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## Briefing

### Governing Structures in First Nations' Children and Family Laws (Bill C92)

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*Rebuilding First Nations Governance (RFNG) is a national alliance of First Nation communities and Tribal Councils, academic researchers and public sector practitioners created to support First Nations leadership and rights holders who have collectively made the decision to transition out from under the Indian Act to their own inherent rights governance. This Indigenous-led applied research project is supported by a \$2.5M SSHRC Partnership Grant. We are grateful to our partners and collaborators for sharing their knowledge and experience with us and with you.*

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## Governing Structures in First Nations' Children and Family Laws (Bill C92)

### Issue:

What legal authority and governing structures are First Nation's communities in Canada using to enact their Children and Family laws in relation to *An Act Respecting First Nations, Inuit, and Metis children, youth and families* (commonly referred to as Bill C-92)?

### Background:

Since Bill C-92 became law in 2019, a number of First Nation communities across Canada have been enacting their own child and family services laws under the framework of their inherent right of self-government. Co-developed with Indigenous partners, the legislation was in response to years of failures and serious abuses by federal and provincial governments in exercising their authority. A key feature of the law is that it represents one of only two instances<sup>1</sup> in which the Crown has recognized a specific jurisdiction under the inherent right of self-government.

Bill C-92 offers an important opportunity for nations to create an "Indigenous Governing Body" distinct from Indian Act administration. This briefing note presents an overview of the new First Nations laws, their governing structures, and the processes by which they were ratified. It also briefly explores the current governing structure options and assesses their effectiveness in promoting inherent rights governance. The information will help in understanding the diverse approaches taken by different communities and identify common themes and challenges.

### Methodology:

We reviewed 11 First Nation Bill C-92-related laws published on the [Indigenous Services Canada website](#) (Government of Canada, 2024) as of July 8th, 2024. (The 12<sup>th</sup> law that appears on the site is an Inuit law.), in accordance with the requirements of Section 25 of Bill C92 which mandates that certain information under Section 20 be made publicly accessible. Although other laws may exist, they were not included in this analysis. Our objective was to understand their ratification processes (referendum vote, community consultation, chief and council vote, etc.), governing structures (First Nations band office, nonprofit, other), and governing members under their new laws (all chief and council, some chief and council, no chief and council). Ultimately, we wanted to determine whether Nations are implementing these laws based on their inherent rights jurisdiction recognized by Bill C-92 and protected under Section 35 of Canada's constitution; or through 91.24<sup>2</sup> delegated authority to Chief and Council under the

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<sup>1</sup> The other is the *Indigenous Languages Act* 2019

<sup>2</sup> Section 91(24) of the Constitution Act, 1867 gives the federal government exclusive legislative authority over "Indians, and Lands reserved for the Indians." This authority underpins the Indian Act, which delegates

Indian Act. We also hoped to learn the nature of community engagement involved in the law enactment processes.

Our analysis included qualitative content analysis to identify themes related to ratification processes, governing structures, and governing members, systematically coding the data; and thematic analysis to understand the broader implications of the governance models and community engagement practices. The findings provide practical insights into the implementation of Bill C-92 laws and offer recommendations for improving governance models and community engagement processes and inform future policy development to support greater self-governance for First Nations.

### **First Nations Laws and Governance Structures:**

Our review revealed diverse approaches to governance and community engagement among the laws analyzed. Here is a summary of the key elements (greater detail for each law can be found in Appendix A):

- Designation of law making/clarifying/amending authority (of 11):
  - Explicitly given to Indian Act Band Councils: 9
  - Indigenous Governing Body<sup>3</sup> established under Section 35: 1
  - Unclear: 1
- Appointments/dismissals to positions within the governing structure (of 11):
  - Authority to Band Council: 8
  - Authority rests with the First Nation: 1
  - Unclear/Unknown: 2
- Ratification (of 11):
  - Band Council: 1
  - Community Vote or Referendum: 4
  - Ceremony: 1
  - Not Specified: 5

### **Analysis and Insights:**

Each of the 11 communities has developed a unique law and governance model tailored to their specific needs and cultural practices. Common themes include the involvement of Chief

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certain powers to Chief and Council. In contrast, Section 35 of the Constitution Act, 1982 recognizes and affirms Indigenous peoples' Inherent Rights, including self-government. Bill C-92, passed in 2019, further supports this by affirming the jurisdiction of Indigenous groups over child and family services, based on their Inherent Rights rather than federal delegation.

<sup>3</sup> While the term 'Indigenous Governing Body' is in Bill C-92 in the context of Section 35(1) of the *Constitution Act*, 1982, this document strives to minimize the use of such broad terminology, as we focus specifically on First Nations. However, in this instance, it is necessary to refer directly to the legal language as defined in the Act.

and Council, the establishment of specialized agencies or boards, and the incorporation of traditional knowledge, language, and practices. However, there are variations in how jurisdiction and citizenship are defined, the prominence of Chief and Council in governance, and the processes for law ratification and amendments.

The majority of the eleven laws connects governance structures or bodies to Indian Act Band Councils in some capacity. Although the extent of power granted to Band Councils varies among these laws, these laws link the Nations' Section 35 inherent rights to an entity deriving its authority from Section 91(24) delegation. The implications of this relationship warrant further analysis.

Many of the laws have preambles with strong language grounding inherent rights in history, tradition, Section 35 and supported by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). However, the delegation of authority to Band Councils seems to contradict these strengths from an inherent rights perspective.

There are several laws that incorporate or ground the law in strong traditional language use. The definition of citizenship and jurisdiction varies across the laws.

### **Considerations for further analysis:**

More in-depth research into these 11 laws would be beneficial for those First Nations who are still in the process of drafting their child and family laws and implementation plans. From a self-government perspective we suggest:

- An examination of the potential legal implications of tying Section 35 rights to Section 91(24) Band Councils as rights-holding authorities. Findings in this area could help strengthen future Indigenous Child and Family Welfare laws against challenges.
- While it may prove challenging to investigate, seeking to understand why the First Nations laws designate Band Councils as authorities may help to identify specific barriers to asserting Section 35 inherent rights. Identifying these barriers would lead to more targeted support to strengthen Section 35 inherent rights laws and law-making. Hypotheses could point to:
  - a need for further knowledge building on the differences of Section 35 and Section 91(24);
  - a desire to expedite and implement the laws and jurisdiction;
  - administrative capacity and financial infrastructure challenges; or
  - reluctance to establish unknown governing structures.

- As there are unique strengths in many of the laws, it would be beneficial to examine and highlight those strengths including: culturally grounded advisory bodies, traditional language used to support the interpretation of laws, and diverse agency and administrative structures.

## Appendix A:

- 1. Wabaseemoong Independent Nations:** [Wabaseemoong Independent Nations Customary Care Code](#)  
**Ratification:** January 8, 2021 ratification not specified  
**Structure:** Wabashki Maakinaakoons Agency, Board of Directors and committees exercising inherent rights through customary care and adoption practices  
**Authorities:** The law was endorsed by the Chief and Council through a Band Council Resolution (BCR) in December 2017, although it is noted that the law is somewhat vague about its authorities and selection processes.
- 2. Cowessess First Nation:** [Miyo Pimatisowin Act](#)  
**Ratification:** April 1, 2021 ratified by voting members, percentages unknown  
**Structure:** Chief Red Bear Children's Lodge, nine-member Board of Governors (including a Band council member)  
**Authorities:** Cowessess First Nation Council Band Council Resolutions which have the authority to clarify powers, duties, functions and dismiss board members for cause.  
**Notes:** A citizen is defined as someone on the Band List maintained by the Indian Registry Administrator.
- 3. Kitchenuhmaykoosib Inninuwug:** [Dibenjikewin Onaakonikewin](#)  
**Ratification:** April 1, 2023 ratified by a community engagement process and Chief and Council approval November 2019  
**Structure:** Tikinagan Child and Family Services  
**Authorities:** Chief and Council holding ultimate authority over children, youth, and family matters. The law outlines how Chief and Council will conduct themselves.
- 4. Atikamekw of Opitciwan:** [Loi de la Protection Sociale Atikamekw d'Opitciwan](#)  
**Ratification:** January 17, 2022 ratification process is unclear  
**Structure:** Various health and social services Directors and an Elder  
**Authorities:** Atikamekw Council of Opitciwan is designated as the Indigenous Governing body delegating responsibilities to specific health and social services leaders including the elected councillor responsible for health and social services. The law specifies tasks and responsibilities incumbent upon the Council and delegates authority to various directors and a Sage (Elder).
- 5. Splatsin:** [Spallumcheen Indian Band Care of Our Children By-law](#)  
**Ratification:** April 1, 2023 ratification details are not specified  
**Structure:** Band Council may appoint persons to act on behalf of the Band  
**Authorities:** The law (noted in the text as a by-law) grants law-making authority to the Band Council, which acts as legal guardians and can appoint others for child protection  
**Notes:** The by-law dates to 1980 and self-determination is explicitly expanded through Section 91(24).

6. **Sts'ailes First Nation:** [Snowoyelh te Emite Sts'ailes](#)  
**Ratification:** April 1, 2023, law enacted February 22, 2022, amended as recently as February 14, 2024  
**Structure:** The law is administered by a committee appointed by Band Council Resolution, with a Chair and Co-Chair holding delegated authority.  
**Authorities:** Amendments require Chief and Council approval.
  
7. **Cowichan Tribes:** [Laws of the Cowichan People for Families and Children](#)  
**Ratification:** November 24, 2023 by community vote. 5,517 total Cowichan Tribes population, 416 (7.5% of total) citizens voted: 83% in favor, 17% not in favor.  
**Structure:** An agency and Board of Directors  
**Authorities:** Duly elected Chief and Council or any duly authorized successor government. The council is granted authority to establish laws, establish the agency, and appoint Board of Directors who are not members of council or staff.
  
8. **Louis Bull Tribe:** [AMO Law](#)  
**Ratification:** Effective October 22, 2021, ratification process unclear  
**Structure:** Asikiw Mostos O'pikinawasiwin Society Board, the law includes provisions for a Children's Commissioner and a Wellbeing Committee  
**Authorities:** Louis Bull Tribal Constitution grants law making authority to the Chief and Council. Amendments are approved by the Chief and Council.
  
9. **Peguis First Nation:** [Honouring Our Children, Families and Nation Act](#)  
**Ratification:** Effective January 21, 2022, draft act sent to members for comments and ratified through engagement, and pipe ceremonies on January 19, 2021, and March 2, 2021.  
**Structure:** Overseen by a five-member Board of Directors appointed by Band Council Resolution  
**Authorities:** Chief and Council may pass resolution to clarify powers, duties and functions of the agency.
  
10. **Loon River First Nation, Lubicon Lake Band, Peerless Trout First Nation:** [Awasiwewin](#)  
**Ratification:** Effective May 15, 2023 ratified by a vote of 616 - 70 of the participating voters, representing 25.8% of the total population.  
Specific voting figures: Loon River (23.6%), Lubicon Lake (16.8%), Peerless Trout (34%).  
**Structure:** Managed by the KTC Child and Family Services an Onikanew (Officer) overseeing child and family services and accountable to First Nation councils, participating First Nations and governing bodies  
**Authorities:** "Council" refers to the Indigenous Governing Body (as defined by the federal act as a body holding section 35 rights) of a Founding First Nation.  
Accountabilities are to Indigenous Governing Bodies and Founding First Nations as rights

holders. The word “chief” does not appear in the law. The word “band” is used only to clarify the definition of First Nation. It is unclear how a First Nation appoints a representative to the Council.

11. **Algonquins of Pikwàkanagàn First Nation:** [Nigig Nibi Ki-win](#)

**Ratification:** Effective April 20, 2024, ratified by referendum March 25, 2023

**Structure:** Administered by the Nigig Gamik, with guidance from the Kokomis Mishomis Wedokagonak Advisory Committee (Grandmother and Grandfather Committee)

**Authorities:** Chief and Council have the authority to make and amend regulations under this law based on recommendations from Nigig Gamik.