

# Bill C-92 Implementation Strategies



**On June 21, 2019, Bill C-92: An Act Respecting First Nations, Inuit and Métis Children, Youth and Families became law.** The Bill is a huge and unprecedented step forward in Canada. It is the first time the federal government has exercised its jurisdiction to legislate in the area of Indigenous child welfare.

The purposes of the Bill is to recognize Indigenous People's jurisdiction over child and family services, as part of an inherent and Aboriginal right to self-governance; to establish national standards in this area, in response to the TRC's Call to Action #4; and to contribute to the implementation of UNDRIP.

In March 2019, Yellowhead Institute published an analysis of the Bill, written by five legal scholars, with the aim of improving the legislation as it moved through the committee and the Senate. The goal of *Does Bill C-92 Make the Grade?*, was to provide a useful framework to help Aboriginal leaders and community members understand what's included in the bill—and what's not—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.

**These five areas are:**

- 1. National Standards;**
- 2. Jurisdiction;**
- 3. Funding;**
- 4. Accountability;** and
- 5. Data Collection**

Since then Bill C-92 has passed and while it represents a necessary and long overdue fundamental shift, key issues remain. These, along with improvements made to the final version of the bill are further examined in the follow up report written by three legal scholars, titled, *The Promise and Pitfalls of C-92: An Act Respecting First Nations, Inuit and Métis Children, Youth and Families*.

**Here, we share 21 strategies in four areas, 1) National Standards, 2) Jurisdiction, 3) Funding, and 4) Accountability, aimed at assisting Indigenous communities in navigating and working with the new law.**

These are by no means an exhaustive list but building on the positive elements of the legislation, proactive communities can also overcome some of the legislation's limitations as well.

**By engaging within the community (and perhaps across communities) and then with provincial and federal counterparts, it is still possible to ensure Indigenous visions of child welfare jurisdiction are realized.**

The full analysis of Bill C-92 can be downloaded at [yellowheadinstitute.org/bill-c-92-analysis](http://yellowheadinstitute.org/bill-c-92-analysis)

## NATIONAL STANDARDS

1. **Define what Best Interests of the Child** means for your own Indigenous community as soon as possible. Write it down, make it public and distribute it to Children Services Managers and Workers as soon as possible.
2. **Ensure workers and advocates know** the new National Standards, your BIOC standards, and advocate for them to be applied in every case.
3. **Consider strategic and coordinated** advocacy with other Indigenous groups. In particular, how the BIOC and “reasonable efforts” of this Act are actually interpreted and applied will make a huge difference for Indigenous children.
4. **Even if you don’t have a full** piece of legislation and a coordination agreement, the National Standards require notice, consultation and provide standing. Develop your own laws to fill the gaps. This will build toward jurisdiction as well.

For example, consider clauses like:

- Active efforts, not just reasonable efforts, to keep a child in family care,
  - Maximum contact with siblings, extended family, community and territory, as a principle for all children out of family care,
  - Impermissible reasoning, where time out of parental care alone cannot be grounds for permanently ending the child’s legal relationships
5. **Internally, develop a list of people** in or related to the community who are able and willing to act as safe houses in emergencies or take in children temporarily or permanently. Also develop a list of people who might not be able to provide full time care, but may be able to provide respite, regular or special visits, and facilitate familial and cultural connections for children out of family care.
  6. **Keep advocating** for children’s and families needs as a whole, as well as for the needs of youth in care or aging out of care today.

## JURISDICTION

7. **This is your inherent jurisdiction**, not jurisdiction granted or delegated to you.
8. **Start sooner rather than later.**
9. **Define own BIOC**, definitions and terms and start drafting (see National Standards above).
10. **Consider what are the most important** aspects of child welfare to your community, or most significant differences from provincial statutes or practices, and start writing these down.
11. **Nothing in the Act states** jurisdiction must be all or nothing. Consider your options and what your community’s capacity and goals are.

For example:

- Some communities have large populations and pre-existing agreements and or/ have delegated agencies, and may want to develop, administer and enforce all aspects of child and family services, as well create or expand dispute resolution processes.
  - Some communities may have small populations, or not want to take on all aspects of administering and delivering children services. You may want to develop laws and coordination agreements that outline, for instance, standards for your children’s care. Like other governments, you may choose to delegate certain aspects of administration and service delivery while retaining oversight or final decision making power.
  - Some communities with shared values and goals may choose to work together on all or some aspects of law development, administration, service delivery, enforcement and dispute resolution.
12. **If you want your jurisdiction to extend** to children off-reserve and even out of province, write this in clearly, and consider how you want this to work in practice, so you can explain this to provincial ministries and provide them guidance.

- 13. Work together and share resources.** There are some existing examples of Indigenous child welfare laws and groups that are currently working on creating their own laws.

There is a need for gathering together and sharing of laws and best practices (e.g. Wahkohtowin Lodge is working on website now).

- 14. Use existing / upcoming gatherings** to discuss strategies around development of laws and what issues, questions and pressure points need to be addressed in your community.
- 15. If you are a First Nation, consider** whether **Indian Act bylaws on child welfare** (like Splat'sin First Nation) are a viable alternative for your First Nation, or would be useful as an interim measure for establishing key laws (like your BIOC) while developing more fulsome legislation and negotiating coordination agreements.

## FUNDING

- 16. The federal government has an obligation** to continue to fund existing child welfare services - failure to do so is a human rights violation according to Caring Society.
- 17. The federal government is also responsible** for funding the exercise of self-government in child welfare under s. 91(24) and also UNDRIP (article 4).

- 18. For funding for future self-government, Bill C-92** requires negotiation with Canada and the provinces. The broad definition given to Jordan's Principle by the Canadian Human Rights Tribunal applies to such negotiation. This means Canada should be the payor of first contact and, if Canada thinks provinces should also pay, this is up to the federal government and provinces to resolve between themselves after funding has been provided. This can be asserted and reasserted if necessary to your government counterparts.

- 19. Indigenous groups should insist on funding** for capacity building in addition to service delivery.

## ACCOUNTABILITY

- 20. Bill C-92 gives Canada the power** to create dispute resolution mechanism by regulation to deal with funding and other disputes. Canada should be pressured to start developing this now and in partnership with Indigenous groups.
- 21. This should be a dispute resolution body** that is independent and arms-length from the federal government with the power to make binding decisions. Advocate to participate in its creation.

**Learn more:**  
[www.yellowheadinstitute.org](http://www.yellowheadinstitute.org)

### AUTHORS:

**Naiomi Walqwan Metallic** is a Migmaq lawyer, Assistant Professor and holds the Chancellor's Chair in Aboriginal Law and Policy at the Schulich School of Law, Dalhousie University.

**Hadley Friedland**, Assistant Professor, University of Alberta Faculty of Law.

**Sarah Morales**, *Su-taxwiye*, is Coast Salish and an Associate Professor at the University of Victoria, Faculty of Law.