

# FIRST NATIONS LEADERSHIP COUNCIL



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**TO: FIRST NATIONS LEADERSHIP**  
**FROM: FIRST NATIONS LEADERSHIP COUNCIL**  
**DATE: JUNE 4<sup>TH</sup>, 2019**  
**RE: UPDATE ON LEGISLATIVE PROCESS ON BILL C-92**

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## PURPOSE

The purpose of this briefing note is to provide an update to the First Nations Leadership Council and BC Chiefs around the status and progress of Bill C-92: *An Act respecting First Nations, Inuit, and Métis children, youth and families* (Bill C-92).

## BACKGROUND

Bill C-92 was tabled by Parliament on February 28<sup>th</sup>, 2019 and proceeded to second reading on March 19<sup>th</sup>, 2019. It then went before the Standing Senate Committee on Aboriginal Peoples (APPA), and the House of Commons Standing Committee on Indigenous and Northern Affairs (INAN) for study. Representatives from the First Nations Summit and from UBCIC presented on behalf of their respective organizations and as representatives of the First Nations Leadership Council.

## CURRENT STATUS

Presentations before the House of Commons Committee on Indigenous and Northern Affairs completed on May 9<sup>th</sup>, 2019 and underwent clause-by-clause consideration before the committee on May 28<sup>th</sup>, 2019. The proposed amendments went before the House on June 3<sup>rd</sup>, and it has passed Third Reading. It will now go to the Senate for vote.

## ANALYSIS

The FNLC has been mandated by resolution from BC Chiefs to support Bill C92 and the transfer of jurisdiction over First Nations child welfare to BC First Nations. It has been recognized that Bill C92 is not perfect, and that there are issues that will need to be addressed moving forward. Representatives from BC presented before the Senate and the INAN Committee to express support for the Bill and to propose amendments. Though not all proposed amendments were carried in the version that was sent for Third Reading, many were carried. These are summarized below.

**Customary Adoption:** The INAN committee carried a proposed amendment to the Bill to add customary adoption into the definition of the family, and to also see custom adoption added as a consideration under Clause 16 – *Placement of Indigenous Child*. This is consistent with recommendations made by BC representatives who stated that the Bill must be consistent with First Nations lawmaking, including First Nations definitions of kinship and family.

**UNDRIP:** BC Chiefs and representatives strongly advocated that UNDRIP be added into the Purposes section of the Bill. Chief Wayne Christian, speaking on behalf of the Shuswap Nation Tribal Council, stated that UNDRIP *“needs to move out of the Preamble and into the body of the legislation”*. Cheryl Casimer urged the Committee to add a specific reference to UNDRIP in the Purposes section so that it may *“form and provide the necessary context for this work at all levels”*. Kukpi7 Judy Wilson stated: *“the United Nations declaration reflects the minimum standards of the survival and dignity of our Indigenous people. It sets out the minimum standards of human rights. It’s an important provision that needs to be emphasized in the implementation of Bill C-92.* These recommendations resulted in a proposed amendment adding an explicit reference to UNDRIP in Clause 8 (Purposes), which was carried by the Committee.

**Best Interests of the Indigenous Child:** Numerous witnesses raised concerns about the Best Interests of the Child definition and the potential implication that cultural connection and continuity would be placed as secondary interests. Ronald Mitchell, Wet’suwet’en Hereditary Chief stated: *“There is too much discretion for social workers to interpret what is meant by “best interests of the children” based on colonial western concepts, values and biases. Cultural safety must be explicit”*. In her presentations before the Senate Standing Committee on Aboriginal Peoples, Ardith Walkem recommended it be explicitly stated that *“it is in the best interest to remain connected to their Indigenous cultures, community and territory, and give very clear direction that it’s to be interpreted and defined according to their own Indigenous people’s values and traditions.”* These comments and others resulted in a proposed amendment, carried by Committee, to have cultural continuity and an ongoing relationship with family added to Clause 10(2), and it be included that the Best Interests of the Child be construed in a manner that is compatible with Indigenous law.

**Notice:** The Committee has recommended Clause 12 to be amended to ensure that Indigenous groups receive the notice that they require to be able to act, and that coordination agreements contain a notice provision. This is reflective of recommendations from British Columbia, who stated the importance of First Nations being provided adequate notice. Raven McCallum, a representative of the Ministry of Children and Family Development Youth Advisory Council and a former youth in care, stated: *“I believe this will allow communities the opportunity to share their thoughts on how to provide the best care possible for children and maybe even create permanent options or offer preventive services.”*

**Funding:** First Nations in BC and across Canada emphasized the need for funding to be referenced within the body of the Bill. Cheryl Casimer emphasized that *“funding is critically important to reform child welfare and to support first nations child and family services”* with Grand Chief Ed John making similar sentiments. BC Chiefs and representatives emphasized the need for a reference to funding within the statutory aspects of the Bill in order for First Nations to meaningfully draw down on the legislation. In response to these recommendations, the INAN Committee proposed an amendment to Clause 20

which would state that fiscal arrangements under coordination agreements are sustainable, needs-based, and consistent with the principle of substantive equality.

**Data Collection:** Responding to various calls for strengthened data collection, amendments were proposed by the Committee to Clause 28 to ensure that data collected is disaggregated.

Bill C92 passed Third Reading in the House of Commons on June 3<sup>rd</sup>, 2019 and will now go to the Senate for vote. The Bill must receive Royal Assent by June 21<sup>st</sup>, 2019 or it will likely die on the order paper. Amendments proposed by BC representatives, but not passed, included: post-majority supports, addressing the definition and standing of 'care provider', and clarifying dispute resolution mechanisms. Moving forward, the FNLC and First Nations can continue to advocate on these specific issues via the Regulations and within Coordination Agreements. Further, in the exercise of self-determination and jurisdiction, First Nations can address some of these issues within the development of your own child and family wellbeing laws.

## **NEXT STEPS**

The FNLC is preparing an Open Letter to the Senate expressing support for the urgent passing of Bill C-92.