Association of Native Child and Family Services Agencies of Ontario

May 2019

Written Submission for the Standing Committee on Indigenous and Northern Affairs, RE: Subject Matter of Bill C-92

A report prepared by the Association of Native Child and Family Services Agencies of Ontario

About ANCFSAO

Since 1994, ANCFSAO has served as a technical voice and reference group for Indigenous Child Well-Being Agencies (ICWBA) on matters relating to child and family well-being. As a membership-based organization, ANCFSAO acts as a resource in assisting its member agencies (and the communities they serve) toward the provision of quality Indigenous child welfare and related services to Indigenous people through education, training, advocacy, research, and policy development and analyses.

We are comprised of 13 of the 14 ICWBA, both designated and pre-designated, in Ontario. We are mandated by our First Nations to provide child welfare services to our member communities in ways that are community-oriented and community-based. The origins of our agencies date back to the 70s. In the words of one of our member agencies, Weechi-it-te-win Family Services, we are examples of "First Nations communities reclaiming jurisdiction for their children and safeguarding a cultural heritage shaken by the impacts of colonization, the legacy of residential schools, and intervention by the mainstream child welfare system."[1] Our agencies are guided by the values and principles instilled in us by our traditions, cultures, and communities.

Our agencies serve 90% of the First Nations in Ontario. Our membership is comprised of the following agencies in Ontario:

1. Anishinaabe Abinoojii Family Services
2. Dilico Anishinabek Family Care
3. Dnaagdawenmag Binnoojiiyag Child and Family Services
4. Kina Gbezhgomi Child and Family Services
5. Kunuwanimano Child and Family Services
6. Mnassged Child & Family Services
7. Native Child and Family Services of Toronto
8. Nogdawindamin Family & Community Services
9. Ogwadeni:deo
10. Payukotayno James & Hudson Bay Family Services
11. Tikinagan Child & Family Services
12. Waabnoong Bemjiwang Child Well Being Agency Development Project
13. Weechi-it-te-win Family Services Inc.

Executive Summary

This submission is made on behalf of the Association of Native Child and Family Services Agencies of Ontario (ANCFSAO), at the request of our member agencies. As individual agencies and members of ANCFSAO, we stand firmly behind our First Nations who mandate us and by whose governance we abide. This submission offers a series of discussions and recommendations for Bill-C92 for consideration. These considerations arise from our vantage point as on-the-ground child welfare practitioners and technicians.

[1] https://www.weechi.ca/wcm-docs/docs/wfs_promising_practice_article.pdf

In what follows, we discuss our involvement in the Indigenous Services Canada (ISC) initial engagement sessions on Indigenous child and family service reform. We then turn to the substance of our brief: considerations from child welfare technicians on the substantive aspects of Bill C-92.

Engagement with Indigenous Services Canada

ANCFSAO was engaged in August 2018 by ISC during their initial engagement on a potential federal legislation. The table below categorizes our feedback.

Cultural Congruence and Enhancement of Cultural Identities	• Agencies were consistent that cultural congruence and the enhancement of cultural identities was critical to any potential legislation to do with Indigenous child welfare. • Agencies were consistent that federal legislation must recognize the cultural diversity of First Nations. • Agencies agreed that the cultural systems in place are the foundation for child welfare practice.
Engagement Process	• Agencies expressed concern with ISC's engagement process in terms of who was being engaged; how decisions were being made; and why the legislation was being rushed. • Agencies clarified with ISC that our participation in the process was not consultation per the Crown's obligation. • Agencies stated that the people who are affected must be consulted, and that the process must be grounded in and across all of Ontario, including the urban Indigenous populations.

Socioeconomic Conditions	• Agencies agreed that the underlying socioeconomic factors that bring children into the child welfare system must be addressed.
	• If ISC wants to reduce overrepresentation, then they need to address the issues of why children come into care, including but not limited to:
	  ○ Poverty;
	  ○ Unemployment;
	  ○ Poor and inadequate housing;
	  ○ Food instability;
	  ○ Domestic violence; and
	  ○ Addictions.

Needs-Based Funding	• While agencies stated that money itself would not solve the issues facing our communities, they were consistent that funding should be based on actual costs and needs while accounting for remoteness and case complexity.

Principles to Implementing Federal Legislation	1. **Flexibility** respecting individual First Nations' child welfare practice must be central to any federal legislation; 2. **Family, community, and nation preservation and prevention** are central to Indigenous child welfare practices; 3. **First Nations' jurisdiction** and sovereignty must be respected; and 4. **Quality care** must be based on best practice.

Alongside the above, ANCFSAO stated to ISC that any legislative changes must be done in such a way that materially improves the quality and effectiveness of services provided to and received by Indigenous children without regard to status or any other colonial or imposed definition.

Considerations

Exercise of First Nations' Jurisdiction over Child Welfare

ANCFSAO and our member agencies are mandated by our First Nations and we abide by their governance. As such, whatever decision our leadership makes, we will continue to follow as is our mandate. First Nations jurisdiction and sovereignty must be respected, upheld, and enacted through any federal legislation without any qualifications.

While Bill C-92 attempts to honour our First Nations' jurisdiction and sovereignty, Section 18(1) and Section 19 qualify this sovereignty as only in relation to child and family services, so long as it complies with the *Canadian Charter of Rights and Freedoms.* In our view, full recognition of First Nations' inherent right should be deeply entrenched in the Bill C-92. This has not been done, and the path to exercising sovereignty is constrained by the lack of legislated resources to allow our First Nations to do so.

ANCFSAO has concerns with the issues of implementation and the exercise of our First Nations' jurisdiction in relation to child and family services. Operationally, we have concerns about our ability to provide services to Indigenous children, youth and families with potentially multiple laws and jurisdictions to comply with. We note that following multiple laws and multiple jurisdictions requires significantly more resources and careful planning that is inclusive of funding mechanisms.

"Best Interests" and "Purposes and Principles"

Canada should not be defining the best interests of an Indigenous child. The best interests and safety of an Indigenous child must consider as a primary factor the culture and cultural identity of the Indigenous child and that the best interests and safety of Indigenous children are attended to through culturally congruent[2] services.

At this time, per *KHCAS v. M.W., 2019 ONCA 216*, Ontario's Court of Appeal has provided a favourable ruling that the best interests of the child are to be determined through a "remedial lens;" that is, special consideration is to be paid to a child's Indigenous heritage in order to redress historical trauma while acknowledging the significance of Indigenous cultural and community connections to a child. ANCFSAO feels that this is a favourable

[2] See Appendix

ruling that will have positive ramifications for Indigenous children in Ontario's legal child welfare system. We therefore recommend that consideration is paid to this ruling should Bill C-92 be moved forward.

The Provision of Child and Family Services

Alongside our First Nations, ANCFSAO has long advocated for a shift from the protectionist, forensic framework that currently guides Ontario's child welfare legislation and move towards a preventive, family preservation approach that is rooted in cultural healing practices. In ANCFSAO's ample experience, the two cannot be considered in opposition of one another but, rather, approaches along a continuum.

Through the funding from both Jordan's Principle and the Canadian Human Rights Tribunal, our agencies are able to practice innovative prevention services, such as Nogdawindamin Child and Family Service's Baby Lucious Neonatal Hub, which offers mothers living with opioid addiction an opportunity to connect with their babies and families while providing culturally grounded, supportive service. This program is showing exceptional results, and we are pleased to see that s. 14(2) of Bill C-92 is aligned with what our communities, First Nations, and member agencies already are successfully practicing.

While priority is given to prevention care under s.14(1) and (2), as well as legislating that socioeconomic conditions cannot be reason alone for apprehension through s.15, Bill C-92 is unclear on the requirements to provide prevention services. Under Ontario's legislation, our member agencies' struggle with provincial understandings of our wholistic approach to child welfare that is along the prevention to protection continuum. Therefore, ANCFSAO recommends that Bill C-92 states that First Nations articulate what constitutes "prevention care" as referenced under s.14.

Without a funding clause, ANCFSAO cannot express full confidence that Bill C-92 will be able to achieve what it hopes to. Per the 2016 CHRT ruling, our agencies have been chronically under funded and our children racially discriminated against. Our communities continue to experience the effects of chronic community underfunding, intergenerational trauma, and systemic impoverishment in a way that requires clearly funded services, programming, and strategies.

While it is timely to legislate that socioeconomic conditions on their own are not a protection concern, the government must address why socioeconomic conditions are so poor among our communities with attention paid to federal and provincial roles in the historic and systematic impoverishment of our communities. If there are no additional investments into our communities, and socioeconomic conditions are not improved, children will continue to be apprehended for those reasons.

The federal legislation will fail unless the provincial and federal governments take responsibility for redressing the socioeconomic conditions of our communities and Nations, as well as provide consistent and substantial financial support to provide substantive equality as proposed under s.11(d).

Definition of First Nations and Other Communities

Bill C-92 follows the constitutional definition of Aboriginal Peoples which only includes Indians, Métis, and Inuit. This is not reflective of our service populations, nor does it provide Indigenous children to their entitlements under both the United Nations Declaration of the

Rights of Indigenous People (UNDRIP) and the United Nations Convention of the Rights of Children (UNCRC), both of which Canada has ratified and both of which state that children have a right to their culture.

Under Bill C-92, our ability to continue to serve those who self-identify as Indigenous is restricted. ANCFSAO is concerned that Bill C-92 does not represent our service population, which may include urban Indigenous populations, non-status Indigenous children, youth, and families, black Indigenous youth, and self-identifying Indigenous young people.

Bill C-92 asserts cultural continuity and substantive equality as principles of this legislation, yet it fails to provide the potential benefits of this legislation to all the Indigenous people entitled to them by imposing the arbitrary definition of "Indians" contained in the Indian Act by using the Constitutional definition of Aboriginal people.

Standards and Accountability

As Indigenous Child Well-Being Agencies, we believe that our First Nations have the right to define their own regulations and standards for our children as is traditional, customary, and their inherent right. This Bill must not shift our accountability from the province to the federal government; otherwise, it recreates the very structure we already experience as problematic, paternalistic, and colonial in the provinces.

The Province of Ontario requires us to comply with many standards and regulations even when the practice does not provide cultural continuity. For example, when it comes to formal customary care, in accordance with the province's permanency funding guidelines and the province's customary care guide, this requires all foster care licensing to be imposed on our customary caregivers. A full home study, which is required by the foster care licensing standards, include: medical clearances; police clearances; home safety assessments; fire safety; water safety; water testing; bedroom specifications; written references; and interview processes, to name a few of the requirements. These clearances are themselves poverty checks and invalidate our people from becoming customary caregivers both because of systemic impoverishment and underfunding and because they are standards that are not necessarily custom.

We are not suggesting that there be no oversight or accountability mechanisms with respect to services and outcomes; but that these functions should not rest with Canada or the province. Should our First Nations accept Bill C-92, there will need to be oversight mechanisms, such as Elders Councils or Grandmothers Councils. This must be First Nations-defined within our own roles.

ANCFSAO recommends that Bill C-92 provides sufficient oversight to mainstream agencies currently servicing Indigenous children. Historically, insufficient weight, effort, and attention is given by mainstream agencies to Indigenous children despite clearly stated, mandated, and unambiguous provisions that speak to consultation and the best interests of an Indigenous child. ANCFSAO is concerned over how Bill C-92 will be effectively regulated for Indigenous children in mainstream services.

Placement Priorities

As Indigenous agencies mandated by our First Nations' members, we already practice placement priorities as per the customs and directions of our First Nations. Whether or not this matches what is proposed in this legislation is irrelevant. This Bill purports to affirm the

rights and jurisdictions of First Nations in relation to child and family services – First Nations jurisdiction means that it is First Nations defined.

Our children might not be placed in our communities because the financial resources are not there to mitigate concerns caused by the many socioeconomic conditions, including water advisories, housing conditions, and poverty, in order to understand why children, come into care. Without substantial investments in ameliorating the conditions of Indigenous peoples caused by colonization, we will continue to have this problem. Legislating placement principles in and of itself does nothing.

Role of the Non-Indigenous Governing Bodies

The role of any non-Indigenous governing body must maintain flexibility and adaptability to our cultural and political structures.

Our agencies require clarity about the Coordination Agreements what the role of the federal government and provincial government will be when a First Nation declares their own child welfare law as the law to govern child welfare matters. As we have stated above, our conflict with the province has been the requirement to fit non-Indigenous formulae and standards that are not congruent with our needs, circumstances, and cultures. Any new agreements must not perpetuate this colonial and paternalistic structure but, rather, affirm our right to practice as we have customarily.

Needs-Based Funding

In our August 2018 engagement session with ISC, our agencies were consistent that funding should be based on actual costs and needs, while considering remoteness and case complexity. The Canadian Human Rights Tribunal itself, Canada's highest arbiter of human rights, found the federal government was racially discriminating against First Nations children through substantially inequitable funding to "First Nations Child and Family Services" (FNCFS) programs. This ruling also stated that federal funding formulae create "incentives" to remove children from their homes and placed in foster care, thus fuelling the humanitarian crisis of overrepresentation.

It is in this context that ANCFSAO expresses concern with Bill C-92's failure to legislate mandatory, equitable funding for FNCFS programs. This is concerning because there are precedents for legislated funding in Canada's jurisprudence, such as the under the *Canada Health Act* through the Canada Health Transfer. ANCFSAO therefore recommends legislating mandatory and equitable funding through Bill C-92.

ANCFSAO has long advocated for needs-based funding that is not formulaic, but rather based on the actual needs of our communities, families, and children, and the costs of these services. ANCFSAO has provided a series of recommendations to the province of Ontario during their 2017 review of their funding formula. Our recommendations remain relevant for the purposes of this section. Any funding must be provided for:

- Core funding; prevention funding; and protection funding;
  - Core funding here should provide revenue for positions that are essential to the operations of an Indigenous agency.
- Actual child-in-care costs;
- Staff retention and training;
- Prevention programming;
- Remoteness quotient;

- Capital infrastructure;
- The size of the agency; high cost service population; and high needs, complex cases.

ANCFSAO further recommends that both the federal and provincial governments fund treatment resources for our youth in the north so that they do not need to be flown out of their communities hundreds of kilometres south to experience culturally incongruent treatment for their needs. This current practice, based on unavailable resources up north, has disastrous and deleterious effects on our youth, as expressed in the Ontario Chief Coroner's "Expert Panel's Report on the Deaths of Children and Youth in Residential Placements."

Transition Process

Children cannot be put at risk in this transition

The safety of our children is paramount to any jurisdiction. Wherever our First Nations choose to go, we support them and will follow them. Our concern here is, if transition is the way forward, there must be a clear process so that every Indigenous child receives high quality service that is seamless. No child can fall between gaps that may arise in the transition of jurisdictions. Be it through protocols, policies, or regulations, all our children must receive seamless service at all points in time.

Uphold Jordan's Principle

ANCFSAO calls on the federal government to continue funding and upholding Jordan's Principle throughout this transition process and beyond, and that this funding is based on the principle of substantive equality.

Summary and Final Thoughts

The Association of Native Child and Family Services reiterates that we are mandated and governed by our First Nations. Therefore, we stand by any decision they make about child welfare jurisdiction. This brief has offered a series of considerations and recommendations for decision-makers to reflect upon. These include issues related to needs-based funding; transition processes; standards and accountability; the identities of our children; prevention and protection; and, finally, the full exercise of First Nation's jurisdiction over our children's welfare.

We are thankful for the opportunity to present these considerations to the Standing Committee on Indigenous and Northern Affairs.

Miigwetch. Nia:weh.

Appendix

Cultural Congruence, as explained by Larry W. Jourdain, Executive Director, Anishinaabe Abinoojii Family Services:

As Anishinaabe people, our concept of knowledge (or knowingness and feeling who we are from the inside out) is vital to our successes both as individuals and as collectives (people, family, community, nation). When this is measured from a mainstream thought or way, it does not transfer the equally; we see that in such concepts as permanency or treatment. Most mainstream modalities and plans are unsuccessful even when taking into consideration this thought or idea of cultural competence, and what make them still unsuccessful. Knowledge is not competence; understanding and awareness is not competence. Knowledge, awareness, and understanding combined with actionable changes to structural supports such as policy, procedures and attitude within the work and accountability to those changes: this is cultural congruence. Competence is in the way that the knowledge will be applied in a competent way.

Cultural congruence is also integral to transitioning the work with Indigenous people for more successful outcomes. In using this term, we are referring to the process of making culture the core to our work, not only in structural development, policy, procedure but within all factions in a way that it transfers from agency to frontline to families. That the workers are there to facilitate the work in away that brings out the importance of the culture as the center and main avenue of success, not take it over in their mainstream thought and worldview, and not to make culture a component to, but the center of. They are there to empower the people and stand them back up using culture as the path to do so and this needs to be from an Anishinaabe worldview, perspective and knowingness. In the pursuit of doing this we must start with cultural safety, creating the space to enable Anishinaabe people to feel safe to explore culture as the avenue. Allowing cultural competence and congruence to flourish within the work will be evident by the demonstration of cultural safety of the agency.

Cultural safety is vital as this will demonstrate to the families the agencies ability to embrace and create safety to explore culture. This may be done aesthetically but also energetically; people will feel safe in sharing their culture through action or word when cultural safety exists. This cultural safety must also be embedded in the energy that is created within the worker, that also transfers into cultural humility. Although a worker may have a high level of knowledge, awareness and understanding that does not make them the expert, we are the experts as Anishinaabe people, as Anishinaabe youth, as Anishinaabe families. It is we who are born with this knowledge, awareness and knowingness that perhaps may be masked but it is still inherently there. Workers need to understand this, be aware of their affect via body language, words, thought and action. Absolutely, we need workers that are empowering the families, the knowledge keepers, the elders, traditional practitioners, making them apart of the conversation and relying on them as the experts.

It is vital to the work to have all this discussion work together and intertwine to create a relationship with the work that enables cultural competence, cultural congruence, cultural safety and cultural humility to live within the work. Removal is not the answer, it absolutely does not create successful outcomes for Indigenous youth or families, filling the void that history has left us with via the use of culture is the path we need to work together to create.