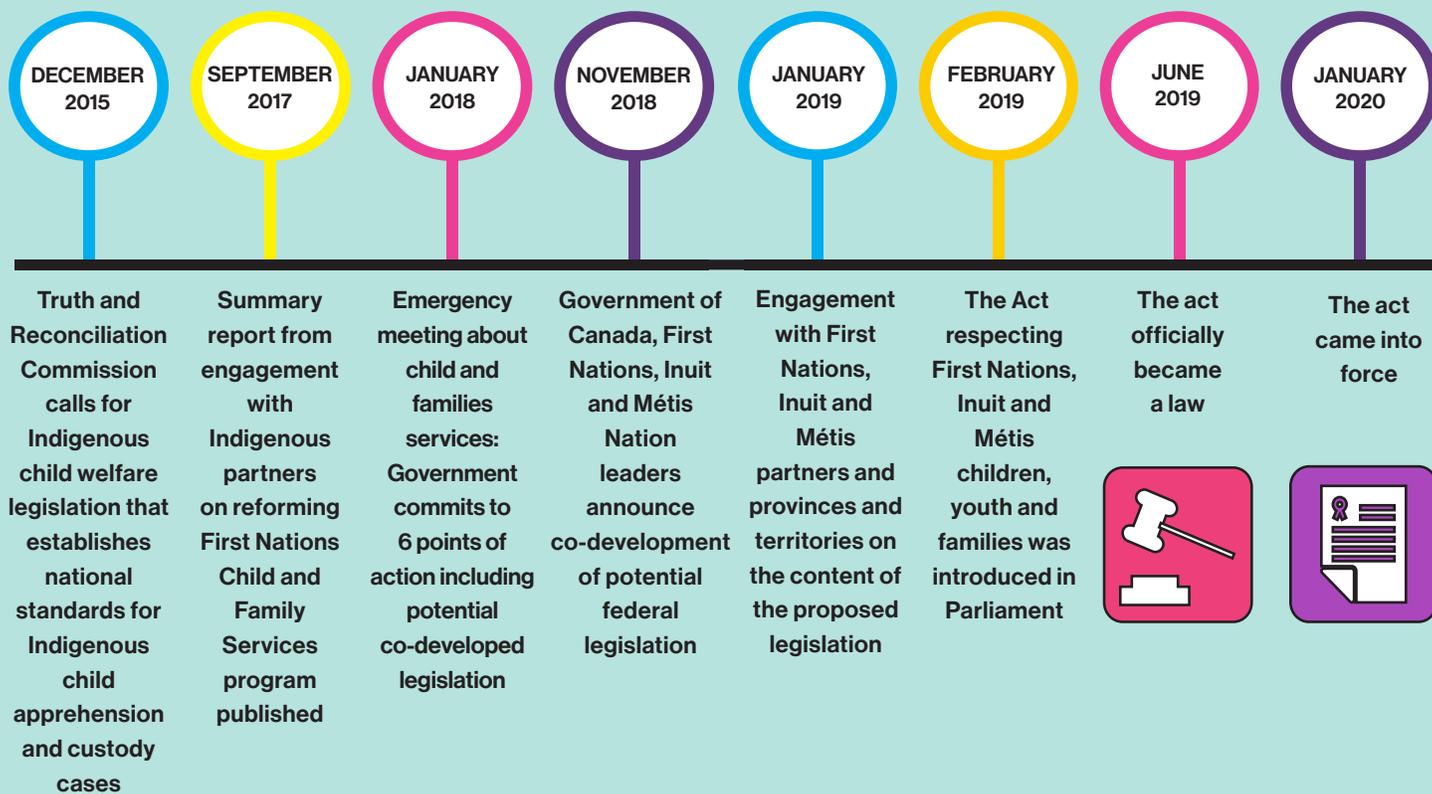


# FEDERAL INDIGENOUS CHILD WELFARE LEGISLATION (BILL C-92)

## An Act respecting First Nations, Inuit and Métis Children, Youth and Families

Infographic developed by BC Federation of Foster Parent Associations (BCFFPA)

### What steps did it take to develop the legislation? When did it go into effect?



### What is the purpose of the legislation?

With the legislation, the Federal government has created its own child welfare law that applies to Indigenous peoples across the country. The legislation intends to address the overrepresentation of Indigenous children in the child welfare system. It also affirms the rights and jurisdiction of Indigenous peoples in relation to child and family services and sets out principles applicable, on a national level, to the provision of child and family services in relation to Indigenous children, such as the best interests of the child, cultural continuity and substantive equality. These principles must be followed by every person providing services to Indigenous children.



### What changes come with the legislation?

The legislation reforms the way child welfare is delivered to Indigenous children. We are moving from a situation in which only provincial/territorial laws have typically been applied to one in which there are potentially three layers of laws that interact: Indigenous law, federal law and provincial/territorial law (Child, Family and Community Service Act or CFCSA in British Columbia).

As the legislation affirms the inherent right of Indigenous peoples to exercise jurisdiction over child and family services, it provides an opportunity for Indigenous peoples to choose and implement their own solutions for their children and families and emphasizes the need to shift from removal to prevention. Indigenous communities and groups will be free to develop policies and laws in the provision of child and family services based on their particular histories, cultures, and circumstances.

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### What is the primary consideration in the case of decisions or actions related to child apprehension?

The best interests of the child must be the paramount consideration. Primary consideration must be given to the child's physical, emotional and psychological safety, security and well-being, to having an ongoing relationship with their family and with the Indigenous group, community or people to which they belong and to learning about and practicing the child's Indigenous traditions, customs and language.



### How is the 'best interest' of an Indigenous child determined?

To determine the best interests of an Indigenous child, all factors related to the circumstances of the child must be considered, including:

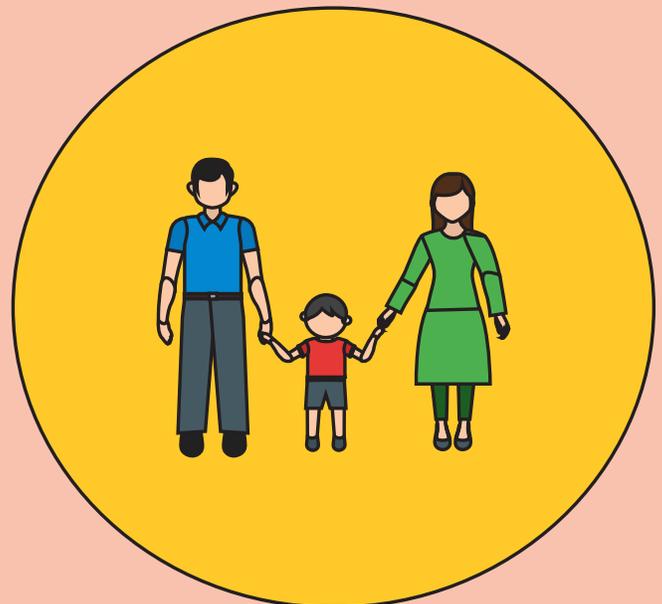
- the child's cultural, linguistic, religious and spiritual upbringing and heritage;
- the child's needs, given the child's age and stage of development, such as the child's need for stability;
- the nature and strength of the child's relationship with his or her parent, the care provider and any member of his or her family who plays an important role in his or her life;
- the importance to the child of preserving the child's cultural identity and connections to the language and territory of the Indigenous group, community or people to which the child belongs;
- the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
- any plans for the child's care, including care in accordance with the customs or traditions of the Indigenous group, community or people to which the child belongs;
- any family violence and its impact on the child, including whether the child is directly or indirectly exposed to the family violence as well as the physical, emotional and psychological harm or risk of harm to the child; and
- any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

### What happens if there is conflict between the laws?

If there is a conflict or inconsistency, the provision that is in the law of the Indigenous group, community or people prevails to the extent of the conflict or inconsistency. Where there is a coordination agreement in place between the Indigenous community, federal government and provincial government, or where a reasonable attempt had been made to develop a coordination agreement.

### What happens if the conflict is between two Indigenous laws?

The provision that is in the law of the Indigenous group, community or people with which the child has stronger ties prevails to the extent of the conflict or inconsistency. The child's habitual residence as well as their views and preferences, their age and maturity, unless they cannot be determined, and the views and preferences of their parent(s) and the care provider will all be taken into consideration.



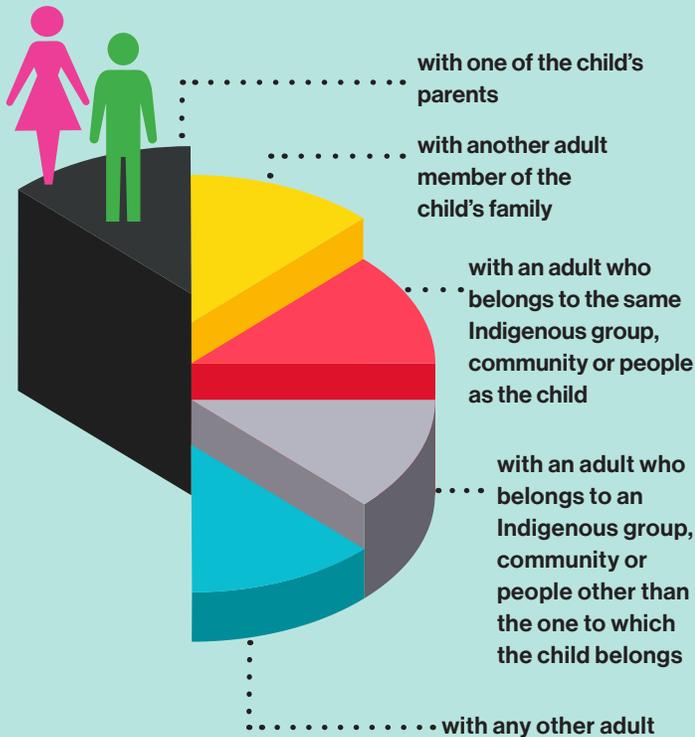
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### How does the legislation impact placement decisions relating to Indigenous children?

When it is consistent with the best interests of the child, the following order of priority must be followed:



**Additional consideration:**  
place with or near children who have the same parent or member of the child's family

### Who is considered the "care provider"?

Under the CFCSA, care providers would include those to whom the parent has directly given care of the child or those individuals other than the parent who have custody of the child under the Director's supervision. In these situations, the Director does not have care or custody of the child.

The Director has primary responsibility for children in the custody, care or guardianship of the director, with the director authorizing, via the Family Care Home Agreement, for the foster caregiver to carry out the Director's rights and responsibilities. Foster caregivers are considered as key service providers working on behalf of the Director but not care providers who have guardianship responsibilities independent of the Director's responsibilities. This means that foster caregivers are not parties to court proceedings and are not provided notification of significant measures like parents.



### What is the role of foster caregivers in promoting attachment and emotional ties to family members when a child is unable to live with their family?

As part of the child's care team, foster caregivers must:

- Arrange access and visitation with family members
- Promote and support ongoing contact
- Support a child through changes in placement or transitions out of care



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### How will the Resource Worker Policies be updated to in light of the new legislation?

Policy 1.1 - Working with Indigenous Children, Youth, Families and Communities - has been updated to reflect the requirements of the federal legislation. It supersedes other policies regarding Indigenous children. Over time, other policies will be amended to reflect Policy 1.1.

**Who should be notified before taking any significant measures in relation to the child?**

Indigenous Governing Body

Care Provider

Parent

### What would classify as a 'significant measure'?

A significant measure is a step the Director would take when:

- the Director makes an application for a court proceeding that requires notice to any party under the CFCSA (with the exception of applications for the director to have access to a child, access to a record or receive financial maintenance),
- the Director removes the child or enters into/renews an agreement for the child to be in care,
- the Director enters into/renews a Youth Agreement,
- the child has a new placement or change in placement, or the CFCSA Director consents to the child's adoption,
- the Director withdraws from court proceedings or returns the child to the parent.

\*Significant measures do not include processes for obtaining, gathering or assessing information, leading up to the director making a decision. They also do not include agreements where the Ministry's role is mainly to provide financial support. Foster caregivers, although care givers, are not included in notice of significant measure.

### How is the legislation going to change the care of Indigenous children currently in the continuing custody of a Director under the CFCSA?

Until Indigenous laws are in place — services to Indigenous children will continue to be provided by the Director under the CFCSA. However, every Indigenous child and family services provider will have to apply the best interest principles set out in the Federal Act. This means, for example, that when an Indigenous child comes into care, child and family services providers will always have to consider:

- the child's physical, psychological and emotional safety, security and well-being;
- the importance for that child having an ongoing relationship with their family and community; and
- preserving the child's connection to their culture.

Reassessment of safe placement with parents or family members will be conducted on an ongoing basis, including when:

- A previously unknown family member is identified
- A change of placement or legal status is being considered
- Requested by the child's Indigenous community
- A care plan is reviewed

### How can foster caregivers get training or more information on the Federal legislation?

There will be an online training available to resource workers and foster caregivers to be launched by MCFD's Learning and Development.

For questions, foster caregivers can call BCFFPA at 1-800-663-9999 or email [office@bcfosterparents.ca](mailto:office@bcfosterparents.ca)

