

ALBERTA COURT OF JUSTICE

Family and Youth Division

Edmonton, Alberta

Practice Directive¹

Section 12 Notice to Parents, Care Providers, and Indigenous Governing Bodies under

An Act respecting First Nations, Inuit and Métis children, youth and families

I. PURPOSE

1. The purpose of this Practice Directive is to articulate Court practices and standards to ensure, among other things, that the requirements of notice pursuant to *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c 24 (the “Act”) are met.
2. As jurisprudence continues to develop and evolve in this area, this Practice Directive reflects a purposive approach, aligned with the principles enunciated in the *Act*, to support the meaningful involvement of Indigenous groups, communities, and peoples in the lives of children and families impacted by child and family services.
3. In adopting a purposive approach, this Practice Directive is guided by the Preamble of the *An Act Respecting First Nations, Inuit and Metis Children, Youth and Families* (S.C. 2019, c. 24) which
 - a. affirms the right to self-determination and self-government of Indigenous peoples, including jurisdiction in relation to child and family services;
 - b. acknowledges the need to respect Indigenous cultures and traditions in order to address the needs of Indigenous children; and
 - c. highlights the need to eliminate the over-representation of Indigenous children in child and family services systems.

¹ This Practice Directive is currently a pilot project and will be reviewed within nine months of its inception.

4. Along with other relevant legislative authority, this Practice Directive is further guided by the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, the *United Nations Declaration on the Rights of Indigenous Peoples*, the *United Nations Convention on the Rights of the Child*, and the principles and requirements of the *Child, Youth and Family Enhancement Act*, RSA 2000, c C-12 (“*CYFEA*”)

II. LEGISLATION

5. Section 12 of *An Act Respecting First Nations, Inuit and Metis Children, Youth and Families* reads as follows:

Notice

12 (1) In the context of providing child and family services in relation to an Indigenous child, to the extent that doing so is consistent with the best interests of the child, before taking any significant measure in relation to the child, the service provider must provide notice of the measure to the child’s parent and the care provider, as well as to the Indigenous governing body that acts on behalf of the Indigenous group, community or people to which the child belongs and that has informed the service provider that they are acting on behalf of that Indigenous group, community or people.

III. DEFINITIONS

6. Relevant legislative definitions are as follows:
 - a. ***care provider*** means a person who has primary responsibility for providing the day-to-day care of an Indigenous child, other than the child’s parent, including in accordance with the customs or traditions of the Indigenous group, community or people to which the child belongs (the *Act*).
 - b. ***child and family services*** means services to support children and families, including prevention services, early intervention services and child protection services (the *Act*).
 - c. ***Indigenous***, when used in respect of a person, also describes a First Nations person, an Inuk or a Métis person (the *Act*).
 - d. ***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* (the *Act*).
 - e. ***Indigenous peoples*** has the meaning assigned by the definition *aboriginal peoples of Canada* in subsection 35(2) of the *Constitution Act, 1982* (the *Act*).
7. Words and phrases not defined in legislation, but are interpreted for the purposes of this Practice Directive as follows:
 - a. ***Indigenous group, community, or people to which the child belongs*** includes:

- i. a band of which the child is a registered member or has potential to be registered as a member;
 - ii. a Métis Settlement of which a parent of the child or the child is a member;
 - iii. a Métis Nation of which a parent of the child or the child is a registered member;
 - iv. an Inuit community of which the child is a registered member or has the potential to be registered as a member; and
 - v. a First Nation, Métis Settlement, or Inuit community with which the child is personally culturally connected.
- b. ***Service provider*** means any entity required by law to provide child and family services, including, but not limited to, a director under *CYFEA*, and any Delegated First Nations Agency that has delegated authority to provide child intervention services under *CYFEA*.
- c. ***Significant measure*** includes, at a minimum, and for the purposes of this court process Practice Directive,
- i. the apprehension of a child pursuant to the provisions of *CYFEA*;
 - ii. an application for Private Guardianship pursuant to the provision of *CYFEA*;
 - iii. any other court application under *CYFEA* that impacts a child, including, but not limited to, orders for supervision, initial custody, temporary guardianship, and permanent guardianship;
 - iv. any other child and family services' court application impacting a child under any other legislation, including, *Drug-endangered Children Act*, and/or *Protection of Sexually Exploited Children Act* applications, and
 - v. Any change in placement of a child in care.

IV. NOTICE UNDER THE *CHILD, YOUTH AND FAMILY ENHANCEMENT ACT*

8. Nothing in this Practice Directive replaces or detracts from the obligations of the director or any other service provider to provide notice under *CYFEA*.

V. INFORMATION REGARDING INDIGENOUS STATUS OF A CHILD

9. Upon filing any court application regarding a child, the service provider shall file with the Court as soon as is reasonably practicable a copy of *Form A – Indigenous Status of a Child*.

VI. NOTICE TO INDIGENOUS GOVERNING BODIES

10. Before taking any significant measure in relation to an Indigenous child, the service provider shall provide notice of the measure to the Indigenous governing body (if any) that acts on behalf of the Indigenous group, community or people to which the child belongs, and that has informed the service provider that they are acting on behalf of that Indigenous group, community or people.
11. Notice must be provided to all Indigenous governing bodies to which the child belongs.
12. If the service provider believes such notice is not consistent with the best interests of the child, the service provider shall advise the Court of that in its application and shall include the reasons supporting that belief.
13. If the service provider does not provide notice prior to the apprehension of an Indigenous child, the service provider must provide notice to the Indigenous governing body or bodies forthwith after the child is apprehended.
14. Notice shall be given in the form of the *Notice to Indigenous Governing Body* included as Practice Directive Form B, or in a form providing substantively equivalent information.
15. Notice shall be given as soon as reasonably practicable to facilitate meaningful participation in the process at an early stage.
16. Notice shall be given
 - a. personally to an individual authorized by the Indigenous governing body to accept notice;
 - b. by letter to an address authorized by the Indigenous governing body to accept notice;
 - c. by email to an email address authorized by the Indigenous governing body to accept notice; or
 - d. in any other manner which satisfies the Court effective notice has been provided.

VII. INVOLVING INDIGENOUS GROUPS, COMMUNITIES AND PEOPLES WHO HAVE NOT YET AUTHORIZED AN INDIGENOUS GOVERNING BODY AS THEIR REPRESENTATIVE UNDER THE ACT

17. If there are reasonable grounds to believe that a child is connected to an Indigenous group, community or people that has not yet
- a. authorized an Indigenous governing body, or
 - b. satisfied formal notification processes to all service providers,
- the service provider shall take steps, as required by law, to meaningfully involve the Indigenous group, community, or people to which the child belongs in the services provided to the child receiving intervention services.
18. Such involvement shall include notice of all court proceedings in accordance with Part VI of this Practice Directive.
19. Along with other general legislative authority and its overarching duty to fairness, the Court relies on the provisions of the *Provincial Court Act*, RSA 2000, c P-31 to support this directed notice.

VIII. NOTICE TO PARENTS AND CARE PROVIDERS

20. Before taking any significant measure in relation to an Indigenous child, the service provider shall provide notice of the measure to the child's parents and care providers.
- a. Notice shall be given in the form of the *Notice to Parent and Care Providers* included as Practice Directive Form C, or in a form providing substantively equivalent information.
 - b. Notice shall be given forthwith to facilitate meaningful participation in the process at an early stage.
 - c. Notice to parents and care providers shall be given personally.
 - d. If personal service of the notice is not reasonably practicable, the service provider may apply to the Court for an Order for Substitutional Service of the notice.
 - e. Notwithstanding the direction for personal service, the Court may approve notice as being adequate if the Court is satisfied effective notice has been provided in the circumstances.
- a. If the service provider does not provide notice to the child's parents or care providers prior to the apprehension of an Indigenous child, the service provider must provide notice forthwith after the child is apprehended.

21. Where service or notice to a parent or care provider is already required under *CYFEA*, or any other legislation, that service or notice will satisfy the requirements of notice under this Practice Directive.

IX. AFFIDAVITS CONFIRMING NOTICE PROVIDED

22. A service provider shall provide evidence to the Court they have complied with the notice requirements of this Practice Directive unless they can satisfy the Court such compliance is not in the best interests of the Indigenous child.
23. Upon giving the requisite notice to an Indigenous governing body, the service provider shall file with the Court an Affidavit in the form of the *Affidavit – Notice to Indigenous Governing Body*, included as Practice Directive Form D.
24. Upon giving the requisite notice to a parent or care provider under this Practice Directive, the service provider shall file with the Court an Affidavit in the form of the *Affidavit – Notice to Parent or Care Provider* included as Practice Directive Form E.

DRAFT - For Discussion Only

Notice Practice Directive - Form A

Indigenous Status of a Child

An Act respecting First Nations, Inuit and Métis children, youth and families

1. Name of child: _____ Date of birth _____
2. Name of Parent 1: _____
3. Name of Parent 2: _____
4. Service provider's application: _____
5. Information known to the service provider regarding the child's Indigenous status: _____
6. If the child is Indigenous, identify the Indigenous groups, communities or people to which the child belongs (e.g. specific First Nation, Métis Settlement, Métis Nation of Alberta, Inuit community, etc.) and the nature of that relationship (e.g. registered band member, potential to be registered as band member, registered under Indigenous Services Canada, registered citizen of Métis Nation of Alberta, registered member of an Inuit community, etc.)
 - a. On Parent 1's side:
 - i. _____
 - ii. _____
 - iii. _____
 - b. Additional relevant information: _____

c. On Parent 2's side:

i. _____

ii. _____

iii. _____

d. Additional relevant information:

DRAFT - For Discussion Only

Notice Practice Directive - Form B

Notice to Indigenous Governing Body of a Significant Measure in Child and Family Services (Court Practice) Regarding an Indigenous Child

An Act respecting First Nations, Inuit and Métis children, youth and families

From: [SERVICE PROVIDER]

Contact person:

Address:

Email Address:

Telephone Number:

To: [INDIGENOUS GOVERNING BODY]

This is to notify you that the [SERVICE PROVIDER] is seeking to take a significant measure regarding a child who is connected to your community.

Name of child:

Date of birth:

Name of Parent 1:

Name of Parent 2:

Connection of child to community:

Significant measure that is being sought:

Next court date:

Court location:

Court hearing time:

Pursuant to *An Act respecting First Nations, Inuit and Métis children, youth and families*, Indigenous governing bodies have the legal right to make representations and provide input into significant decisions and court applications regarding children connected to their communities.

Please advise the service provider at the contact information provided above:

- 1) If the child is connected to your community;
- 2) If you wish to be informed of any significant measures taken regarding the child;
- 3) If you wish to participate in proceedings related to the child; and
- 4) An address or email at which you would like any further notices to be sent.

If you wish to become involved in this matter, you may also attend court to address the judge.

DRAFT - For Discussion Only

Notice Practice Directive - Form C

Notice to Parent and Care Providers of a Significant Measure in Child and Family Services (Court Practice) Regarding an Indigenous Child

An Act respecting First Nations, Inuit and Métis children, youth and families

From: [SERVICE PROVIDER]

Contact person:

Address:

Email Address:

Telephone Number:

To: [NAME OF PARENT OR CARE PROVIDER]

Relationship to Child:

This is to notify you that the [SERVICE PROVIDER] is seeking to take a significant measure regarding your child, or a child to whom you were the care provider.

Name of child:

Date of birth:

Name of Parent 1:

Name of Parent 2:

Significant measure that is being sought:

Next court date:

Court location:

Court hearing time:

September 14, 2023 Version

Pursuant to *An Act respecting First Nations, Inuit and Métis children, youth and families*, you have a right to have your views and preferences considered in this decision that affects the child. You have a right to attend Court and to speak to a Judge in this matter. You have the right to be a party to the proceeding.

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Notice Practice Directive - Form D

AFFIDAVIT OF NOTICE

Notice to Indigenous Governing Body pursuant to this Practice Directive

An Act respecting First Nations, Inuit and Métis children, youth and families

1. [Affiant's name and authority to act on behalf of a service provider]
2. [Service provider's application and name of child]
3. [Affiant's belief that the child is Indigenous and the community or communities to which the child belongs]
4. [Affiant attests to date of notice on Indigenous governing body, and form of notice. Form B attached as Exhibit.]

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Notice Practice Directive - Form E

AFFIDAVIT OF NOTICE

Notice to Parent or Care Provider

An Act respecting First Nations, Inuit and Métis children, youth and families

1. [Affiant's name and authority to act on behalf of a service provider]
2. [Service provider's application and name of child]
3. [Affiant's belief that the child is Indigenous]
4. [Affiant attests to date of notice to Parent or Care Provider, and form of notice. Form C attached as Exhibit.]

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