



Assembly of First Nations Issue Update



C-92: An Act respecting First Nation, Inuit and Métis Children, Youth and Families

History

In 2019, Canada passed Bill C-92, *An Act respecting First Nations, Inuit and Métis Children, Youth and Families* (the Act). The Act was developed with input by the Assembly of First Nations (AFN) through a legislative working group, comprised of First Nations leaders, technicians and experts from across the country, drawing on years of advocacy and direction.

First Nations children make up a disproportionately high percentage of children in foster care. Bill C-92 aims to address this by enabling community-driven solutions that keep children with their families and connected to their communities. With a focus on the safety, security, and future of First Nations children, Bill C-92 recognizes the rights of First Nations, Inuit, and Métis communities to exercise jurisdiction over child and family services. It supports the transition of child welfare services from provincial control to Indigenous governments, ensuring that First Nations children grow up surrounded by their cultures, languages, and communities.

Following the passing of the Act, First Nations-in-Assembly passed AFN Resolution 16/2019, *An Act respecting First Nations, Inuit and Métis Children, Youth and Families—Transition and Implementation Planning*, mandating the establishment of the Chiefs Committee on Child and Family Services and Self Determination (Chiefs Committee). The resolution directs the Chiefs Committee to provide input, oversight, and guidance during the national transition and implementation process of the Act; support First Nations exercising jurisdiction over children and families; and to report regularly to the National Chief, AFN Executive Committee, and First Nations-in-Assembly on the progress of the Act's the implementation bi-annually at the AFN General and Special Assemblies. Further, AFN Resolution 88/2019, *Re-affirming First Nation Regional Implementation Priorities for An Act Respecting First Nations, Inuit and Metis Children, Youth and Families*, calls on Canada to support and fund a First Nations-led, distinctions-based transition and implementation planning process for the Act.

Since coming into force, 231 Indigenous governing bodies have received capacity funding to develop their own child and family services laws and models. To date, Indigenous Services Canada (ISC) has signed seven agreements in four provinces and expects many more to be concluded in 2024.



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AFN's Recent Advocacy

In September 2021, the Government of Quebec challenged the constitutionality of Bill C-92, *An Act respecting First Nations, Inuit and Métis Children, Youth, and Families*, in the Quebec Court of Appeal. In February 2022, the Court upheld much of the Act but struck sections 21 and 22.3, which grants First Nations laws the “force of law as Federal law.” The federal government appealed the decision to the Supreme Court of Canada (SCC), where the AFN participated as an intervenor. In December 2022, the AFN defended the Act and the rights of First Nations to self-determination and jurisdiction over their children and families, asserting that First Nations have always possessed the inherent right to self-government. On February 9, 2024, the SCC ruled that the Act, in whole, is constitutional, including the two sections previously found unconstitutional by the Quebec Court of Appeal. The SCC also endorsed the creativity of the co-drafted legislation as a viable alternative to affirm the Inherent Right of First Nations and other distinctions-based rights-holders. Federal Budget 2024 committed \$1.8 billion over 11 years to support communities exercising jurisdiction under the Act.

The AFN collaborates with ISC on the implementation of the Act, as guided by the 2019 *Protocol regarding the Act in relation to the Assembly of First Nations* (the Protocol). The Protocol outlines the partnership between the AFN and ISC on work related to the Act, including governance, in accordance with AFN Resolution 16/2019. The AFN is working collaboratively to renew the currently expired Joint Protocol. The renewal presents an opportunity to update the governance structure to be more efficient and responsive to First Nations.

Next Steps

The AFN will continue to support of implementation of the Act in accordance with AFN Resolutions 16/2019 and 88/2019, and advocate for the federal government to provide sustainable and adequate statutory funding for First Nations to exercise their jurisdiction and establish their own laws. This will involve working with ISC to ensure they properly engage and collaborate with First Nations in renewing the funding authorities for Capacity Building and Coordination Table funding to support work under the Act.

The Firelight Group is currently conducting research and engagement initiatives to ensure that advocacy efforts accurately reflect the needs and priorities of First Nations.



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This work is expected to conclude this year. The research, which includes engagement on Data Collection, Communications, Capacity Building, Statutory Funding, and Dispute Mechanisms will inform renewed C-92 mandates through future resolutions.

In anticipation of the renewal of the Joint Protocol, work also continues to reconvene the Joint National Working Group (JNWG). The mandate of the JNWG, comprised of representatives from each of the AFN's regions, supports the collaborative implementation of work regarding the Act as guided by the Joint Protocol. The AFN will continue to work with each region to confirm its representative to the JNWG in conjunction with the ongoing renewal work of the Joint Protocol.