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Judicial Workbook on Bill C-92 — An Act Respecting First Nations, Inuit and Métis Children, Youth and Families

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Judicial Workbook

Bill C-92 - An Act Respecting First Nations, Inuit and Métis Children, Youth and Families

WAHKOHTOWIN

LAW & GOVERNANCE LODGE

JUDICIAL WORKBOOK

Bill C-92 - *An Act Respecting First Nations, Inuit and Métis Children, Youth and Families*

Objective: Based on the purpose, history, textual wording and relevant interpretative principles, these are the approaches to the provisions of the *Act* that we believe will best achieve its purpose, which Canada has identified as "to protect and ensure the well-being of Indigenous children, families and communities by promoting culturally sensitive child welfare services, with the goal of putting an end to the overrepresentation of Indigenous children in child and family services systems."[1]

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[1] Attorney General of Canada's Brief in *Reference to the Court of Appeal of Quebec in Relation to An Act Respecting First Nations, Inuit and Métis Children, Youth and Families* (500-09-0287151-196), dated April 1, 2021 at para 4.

DEFINITIONS

Significant Measures

Wahkohtowin Law and Governance Lodge defines **"Significant measures"** in a broad inclusive way, in keeping with the purposes of the *Act* – not just legal changes but changes in placements, service provider awareness or responses to issues such as suicidal ideation or behaviour, sexual identity, etc. –anything that could significantly change the day to day life of the child, parent and/or care provider, or can impact the likelihood or timeline of apprehension, permanency or reunification.

While this is an interpretation of an undefined term, significant measures must cover more than court proceedings or else parliament could simply say court proceedings.

Indigenous Governing Body [IGB]

The *Act* defines "**Indigenous Governing Bodies**" as "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":* s. 1. This:

- Includes band councils and other current governing organizations (e.g. Métis Nation, NTI)[2]
- May include tribal organizations or other bodies granted authority over this area by multiple band councils etc.
- May include non-profit societies or corporations incorporated as representative governing bodies for Métis, Inuit or non-status groups.[3]

An Act Respecting First Nation, Inuit and Métis Children, Youth and Families
JURISDICTION AND APPLICABLE LAW
Indigenous Identity Is the child Indigenous (First Nation, Inuit or Métis)? Is this confirmed? Is there a possibility the child is Indigenous but not connected? Is this investigated? Self-identification is sufficient for the purposes of applying the Act. If a child is Indigenous, the Act applies.

[2] In *Behn v. Moulton Contracting Ltd.*, 2013 SCC 26, the Supreme Court took for granted that Indian Act First Nations bands are appropriate representatives of s 35 rights holders.

[3] Courts have recognized these as proper representative bodies. See, for example: *Labrador Métis Nation v Newfoundland and Labrador* (Minister of Transportation and Works), 2007 NLCA 75 at 36-47; *Martin v Province of New Brunswick and Chaleur Terminals Inc*, 2016 NBQB 138 at para 48-51.

The Act applies whether the child is status or non-status.
The Act applies whether the child resides on or off reserve.

Related to Child and Family Services
Is the matter "related to child and family services"?

In order for this Act to be meaningfully applied:
The Act applies at every stage of a child protection hearing. This includes:

- applications which may result in an Indigenous child *entering* into the care of CFS, by agreement, temporarily, or permanently, and
- applications that may result in *removing* the child from CFS care such as private guardianship or adoption.

Taking a purposive approach, the protections provided to Indigenous children, families and communities in the minimum national standards should be applied in any private guardianship, tutelage and adoption applications.[4]

The Act, and particularly:

- S. 11 (impacts),
- S. 16(3) (re-assessment) and
- S. 17 (promoting emotional ties)

Continue to apply until the child reaches age of majority so all Guardianship, Tutelage and Adoption orders should reflect these protections.

Indigenous Governing Body/ies
What is the child's Nation(s) or Communities?

In order for this Act to be meaningfully applied:
First Nations (Status) Bands are presumed to be IGBs, as the appropriate representative of s. 35 rights holders (Behn).
If a First Nation (Band) has not designated an IGB, and there is no other group claiming to represent the Indigenous group, assume Band is the IGB.

If an Indigenous representative government (i.e. Inuit, Métis or non-status) has not designated an IGB, and there is no other group claiming to represent the Indigenous group, assume the representative governing organization is the IGB.

Notice must be given to an IGB in matters affecting an Indigenous child, regardless of whether the IGB has given notice of intention to act on behalf of a group, community, or

[4] An issue to be aware of, for example, is the authors have heard of multiple anecdotal reports of private adoption agencies urging parents to place a child for adoption or not name an Indigenous parent to avoid the protections CFS provides. Without legislated protections, post-adoption, or guardianship, Indigenous youth often find themselves back in the system and "radically isolated" in adolescence and young adulthood after permanency placements break down. See Friedland, Re Racine v Woods.

people (s. 12).

If an Indigenous child is connected to more than one IGB, or the appropriate IGB is contested between 2 or more Indigenous bodies, notice should be given to all IGBs.

Applicable Legislation
Does the child's IGB have their own legislation? Check Canada website
If **yes**, start with the requirements from the Indigenous legislation.

- ss. 10-15 of the National Standards still apply.

If **no**, start with the requirements of National Standards in the Act .
Next, any requirements of the relevant provincial legislation the Indigenous legislation or the Act does not address, if they do not conflict or contradict them, may be applied (s. 4).

Overlapping Jurisdictions
The Act assumes overlapping jurisdiction (double aspect) and so, potential conflicts, would be addressed as follows:

If there **is no** Indigenous law (IL):

- If province has lower or no similar standard, C-92 prevails
- If province and federal standards are equal - either applies
- If provincial law provides more robust protection - provincial applies

If there **is** an IL:

- If conflict between IL and ss 10-15 of C-92, C-92 prevails
- If conflict between *Canadian Human Rights Act* (CHRA) and IL, *CHRA* prevails (s. 22(1))
- If conflict between 2 or more ILs, the "stronger ties" provision applies (s. 24(1))

In both cases, equal or more robust Indigenous laws will not be in conflict

- If conflict between IL and any other federal law, IL prevails (s. 22(1))
- If conflict between IL and a provincial law, IL prevails (s. 22(3))

Has a significant measure occurred to the child, or could it occur as a result of this hearing? If so:

Notice (s. 12)

Did CFS give prior notice of the significant measure to:

(1) the child's parents?
(2) anyone else who is a care provider(s)[5]?
(3) the child's IGB? Who is being served the notice and how? Notice must be served to a Director or actual Band Administrator (this requires effort, i.e. not just leaving at security office)
(4) If notice was not given prior to a significant measure due to emergency

[5] Care providers could include private guardians but don't include foster parents or group care providers.

circumstances, was notice given as soon as possible to all parents, care providers and IGBs?

Representation (s. 13)
Are the parents present, as a party, to make representations?

Are any care providers, as parties, present to make representations?

Is a representative of the child's IGB present to make representations?

If not, did CFS inform them they have party status (parents and care providers) and have a right to make representations in this hearing?
If not, has there been an inquiry into whether they have capacity and resources to do so?[6]

Representation by and Consultation with IGBs[7]
In addition to the s. 12(1) requirement of notice and representation from the child's IGB(s), inquiry into the child's IGB's views as to what is in the child's best interests in the particular circumstances of each case may offer the best evidence of:

Adequate local information to consider the child's wellbeing relating to:

- CFS providers' prior compliance with notice and representation requirements: s. 12(1),
- A child's "languages, cultures, practices, customs, traditions, ceremonies and knowledge": s. 9(2)(b) and "cultural, linguistic, religious and spiritual upbringing and heritage": s. 10(3)(a),
- The "characteristics and challenges of the region": s. 9(2)(d),
- In cases of disability, what is needed for a child to be able to participate "in the activities of his or her family or the Indigenous group, community or people to which he or she belongs": s. 9(3)(a),
- Ensuring a jurisdictional dispute is not "resulting in a gap in... services provided": s. 9(3)(e),
- The importance to the child of the child's cultural identity and connections to the language and the territory of the Indigenous group, community or people to which the child belongs": s. 10(3)(d),
- Any plans for the child's care in "accordance with the customs or traditions of the Indigenous group, community or people to which the child belongs": s. 10(3)(f),

[6] See the Principle of Substantive Equality that sets out that S.10(3)(c) family members and (d)IGBs must be able to exercise their rights under this Act without discrimination, which arguably requires state funding in these circumstances.

[7] It is helpful to be aware of and consider applying best practices for addressing a common bias of "Assuming a Conflict between Indigenous children and Communities" at 125-127 in Justice Ardith Walkem's "Addressing Biases Against Indigenous Parents and Indigenous Parenting" in *Wrapping Our Ways Around Them: Indigenous Communities and Child Welfare Guidebook* 2nd ed. 2021.

- Ensuring the effect of services are provided in a manner that takes into account a child's needs, their culture, allows them to know their family origins, and promotes substantive equality: s. 11(a)-(d),
- Socio-economic conditions, including information on the availability or lack of adequate housing and infrastructure in a land based community, such as a village, reserve or settlement: s. 15,
- What reasonable efforts and support services have or could be realistically taken to promote preventative care and have a child continue or return to reside with a family member: s. 14(1); s. 15.1 and s. 16(3),
- In regard to placement, what possibilities may exist and what is needed in support for priority placements within the child's family or community: s. 16(1)(a)-(e) & (2), as well as placements in accordance with the "customs and traditions' of Indigenous peoples, such as custom adoption: s. 16(2.1).

The child's wellbeing in relation to their Indigenous group, community or people's inherent jurisdiction, including:

- Upholding Indigenous governing body's right to have "exercise, without discrimination" their rights under this Act, including the right to have "the views and preferences of the Indigenous group, community or people considered in decisions that affect that Indigenous group, community or people": s. 9(3) (d).
- How services can be provided in a manner that does not "contribute to the assimilation of the Indigenous group, community or people to which the child belongs or to the destruction of the culture of that Indigenous group, community or people": s. 9(2)(e),
- Determining congruence with the Indigenous governing body's laws: s. 10(4)
- Fulfilling Bill C-92's purpose of recognizing inherent CFS jurisdiction: s. 8 (a) & s. 18(1).

Guiding Principles (s. 9)

The Act is to be interpreted and administered in accordance with the guiding principles of **best interests of the Indigenous child** (s. 9(1)), **cultural continuity** (s. 9(2)), and **substantive equality** (s. 9(3)) and ss. 10 (1)-(3), which requires decision-makers to go beyond principles in most provincial statutes.

Best Interests of the Indigenous Child Analysis (s. 9(1), s. 10)

Best Interests of the Child [Best Interests] remains the primary consideration: **s. 10(1). Determining Best Interests under the Act requires a new analysis.** It is not a matter of just adding additional factors to factors in provincial statutes or applying past precedents.

Starting point is that Indigenous children's need for ongoing relationships with their family members and community, as well as their cultural connectedness, are of at least equal

importance to other indicators of emotional and psychological safety, security and wellbeing. **This super-weights Indigenous children's need for ongoing relationships with family and cultural connectedness**.

The full primary consideration clause reads:

> **Primary Consideration:** When the factors referred to in subsection (3) are being considered, primary consideration must be given to t**he child's physical, emotional and psychological safety, security and well-being**, as well as to the importance, for that child, of **having an ongoing relationship with his or her family and with the Indigenous group, community or people to which he or she belongs** and of **preserving the child's connections to his or her culture**: s. 10(2) (emphasis added)

Compare with the Primary Consideration clause in the amended Divorce Act, s. 16(2), which only includes the first clause (safety, security and well-being).

Best Interests is paramount and

- should be read *with* principles of **cultural continuity**: s.9(2) & **substantive equality**: s. 9(3),
- not in a way contrary to the Act's purposes: s. 8(a)-(c), and
- considering the primary considerations as well as the factors in s. 10(3).
- When considering a child's wellbeing, remember cultural continuity is now *essential* to an Indigenous child's wellbeing: s. 9(2)(a).

Best Interests Factors (s. 10(3))

Many of the best interests factors are familiar, and are the same or similar to the best interests factors in the amended *Divorce Act*.

Distinct factors include:

> (d) the importance to the child of preserving the child's cultural identity and connections to the language and territory of the Indigenous group, community or people to which the child belongs;
>
> (f) any plans for the child's care, including care in accordance with the customs or traditions of the Indigenous group, community or people to which the child belongs;

Common factors include:

> (a) the child's cultural, linguistic, religious and spiritual upbringing and heritage;
>
> (b) the child's needs, given the child's age and stage of development, such as the

child's need for stability;

(c) the nature and strength of the child's relationship with his or her parent, the care provider and any member of his or her family who plays an important role in his or her life;

(e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;

(g) family violence and its impact on the child and

(h) any relevant civil or criminal proceeding, order, condition or measure.

Cultural Continuity (s. 9(2))

Cultural continuity may be a new, or less familiar principle to Canadian judges than best interests or substantive equality. The Act sets out concepts to assist understanding it and for applying it.[8]

The Act explains:

- "**cultural continuity is essential to the well-being** of a child, a family and an Indigenous group, community or people" (a) and
- "the transmission of the languages, cultures, practices, customs, traditions, ceremonies and knowledge of Indigenous peoples is **integral to cultural continuity** (b).

Other concepts refer to administration of the Act, including that residing with family often promotes an Indigenous child's best interests (see the placement provisions. (s. 16(1)(a)-(e)).

There are two directives for CFS provision:

(d) child and family services provided in relation to an Indigenous child are to be provided in a manner that does not contribute to the assimilation of the Indigenous group, community or people to which the child belongs or to the destruction of the culture of that Indigenous group, community or people; and

(e) the characteristics and challenges of the region in which a child, a family or an Indigenous group, community or people is located are to be considered.

Substantive Equality (s. 9(3))

Substantive equality is prioritized as one of the three principles that ought to inform the interpretation of the Act as a whole. In the context of First Nations child welfare, the Canadian Human Rights Tribunal has defined substantive equality as First Nations children

[8] To learn more about the importance of cultural connection or 'groundedness' for Indigenous children and youth's well being, see NICWA Contemporary Attachment and Bonding, as well as other resources listed below under "Attachment Theory and Cultural Connectedness", below.

and families having access to services that "consider the[ir] distinct needs and circumstances … including their cultural, historical and geographical needs and circumstances," as well as conforms to Jordan's Principle.[9]

Jordan's Principle is a child-first principle and provides that where a government service is available to all other children and a jurisdictional dispute arises between Canada and a province/territory, or between departments in the same government regarding services to a First Nations child, the government department of first contact pays for the service and can seek reimbursement from the other government/department after the child has received the service. It is meant to prevent First Nations children from being denied essential public services or experiencing delays in receiving them.[10]

The Act directs that substantive equality reflects that:

- Children with a disability should participate in the activities of their family or community to which he or she belongs, to the same extent as other children: s. 9(3)(a);
- A child, the child's family member, and the child's IGB should be able to meaningfully participate in decisions affecting them, without discrimination: s. 9(3)(b)-(d);
- Discrimination can include systemic underfunding of services based on ethnic/Indigenous origin.[11]
- Jurisdictional disputes must not result in a gap in child and family services that are provided in relation to Indigenous children (e.g., Jordan's Principle): s. 9(3)(e).

Priority to Preventative Care (s. 14 (1)):

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.

Remember:

- The new best interest analysis super-weights ongoing relationships to family and cultural connectedness: s. 10(2)
- A child's best interests are often promoted when the child resides with members of his or her family and the culture of the Indigenous group, community or people to which he or she belongs is respected 9(2)(c)

Courts can encourage compliance by asking:

- Has preventative care to support the child's family been provided?
- If so, what services?
- Has preventative care been prioritized over other services?

[9] *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2 at para 465 and 481.

[10] *Ibid* at para 351.

[11] *Ibid*.

- Has the child's family and IGB been asked for information regarding realistic or useful support services for the family?
- If support has not been provided, has CFS provided a reason, with evidence, that such support is not congruent with the child's best interests?

Consider:

- If CFS has provided a reason, with evidence, that supports are not consistent with the best interests of the child, does the IGB agree with CFS? If not, where is there a difference of opinion?
- What other supports could be provided?

Prenatal Care (s. 14(2)):

To the extent likely to be consistent with best interests after birth, the provision of prenatal services to promote preventative care should be provided and given priority over other services in order to prevent the apprehension of the child at the time of birth. Prenatal services likely to be in a child's best interests after birth may include:

- Basic necessities of life for the pregnant parent (food, shelter, safety),
- Access to culturally safe basic prenatal health services
- Access to culturally safe specialized prenatal health services, including addiction and mental health services,
- Planning and preparation for mitigating socio-economic conditions and putting family support services for the family in place at the time of birth,
- Planning and preparation for placement (including notice and representation and following placement priorities) at the time of birth.

This provision means that CFS providers can no longer justify *not* helping parents in the prenatal period by saying they cannot respond to requests for help until the child is actually born.

Consider:

- If a parent is pregnant, should an order be made for CFS to provide prenatal services?
- If a child is apprehended at birth, or there is an application to apprehend at birth, what evidence has CFS provided of offering or providing prenatal services prior to birth?
- If no prenatal services have been offered or provided, can the child's immediate safety be maintained (e.g. remain in hospital, 24/7 in-home family support) until family support or placement planning can be implemented?

Socio-Economic Conditions (s. 15):

The child **must not** be apprehended solely based on their socio-economic conditions,

including poverty, lack of adequate housing or infrastructure, or the state of health of either their parent or care provider

Remember:

- S. 10(3)(e) - substantive equality and s. 15.1 - reasonable efforts.

Courts can encourage compliance by asking:

- Were the grounds on which CFS apprehended the child based on or including any of these factors?
- If grounds include more than socio-economic conditions, would those grounds be sufficient to apprehend absent these factors?
- Did CFS assess whether safety, security and wellbeing concerns could be mitigated or resolved by provision of housing, services or financial supports? If so, did CFS provide these?
- If not, why not?

Consider:

- Can an order be made to provide the necessaries to maintain the child safely in their family home?

Reasonable Efforts (s. 15.1)

Before apprehending a child who resides with their parent(s) or other family member, the CFS provider *must* demonstrate they made reasonable efforts to have the child continue to reside with that person (unless immediate apprehension is necessary for best interests).

- Reasonable efforts require *active* and *ongoing* measures by CFS providers, including problem-solving with parents and family members when necessary, not just providing a list of conditions and a list of resources.[12]
- What evidence has CFS provided to demonstrate they have actively made reasonable efforts to have the child continue to reside with their parent or care provider?
- Have reasonable efforts been actively made on an ongoing basis?

Consider:

- If the child is not in immediate physical danger, and there is no evidence of CFS making reasonable efforts, CFS is not in compliance with the Act and an apprehension order should not be granted.

Placement Priorities (s. 15.1 and s. 16(1)(a)-(e), (2) and (2.1))

The Act's placement priorities mean that Courts now oversee placements.

[12] For more detailed information and case studies on what reasonable efforts should and can entail, see "Best Practices for Reasonable Efforts" in Justice Ardith Walkem's *Wrapping Our Ways Around Them: Indigenous Communities and Child Welfare Guidebook* 2nd ed. 2021 at 60-63.

- This may be a change in provinces where in the past this was left to the discretion of the Director.
- It is the duty of CFS providers to look for placements and identify what efforts were taken to find placement priorities and why these efforts weren't successful. This needs to be documented, with evidence, in every case.
- The onus is not on the parent, family members, care providers or the IGB to identify placement options.

The CFS provider has the duty under the Act to make reasonable efforts to identify priority placements.

When making placement decisions, remember:

- The new best interest analysis super-weights ongoing relationships to family and cultural connectedness: s. 10(2)
- A child's best interests are often promoted when the child resides with members of his or her family and the culture of the Indigenous group, community or people to which he or she belongs is respected: s. 9(2)(c)

Courts can encourage compliance by asking:

- Is there documentation for each step in the Placement process?
- Has CFS provided reasons with evidence of why the steps didn't work out?
- Does the IGB agree with these reasons? Do they have any other suggestions or avenues to explore?
- Could these reasons be addressed through reasonable efforts?

Consider:

- Are reasons for not placing an Indigenous child with family members or community members only or primarily socio-economic or infrastructure related ones?
- Can an order for family support and/or socio-economic support mean a child can stay or return to their family or community? See s. 10, s.14(1), s. 15, s.15.1.

Reassessment for Family Unity (s. 16(3))

Every order relating to an Indigenous child **must now include ongoing reassessment for family unity**. This is mandatory. It is the *only* clause in the Act that does *not* say this requirement is subject to best interests.

- There is no end date in the Act for reassessments for family unity.
- There is nothing in the Act that suggests it does not apply in permanency orders.

The outcome of the reassessment itself is subject to appropriateness. Even where residing with family may not be deemed appropriate, ongoing reassessments can benefit the child as an opportunity to assess:

- Whether there are ways to promote their attachment and emotional ties to a family member (s. 17),

- Whether, in effect, the original order is still taking into account:
  - the child's needs and their culture (s. 11(a)-(b)),
  - allowing the child to know their family of origin (s. 11(c) and
  - promoting substantive equality (s. 11(d)),
- Whether, in effect, the original order is still not contributing to assimilation and cultural destruction contrary to s. 9(2)(d), and
- Whether the original order is still in the best interests of the Indigenous child or if an additional order (i.e. access order) may be: s. 10 (1)- (3).

Consider:

- All orders should include regular reassessment dates, however the frequency of these re-assessments will vary case to case.
- All orders should continue ongoing reassessments for family unity until an Indigenous child reaches the age of majority, regardless of the permanency type (i.e. adoption, guardianship, tutelage).
- Where statutory permanency options exist that do not require erasing and replacing a child's birth relationships to achieve permanence, such as "custom adoption" statutes, private guardianship or tutelage, ask IGB for their preference for their children and ask CFS and prospective guardians for reasons to *not* use these in each case: s. 11(c).[13]

Promoting Attachment and Emotional Ties (s. 17)

In the context of providing CFS, the child's attachment and emotional ties to each such member of his or her family are to be promoted, as consistent with the child's best interests.

- There is no end date in the Act for promoting attachments and emotional ties to family members.
- There is nothing in the Act that suggests this provision does not apply in permanency orders.
- Promoting attachments and emotional ties is relevant until an Indigenous child reaches the age of majority.

Some Courts have found ways to promote an Indigenous child's attachments and emotional ties over their lifetime, even in permanency orders.

Some ways Courts have promoted this prior to granting any order, include:

- Considering a prospective private guardian or adoptive parent's willingness to promote the child's attachments and emotional ties to family members through an order as part of the best interests analysis (s. 10(2) and (3)),
- Asking for and requiring adequate time for the child's IGB and family members' input and advice regarding promoting the child's attachments and emotional ties,

[13] See Friedland, "Re Racine v Woods" for a trans-systemic discussion regarding the "addition" adoption model for forming a new parent-child relationship in many Indigenous legal traditions in comparison with the "erase and replace" model in English and Canadian statutes.

or requiring CFS to provide evidence of the results of this consultation with results,
- Asking CFS and IGB to identify any family members or community members who are willing and able to maintain regular contact with the child, even if there are none who can currently provide full-time care, including providing support where needed (e.g. phones, apps, travel and accommodation expenses).

Consider including in Orders or as an additional related Order:
- Access or contact orders with family members or community members whenever possible,
- More defined and specific cultural connection requirements or compliance with a cultural connection plan or cultural preservation plan co-developed by an IGB and family.
- Hyphenate last names instead of erasing the child's birth name: s. 11(c)
- Include the names of community and birth parents in order so the child can find the connection if it is not already created: s. 11(c).

Remedies:
The Act is silent insofar as remedies.

In order for this Act to be meaningfully applied:
The Act provides minimum standards and is not intended to cover the field. In fact it is premised on double aspect. Therefore where the Act is silent, all provincial substantive, procedural and remedial laws apply.

C92 Summary Checklist

Prior to Granting an Apprehension or Placement Order
Jurisdiction and Applicable Law ☐ Is the child Indigenous (First Nations, Inuit, Métis, status or non-status, on-reserve or off-reserve, self-identified or identified through other means)? ☐ Is the matter related to CFS delivery (apprehension, entering care, leaving care etc.) ☐ Does the child's IGB have their own CFS legislation?
Notice and Representation ☐ Do you have evidence of meaningful notice and do you have information about the views of the best interests of the child from parents and/or care providers? ☐ Do you have evidence of meaningful notice and do you have information about the views of the best interests of the child from their IGB?
Best Interests Is your analysis of the child's best interests: ☐ A different analysis from an analysis under provincial legislation, considering the primary considerations, which super-weight the child's relationships with family and cultural connectedness? ☐ Taking into account the factors in s. 10(3). ☐ Congruent with principles of **cultural continuity**: 9(2) & **substantive equality**: 9(3)? ☐ Not contrary to the Act's purposes: s. 8(a)-(c)?
Prioritization of Preventative Care ☐ Do you have evidence that preventative care has been prioritized prior to granting an apprehension order? ☐ Has CFS actively provided support and made reasonable efforts for the child to stay in the home of a parent or family member? ☐ Do the grounds for apprehension include socio-economic conditions, including poverty, lack of adequate housing or infrastructure, or parent or care provider's health? If so, can an order to address these be made instead?

Placement Priorities

- ☐ Do you have evidence that CFS has investigated all priority placements and the child is being placed in the highest priority placement possible?

Promoting Attachment and Emotional Ties

- ☐ Has there been adequate time and consultation for promoting attachments and emotional ties, regardless of placement, until the age of majority?

Promoting Attachments and Emotional Ties included in Order.

- ☐ A way to promote attachment and emotional ties (e.g. access or contact order; order to incorporate cultural preservation plan)? s. 16(3)

Reassessment for Family Unity taken into account in Order

- ☐ Regular ongoing reassessment dates for family unity s. 17 and evaluating the impacts of delivery of services: s. 11 to the age of majority.

APPENDIX
Helpful Resources:

Overview of the Act:

- The Statute: *An Act Respecting First Nations, Inuit, Métis Children, Youth and Families*
- Webinar Overview the Act: Bill C-92 An Act respecting First Nations, Inuit and Métis children, youth and families, From Compliance to Connection
- Canada Technical Information Package: Technical Information Package: An Act Respecting First Nations, Inuit and Métis Children, Youth and Families
- Indigenous groups who have given notice to create their own laws: https://www.sac-isc.gc.ca/eng/1608565826510/1608565862367

Legal Professionals Applying the National Standards:

- Provincial Courts' Jurisdiction to apply the Act: Who Hears Bill C92?
- For Courts and Lawyers applying the National Standards: Bill C92 National Standards Guide for Legal Professionals

National Standards: Practice Changes and Best Practices for Other Professionals:

- How Social Workers and Service Providers can comply with National Standards: Bill C92 Compliance Guide for Social Workers and Service Providers
- Applying the Preventative Prenatal Care Provisions: Bill C92 Prenatal Provision Guide for Health Care Professionals
- Primer on Practice Shifts: Primer on Practice Shifts required with Canada's *An Act Respecting First Nations, Inuit, Métis Children, Youth and Families*

Parent Information:

- Parent's Rights Guide (plain language): Bill C92 Rights Guide for Parents

Indigenous Governing Bodies' Exercising Jurisdiction through National Standards and Law-Making Authority:

- First Steps for Indigenous Groups: What to do with C92: Day 1 Guide for First Nations and Other Indigenous Governing Bodies
- Implementation Strategies: Bill C92 Implementation Strategies
- Canada Technical Information Package: Technical Information Package: An Act Respecting First Nations, Inuit and Métis Children, Youth and Families
- Bill C-92 Community Guide (45 minutes): YouTube presentation by Wahkowtowin lodge

Scholarly blogs and articles on Bill C-92 and related issues (*Caring Society* case, Jordan's Principle, Attachment Theory)

Bill C-92:

- Naiomi Metallic, Hadley Friedland and Sarah Morales, "The Promise and Pitfalls of C-92: An Act Respecting First Nations, Inuit and Métis Children, Youth and Families," Special Feature for Yellowhead Institute, July 4, 2019.
- Christiane Guay, Naiomi Metallic and Hadley Friedland, "Quebec's Misguided Challenge to Federal Indigenous Child Welfare Law," Dalhousie Law Journal Blog, January 23, 2020.
- Justice Ardith Walkem, *Wrapping Our Ways Around Them: Indigenous Communities and Child Welfare Guidebook* 2nd ed. 2021.

Human Rights and Jurisdiction (Caring Society Case, Jordan's Principle):

- Naiomi Metallic, "A Human Right to Self-Government over First Nation Child and Family Services and Beyond: Implications of the Caring Society Case," (2019) Journal of Law and Social Policy, Volume 28:2, article 4.
- Vandna Sinha, Colleen Sheppard, Maya Gunnarsson and Gabriella Jamieson, "Substantive Equality and Jordan's Principle: Challenges and Complexities," (January 2021).

Attachment Theory and Cultural Connectedness:

- Hadley Friedland, "Reference Re: Racine v Woods" in Systems Disruption: Reimagining Canada's Aboriginal Rights Jurisprudence Collection (special issue of the Canadian Native Law Reporter, Native Law Center, Saskatchewan, 2020).
- Yazan Materieh, "Weighing Indigeneity: Culture and the Indigenous Child's Best Interests under Bill C-92" (2020).
- Peter W. Choate et al., "Rethinking Racine v Woods from a Decolonizing Perspective: Challenging the Applicability of Attachment Theory to Indigenous Families Involved with Child Protection," (2019) 34(1) Can J Law & Society at 55.
- Justice Ardith Walkem, Chapter 6: "Best Interests of the Indigenous Child" in *Wrapping Our Ways Around Them: Indigenous Communities and Child Welfare Guidebook* 2nd ed. 2021 at 75-95.
- NICWA, "Contemporary Attachment and Bonding Research: Implications for American Indian/ Alaska Native Children and their Service Providers" (Feb. 2020).

Best Practices for Addressing Common Biases:

- Justice Ardith Walkem, "Addressing Biases Against Indigenous Parents and Indigenous Parenting" in *Wrapping Our Ways Around Them: Indigenous Communities and Child Welfare Guidebook* 2nd ed. 2021 at 109 to 134.