

FISHER RIVER CREE NATION BILL C-92

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COCHRANE SAXBERG 
BARRISTERS & SOLICITORS

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AGENDA

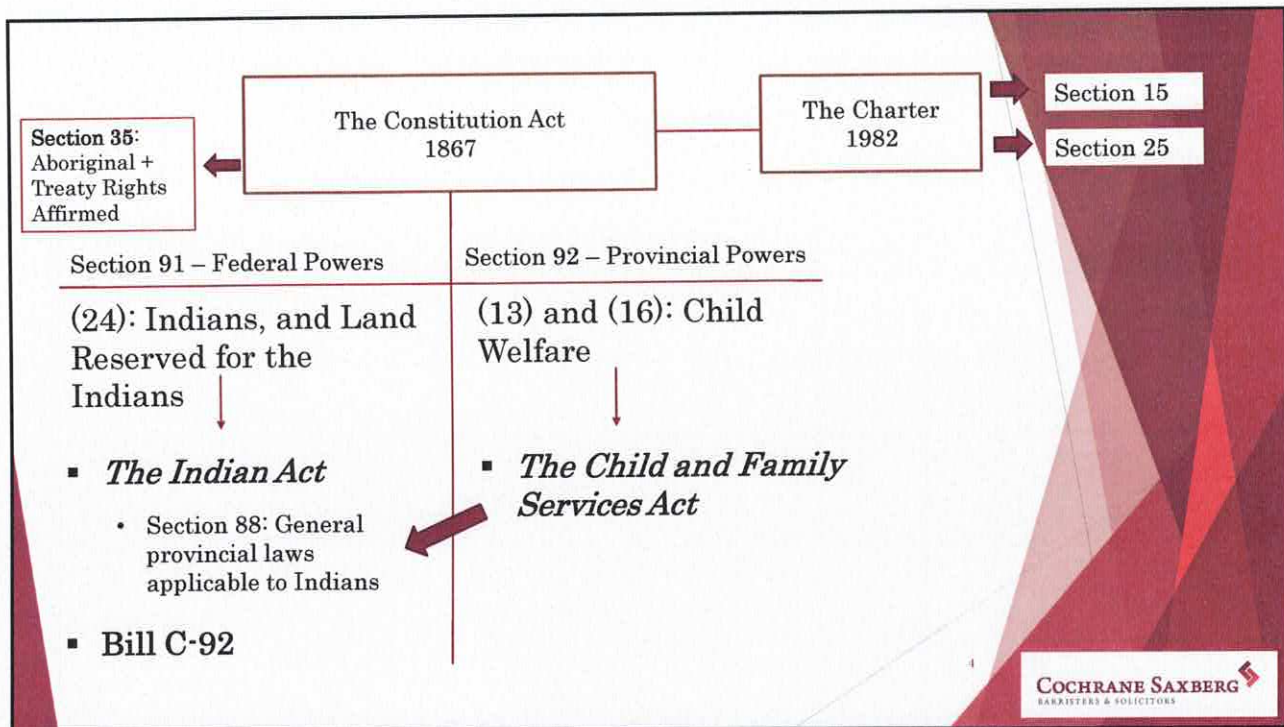
1. Introduction
2. Constitutional Framework
3. Current Child and Family Service Regime
4. Bill C-92 Overview

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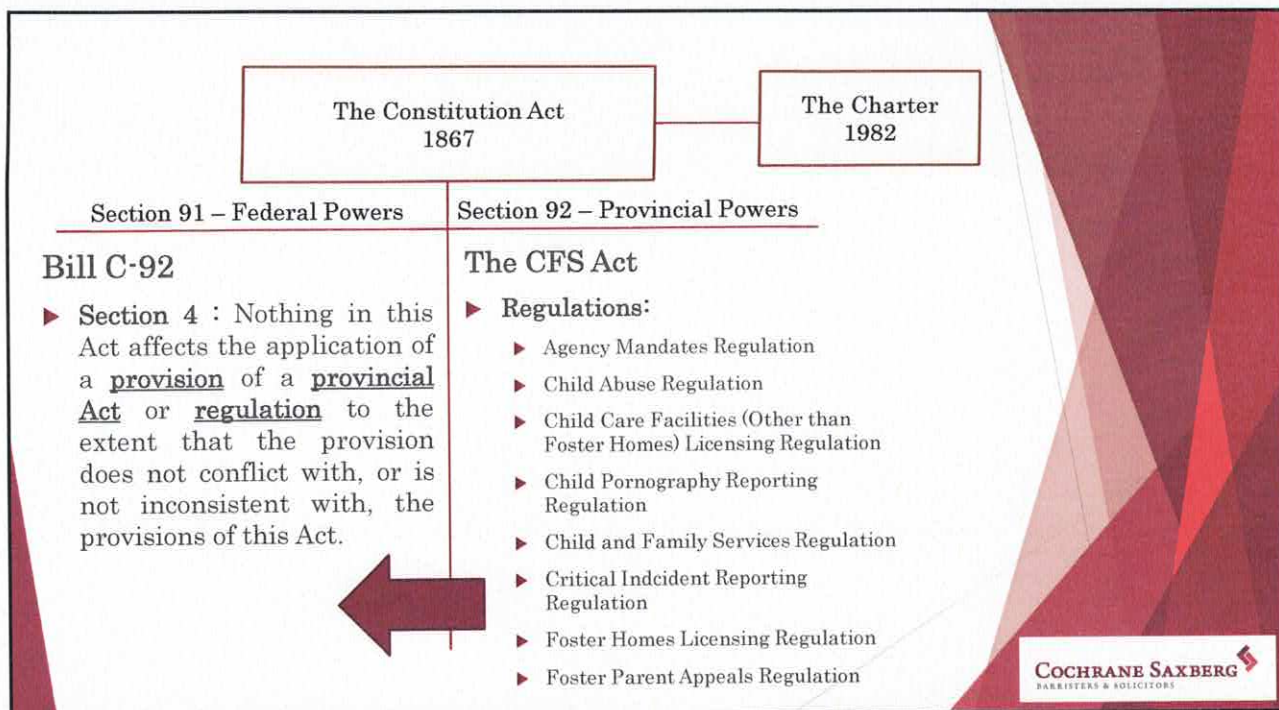
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2. CONSTITUTIONAL FRAMEWORK

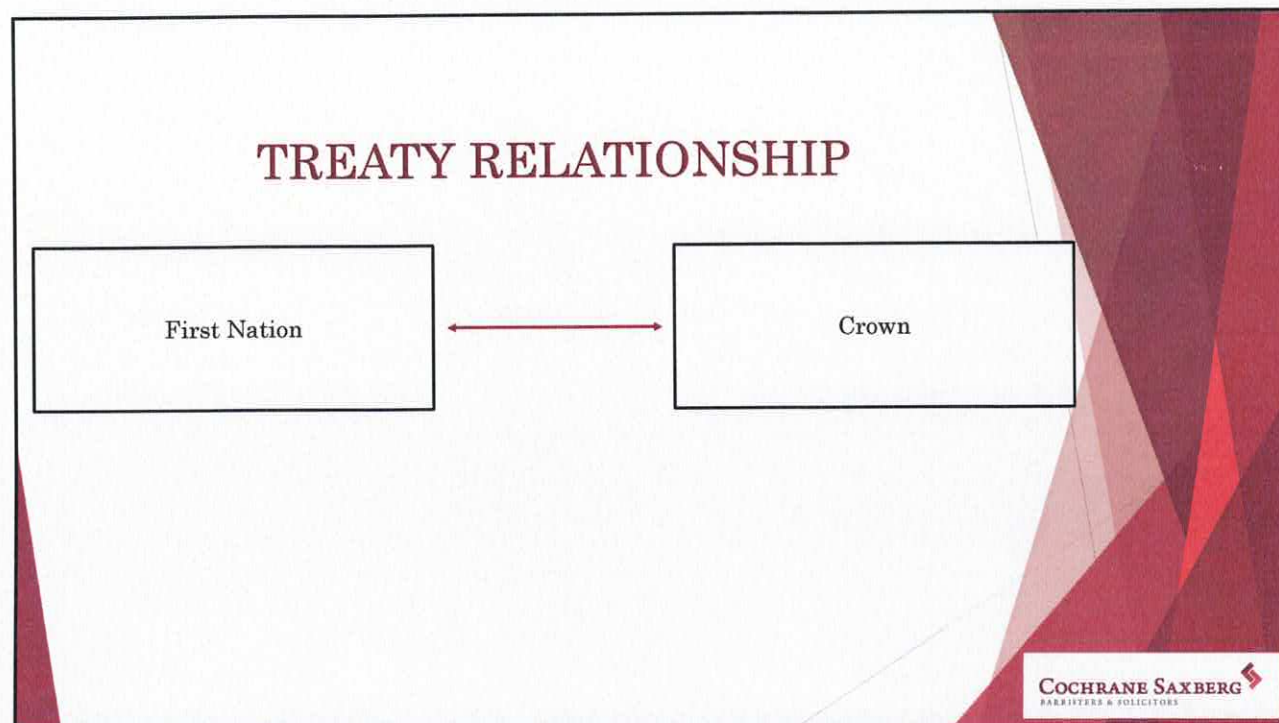
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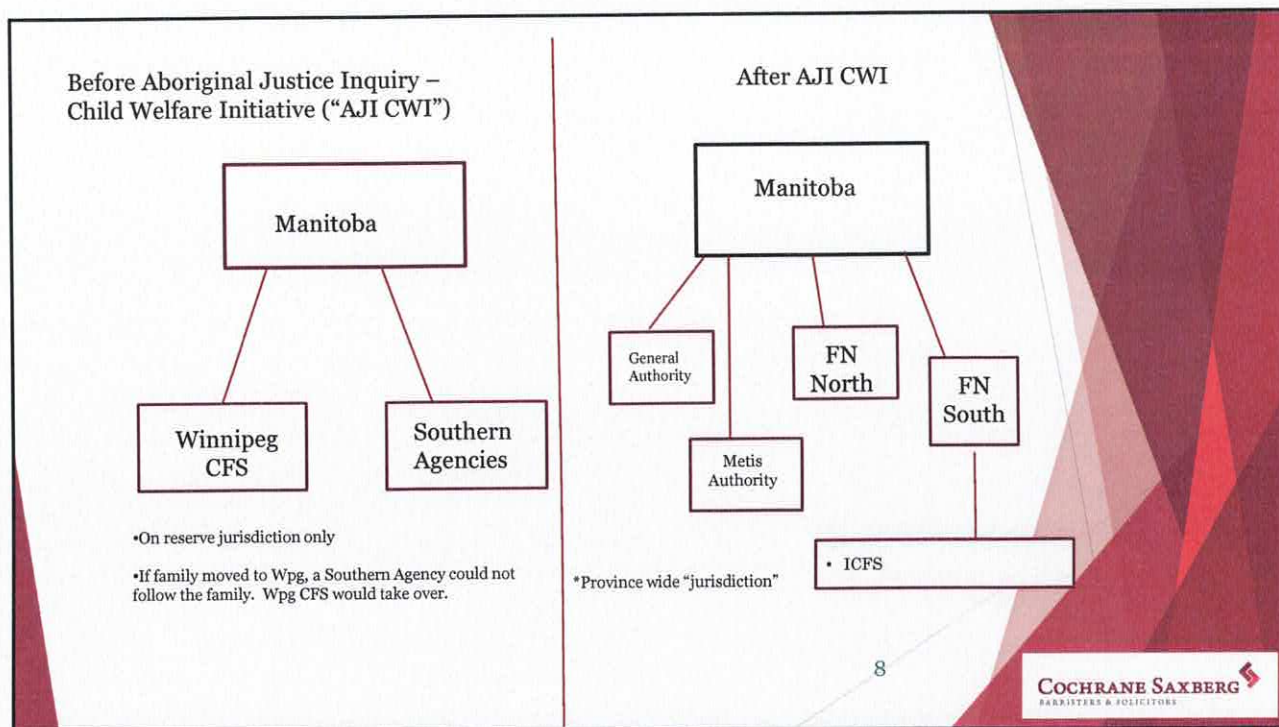
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3. CURRENT CFS REGIME IN MANITOBA

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MANITOBA PROVINCIAL CFS SYSTEM

- ▶ Not based on First Nation values, customs or traditions
- ▶ Apprehension focused
- ▶ No role for FN Leadership
- ▶ Accountability to a Provincial Minister
- ▶ Agency can apprehend without a warrant
- ▶ Agency can apprehend without notice to First Nation
- ▶ Priority is not prevention services
- ▶ Placement Priorities are not with families
 - ▶ Foster Parents = Strong Rights

CHILD WELFARE LEGISLATION IN MANITOBA

- ▶ Four main provincial statutes govern child welfare in Manitoba:
 - ▶ *The Child and Family Services Act (CFS Act)*
 - ▶ *The Child and Family Services Authority Act (CFSAA)*
 - ▶ *The Adoption Act*
 - ▶ *The Intercountry Adoption Act (Hague Convention)*

REGULATIONS AND STANDARDS

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REGULATIONS

- ▶ Agency Mandates Regulation
- ▶ Child Abuse Regulation
- ▶ Child Care Facilities (Other than Foster Homes) Licensing Regulation
- ▶ Child Pornography Reporting Regulation
- ▶ Child and Family Services Regulation
- ▶ Critical Incident Reporting Regulation
- ▶ Foster Homes Licensing Regulation
- ▶ Foster Parent Appeals Regulation

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STANDARDS

- ▶ Child and Family Services Standards
 - ▶ Volume 1: Agency Standards
 - ▶ Volume 2: Facility Standards
 - ▶ Volume 3: Authority Standards
 - ▶ Volume 4: Branch Standards

4. *BILL C-92*

- What does it mean?
- What do the provisions say?
- What are the options?

BILL C-92

- ▶ Came into force January 1, 2020
- ▶ Establishes national standards for Indigenous children in child welfare
- ▶ Establishes paths for Indigenous governing bodies to enact their own laws with respect to child and family welfare
- ▶ C-92 brings in force new “national” standards and principles for child welfare decisions
 - ▶ Federal legislation will prevail over provincial law, First Nations law can prevail over federal and provincial laws

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BILL C-92: JURISDICTION AND RIGHTS FOCUSED

- ▶ Purpose of Bill in Section 8
 - ▶ (a) affirm the inherent right of self-government which includes jurisdiction 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; and
 - ▶ (c) contribute to the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*.

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WHAT DOES IT MEAN FOR....

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INDIGENOUS GOVERNING BODIES, COMMUNITIES, OR PEOPLES

- ▶ Provides a framework to enact laws in relation to child welfare
- ▶ It sets a minimum standard that can be expanded upon based on culture and tradition
- ▶ Will be notified of any significant measure taken in relation to a child from your community, and can make representations in court regarding that child's care

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PARENTS OR CARE PROVIDERS

- ▶ Can help children you care for stay with you and can help return children that were removed from your care
- ▶ A child cannot be removed from your care only because of financial, health or housing challenges;
- ▶ Enables a focus on prevention measures rather than apprehension
- ▶ Indigenous children's language, culture and community will be prioritized

CHILDREN

- ▶ It can help you stay with your family and community
- ▶ It recognizes and prioritizes the importance of your connection to your language, culture and community
- ▶ Financial, health or housing challenges cannot be the only reason you are separated from your family

WHAT DO THE PROVISIONS SAY....

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SECTION 1 - DEFINITIONS

▶ **Family:**

- ▶ Includes a person whom a child considers to be a close relative or whom the Indigenous group, community or people to which the child belongs considers, **in accordance with the customs, traditions or customary adoption practices of that Indigenous group, community or people, to be a close relative of the child.**

▶ **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

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SECTION 4 – PROVINCIAL ACTS AND REGULATIONS

- ▶ Allows for provincial acts and regulations to continue to apply if it does not conflict with the Act or a Law created under the Act

SECTION 10 – BEST INTERESTS OF INDIGENOUS CHILD

- ▶ Primary consideration:
 - ▶ Child's physical, emotional and psychological safety, security and well-being and the importance of an ongoing relationship with his or her family and with the Indigenous group, community or people to which he or she belongs and preserving the child's connection to his or her culture

SECTION 10 – BEST INTERESTS OF INDIGENOUS CHILD

- ▶ Within the context of Indigenous children, factors to be considered:
 - ▶ Cultural, linguistic, religious and spiritual upbringing and heritage;
 - ▶ Child's needs given the age and stage of development;
 - ▶ Nature and strength of the relationship b/w the child and his or her parent, care provider or any member of his or her family who plays an important role in his or her life
 - ▶ Preservation of cultural identity and connections to language and territory of the Indigenous group to which the child belongs
 - ▶ Child's views and preferences
 - ▶ Care in accordance with the customs or traditions of the Indigenous group to which the child belongs

WHAT ARE NEW “NATIONAL” PRINCIPLES?

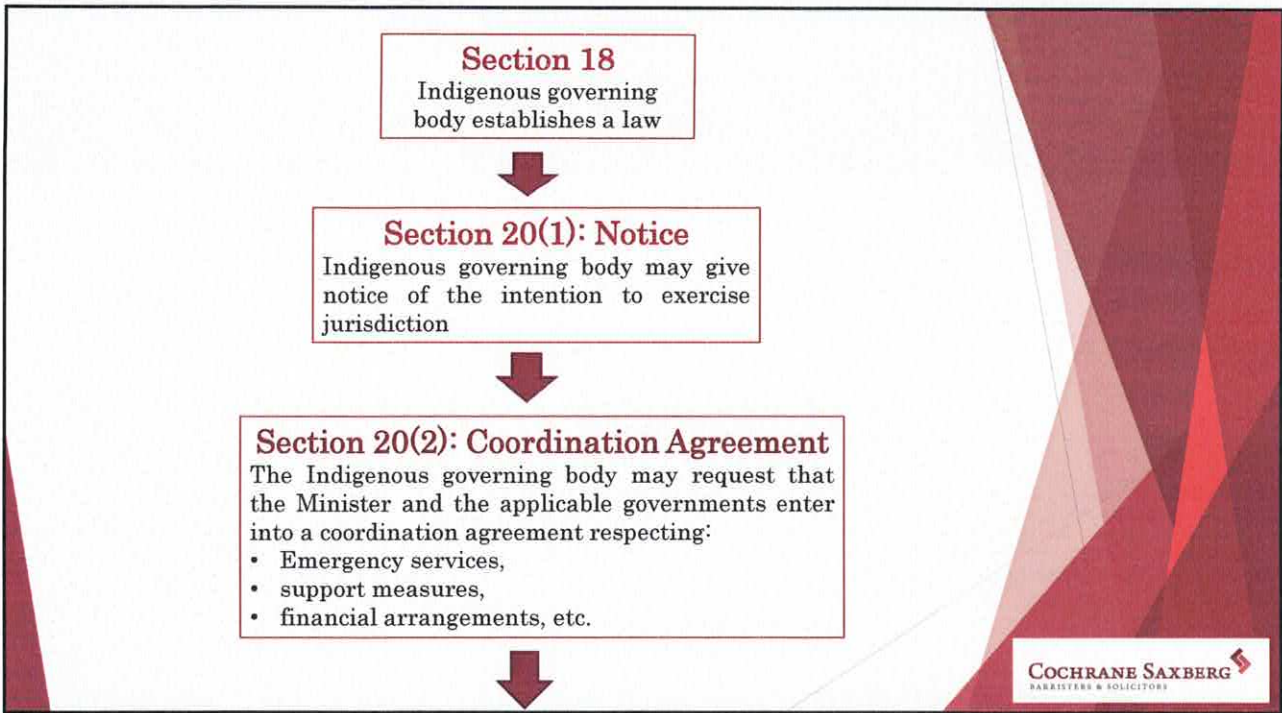
- ▶ Requirement of notice before taking any “significant” measures about child in advance to parents, caregivers, Nations, and involvement of child (views of the child, where appropriate) (s. 12)
- ▶ Representation and Party Status: parent, care provider, Indigenous governing body (s. 13)
- ▶ Priority on Prevention Services (s. 14)
- ▶ Prenatal/postnatal work required for prevention (14(2))
- ▶ Cannot remove due to poverty, ill-health and lack of services to parents or caregivers (s.15)
- ▶ Reasonable efforts to have child continue to reside with parents (s.15.1)
- ▶ Placement priorities with new tests based on identity and connection to birth family, kinship placement, First Nations Placement and **last resort** placed outside of First Nations – have to show no FN home (s.16.1)

SECTIONS 16-17: PLACEMENT OF INDIGENOUS CHILD

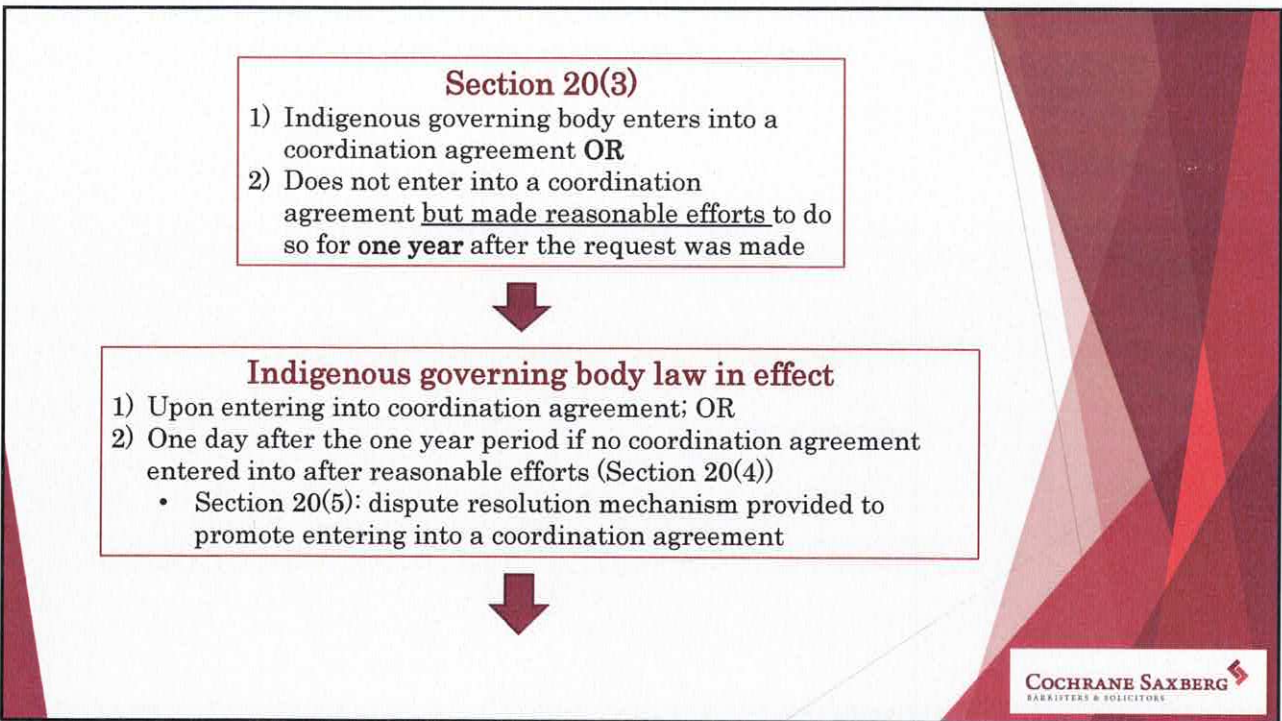
- ▶ Must consider placing child with or near children of same family (s. 16(2))
- ▶ Must take into account customs and traditions – ie. Customary Adoption (s. 16(2.1))
- ▶ Must have ongoing reassessment of whether child can be placed with parent or adult member of family (s. 16(3))
- ▶ Must promote attachment and emotional ties if the child is not placed with a parent or another adult member of the child's family (s. 17)

SECTION 20-24: COORDINATION AND APPLICATION

- ▶ Addresses the exercise of Jurisdiction



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Force of Law

- **Section 21:** Force and effect of a Federal Law
 - Only the Act and Canadian Human Rights Act apply
- **Section 22:** Indigenous governing body's law will prevail to the extent of a conflict or inconsistency with federal or provincial law/regulation on CFS

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QUESTIONS?

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