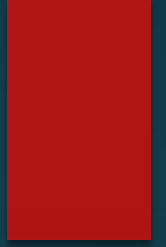


West Moberly First Nations

Bill C-92 Jurisdictional Information Session

Presented by Kathy Waddell

Kaniikaniit Consulting



Introductions & Acknowledgements



Photo credit: Northern Development Initiative Trust

- I would like to acknowledge the West Moberly First Nations traditional territory.
- I also acknowledge I live, work, and play on the traditional territories of the Tseshaht and Hupačasaht Nations.
- I would also like to thank West Moberly First Nations for entrusting me with this important work.



“

What is the purpose of today's meeting?

”

To support West Moberly First Nations Chief and Council with enough information to understand Bill C-92 and some of its opportunities and implications, so that they can make decisions on how to move forward.

What is it?

Bill C-92 - An Act Respecting First Nations, Inuit, and Métis Children, Youth, and Families was enacted January 1, 2020.

Under Bill C-92, WMFN can create laws that would have Force of Law and take precedence over all other laws, including the Child, Family, Community Services Act and Bill C-92 itself.



Photo: Kathy Waddell

Benefits for Children

Priorities:

- Keeping families together
- Providing families with support to prevent children being at risk
- Place children in need of protection with siblings and in their community

Benefits:

- WMFN decides the principles that define the “Best Interests of the Child” (BIOC).
- Social workers **MUST** ensure that family, community, and cultural ties are promoted and maintained.
- Prevention is the focus in delivering services.



Highlights of the Act

- Establishes National Standards for Child and Family Services.
- WMFN can negotiate a “Coordination Agreement” that provides the Nation with adequate funding to build and sustain their own laws and programs as well as building internal capacity to adhere to their laws and programs.
 - ✓ *WMFN controls services provided to their families.*
 - ✓ *WMFN law extends to all WMFN children living in BC regardless of where they live.*
 - ✓ *WMFN law could extend to WMFN children living in other provinces.*
 - ✓ *No child will be removed due to socio-economic conditions alone. (i.e., housing, poverty, health of care giver)*

Foundational Contexts

- WMFN wants solutions that address child safety concerns
- Change will require consistent implementation over a long period of time, maybe even a couple generations

Important considerations

- Include diverse voices – families, youth, service providers, community, leaders
- Address gaps in services and identify WMFN needs
- Create community and leadership buy-in – collaborative planning and communicate often



INDIGENOUS AND NON-INDIGENOUS ADVOCATES AND SCHOLARS HAVE
BEEN WRITING REPORTS FOR TWO DECADES RECOMMENDING LAW AND
PRACTICE REFORM

The WMFN Bill C-92 report builds on the previous work and considers WMFN specific goals and issues.

Some key documents to review for more information:

- *The Hughes Report 2006*
- *First Nations Caring Society – Touchstone of Hope*
- *Truth and Reconciliation Commission – Calls to Action 2015*
- *Grand Chief Ed John report 2016*
- *Pathways in the Forest, West Coast Leaf 2019*

West Moberly First Nations in 2020

- Approximate Population: On Reserve – 122 / Away from Home – 226
 - This may impact how WMFN approaches jurisdiction
- Comprehensive Community Planning in progress
 - Questions have been added to the US survey about WMFN member's experiences with the Ministry of Children and Families
- Areas of inquiry with knowledge keepers and Elders' advice have not been completed
 - Traditional parenting practices, cultural considerations, language, connection to land in terms of cultural continuity

Recommendation: Further consultation with WMFN people will be required to complete this report, however, with the recent pandemic, that engagement process will need to wait until it is safe to do so in a supportive and meaningful way.

WMFN Unique Perspectives



- Strategic Priorities, Council Values, and Organizational Values
- Interview with Council on November 9, 2020 + interviews with staff
- Current programs and services and human resources
- Current status: respectful working relationship with MCFD
- Difficulties with time and travel required to access services
- Inconsistent supports from external agencies

SWOT in context of Bill C-92

Strengths

- Family based governance system
- Dedicated community wellness support worker
- Governance Policy – Familial governance structure, Mandate comes from community, Elders Council
- Regional Leader

Weaknesses

- Northern Semi-Remote Community
- Indian Act



SWOT in the context of Bill C-92

Opportunities

- Comprehensive Community Plan
- Indigenous Social Determinants of Health
- Partnerships with other Treaty 8 Nations

Challenges

- Safe Homes
- Planning and Human Resources
- Effects of colonial practices and Residential Schools
- Root Cause analysis



Legislative Environment

Legal and jurisdictional issues

- WMFN Governance Policy – may need amendments to support child and family jurisdiction
- Support of legal advocates to ensure WMFN laws take precedence
- Child, Family, and Community Services Act govern in BC

Considerations

- What is the role of MCFD? Social workers? Other supports? Who does WMFN call if there are jurisdictional issues?
- What is the role of ISC?
- What is WMFN's role? Ensure clarity and alignment of WMFN vision, values, expectations of relationship with their members, the WMFN Community Wellness worker, and the WMFN Government

Legislative Environment

- Bill C-92 - will interconnect with several other laws and policies, which could impact the Nation's ability to ensure their laws have "Force of Law" (i.e., Public Trustee Act, Coroner's Act, and Child and Youth Advocate Act).
- Jordan's Principle – services need to be provided regardless of payment disputes between BC and Canada - It is important that BC and Canada ensure this policy continues and is honoured.
- Indian Act – Applies on WMFN territories, reserves, and current funding models under the Indian Act could influence the implementation of Bill C-92.
- *Note: Coordination Agreements can be used to address the issue of adequate resources to implement Bill C-92.*



Legislative Environment

Recommendation: Legal support to ensure the *Purpose and Principles* of Bill C-92 is applied when it comes in conflict with or is inhibited by the status quo implementation of the Indian Act.

Recommendation: Include WMFN definitions of members, community, and families in WM Law. Intent is to ensure that WMFN gives itself jurisdiction to provide wrap around, preventative support to WMFN children and their families wherever they live. Exercising jurisdiction in children and family services is likely to have a ripple effect on other WMFN policies and practices.

Recommendation: Negotiate with ISC and MCFD but also identify sources of funding within and outside of federal and provincial ministries.

Best Practices – Common Themes

- Decolonization / Reconciliation
- Indigenous approaches to child welfare including traditional parenting practices
- Local community-based programming
- Self-determination in child welfare jurisdiction
- Wrap-around, holistic family support services – relationship based services
- Creating circles of connection

- Addressing root causes
- Removing barriers to supports and services
- Protection must NOT compound trauma – trauma-informed practices
- Enhanced communication with family, children (appropriately delivered), and community (where appropriate)
- Culture and language as a prevention factor

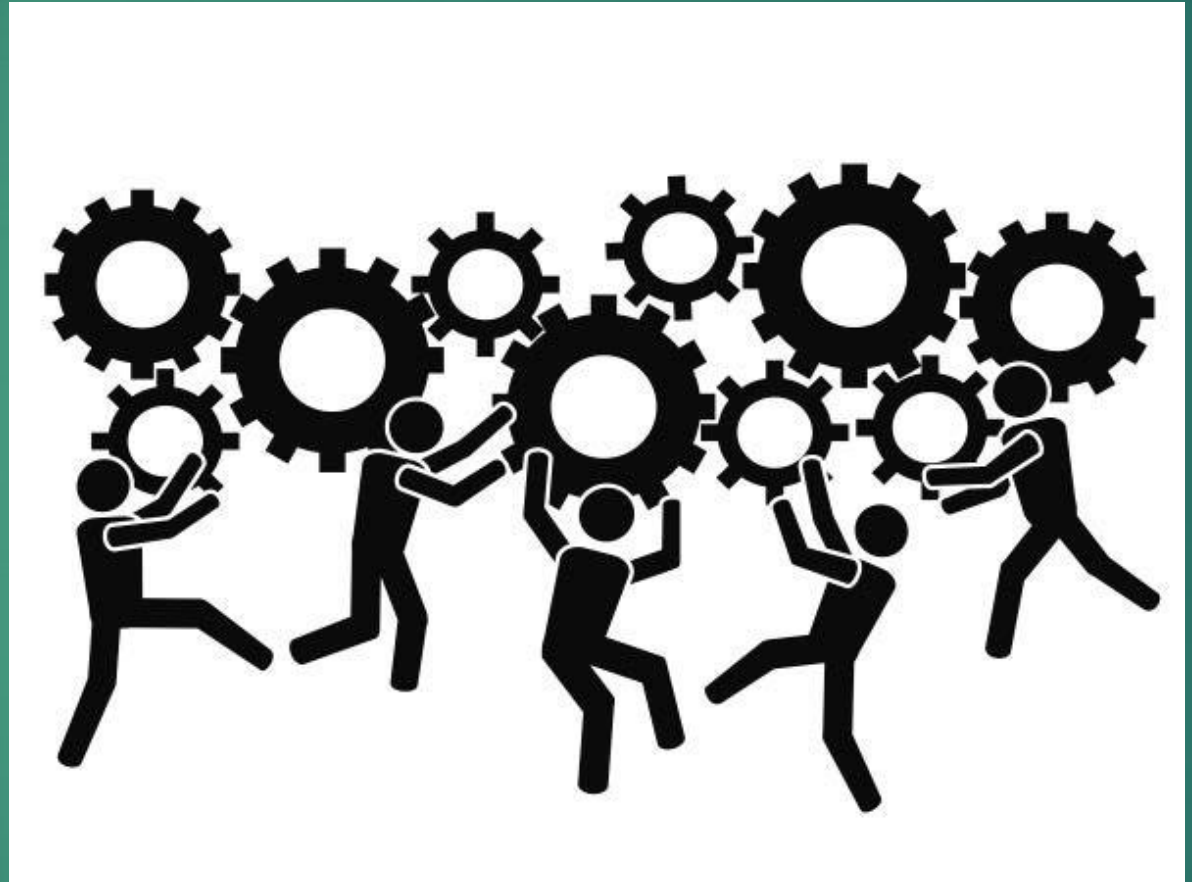
CONSISTENCY over time in all areas affected by Bill C-92

Best Practices

Recommendation: WMFN must take the time to hear from community members to understand what best practices should be incorporated for use with their families.

Presentations should be made to community members to help them understand how Bill C-92 jurisdiction affects them.

This can include a facilitated story-telling type discussion where facilitators capture highlights to analyze and provide input into WMFN's future programs and services.



Best Interest of the Child



- Best interest of the Child (BIOC) is referenced throughout the Act
- There is an opportunity for Nations to critically examine the BIOC from their own perspectives and unique beliefs
- Nations create BIOC guidelines as they deem appropriate - meet or beat the standards
- BIOC must be primary consideration for all decisions and before taking any action

BIOC – Section 3 of the Act

(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.

(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.

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

(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.

(g) any family violence and its impact on the child, including whether the child is directly or indirectly exposed to the family violence as well as the physical, emotional and psychological harm or risk of harm to the child; and

(h) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

Best Interest of the Child

- Prevention services must be given priority over any other services. (section 14)
- Children cannot be apprehended based solely on socio-economic conditions (poverty, housing, health of parent). (section 15)
- The service provider must demonstrate that they have made reasonable efforts to ensure that the child is able to continue to reside with their parent (needs to be consistent with BOIC) before apprehension. (Section 15.1)

- Priority placement: 1) child's parent, 2) another adult family member, 3) an adult in the child's community of the same Indigenous group, 4) another Indigenous adult, 5) anyone else.
- Siblings should be placed together. (section 16.1)
- The child's attachments and emotional ties must be promoted and maintained. (Section 16.2)

Best Interest of the Child

Everyone making decisions regarding the BIOC
MUST consider:

- Nature and strength of relationships.
- Cultural, linguistic, and spiritual heritage.
- Child's voice and communication with the family.
- Connection to family, culture, and traditional territory.
- Culturally appropriate care.
- Physical health.
- Mental and spiritual health.
- Socio-economic considerations.
- Stability and safety plans.
- Preventative care for children and their families.
- Appropriateness of placements.



Best Interest of the Child

Proposed Headings for Best Interest of the Child framework (Appendix A)

History and Context

Intro – Intention and Interpretation of BIOC

Relationships

Infant Children

Cultural, linguistic, and spiritual heritage of WMFN children

Child's Voice and Family Communication

Connection to immediate and extended family, culture, and traditional territory

Culturally appropriate (CFS) care

Health – Physical

Health – Mental and Spiritual

Socioeconomic Considerations

Stability and Safety Plans

Preventative Care and family support

Appropriateness of placement

Existing agreements and proceedings

Family and community commitments

Regular and timely assessments

Jordan's Principle

Best Interest of the Child

Implementation practices to support the success of the child safety:

- Family and community commitments to child safety.
- Consideration of existing agreements and proceedings.
- Regular and timely assessments and reporting.
- Application of Jordan's Principle.

Recommendation: West Moberly First Nations participates in an examination and articulation of the BIOC principles that apply to their unique worldview and beliefs.



West Moberly First Nations - decision

OPTION 1

Under this option, the authorized Indigenous Governing Body would send a notice to ISC & BC indicating their intent to exercise their jurisdiction.

Through this option, WMFN Indigenous law would not prevail over conflicting federal, provincial and territorial laws on child and family services. It would, however, send a strong message.

OPTION 2

Under this option, the authorized Indigenous Governing Body would send a request to enter into a tripartite coordination agreement to ISC & BC.

Within 12 months following the request, if a tripartite coordination agreement is reached, or no agreement is reached but reasonable efforts were made to reach an agreement, WMFN Indigenous law would have force of law and would prevail over federal and provincial laws.

OPTION 3

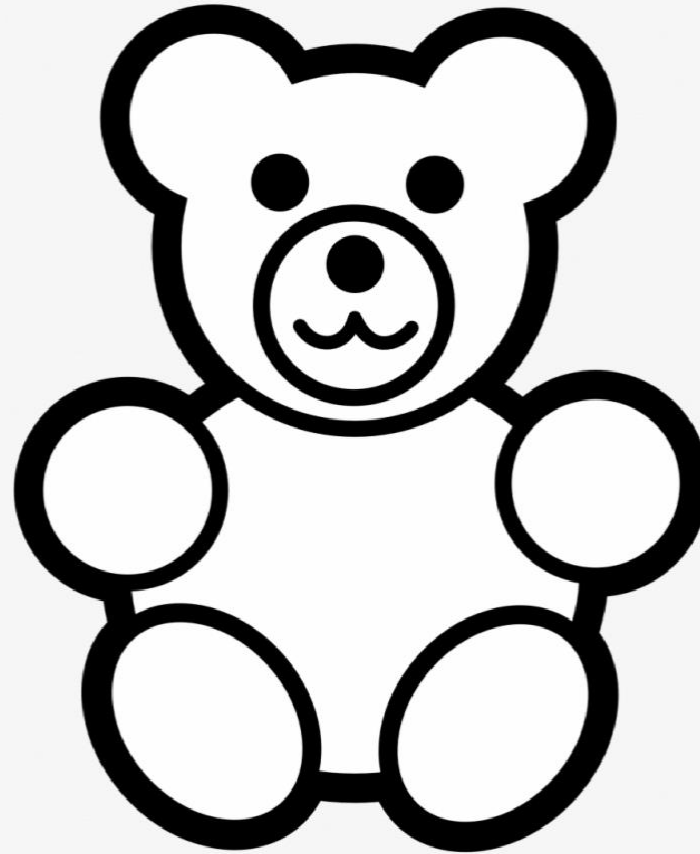
There is opportunity to collaborate with other interested Nations in the region (potentially Treaty 8 Tribal Association Nations) to develop an IGB and indicate to ISC and BC the intention to exercise jurisdiction under either Option 1 or Option 2 and will be governed by all the partner Nations.

Option 4

Status quo

If WMFN is satisfied with the current provision of services for their families and their working relationship with MCFD, WMFN can choose to do nothing, and everything will continue as usual.

You can explore jurisdiction at anytime.



Force of Law

Force of Law:

- If there is a conflict or inconsistency between a provision respecting child and family services that is in a law of an Indigenous group, community or people and a provision respecting child and family services — other than any of sections 10 to 15 of this Act and the provisions of the Canadian Human Rights Act — that is in a federal or provincial Act or regulation, the provision that is in the law of the Indigenous group, community or people prevails to the extent of the conflict or inconsistency - unless contrary to the BIOC. vide prevention and intervention services to children and families.

Coordination Agreement and Force of Law

Recommendations:

- WMFN engages with a lawyer who is knowledgeable in First Nations issues in Child and Family Services.
- Creation of an Interpretation Law alongside the WMFN Child and Family Services law to ensure laws are interpreted according to WMFN principles and intent.
- Consideration of a Privacy Law to ensure that WMFN has access to the right information at the right time. An information sharing agreement currently exists between WMFN and MCFD.

Implementation Considerations

A Non-exhaustive list adapted from the implementation strategies recommended by the Yellowhead Institute (2019) is included in the Appendices.

- Implementation priorities need to be further explored through strategic planning, CCP, Council, staff input, and Community Consultation
- Implementation Work Plan includes: Standards and Definitions, Jurisdiction, Collaboration, Funding, Accountability

Recommendation: Use the implementation strategies as a discussion guide to develop an Implementation Work Plan.