

AN OVERVIEW + RECOMMENDATIONS

An Act Respecting First Nations, Inuit, and Métis Children, Youth and Families: Does Bill C-92 Make the Grade?



The time for change to Indigenous child welfare policy in Canada is long overdue.

ON THURSDAY, FEBRUARY 28, 2019, the federal government introduced Bill C-92, An Act respecting First Nations, Métis and Inuit children, youth and families for first reading. After many years of well documented discrimination against Indigenous children, there is much hope in this legislative process to reverse this trend, empower Indigenous peoples to reclaim jurisdiction in this area, and ensure the rights of children are affirmed. To realize those hopes, **five legal scholars** drafted an analysis of the bill with the aim to improve the current legislation as it moves through committee and the Senate.

The goal was to provide a useful framework to help Aboriginal leaders and community members understand what's included—and what's not—this bill and what that means.

As such, they identified, analyzed and graded five key areas they believe the legislation should address in order to make meaningful change in the lives of Indigenous children and families.

Here, we summarize the proposed amendments, that if acted upon in the final weeks of this parliamentary session, can strengthen the legislation and ensure, finally, that Indigenous children, youth and families receive the services that they are owed.

The full report includes an analysis of whether the bill delivers in these areas, and assign grades (A to F) based on how the bill performs in each. At a glance, the bill was scored as follows:



01. National Standards



02. Funding



03. Accountability



04. Jurisdiction



05. Data Collecting and Reporting

Download the full report at yellowheadinstitute.org/bill-c-92-analysis

1. NATIONAL STANDARDS

- **Ensure that standards** exist in law so that Indigenous children do not automatically become government wards without significant efforts are made to maintain familial and community care.
- **Require ongoing legal relationships**, or at the least, access to children's family of origin.
- **Include strong, mandatory language** around BIOC to address judicial bias and overtake any binding precedents in this area.
- **Include "active efforts" or "maximum contact"** clauses in relation to Indigenous child welfare with First Nations have not taken over full jurisdiction.
- **A requirement of written documentation** of active efforts to find placements according to the priority set out or affidavit evidence from the Indigenous group that there is no available placement. And/ or a presumption that an access order with some family or community member and a long term funding commitment for regular travel back to the community is included as a term of any permanency order.

2. FUNDING

- **Attach clear federal funding commitments** for First Nations pursuing child welfare jurisdiction.
- **Ensure funding reflects** the principle of substantive equality and which also meets the needs and circumstances of children on reserve
- **Ensure off-reserve, Métis, non-status and Inuit children and families** are included in budgets, distinct from non-Indigenous children and families.
- **Compel coordination** between federal and provincial governments regarding incentives to cooperate and adequately fund Indigenous governing bodies to implement Jordan's Principle.
- **Provide clarity** around the inclusion of the provincial funding obligations.

3. ACCOUNTABILITY

- **Establish a dispute resolution mechanism** to deal with situations where Indigenous groups experience challenges in entering collaboration agreements with Canada and the provinces, in the cases they are required.

- **Create an independent body** to hear disputes and make binding decisions on all parties.

4. JURISDICTION

- **Recognize jurisdiction** as a right to self-determination under UNDRIP rather than a s. 35 right.
- **Set a clear path** out of the existing jurisdictional squabbling between the provincial and federal governments.
- **Revise paramountcy rules** so they are clear enough for, and accessible to community members, so that can understand in time sensitive or emergency circumstances.
- **Contain clear conflict of laws principles** and processes that give real weight to Indigenous law-making authority and jurisdiction.
- **Address the long-standing issue** of services to First Nations children who are residing off-reserve, as well as non-status, Métis and Inuit children.
- **Provide clarity and direction** on how the BIOC standard will be defined regarding the applicability of laws. At minimum this should clarify a standard for best interests of the Indigenous child—determined by Indigenous legal and community standards—and dictate the application of federal and provincial laws to Indigenous children.
- **Clearly and openly resolve** the lack of funding for Indigenous law-making, administration and enforcement as well as funding for the of preventative child and family health.

5. DATA COLLECTION AND REPORTING

- **Mandate collection and publication** of data along the lines of TRC Call to Action #2
- **Address privacy issues** by anonymized and displaying data in aggregate.

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