

PART I – STATEMENT OF FACTS

1. JFCY accepts the facts as presented by the Appellant and takes no position where the Respondent might disagree.

PART II – INTERVENER’S POSITION ON THE QUESTIONS IN ISSUE

2. The Immigration Officer incorrectly applied the Best Interests of the Child (BIOC) test by limiting the scope to only the “short term interests” of the child and the resulting analysis was unreasonable. While a removal may be executed for a custodial parent of a child, a fulsome BIOC analysis must occur at the deferral stage.
3. The BIOC principle requires a comprehensive analysis of the unique needs of the affected child including their cultural identity. When the affected child is Aboriginal, the analysis of their cultural identity must consider the harm caused and commitment towards reconciliation by the Canadian government for their history of discrimination towards Aboriginal people.
4. In the alternative, the removal of the parent(s) must be deferred until the BIOC analysis is completed in a Humanitarian and Compassionate grounds application consistent with s. 25 of the *Immigration and Refugee Protection Act*.¹

PART III – BRIEF OF ARGUMENT

5. JFCY’s submissions focus on the BIOC, a fundamental principle of law,² that must be assessed in recognition of the child’s vulnerable position and in order to comply with Canadian law and international human rights instruments. The BIOC principle has both procedural and substantive aspects and requires comprehensive consideration in both respects.

¹ *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

² *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 70-71, SCJ No 39 (QL) [*Baker*] Intervener’s Book of Authorities at Vol I, Tab 1 [JBOA].

(i) Procedural Process:

6. Procedurally, the BIOC must be the primary consideration in any decision that affects a child.³ *IRPA* as a whole must be applied and construed in a manner that, *inter alia*, ensures decisions made under it are consistent with the *Charter*, domestic law and in compliance with international human rights instruments to which Canada is a signatory,⁴ including the *UN Convention on the Rights of the Child*,⁵ *Declaration on the Rights of Indigenous Peoples*,⁶ *International Covenant on Economic, Social, and Cultural Rights*,⁷ *Convention on Elimination of all Forms of Discrimination*,⁸ and the *Universal Declaration on Human Rights*.⁹
7. *The BIOC is a fundamental principle of law:*¹⁰ The Supreme Court of Canada has held that Canadian laws must be interpreted to comply with Canada's international treaty obligations¹¹ and that "(c)hildren's rights, and attention to their interests, are central humanitarian and compassionate values in Canadian society".¹² The recognition of the inherent vulnerability of children and the importance of attention to their unique interests has consistent and deep roots in Canadian law¹³ and has been repeatedly recognized by the

³ *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 37-40, 3 SCR 909 at Vol I, Tab 2 [JBOA]; UN Committee on the Rights of the Child, *General comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art 3, para 1)*, UNCRCOR, 62nd Sess, UN Doc CRC/C/GC/14 at para 16 [CRC Comment No 14] [JBOA Vol 2 at Tab 29].

⁴ *Supra* note 1 at s. 3.

⁵ *Convention on the Rights of the Child*, 28 May 1990, 1577 UNTS 3 (entered into force 2 September 1990, ratified by Canada 13 December 1991) [*Children's Convention*] [JBOA Vol 2 at Tab 30].

⁶ *Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR, 61st Sess, Supp No 53, UN Doc A/RES/61/295 (2007) [UNDRIP] [JBOA Vol 2 at Tab 31].

⁷ *International Covenant on Economic, Social, and Cultural Rights*, 993 UNTS 3 (entered into force 3 January 1979, accession by Canada 19 May 1976) [ICESCR] [JBOA Vol 2 at Tab 32].

⁸ *International Covenant on the Elimination of All Forms of Racial Discrimination*, 24 August 1966, 660 UNTS 195 (entered into force 4 January 1969, ratified by Canada 14 October 1970) [ICERD] [JBOA Vol 2 at Tab 33].

⁹ *Universal Declaration on Human Rights*, 10 December 1948, GA Res 217 A (III), UNGAOR, 3 Sess, Supp No 13, UN Doc A/810 (1948) [UDHR] [JBOA Vol 2 at Tab 34].

¹⁰ *Baker*, *supra* note 2 at paras 70-71.

¹¹ *Canadian Foundation for Children, Youth and the Law v Canada (Attorney General)*, 2004 SCC at para 32, 1 SCR 76 [JBOA Vol 1 at Tab 3].

¹² *Baker*, *supra* note 2 at para 67.

¹³ The importance of safeguarding their unique position in Canadian society is demonstrated through a variety of legal measures, including the inherent *parens patriae* power of our courts, child welfare legislation in every province and territory, and the recognition of a shared responsibility to address the developmental challenges and needs of young persons as stated in the preamble to the *Youth Criminal Justice Act* SC 2002, c 1; which also recognizes that Canada is a party to the *Children's Convention*.

Supreme Court.¹⁴

8. BIOC is “the” Primary Consideration: Article 3(1) of the Convention on the Rights of the Child (*Children’s Convention*) provides that:

(i) in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.¹⁵ [Emphasis added]

This is in fact the only primary consideration provided for within the *Children’s Convention*.¹⁶ In the context of migration, the UN Committee on the *Children’s Convention* recently stated that:

In particular, primary consideration should be given to the best interests of the child in any proceeding resulting in the child’s or their parent’s detention, return or deportation¹⁷ [Emphasis added]

9. The UN Committee on the *Children’s Convention* urged Canada, in its report evaluating Canada’s compliance with the *Children’s Convention* to:

Ensure that legislation and procedures use the best interests of the child as the primary consideration in all immigration and asylum processes ...” [and] to pay particular attention to ensuring that its policies and procedures for children in asylum seeking, refugee and/or immigration detention give due primacy to the principle of the best interests of the child.¹⁸ [Emphasis added]

10. Recently, in *Kanhasamy*, the Supreme Court emphasized the centrality and singular importance of a BIOC analysis¹⁹ and held that:

International human rights instruments to which Canada is a signatory, including the *Convention on the Rights of the Child*, also stress the centrality of the best interests of a child: Can. T.S. 1992 No. 3; *Baker*, at para. 71. Article 3(1) of

¹⁴ *AB v Bragg Communications Inc*, 2012 SCC 46 at para 17, 2 SCR 567 [JBOA Vol 1 at Tab 4]; *R v DB*, 2008 SCC 25 at para 48, 2 SCR 3 [JBOA Vol 1 at Tab 5]; *AC v Manitoba (Director of Child and Family Services)*, 2009 SCC 30 at para 151, 2 SCR [JBOA Vol 1 at Tab 6]; *Baker*, *supra* note 2 at para 67; *Gordon v Goertz*, [1996] 2 SCR 27 at para 44, 134 DLR (4th) 321 [*Gordon*] [JBOA Vol 1 at Tab 7].

¹⁵ *Children’s Convention supra* note 5 at Article 3 [JBOA Vol 2 at Tab 30].

¹⁶ CRC Comment No 14, *supra* note 3 at para 16.

¹⁷ UN Committee on the Rights of the Child, *Report of the 2012 Day of General Discussion: The Rights of all Children in the Context of International Migration*, UNCRCOR at paras 72 [CRC Migration] [JBOA Vol 2 at Tab 35].

¹⁸ UN Committee on the Rights of the Child, *Concluding Observations: Canada*, 65th Sess, CRC/C/CAN/CO/3-4 (2012) at para 74 [CRC Canada][JBOA Vol 2 at Tab 36].

¹⁹ *Kanhasamy*, *supra* note 3 at para 37-40.

the *Convention* in particular confirms the primacy of the best interests principle.²⁰
[Emphasis added]

11. The Federal Court has consistently held that the BIOC is relevant to the determination of whether or not to defer the removal of a child's custodial parent. Prior to *Kanthisamy*, the BIOC analysis was limited to the so called "short-term" interests of the child.²¹ However, *Kanthisamy* directs that the BIOC must be of singular, significant focus in decisions that affect a child. The decision-maker must, from the child's perspective, identify, define and examine the multitude of factors that may impinge on the child's best interests.²² This has yet to be applied in the deferral context. When applying *Kanthisamy*, in the deferral context, it is clear that the BIOC analysis must also be comprehensive because, "children experience greater hardship than adults when faced with a comparable situation"²³ and the short term impact of a deferral will have long term consequences on a child as set out below in paragraph 16.
12. The UN Committee on the *Children's Convention* has stated that the principle of the BIOC must *take priority* over migration and policy considerations,²⁴ including deporting a child's parent. This is because children are individual rights holders, not simply the property of their parents. This principle has been recognized in the jurisprudence of the Supreme Court for over thirty years.²⁵ If a removal order can still be executed when the policy benefits of removal do not outweigh the harm to the child then, the BIOC is deprived of meaning and the child is treated as property rather than as a rights holder.
13. Importantly, the European Court of Justice has recognized the weight that must be accorded to the BIOC analysis in the deportation context because generally if a child's parent is removed, a child citizen is "constructively" deported. Consequently, their right of residency

²⁰ *Ibid* at para 37.

²¹ See *Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81, para 50-51, 57, 309 DLR (4th) 41 [JBOA Vol 1 at Tab 8]; *Munar v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1180, para 34-40, 279 FTR 90 [JBOA Vol 1 at Tab 9]; *Baptiste v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1359, para 9-10, FCJ No 1433 [JBOA Vol 1 at Tab 10].

²² *Kanthisamy*, *supra* note 3, paras 35-41.

²³ *Ibid* at para 41.

²⁴ CRC Migration, *supra* note 17 at para 73.

²⁵ *ANR v LJR*, [1983] 2 SCR 173, para 1, 1 DLR (4th) 193 [JBOA Vol 1 at Tab 11].

is robbed of any meaningful effect or alternatively, the child remains and is deprived of their right to family unity.²⁶

(ii) Substantive Analysis:

14. In the decision making process, the BIOC framework involves an assessment of various factors that are inevitably unique to each child.²⁷ The purpose of the BIOC analysis is to “ensure the full and effective enjoyment of the rights recognized in the Convention and its Optional Protocols, and the holistic development of the child.”²⁸ In *Kanthasamy*, the Supreme Court outlined how to conduct the BIOC analysis and held that:

It is not only the requirement that the "best interests" be treated as a significant factor in the analysis, it should also influence the manner in which the child's other circumstances are evaluated.²⁹

15. When determining whether to remove an Aboriginal child’s custodial parent, the most important factors to analyze include the short-, medium-, and long-term consequences to a child and the right to benefit from family unity,³⁰ cultural identity,³¹ and non-discrimination.³²

16. Short-, Medium-, Long-, Term Impact: By nature of their developmental processes, the short term impact of a removal on a child (even if the removal is temporary) will have a long term impact on their well-being.³³ The BIOC analysis must account for the temporariness of childhood that is marked by an enhanced vulnerability and increased dependence on adults.³⁴

²⁶ *Zhu and Chen v Secretary of State for the Home Department*, [2004] ECR I – 9925, para 45-47, Case-200/02 [JBOA Vol 2 at Tab 27]; *Gerardo Ruiz Zambrano v. Office national de l’emploi (ONEm)*, ECJ 8 Mar 2011, para 44, 117, Case C-34/09 [JBOA Vol 2 at Tab 38]; Jacqueline Bhabha, “Staying Home: The Elusive Benefits of Child Citizenship” in Jacqueline Bhabha, *Child Migration & Human Rights in a Global Age* (Princeton: Princeton University Press, 2014) 203 at 83-86, 91-93 [JBOA Vol 2 at Tab 38].

²⁷ CRC Comment No 14, *supra* note 3 para 48 and 49.

²⁸ CRC Comment No 14, *supra* note 3 at para 82.

²⁹ *Kanthasamy*, *supra* note 3 at para 41.

³⁰ *Children’s Convention*, *supra* note 5 at Articles 5, 8, and 9.

³¹ *Ibid* at Article 2.

³² *Ibid* at Article 30.

³³ *Catholic Children’s Aid Society of Metropolitan Toronto v. CM* [1994] 2 SCR 165, para 44, 35 SCJ No 37 [CM] [JBOA Vol 1 at Tab 12]; CRC Comment No 14, *supra* note 3 at para 93.

³⁴ CRC Comment No 14, *supra* note 3 preamble, para 16 and 37.

17. Children have a unique perception of the passage of time that is different from and faster than adults. In *CM*, the Supreme Court of Canada held that altering a situation of perceived permanence for a child (even only for a few months) can cause lasting emotional harm;³⁵ and in *BSC*, the Alberta Court of Appeal emphasized that a BIOC analysis must take a "broad view of past, present and future circumstances and needs of the child."³⁶ For this reason, in the deferral context, it is not sufficient to consider the short-term BIOC.
18. Family Unity: Family is the natural environment for the growth and well-being of children.³⁷ Given the gravity of the impact on a child who is separated from their parents, such separation should only occur as a measure of last resort.³⁸ The Supreme Court has long recognized that separating a child from their parent for child welfare reasons engages both a child and parent's section 7 *Charter* right to security of the person because, "few state actions can have a more profound effect on the lives of both parent and child."³⁹ As such, the preservation of the child's family unit should be taken into account when assessing the BIOC⁴⁰ in the deferral context.
19. Cultural Identity: The unique cultural identity of an Aboriginal child requires particular attention and is a significant factor in a BIOC analysis.⁴¹ The importance of recognizing the unique cultural identity and rights of Aboriginal children is embedded into provincial and federal legislation that relate to children.⁴² In the Canadian context, Aboriginal heritage is

³⁵ *CM*, *supra* note 32.

³⁶ *BCS v CLJ*, 2007 ABCA 24, para 17, 155 ACWS (3d) 116 [JBOA Vol 1 at Tab 13].

³⁷ *Children's Convention*, *supra* note 5 at preamble.

³⁸ CRC Comment No 14, *supra* note 3, para 61.

³⁹ *New Brunswick (Minister of Health and Community Services) v JG*, [1999] SCR 46, at para 76, 177 DLR (4th) 124 [JBOA Vol 2 at Tab 14].

⁴⁰ CRC Comment No 14, *supra* note 3 at para 66.

⁴¹ *Van de Perre v Edwards*, 2001 SCC 60 at para 40, 2 SCR 1014 [JBOA Vol 1 at Tab 15]; *Ibid* at para 55; *General comment No 11 (2009): Indigenous children and their rights under the Convention*, UNCRCOR, 50th Sess, UN DOC CRC/C/GC/11 at para 1-5 [CRC Comment 11] [JBOA Vol 2 at Tab 37].

⁴² *Youth Criminal Justice Act*, SC 2002, c 1, s. 3(c)(iv); Alberta: *Child, Youth and Family Enhancement Act*, RSA 2000, c C-12 at s. 2(p); British Columbia: *Child, Family and Community Service Act*, RSBC 1996, c 46 at s. 2(f), 4(2), *Adoption Act*, RSBC 1996, c 5 at s. 3(2); Manitoba: *The Child and Family Services Act*, CCSM c C80 at Declaration of Principles no. 11; Nunavut: *Adoption Act*, SNWT (Nu) 1998, c 9 at s. 7(7); *Child and Family Services Act*, SNWT (Nu) 1997, c 13 at s. 2(2)(3); Ontario: *Child and Family Services Act*, R.S.O. 1990, CHAPTER C.11 at s. 1(1), 37(4); Prince Edward Island: *Child Protection Act*, RSPEI 1988, c C-5.1 at s. 2(2)(j); Quebec: *Youth Protection Act*, CQLR c P-34.1 at s. 2.4(5)(c); Saskatchewan: *The Child and Family Services Act*, SS 1989-90, c C-7.2 at 61(1); Yukon: *Child and Family Services Act*, SY 2008, c 1 at s. 2(d), 4(2).

more than a race-based consideration,⁴³ because it has multiple elements including those listed below.

20. Membership to Community: Article 30 of the *Children's Convention* states that for an indigenous child to meaningfully exercise their right to a unique cultural identity, they must have the right to participate *collectively* with members of their group and practice their culture as a part of that community.⁴⁴ Multiple provincial appeal courts have recognized that cultural identity cannot be maintained solely by attending the occasion pow-wow or reading Aboriginal stories;⁴⁵ and in *Cote*, the Supreme Court recognized the importance of the ongoing connection to community in Aboriginal culture and held that:

To ensure the continuity of aboriginal practices, customs and traditions, a substantive aboriginal right will normally include the incidental right to teach such a practice, custom, and tradition to a younger generation.⁴⁶

21. Significance of Land: A BIOC analysis must consider the cultural significance of an Aboriginal child's right of connection to their traditional land.⁴⁷ In *Delgamuukw*, the Supreme Court held that when assessing the unique rights afforded to Aboriginal people under s. 35(1) of the *Constitution Act*, due weight must be given to Aboriginal people's unique and fundamental relationship to land given their history, customs, traditions and practices related to the land.⁴⁸ This has been followed by the British Columbia Court of Appeal when evaluating the BIOC in the family law context.⁴⁹

⁴³ *G(T) v. Nova Scotia (Minister of Community Services)*, 2012 NSCA 43, para 122, 316 NSR. (2d) 202 (N.S. C.A.) [JBOA Vol 1 at Tab 16]; Blackstock, C., et al, "Reconciliation in child welfare: Touchstones of hope for Indigenous children, youth, and families" (2006) First Nations Child & Family Caring Society of Canada, 10-11 [Blackstock] [JBOA Vol 2 at Tab 39]; Hadley Friedland, "Tragic Choices and the Division of Sorrow: Speaking About Race, Culture and Community Traumatization in the Lives of Children" (2009) 25 Can J Fam L 223 at para 6 (QL) [JBOA Vol 2 at Tab 43].

⁴⁴ CRC Comment No 11, *supra* note 40 at para 31.

⁴⁵ *EJT v. PMVI*, [1996] MJ No 287, at para 19, 110 Man R (2d) 219 (Man CA) [JBOA Vol 1 at Tab 17]; *AL v KD*, 2000 BCCA 480, para 52, BCWLD 1315 [AL] [JBOA Vol 1 at Tab 18].

⁴⁶ *R v Côté* [1996] 3 SCR 139 at para 56, SCJ No 9 [JBOA Vol 1 at Tab 19].

⁴⁸ *Delgamuukw v. British Columbia*, [1997] 3 SCR 1010, para 84, 114, 153, 176, DLR (4th) 1993 [JBOA Vol 1 at Tab 20].

⁴⁹ *AL*, *supra* note 44, at para 52.

22. *Non-Discrimination*: Freedom from discrimination is a fundamental right guaranteed under the *Canadian Human Rights Act*⁵⁰ and in all the international human treaties and covenants listed in paragraph 6 of this factum.⁵¹ The Canadian Human Rights Senate Committee recognized that, “the protection of Aboriginal children’s rights is an issue of primary importance for all Canadians and an issue of fundamental concern with respect to Canada’s compliance with the *Children’s Convention*.”⁵²
23. Aboriginal children are among the most vulnerable children in Canada.⁵³ In the report titled: *Honouring the Truth, Reconciling for the Future*, the Truth and Reconciliation Commission of Canada⁵⁴ describes the source of the current vulnerability of Aboriginal children as being intimately tied to the legacy of residential schools:
- Many of today’s aboriginal children and youth live with the legacy of residential schools every day, as they struggle to deal with high rates of addiction, fetal alcohol syndrome, mental health issues, family violence, incarceration of parents and the intrusion of child welfare authorities.⁵⁵
24. Canada’s history of discrimination with residential schools, an action previously deemed to have been in the “best interests” of Aboriginal children, has been documented as cultural genocide.⁵⁶ This history coupled with the Canadian government’s *sui generis* relationship

⁵⁰ *Canadian Human Rights Act*, RSC 1985, c H-6, s. 2.

⁵¹ *Children’s Convention*, *supra* note 5 at Article 2; ICESCR, *supra* note 7 at Article 2; ICERD, *supra* note 8 at Articles 6, and 7; UDHR, *supra* note 9 at Articles 7, 8, and 22. See also: Committee on the Rights of the Child, 2003 *Day of General Discussion on the Rights of Indigenous Children: Recommendations*, 34th Sess, UNCRCOR at preamble, para 2, 9-11, 17 [CRC Migration] [JBOA Vol 2 at Tab 39].

⁵² Canada, Senate, Standing Committee on Human Rights, Children: The Silenced Citizens, Effective Implementation of Canada’s Obligations with Respect of Children (April 2007) 172 and 179 (Chair: Raynell Andreychuk) [JBOA Vol 2 at Tab 26].

⁵³ CRC Canada, *supra* note 18 at para 32, 33, 42, 46, 55, 65, 67, 69, 85; Canadian UNICEF Committee, Canada’s Supplement to the State of the World’s Children 2009, Aboriginal Children’s Health: Leaving No Child Behind (2009) at page 3 [JBOA Vol 2 at Tab 40]; *First Nations Child and Family Caring Society of Canada v Canada (Minister of Indian Affairs and Northern Development)*, 2016 CHRT 2, para 383, 406-427, 467, CHRD No 2 [JBOA Vol 2 at Tab 21]; Special Rapporteur on the rights of indigenous peoples, The situation of indigenous peoples in Canada, 27th Sess, A/HRC/27/52/Add.2 (2014), [Indigenous Canada][JBOA Vol 2 at Tab 38].

⁵⁴ The Truth and Reconciliation Committee founded as a component of the Canadian Government’s Residential Schools Settlement Agreement, has a mandate to inform all Canadians about what happened in Indian Residential schools and document the truth of everyone personally affected.

⁵⁵ *Summary of the Final Report of the Truth and Reconciliation Commission of Canada, Honouring the Truth, Reconciling the Future*, Truth and Reconciliation Commission of Canada, 31 May 2015 at v-vi, 1-3, 183 [JBOA Vol 2 at Tab 41].

⁵⁶ *Ibid* at v-vi, 1-3 and 183; S Bernd Walter, Janine Isenegger, & Nicholas Bala, “‘Best Interests’ in Child Protection Proceedings: Implications and Alternatives” (1995) 12 Can J Fam L 367 at para 74 (QL) [JBOA Vol 2 at Tab 42].

with Aboriginal people⁵⁷ heightens the requirement to ensure that such assimilative practices are forever removed from the BIOC evaluation of a child's right to their Aboriginal cultural identity.⁵⁸

25. In the General Comment on Indigenous Children, the UN Committee on the *Children's Convention* recognizes the need to analyze historic discrimination in order to properly recognize, respect, and preserve Aboriginal culture, history, language and their way of life, and that proactive measures may be required to diminish or eliminate the conditions that cause discrimination.⁵⁹

26. In *Gladue*, the Supreme Court held that when applying Section 718.2(e) of the *Criminal Code*, the sentencing judge must look at:

- the unique systemic or background factors which may have played a part in bringing the particular Aboriginal offender before the courts; and
- the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular Aboriginal heritage or connection.⁶⁰

These “Gladue Principles” were designed to ameliorate the historical discrimination and disadvantage of Aboriginal people in Canada.⁶¹

27. In *Ipeelee*, Justice LeBel found that the systemic circumstances of Aboriginal people in Canada provide the *necessary context* for understanding and evaluating case-specific information, and that the moral blameworthiness of an Aboriginal offender must be assessed in the context of their lived experience of intergenerational trauma.⁶² This assessment looks

⁵⁷ *R v Wewaykum Indian Band*, 2002 SCC 79 at para 79-89, 4 SCR 245 [JBOA Vol 2 at Tab 22].

⁵⁸ Blackstock, C., Brown, I., & Bennett, M., “Reconciliation: Rebuilding the Canadian child welfare system to better serve Aboriginal children and youth” in I. Brown, et al, eds, (Prairies Child Welfare Consortium 2007) *Putting a human face on child welfare: Voices from the Prairies*, 59 at 62 [JBOA Vol 2 at Tab 44]; Indigenous Canada supra note 50 at preamble and para 9.

⁵⁹ CRC Comment No 11, supra note 40 at para 18, para 25 and para 41.

⁶⁰ *R v Gladue* [1999] 1 SCR 688, para 66, SCJ No 19 [JBOA Vol 2 at Tab 23].

⁶¹ *Ibid* at para 93.

⁶² *R v Ipeelee*, 2012 SCC 13, para 60, 73 and 82, 91 CR (6th) 1 [Appellants Book of Authorities].

at how the Aboriginal offender's birth and childhood significantly impact their current situation.⁶³

28. The Gladue Principles fit into Canada's broader obligations for reconciliation with all Aboriginal people. As the Supreme Court held recently in *Daniels*, Canada is entering "another chapter in the pursuit of reconciliation and redress" in its relationship with Aboriginal peoples.⁶⁴ The Ontario Court of Appeal has held that the unique statutory obligations for Aboriginal children in child welfare courts in Ontario exist as a reconciliatory action⁶⁵ akin to the Gladue Principles.
29. Irrespective of whether the Gladue Principles should be considered in the immigration context, the analysis of the Gladue Principles mirrors the expected analysis of the principle of non-discrimination in the BIOC analysis because of the Canadian government's unique relationship with and history of discrimination towards Aboriginal people.
30. **Conclusion:** A fulsome analysis of the short-, medium-, and long-term consequences unique to an Aboriginal child must be central to the BIOC analysis. The BIOC must be the primary consideration in deciding whether to execute a removal order for the custodial parent of an Aboriginal child in compliance with domestic and international law.

PART IV – SUBMISSIONS RELATING TO COSTS

31. JFCY does not seek costs and asks that costs not be ordered against them.

PART V – ORDER REQUESTED

32. This Honourable Court grant this appeal. JFCY requests 30 minutes for oral arguments.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 20th day of October, 2016.

Samira Ahmed & Emily Chan
Counsel for the Intervener Justice for Children and Youth

⁶³ Amy Bombay, Kim Matheson & Hymie Anisman, "Intergenerational Trauma: Convergence of Multiple Processes among First Nations peoples in Canada" (2009) 5:3 JAH 6 at page 7, 15-18, and 28-29 [JBOA Vol 2 at Tab 24].

⁶⁴ *Daniels v. Canada (Indian Affairs and Northern Development)*, 2016 SCC 12, para 1, 264 ACWS (3d) 552 [JBOA Vol 2 at Tab 24].

⁶⁵ *Algonquins of Pikwakanagan v. Children's Aid Society of the County of Renfrew*, 2014 ONCA 646, para 61, 50 RFL (7th) 272 [JBOA Vol 2 at Tab 25].

Part V – Table of Authorities

Domestic Caselaw	Cited at Paragraph(s)
<i>Baker v Canada (Minister of Citizenship and Immigration)</i> , [1999] 2 SCR 817, SCJ No 39.	67, 70-71
<i>Kanhasamy v Canada (Citizenship and Immigration)</i> , 2015 SCC 61, 3 SCR 909.	34-41
<i>Canadian Foundation for Children, Youth and the Law v Canada (Attorney General)</i> , 2004 SCC, 1 SCR 76.	32
<i>AB v Bragg Communications Inc</i> , 2012 SCC 46, 2 SCR 567.	17
<i>R v DB</i> , 2008 SCC 25, 2 SCR 3.	48
<i>AC v Manitoba (Director of Child and Family Services)</i> , 2009 SCC 30, 2 SCR.	151
<i>Gordon v Goertz</i> , [1996] 2 SCR 27, 134 DLR (4th) 321.	44
<i>Baron v Canada (Minister of Public Safety and Emergency Preparedness)</i> , 2009 FCA 81, 309 DLR (4th) 41.	50-51, 57
<i>Munar v Canada (Minister of Citizenship and Immigration)</i> , 2005 FC 1180, 279 FTR 90.	34-40
<i>Baptiste v Canada (Minister of Citizenship and Immigration)</i> , 2015 FC 1359, FCJ No 1433.	9-10
<i>ANR v LJR</i> , [1983] 2 SCR 173, 1 DLR (4th) 193.	1
<i>Catholic Children's Aid Society of Metropolitan Toronto v. CM</i> [1994] 2 SCR 165, 206 f-g, 35 SCJ No 37.	44
<i>BCS v CLJ</i> , 2007 ABCA 24, 155 ACWS (3d) 116.	17
<i>New Brunswick (Minister of Health and Community Services) v JG</i> , [1999] SCR 46, 177 DLR (4th) 124.	76
<i>Van de Perre v Edwards</i> , 2001 SCC 60, 2 SCR 1014.	39-40
<i>G(T) v Nova Scotia (Minister of Community Services)</i> , 2012 NSCA 43, 316 NSR. (2d) 202 (NS CA).	122
<i>EJT v PMVI</i> , [1996] MJ No 287, 110 Man R (2d) 219 (Man CA).	19
<i>AL v KD</i> , 2000 BCCA 480, BCWLD 1315.	52
<i>R v Côté</i> [1996] 3 SCR 139, SCJ No 9.	56
<i>Delgamuukw v. British Columbia</i> , [1997] 3 SCR 1010, DLR (4th) 1993.	84, 114, 153, 176,
<i>First Nations Child and Family Caring Society of Canada v Canada (Minister of Indian Affairs and Northern Development)</i> , 2016 CHRT 2, CHRD No 2.	383, 406-427, 467
<i>R v Wewaykum Indian Band</i> , 2002 SCC 79, 4 SCR 245.	79-89
<i>R v Gladue</i> [1999] 1 SCR 688, SCJ No 19.	66
<i>Daniels v Canada (Indian Affairs and Northern Development)</i> , 2016 SCC 12, 264 ACWS (3d) 552.	1
<i>Algonquins of Pikwakanagan v Children's Aid Society of the County of Renfrew</i> , 2014 ONCA 646, 50 RFL (7th) 272.	61
Government Documents	
Canada, Senate, Standing Committee on Human Rights, Children: The Silenced Citizens, Effective Implementation of Canada's Obligations with Respect of Children (April 2007) 172 and 179 (Chair: Raynell Andreychuk).	
Foreign Caselaw	
<i>Zhu and Chen v Secretary of State for the Home Department</i> , [2004] ECR I – 9925,	45-47

Case-200/02.	
<i>Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm)</i> , ECJ 8 Mar 2011, Case C-34/09	44, 117
International Documents	Tab
Committee on the Rights of the Child, <i>General comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art 3, para 1)</i> , UNCRCOR, 62nd Sess, UN Doc CRC/C/GC/14.	16, 36-37, 48, 49, 61, 66, 82, 93
<i>Convention on the Rights of the Child</i> , 28 May 1990, 1577 UNTS 3 (entered into force 2 September 1990, ratified by Canada 13 December 1991).	
<i>Declaration on the Rights of Indigenous Peoples</i> , GA Res 61/295, UNGAOR, 61st Sess, Supp No 53, UN Doc A/RES/61/295 (2007).	
<i>International Covenant on Economic Social and Cultural Rights</i> , 993 UNTS 3 (entered into force 3 January 1979, accession by Canada 19 May 1976).	
<i>International Covenant on the Elimination of All Forms of Racial Discrimination</i> , 24 August 1966, 660 UNTS 195 (entered into force 4 January 1969, ratified by Canada 14 October 1970).	
<i>Universal Declaration on Human Rights</i> , 10 December 1948, GA Res 217 A (III), UNGAOR, 3Sess, Supp No 13, UN DocA/810 (1948).	
Committee on the Rights of the Child, <i>Report of the 2012 Day of General Discussion: The Rights of all Children in the Context of International Migration</i> , UNCRCOR.	72-73
Committee on the Rights of the Child, <i>Concluding Observations: Canada</i> , 65th Sess, CRC/C/CAN/CO/3-4 (2012).	32, 33, 42, 46, 55, 65, 67, 69, 74, 85
<i>General comment No 11 (2009): Indigenous children and their rights under the Convention</i> , UNCRCOR, 50th Sess, UN DOC CRC/C/GC/11.	1-5, 18, 25, 31
Special Rapporteur on the rights of indigenous peoples, <i>The situation of indigenous peoples in Canada</i> , 27th Sess, A/HRC/27/52/Add.2 (2014).	4-6, 15-17, 84, 88
Committee on the Rights of the Child, <i>2003 Day of General Discussion on the Rights of Indigenous Children: Recommendations</i> , 34 th Sess, UNCRCOR	2, 9-11, 17

Secondary Sources
<i>Child Migration & Human Rights in a Global Age</i> (Princeton: Princeton University Press, 2014).
Cindy Blackstock, et al, "Reconciliation in child welfare: Touchstones of hope for Indigenous children, youth, and families" (2006) First Nations Child & Family Caring Society of Canada.
Canadian UNICEF Committee, <i>Canada's Supplement to the State of the World's Children 2009, Aboriginal Children's Health: Leaving No Child Behind</i> (2009).
<i>Summary of the Final Report of the Truth and Reconciliation Commission of Canada, Honouring the Truth, Reconciling the Future</i> , Truth and Reconciliation Commission of Canada, 31 May 2015.
S Bernard Walter, Janine Isenegger, & Nicholas Bala, "'Best Interests' in Child Protection Proceedings: Implications and Alternatives" (1995) 12 Can J Fam L 367.
Hadley Friedland, "Tragic Choices and the Division of Sorrow: Speaking About Race, Culture and Community Traumatization in the Lives of Children" (2009) 25 Can J Fam L 223.
Cindy Blackstock, Ivan Brown, & Marlyn Bennett, "Reconciliation: Rebuilding the Canadian child welfare system to better serve Aboriginal children and youth" in Ivan Brown, et al, eds, (Prairies Child Welfare Consortium 2007) <i>Putting a human face on child welfare: Voices from the Prairies</i> , 59.
Amy Bombay, Kim Matheson & Hymie Anisman, "Intergenerational Trauma: Convergence of Multiple Processes among First Nations peoples in Canada" (2009) 5:3 JAH 6

APPENDIX A

PROVINCIAL LEGISLATION	
*Legislation organized by province (alphabetically)	
ALBERTA	
<p><i>Child, Youth and Family Enhancement Act, RSA 2000, c C-12 at s. 2(p).</i></p> <p>Matters to be considered</p> <p>2. If a child is in need of intervention, a Court, an Appeal Panel and all persons who exercise any authority or make any decision under this Act relating to the child must do so in the best interests of the child and must consider the following as well as any other relevant matter:</p> <p>(a) the family is the basic unit of society and its well-being should be supported and preserved;</p> <p>(b) the importance of stable, permanent and nurturing relationships for the child;</p> <p>(c) the intervention services needed by the child should be provided in a manner that ensures the least disruption to the child;</p> <p>(d) a child who is capable of forming an opinion is entitled to an opportunity to express that opinion on matters affecting the child, and the child's opinion should be considered by those making decisions that affect the child;</p> <p>(e) the family is responsible for the care, supervision and maintenance of its children and every child should have an opportunity to be a wanted and valued member of a family, and to that end</p> <p>(i) if intervention services are necessary to assist the child's family in</p>	<p>*L'acte est disponible en anglais seulement</p>

providing for the care of a child, those services should be provided to the family, insofar as it is reasonably practicable, in a manner that supports the family unit and prevents the need to remove the child from the family, and

(ii) a child should be removed from the child's family only when other less disruptive measures are not sufficient to protect the survival, security or development of the child;

(f) subject to clauses (e) and (g), if a child has been exposed to domestic violence within the child's family, intervention services should be provided to the family in a manner that supports the abused family members and prevents the need to remove the child from the custody of an abused family member;

(g) any decision concerning the removal of a child from the child's family should take into account the risk to the child if the child remains with the family, is removed from the family or is returned to the family;

(h) if it is not inconsistent with protecting the survival, security or development of a child who is in need of intervention, and appropriate community services are available, the child or the child's family should be referred to the community for services to support and preserve the family and to prevent the need for any other intervention under this Act;

(i) any decision concerning the placement of a child outside the child's family should take into account

(i) the benefits to the child of a placement within the child's extended family;

(ii) the benefits to the child of a

placement within or as close as possible to the child's home community,

(iii) the benefits to the child of a placement that respects the child's familial, cultural, social and religious heritage,

(iv) the benefits to the child of stability and continuity of care and relationships,

(v) the mental, emotional and physical needs of the child and the child's mental, emotional and physical stage of development, and

(vi) whether the proposed placement is suitable for the child;

(j) the provision of intervention services is intended to remedy or alleviate the condition that caused the child to be in need of intervention;

(k) intervention services are most effective when they are provided through a collaborative and multi-disciplinary approach;

(l) if a child is being provided with care under this Act, the child should be provided with a level of care that is adequate to meet the needs of the child and consistent with community standards and available resources;

(m) if a child is being provided with care under this Act, a plan for the care of that child should be developed that

(i) addresses the child's need for stability, permanence and continuity of care and relationships, and

(ii) in the case of a youth, addresses the youth's need for preparation for the transition to independence and adulthood;

(n) a person who assumes responsibility for the care of a child under this Act should endeavour to make the child aware of the

<p>child's familial, cultural, social and religious heritage;</p> <p>(o) there should be no unreasonable delay in making or implementing a decision affecting a child;</p> <p>(p) if the child is an aboriginal child, the uniqueness of aboriginal culture, heritage, spirituality and traditions should be respected and consideration should be given to the importance of preserving the child's cultural identity.</p>	
BRITISH COLUMBIA	
<p><i>Child, Family and Community Service Act, RSBC 1996, c 46 at s. 2(f), 4(2).</i></p> <p>Guiding Principles</p> <p>2. This Act must be interpreted and administered so that the safety and well-being of children are the paramount considerations and in accordance with the following principles:</p> <p>(a) children are entitled to be protected from abuse, neglect and harm or threat of harm;</p> <p>(b) a family is the preferred environment for the care and upbringing of children and the responsibility for the protection of children rests primarily with the parents;</p> <p>(c) if, with available support services, a family can provide a safe and nurturing environment for a child, support services should be provided;</p> <p>(d) the child's views should be taken into account when decisions relating to a child are made;</p> <p>(e) kinship ties and a child's attachment to</p>	<p>*L'acte est disponible en anglais seulement</p>

<p>the extended family should be preserved if possible;</p> <p>(f) the cultural identity of aboriginal children should be preserved;</p> <p>(g) decisions relating to children should be made and implemented in a timely manner.</p> <p>4. (1) Where there is a reference in this Act to the best interests of a child, all relevant factors must be considered in determining the child's best interests, including for example:</p> <ul style="list-style-type: none"> (a) the child's safety; (b) the child's physical and emotional needs and level of development; (c) the importance of continuity in the child's care; (d) the quality of the relationship the child has with a parent or other person and the effect of maintaining that relationship; (e) the child's cultural, racial, linguistic and religious heritage; (f) the child's views; (g) the effect on the child if there is delay in making a decision. <p>(2) If the child is an aboriginal child, the importance of preserving the child's cultural identity must be considered in determining the child's best interests.</p>	
<p><i>Adoption Act, RSBC 1996, c 5 at s. 3(2).</i></p> <p>Purpose of the Act</p> <p>2. The purpose of this Act is to provide for new and permanent family ties through adoption, giving paramount consideration in every respect to the child's best interests.</p> <p>Best interests of child</p>	<p>*L'acte est disponible en anglais seulement</p>

<p>3. (1) All relevant factors must be considered in determining the child's best interests, including for example:</p> <ul style="list-style-type: none"> (a) the child's safety; (b) the child's physical and emotional needs and level of development; (c) the importance of continuity in the child's care; (d) the importance to the child's development of having a positive relationship with a parent and a secure place as a member of a family; (e) the quality of the relationship the child has with a parent or other individual and the effect of maintaining that relationship; (f) the child's cultural, racial, linguistic and religious heritage; (g) the child's views; (h) the effect on the child if there is delay in making a decision. <p>(2) If the child is an aboriginal child, the importance of preserving the child's cultural identity must be considered in determining the child's best interests.</p>	
MANITOBA	
<p><i>The Child and Family Services Act, CCSM c C80 at Declaration of Principles no. 11.</i></p> <p>Declaration of Principles The Legislative Assembly of Manitoba hereby declares that the fundamental principles guiding the provision of services to children and families are:</p> <ol style="list-style-type: none"> 1. The safety, security and well-being of children and their best interests are fundamental responsibilities of society. 2. The family is the basic unit of society and its well-being should be supported and preserved. 3. The family is the basic source of care, nurture and acculturation of children and 	<p><i>Loi sur les services à l'enfant et à la famille, CPLM c C80, à déclaration de principes 11, 2(1).</i></p> <p>Déclaration de principes L'Assemblée législative du Manitoba proclame par les présentes que les principes fondamentaux régissant la prestation des services aux enfants et aux familles sont les suivants :</p> <ol style="list-style-type: none"> 1. La protection de la sécurité et du bien-être des enfants ainsi que la défense de leur intérêt supérieur constituent des devoirs fondamentaux de la société. 2. La famille constitue le noyau de la société et son bien-être doit être défendu et sauvegardé.

<p>parents have the primary responsibility to ensure the well-being of their children.</p> <p>4. Families and children have the right to the least interference with their affairs to the extent compatible with the best interests of children and the responsibilities of society.</p> <p>5. Children have a right to a continuous family environment in which they can flourish.</p> <p>6. Families and children are entitled to be informed of their rights and to participate in the decisions affecting those rights.</p> <p>7. Families are entitled to receive preventive and supportive services directed to preserving the family unit.</p> <p>8. Families are entitled to services which respect their cultural and linguistic heritage.</p> <p>9. Decisions to place children should be based on the best interests of the child and not on the basis of the family's financial status.</p> <p>10. Communities have a responsibility to promote the best interests of their children and families and have the right to participate in services to their families and children.</p> <p>11. Indian bands are entitled to the provision of child and family services in a manner which respects their unique status as aboriginal peoples.</p>	<p>3. La famille est la source fondamentale de soins, d'entretien, d'éducation et de culture des enfants et le devoir d'assurer le bien-être des enfants appartient d'abord aux parents.</p> <p>4. Les familles et les enfants ont le droit de subir le moins possible d'ingérences dans leurs affaires, dans la mesure où il y a compatibilité avec l'intérêt supérieur des enfants et les obligations de la société.</p> <p>5. Les enfants ont le droit à un milieu familial stable qui leur permet de s'épanouir.</p> <p>6. Les familles et les enfants ont le droit de connaître leurs droits et de prendre part aux décisions qui touchent à ceux-ci.</p> <p>7. Les familles ont le droit de recevoir des services de prévention et de soutien offerts afin de sauvegarder l'unité de la famille.</p> <p>8. Les familles ont le droit de recevoir des services qui tiennent compte de leur patrimoine culturel et linguistique.</p> <p>9. Les décisions concernant le placement d'enfants doivent se fonder sur le critère de l'intérêt supérieur de l'enfant et non sur celui de la situation financière de la famille.</p> <p>10. Les collectivités ont la responsabilité de promouvoir l'intérêt supérieur des enfants et des familles et ont le droit de prendre part aux services qui sont offerts à ceux-ci.</p> <p>11. Les bandes indiennes ont le droit de recevoir des services à l'enfant et à la famille, d'une manière qui tient compte de leur statut unique de peuple autochtone.</p>
<p>NUNAVUT</p>	
<p><i>Adoption Act, SNWT (Nu) 1998, c 9 at s. 7(7).</i></p> <p>Consultation in respect of aboriginal child</p> <p>7. (7) Subject to subsection (8), where the</p>	<p><i>Loi sur l'adoption, LTN-O (Nu) 1998, c 9 à s. 7(7).</i></p> <p>Consultation relativement à un enfant autochtone</p>

<p>Director has reason to believe that the child who is to be placed is or will be an aboriginal child, the Director shall, before making a decision in respect of the proposed placement, consult with the aboriginal organization that would be the applicable aboriginal organization for the child in the circumstances described in section 25 of the <i>Child and Family Services Act</i>.</p>	<p>7. (7) Sous réserve du paragraphe (8), si le directeur a des raisons de penser que l'enfant qui doit être placé est ou sera autochtone, il consulte, avant de rendre sa décision, l'organisme autochtone approprié pour l'enfant dans les circonstances décrites à l'article 25 de la <i>Loi sur les services à l'enfance et à la famille</i>.</p>
<p><i>Child and Family Services Act, SNWT (Nu) 1997, c 13 at s. 2(2)(3).</i></p> <p>Inuit societal values</p> <p>2. (2) This Act shall be administered and interpreted in accordance with the following Inuit societal values:</p> <p>(a) Inuuqatigiitsiarniq (respecting others, relationships and caring for people);</p> <p>(b) Tunnganarniq (fostering good spirit by being open, welcoming and inclusive);</p> <p>(c) Pijitsirniq (serving and providing for family or community, or both);</p> <p>d) Aajiiqatigiinni (decision making through discussion and consensus);</p> <p>(e) Piliriqatigiinni or Ikajuqtigiinni (working together for a common cause); and</p> <p>(f) Qanuqturniq (being innovative and resourceful).</p> <p>Other Inuit societal values</p> <p>(3) In addition to the Inuit societal values named in subsection (2), the following Inuit societal values may be used or incorporated in the administration or interpretation of this Act:</p> <p>(a) Inunguqsainiq (nurturing or raising an individual to be a productive member of society);</p> <p>b) Inuttiavaunasuaqniq (working towards</p>	<p><i>Loi sur les services à l'enfance et à la famille, LTN-O (Nu) 1997, c 13 à s. 2(2)(3)</i></p> <p>Valeurs sociétales des Inuit</p> <p>(2) La présente loi est appliquée et interprétée conformément aux valeurs sociétales des Inuit qui suivent :</p> <p>a) Inuuqatigiitsiarniq (le respect d'autrui, les rapports avec autrui et le souci du bien-être d'autrui);</p> <p>b) Tunnganarniq (la promotion d'un bon état d'esprit en se montrant ouvert, accueillant et intégrateur);</p> <p>c) Pijitsirniq (le service à la famille ou à la collectivité, ou les deux, et la satisfaction de leurs besoins);</p> <p>d) Aajiiqatigiinni (la prise de décision par la discussion et le consensus);</p> <p>e) Piliriqatigiinni ou Ikajuqtigiinni (travailler ensemble pour une cause commune);</p> <p>f) Qanuqturniq (faire preuve d'innovation et d'ingéniosité).</p> <p>Autres valeurs sociétales des Inuit</p> <p>(3) Outre celles qui sont identifiées au paragraphe (2), les valeurs sociétales des Inuit qui suivent peuvent être utilisées ou incorporées dans l'application ou l'interprétation de la présente loi :</p>

<p>a good or problem-free life);</p> <p>(c) Pijutingani qiniriaquqtugu (the importance of assessing and addressing the root cause of undesirable behaviour or circumstances).</p>	<p>a) Inunguqsainiq (encadrer ou élever une personne pour en faire un membre productif de la société);</p> <p>b) Inuttiavaunasuaqniq (œuvrer en vue d'une vie agréable ou sans problème);</p> <p>c) Pijutingani qiniriaquqtugu (l'importance d'évaluer et de combattre la source des comportements ou des situations indésirables).</p>
YUKON	
<p><i>Child and Family Services Act, SY 2008, c 1 at s. 2(d), 4(2).</i></p> <p>Guiding principles</p> <p>2. This Act shall be interpreted and administered in accordance with the following principles:</p> <p>(a) the best interests of the child shall be given paramount consideration in making decisions or taking any action under this Act;</p> <p>(b) a child has a right to be protected from harm or threat of harm;</p> <p>(c) knowledge about family origins is important to the development of a child's sense of identity;</p> <p>(d) the cultural identity of a child, including a child who is a member of a First Nation, should be preserved;</p> <p>(e) family has the primary responsibility for the safety, health and well-being of a child;</p> <p>(f) a child flourishes in stable, caring and long-term family environments;</p>	<p><i>Loi sur les services à l'enfance et à la famille, LY 2008, c 1 à s. 2(d), 4(2).</i></p> <p>Principes directeurs</p> <p>2. La présente loi doit être interprétée et exécutée en conformité avec les principes qui suivent :</p> <p>a) l'intérêt supérieur de l'enfant doit être le critère prépondérant lors de la prise de décisions ou de mesures sous le régime de la présente loi;</p> <p>b) un enfant a le droit d'être protégé contre tout préjudice ou contre toute menace de préjudice;</p> <p>c) la connaissance de ses origines familiales est importante pour le développement du sentiment d'identité d'un enfant;</p> <p>d) l'identité culturelle d'un enfant doit être préservée, y compris pour un membre d'une Première nation;</p> <p>e) la responsabilité principale pour la sécurité, la santé et le bien-être d'un enfant incombe à la famille;</p>

<p>(g) the family is the primary influence on the growth and development of a child and as such should be supported to provide for the care, nurturance and well-being of a child;</p> <p>(h) extended family members should be involved in supporting the health, safety and well-being of a child.</p> <p>(i) a child, a parent and members of their extended family should be involved in decision-making processes regarding their circumstances;</p> <p>(j) First Nations should be involved as early as practicable in decision-making processes regarding a child who is a member of the First Nation;</p> <p>(k) the safety and well-being of a child is a responsibility shared by citizens; and</p> <p>(l) prevention activities are integral to the promotion of the safety, health and well-being of a child.</p>	<p>f) un enfant s'épanouit dans des environnements familiaux stables et attentionnés dans lesquels il demeure à long terme;</p> <p>g) la famille constitue la principale influence dans la croissance et le développement d'un enfant et à ce titre, elle devrait bénéficier de soutien afin de pourvoir aux soins, à l'éducation et au bien-être de l'enfant;</p> <p>h) la famille élargie devrait être impliquée pour veiller à la santé, à la sécurité et au bien-être de l'enfant</p> <p>i) un enfant, un parent et les membres de la processus famille élargie devraient être impliqués dans la prise de décisions relatives à leur situation;</p> <p>j) les Premières nations devraient être impliquées dès que possible dans le processus décisionnel concernant un enfant qui est membre d'une Première nation;</p> <p>k) la sécurité et le bien-être d'un enfant sont une responsabilité commune à tous les citoyens;</p> <p>l) les activités de prévention sont une partie intégrante de la promotion de la sécurité, de la santé et du bien-être d'un enfant.</p>
<p>Best interests of the child</p> <p>4. (1) In determining the best interests of the child all relevant factors shall be considered, including</p> <p>(a) the child's safety, health and well-being;</p> <p>(b) the attachment and emotional ties between the child and significant individuals in the child's life;</p> <p>(c) the views and preferences of the child;</p> <p>(d) the child's physical, cognitive and needs and level of development;</p>	<p>Intérêt supérieur de l'enfant</p> <p>4(1) Pour établir l'intérêt supérieur de l'enfant, il doit être tenu compte de tous les facteurs pertinents, notamment :</p> <p>a) la sécurité, la santé et le bien-être de</p>

<p>(e) the importance of continuity and the resulting stability to the child, and the effect of any disruption in that continuity;</p> <p>(f) the child's cultural, linguistic, religious and spiritual upbringing and heritage;</p> <p>(g) the importance to the child of an on-going, positive relationship with their parents and with members of their extended family;</p> <p>(h) the ability of a proposed care provider for the child to fulfill parental responsibilities;</p> <p>(i) the role assumed by a proposed care provider during the child's life; and</p> <p>(j) any history of family violence or child maltreatment perpetrated by a prospective care provider, and the effect on the child of any past experiences of family violence of maltreatment.</p> <p>(2) If a child is a member of a First Nation, the importance of preserving the child's cultural identity shall also be considered in determining the best interests of the child.</p>	<p>l'enfant;</p> <p>b) l'attachement et les liens affectifs entre l'enfant et les personnes importantes dans la vie de l'enfant;</p> <p>c) le point de vue et les préférences de l'enfant;</p> <p>d) les besoins physiques, cognitifs et affectifs de l'enfant et son niveau de développement;</p> <p>e) l'importance de la continuité et de la stabilité qui en découle pour l'enfant, ainsi que l'effet de toute rupture de cette continuité;</p> <p>f) l'éducation et les héritages culturels, linguistiques, religieux et spirituels de l'enfant;</p> <p>g) l'importance pour un enfant d'avoir une relation positive continue avec ses parents et les membres de sa famille élargie;</p> <p>h) la capacité d'une personne à qui peuvent potentiellement être confiés les soins de l'enfant à assumer des responsabilités parentales;</p> <p>i) le rôle assumé par la personne à qui peuvent potentiellement être confiés les soins de l'enfant pour la durée de la vie de l'enfant;</p> <p>j) tout antécédent de violence conjugale ou de violence envers l'enfant perpétré par une personne à qui peuvent potentiellement être confiés les soins de l'enfant et l'effet sur l'enfant de toute expérience de violence conjugale et de violence envers l'enfant vécue auparavant.</p> <p>(2) Lorsque l'enfant est membre d'une Première nation, il doit être tenu compte</p>
---	---

	<p>de l'importance de préserver son identité culturelle lorsque l'intérêt supérieur de l'enfant est examiné.</p>
<p>FEDERAL LEGISLATION</p>	
<p><i>Immigration and Refugee Protection Act</i>, S.C. 2001, c. 27 at s. 3(3)(d)(f), 25(1).</p> <p>3. (3) This Act is to be construed and applied in a manner that</p> <p style="padding-left: 40px;">(d) ensures that decisions taken under this Act are consistent with the <i>Canadian Charter of Rights and Freedoms</i>, including its principles of equality and freedom from discrimination and of the equality of English and French as the official languages of Canada;</p> <p style="padding-left: 40px;">(f) complies with international human rights instruments to which Canada is signatory.</p> <p>25. (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the</p>	<p><i>Loi sur l'immigration et la protection des réfugiés</i>, L.C. 2001, ch. 27 à s. 3(3)(d)(f), 25(1).</p> <p>3. (3) L'interprétation et la mise en oeuvre de</p> <p style="padding-left: 40px;">la présente loi doivent avoir pour effet :</p> <p style="padding-left: 40px;">d) d'assurer que les décisions prises en vertu de la présente loi sont conformes à la <i>Charte canadienne des droits et libertés</i>, notamment en ce qui touche les principes, d'une part, d'égalité et de protection contre la discrimination et, d'autre part, d'égalité du français et de l'anglais à titre de langues officielles du Canada;</p> <p style="padding-left: 40px;">f) de se conformer aux instruments internationaux portant sur les droits de l'homme dont le Canada est signataire.</p> <p>25. (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il</p>

<p>best interests of a child directly affected.</p>	<p>estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.</p>
<p><i>Youth Criminal Justice Act</i>, S.C. 2002, c. 1 at preamble.</p> <p>Preamble</p> <p>WHEREAS members of society share a responsibility to address the developmental challenges and the needs of young persons and to guide them into adulthood;</p> <p>WHEREAS Canada is a party to the United Nations Convention on the Rights of the Child and recognizes that young persons have rights and freedoms, including those stated in the <i>Canadian Charter of Rights and Freedoms</i> and the <i>Canadian Bill of Rights</i>, and have special guarantees of their rights and freedoms;</p>	<p><i>Loi sur le système de justice pénale pour les adolescents</i>, L.C. 2002, ch. 1 à préambule.</p> <p>Préambule</p> <p>Attendu :</p> <p>que la société se doit de répondre aux besoins des adolescents, de les aider dans leur développement et de leur offrir soutien et conseil jusqu'à l'âge adulte;</p> <p>que le Canada est partie à la Convention des Nations Unies relative aux droits de l'enfant et que les adolescents ont des droits et libertés, en particulier ceux qui sont énoncés dans la <i>Charte canadienne des droits et libertés</i> et la <i>Déclaration canadienne des droits</i>, et qu'ils bénéficient en conséquence de mesures spéciales de protection à cet égard;</p>