WHO HEARS BILL C-92?

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Provincial courts have jurisdiction to hear cases that apply Bill C-92 starting January 1, 2020

Background: Some people have raised concerns that Bill C-92 does not specifically identify the court that will hear child welfare cases for First Nation, Métis, and Inuit children once the national standards in Bill C-92 come into force. This raises the question of whether Bill C-92 or some provincial statute must specifically identify which court will hear cases involving Indigenous children.

Issue: *Which court will hear Indigenous child welfare cases after Bill C-92 comes into force? Does there have to be an amendment to the bill or something put in provincial law to address this problem?*

Answer: No specific language in Bill C-92 or provincial law is necessary. The courts that will hear Indigenous child welfare matters on January 1, 2020, are the same courts that heard child welfare matters involving Indigenous kids on December 31, 2019. Bill C-92 will simply be a law the court considers, alongside provincial law, in hearing a child welfare matter.

Reasons:

1) Provincial courts have the jurisdiction to adjudicate federal laws; the federal government does not have to specifically grant this jurisdiction.

- As a constitutional matter, s. 92(14) of the *Constitution Act* over "administration of justice" expressly includes "the constitution, maintenance, and organization of provincial courts, both civil and criminal jurisdiction" and "procedure in civil matters in those courts."

- Professor Peter Hogg explains that, as a result of this power, provincial courts are not confined to deciding cases arising under provincial laws. The provincial power over the administration of justice in the province enables a province to invest its courts with jurisdiction over a full range of cases, whether the applicable law is federal or provincial or constitutional.[1]

- Hogg also explains that, because of this, it is not necessary for the federal government to have to specifically identify which court will hear a matter in its law:

> "The general jurisdiction of the provincial courts means that the there is no need for a separate system of federal courts to decide 'federal' questions. Nor does the power to decide federal questions have to be specifically granted to the provincial courts by the federal Parliament. On the contrary, if a federal law calls for the adjudication, but is silent as to the forum, the appropriate forum will be the provincial courts."[2]

2) It is also not necessary to have a provincial law that specifically references the power to adjudicate a federal law.

- Recognition within the statute (either expressly or impliedly) that a provincial court or tribunal has the power to decide questions of law will suffice to provide them with the power to apply all applicable laws, whether provincial, federal, or constitutional.[3]

- Applying such principles, in Ontario (Attorney General) v. Pembina Exploration Canada Ltd., [1989] 1 SCR 206, the Supreme Court ruled that a provision in the province's Small Claims Court Act granting the court jurisdiction in "any action where the amount claimed does not exceed $1,000 exclusive of interest" should be interpreted to include federal matters (in that case, admiralty law).

- Further, in Paul v. British Columbia (Forest Appeals Commission), 2003 SCC 55, the Supreme Court held that a provincial forestry tribunal's ability to consider questions of law granted it the jurisdiction to decide constitutional issues in relation to s. 35 of the Constitution Act, 1982. The Court emphasized that this result was clear and that even practical considerations could not rebut this.[4]

Conclusion: If a court already has jurisdiction to consider child welfare law (in most provinces this is provincial and in some this is the superior court), this is all that is needed for them to apply Bill C-92.

[1] See Peter Hogg, Canadian Constitutional Law, 5th ed., (Markham: Thomson Reuters Canada Ltd., 2014), at Chap. 7, 7-1 to 7-3.
[2] Hogg *ibid* at 7-3.
[3] Hogg *ibid* at 7-3 at note 6.
[4] At para. 39: "Practical considerations will generally not suffice to rebut the presumption that arises from authority to decide questions of law. This is not to say, however, that practical considerations cannot be taken into consideration in determining what is the most appropriate way of handling a particular dispute where more than one option is available."