close and immediate supervision given the aforementioned risks to public health posed by misuse of the tests. Furthermore, who is the acting expert advising the Minister to determine what degrees and training would be approved?

**Conflict of interest.** As part of implementing this legislation, the Department of Education has indicated a collaboration with Pearson Canada Assessment Inc., the company that produces and sells the regulated tests used in psychoeducational assessments. This represents a major conflict of interest. It is no surprise that a for-profit company would like to extend the number of people to whom they can sell their tests. That does not mean that it is in the best interest of New Brunswickers. Corporations do not protect the public. They aim to maximize profits.

### **Conclusion**

The College of Psychologists of NB has the mandate to protect the public by regulating the practice of psychology, making sure that psychologists practice ethically and competently, and that unqualified people do not engage in the practice of psychology, particularly "evaluation and assessment procedures, including psychological and psychometric testing, for the identification and diagnosis of psychological or mental disorders." as defined in the *Psychologists Act*. We firmly believe that allowing Bill-35 to be enacted is in direct conflict with that mandate and poses a critical risk to the public. We stand in strong opposition.