



Date: April 26, 2019

Submission to the Senate Committee on Aboriginal Peoples: Bill C-92, *An Act respecting First Nations, Inuit and Metis children, youth and families*

*This submission provides a technical response to the proposed law that was tabled in the House of Commons on February 28, 2019.*

### **Six Nations of the Grand River:**

Six Nations is the largest populated First Nation in Canada, geographically located in Southern Ontario. This First Nation is comprised of 13 individual federally named bands with a registered membership of approximately 26,000. The governance is legally recognized under the Indian Act by an Elected system and maintains the traditional Hereditary Chiefs and Council.

Six Nations has been recently designated, (January 29, 2018) as an Ontario Children's Aid Society under the Child and Family Services Act. The initial designation was at our finger tips in 1995 and that time turned it down due to funding that would not enable the delivery of a Six Nations model focussed on prevention.

In 2004, the path for designation was revived as an interim step to assume the mandate of protection. This process took until January 2018 to be in compliance with standards in Ontario. Although, changes have been made in the legislation to focus on prevention, the substantial funding and supports come after the determination of alternate care placements for the child(ren).

The passing of Bill C-92, would set a different path to provide a service based on national standards but these may conflict with the existing Child, Youth and Family Services Act, 2018 and create challenges to implement.

Six Nations has never given up the jurisdiction of care of the children and healing must be paramount to address the past injustices caused by the removal of children.

As the Director of Social Services for Six Nations I have had first hand experience with engagement with the Province of Ontario since 2000 on the amendments and review of the Child and Family Services Act and the current Child Youth and Family Services Act. Although the Act itself deems to be responsive to the First Nation it is the regulations and directives that still are punitive and detrimental to the situations in the First Nation community. The reality of living conditions puts children at greater instances of removal than mainstream children.

Review of the Act and recommended changes to provide confidence that this legislation would provide the path to a service that will be responsive and supportive to address children at risk.

- Inclusion of Men and boys in the preamble to be inclusive of the impacts they have endured.
- Notice to the First Nation must include personal information. In response to the comments about the information being on an open fax machine were more to demonstrate the lack of human resources in the community. Substantial information upon notification needs to be included.
- The First Nation needs to be given Party status in Court proceedings, not just able to give presentation otherwise, this is contradictory to the jurisdiction of care of the child.
- Committed funding to reach substantive equality for food, shelter, education, health and social services and capacity funding for capital.
- The reference to groups, people must be removed
- It is difficult to determine the Principles of the Law versus the reference to National standards. Standards are specific requirements that are tangible.

#### Specifics Amendments:

Whereas Parliament recognizes the disruption that Indigenous women and girls have experienced in their lives in relation to child and family services systems and the importance of supporting Indigenous women and girls in overcoming their historical disadvantage;

#### Proposed Changes:

Whereas Parliament recognizes the disruption that Indigenous *people* have experienced in their lives in relation to child and family services systems and the importance of supporting Indigenous *people* in overcoming their historical disadvantage;

**Indigenous governing body** means a council, government or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*. (*corps dirigeant autochtone*)

#### Proposed Changes :

**Indigenous governing body** means a council, government or other entity that is authorized under and affirmed by section 35 of the *Constitution Act, 1982*. (*corps dirigeant autochtone*)

#### Purpose

**8** The purpose of this Act is to

**(a)** affirm the rights and jurisdiction of Indigenous peoples in relation to child and family services;

(b) set out principles applicable, on a national level, to the provision of child and family services in relation to Indigenous children.

11. (d) promotes substantive equality between the child and other children.

#### **Notice**

12 (1) In the context of providing child and family services in relation to an Indigenous child, to the extent that doing so is consistent with the best interests of the child, before taking any significant measure in relation to the child, the service provider must provide notice of the measure to the child's parent and the care provider, as well as to the Indigenous governing body that acts on behalf of the Indigenous group, community or people to which the child belongs and that has informed the service provider that they are acting on behalf of that Indigenous group, community or people.

Proposed Change: This removes the jurisdiction and decision-making in the plan of care and has been a contentious issue with the current policies. The notification must include opportunity for engagement in the "measure" being taken and support the continuation of the Band Rep in Ontario.

#### **Personal information**

(2) The service provider must ensure that the notice provided to an Indigenous governing body under subsection (1) does not contain personal information about the child, a member of the child's family or the care provider.

Proposed Change:

The personal information must be provided to the child's First Nation (Band Representative) in order to confirm eligibility and participation in decision making, healing plan of the child and family to address the issue.

#### **Representations and party status**

13 In the context of a civil proceeding in respect of the provision of child and family services in relation to an Indigenous child,

(a) the child's parent and the care provider have the right to make representations and to have party status; and

(b) the Indigenous governing body acting on behalf of the Indigenous group, community or people to which the child belongs has the right to make representations.

**Proposed Change:**

**13 (b) the Indigenous governing body acting to which the child belongs has the right to full party status (Band Representative).**

#### **Priority to preventive care**

14 (1) In the context of providing child and family services in relation to an Indigenous child, to the extent that providing a service that promotes preventive care to support the child's family is consistent with the best interests of the child, the provision of that service is to be given priority over other services.

Proposed Change: Further clarification on the intention of this clause needs to be articulated.

### **Application — sections 21 and 22**

**(3)** Sections 21 and 22 apply only in respect of an Indigenous group, community or people on whose behalf an Indigenous governing body

**(a)** entered into a coordination agreement; or

**(b)** has not entered into a coordination agreement, although it made reasonable efforts to do so during the period of one year after the day on which the request is made.

### **Clarification**

**(4)** For the purposes of paragraph 3(b), sections 21 and 22 apply beginning on the day after the day on which the period referred to in that paragraph ends.

Proposed Changes: remove

Further Clarification of these clauses.

**coordination agreement** means an agreement referred to in subsection 20(2)

### **Conflict — existing agreement**

**3** If there is a conflict or inconsistency between a provision that is in an agreement — including a treaty or a self-government agreement — that contains provisions respecting child and family services, concluded before the day on which subsection 18(1) comes into force, between an Indigenous group, community or people and Her Majesty in right of Canada or of a province and a provision of this Act or the regulations, the provision that is in the agreement prevails to the extent of the conflict or inconsistency.

*Clarify, the intention of the wording of Indigenous group, community or people and the type of conflict that would be a conflict.*

### **Minimum standards**

**4** For greater certainty, nothing in this Act affects the application of a provision of a provincial Act or regulation to the extent that the provision does not conflict with, or is not inconsistent with, the provisions of this Act.

*Clarify the type of Provincial Act or regulation that this Federal Act can supersede.*

### **Socio-economic conditions**

**15** In the context of providing child and family services in relation to an Indigenous child, to the extent that it is consistent with the best interests of the child, the child must not be apprehended solely on the basis of his or her socio-economic conditions, including poverty, lack of adequate housing or infrastructure or the state of health of his or her parent or the care provider.

*Clarify what supports can be provided to address the socio-economic conditions. It is hoped that poverty can be addressed.*

### **Notice**

**20 (1)** If an Indigenous group, community or people intends to exercise its legislative authority in relation to child and family services, an Indigenous governing body acting on behalf of that Indigenous group, community or people may give notice of that intention to the Minister and the government of each province in which the Indigenous group, community or people is located.

*Clarify how the Minister will address the issues that community or people that may have the opinion that they have the authority to act on behalf of community, group or people. The wording as previously mentioned, "Indigenous group, community or people" is problematic. Consider, If a recognized First Nation, a designated Inuit group or Metis Organization that acts on behalf of a minimum population of 500 people may give notice to exercise legislative authority in relation to child and family services to the Minister and the Provincial Minister responsible for child and family services.*

## **20 Coordination agreement**

**(2)** The Indigenous governing body may also request that the Minister and the government of each of those provinces enter into a coordination agreement with the Indigenous governing body in relation to the exercise of the legislative authority, respecting, among other things,

- (a)** the provision of emergency services to ensure the safety, security and well-being of Indigenous children;
- (b)** support measures to enable Indigenous children to exercise their rights effectively;
- (c)** fiscal arrangements related to the effective exercise of the legislative authority; and
- (d)** any other coordination measure related to the effective exercise of the legislative authority.

*Clarification is needed to ensure that, "request" does not impede or reduce the Federal Act and create a court battle with mainstream agencies and provincial governments.*

*Consider: The Indigenous governing body may choose to enter into a coordination agreement with the Minister and the government of the province in relation to the legislative authority, respecting among other things,*

- a) b) c) d)*

## **Agreements – information**

**28** The Minister may enter into agreements with a provincial government and any Indigenous governing body regarding the collection, retention, use and disclosure of information respecting the child and family services that are provided in relation to Indigenous children in order to, among other things,

- (a)** ensure that Indigenous children are identified as Indigenous when child and family services are provided in relation to them;
- (b)** support the improvement of those services; and
- (c)** facilitate the disclosure of that information to affected families and communities.

*Clarification is needed to ensure that if the above is in relation to an electronic data collection system that it meets the needs of the community and is fully funded for development, implementation and maintenance.*

# Transitional Provisions

## **Representations and party status**

**33** In the context of a proceeding referred to in section 13 that is pending on the day on which that section comes into force, the right referred to in that section may be exercised only if its exercise is consistent with the best interests of the child and is appropriate in the circumstances.

*Clarification is needed to ensure that the First Nation, Inuit or Metis organization that the child is a member or identifies with is given party status (not just able to provide a presentation). In Ontario this is a legislative requirement.*

Summary:

It is with vested interest that this Act supports better outcomes for First Nation children and their families. There needs to be substantive investments to heal and ensure the RIGHTS of First Nation children and they have food, shelter, clean water, education, recreation, health and social services that support the culture and language.

The First Nation must continue to be given notice and have recognized party status in all matters involving the children eligible for status or meeting the First Nation Citizen code.

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