

BILL C-92

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STATUTES OF CANADA 2019

CHAPTER 24

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

ASSENTED TO

JUNE 21, 2019

BILL C-92

SUMMARY

This enactment 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.

Available on the House of Commons website at the following address:
www.ourcommons.ca

64-65-66-67-68 ELIZABETH II

CHAPTER 24

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

[Assented to 21st June, 2019]

Preamble

Whereas the Government of Canada is committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples;

Whereas Canada ratified the United Nations Convention on the Rights of the Child and the International Convention on the Elimination of All Forms of Racial Discrimination;

Whereas Parliament recognizes the legacy of residential schools and the harm, including intergenerational trauma, caused to Indigenous peoples by colonial policies and practices;

Whereas Parliament recognizes the disruption that Indigenous women and girls have experienced in their lives in relation to child and family services systems and the importance of supporting Indigenous women and girls in overcoming their historical disadvantage;

Whereas Parliament recognizes the importance of reuniting Indigenous children with their families and communities from whom they were separated in the context of the provision of child and family services;

Whereas the Truth and Reconciliation Commission of Canada's Calls to Action calls for the federal, provincial and Indigenous governments to work together with respect to the welfare of Indigenous children and calls for the enactment of federal legislation that establishes national standards for the welfare of Indigenous children;

Whereas Parliament affirms the right to self-determination of Indigenous peoples, including the inherent right of self-government, which includes jurisdiction in relation to child and family services;

Whereas Parliament affirms the need

- to respect the diversity of all Indigenous peoples, including the diversity of their laws, rights, treaties, histories, cultures, languages, customs and traditions,

- to take into account the unique circumstances and needs of Indigenous elders, parents, youth, children, persons with disabilities, women, men and gender-diverse persons and two-spirit persons,

- to address the needs of Indigenous children and to help ensure that there are no gaps in the services that are provided in relation to them, whether they reside on a reserve or not,

- to eliminate the over-representation of Indigenous children in child and family services systems, and

- to enact legislation for the benefit of Indigenous children, including First Nations, Inuit and Métis Nation children;

Whereas the Government of Canada is committed

- to working in cooperation and partnership with Indigenous peoples to support the dignity and well-being of Indigenous children and youth and their families and communities, as well as the achievement of their full potential, and to respecting, strengthening and building on the accomplishments of Indigenous peoples in this regard,

- to achieving reconciliation with First Nations, the Inuit and the Métis through renewed nation-to-nation, government-to-government and Inuit-Crown relationships based on recognition of rights, respect, cooperation and partnership, and

- to engaging with Indigenous peoples and provincial governments to support a comprehensive reform of child and family services that are provided in relation to Indigenous children;

And whereas the Government of Canada acknowledges the ongoing call for funding for child and family services that is predictable, stable, sustainable, needs-based and consistent with the principle of substantive equality in order to secure long-term positive outcomes for Indigenous children, families and communities;

Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Interpretation

Definitions

1 The following definitions apply in this Act.

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. (*fournisseur de soins*)

child and family services means services to support children and families, including prevention services, early intervention services and child protection services. (*services à l'enfance et à la famille*)

coordination agreement means an agreement referred to in subsection 20(2). (*accord de coordination*)

family includes a person whom a child considers to be a close relative or whom the Indigenous group, community or people to which the child belongs considers, in accordance with the customs, traditions or customary adoption practices of that Indigenous group, community or people, to be a close relative of the child. (*famille*)

Indigenous, when used in respect of a person, also describes a First Nations person, an Inuk or a Métis person. (*autochtone*)

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*. (*corps dirigeant autochtone*)

Indigenous peoples has the meaning assigned by the definition *aboriginal peoples of Canada* in subsection 35(2) of the *Constitution Act, 1982*. (*peuples autochtones*)

Minister means the Minister designated under section 6. (*ministre*)

Rights of Indigenous peoples

2 This Act is to be construed as upholding the rights of Indigenous peoples recognized and affirmed by section 35 of the *Constitution Act, 1982*, and not as abrogating or derogating from them.

Conflict — existing agreement

3 If there is a conflict or inconsistency between a provision that is in an agreement — including a treaty or a self-government agreement — that contains provisions respecting child and family services, concluded before the day on which subsection 18(1) comes into force, between an Indigenous group, community or people and Her Majesty in right of Canada or of a province and a provision of this Act or the regulations, the provision that is in the agreement prevails to the extent of the conflict or inconsistency.

Minimum standards

4 For greater certainty, nothing in this Act affects the application of a provision of a provincial Act or regulation to the extent that the provision does not conflict with, or is not inconsistent with, the

provisions of this Act.

Nunavut Act

5 Subject to section 4, nothing in this Act affects the Legislature for Nunavut's legislative powers referred to in section 23 of the *Nunavut Act*.

Designation of Minister

Order in council

6 The Governor in Council may, by order, designate any federal minister to be the Minister referred to in this Act.

Her Majesty

Binding on Her Majesty

7 This Act is binding on Her Majesty in right of Canada or of a province.

Purpose and Principles

Purpose

8 The purpose of this Act is to

- (a) affirm the inherent right of self-government, which includes jurisdiction in relation to child and family services;
- (b) set out principles applicable, on a national level, to the provision of child and family services in relation to Indigenous children; and
- (c) contribute to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples.

Principle — best interests of child

9 (1) This Act is to be interpreted and administered in accordance with the principle of the best interests of the child.

Principle — cultural continuity

(2) This Act is to be interpreted and administered in accordance with the principle of cultural continuity as reflected in the following concepts:

- (a) cultural continuity is essential to the well-being of a child, a family and an Indigenous group, community or people;
- (b) the transmission of the languages, cultures, practices, customs, traditions, ceremonies and knowledge of Indigenous peoples is integral to cultural continuity;
- (c) a child's best interests are often promoted when the child resides with members of his or her family and the culture of the Indigenous group, community or people to which he or she belongs is respected;
- (d) child and family services provided in relation to an Indigenous child are to be provided in a manner that does not contribute to the assimilation of the Indigenous group, community or people to which the child belongs or to the destruction of the culture of that Indigenous group, community or people; and

(e) the characteristics and challenges of the region in which a child, a family or an Indigenous group, community or people is located are to be considered.

Principle — substantive equality

(3) This Act is to be interpreted and administered in accordance with the principle of substantive equality as reflected in the following concepts:

(a) the rights and distinct needs of a child with a disability are to be considered in order to promote the child's participation, to the same extent as other children, in the activities of his or her family or the Indigenous group, community or people to which he or she belongs;

(b) a child must be able to exercise his or her rights under this Act, including the right to have his or her views and preferences considered in decisions that affect him or her, and he or she must be able to do so without discrimination, including discrimination based on sex or gender identity or expression;

(c) a child's family member must be able to exercise his or her rights under this Act, including the right to have his or her views and preferences considered in decisions that affect him or her, and he or she must be able to do so without discrimination, including discrimination based on sex or gender identity or expression;

(d) the Indigenous governing body acting on behalf of the Indigenous group, community or people to which a child belongs must be able to exercise without discrimination the rights of the Indigenous group, community or people under this Act, including the right to have the views and preferences of the Indigenous group, community or people considered in decisions that affect that Indigenous group, community or people; and

(e) in order to promote substantive equality between Indigenous children and other children, a jurisdictional dispute must not result in a gap in the child and family services that are provided in relation to Indigenous children.

Best Interests of Indigenous Child

Best interests of Indigenous child

10 (1) The best interests of the child must be a primary consideration in the making of decisions or the taking of actions in the context of the provision of child and family services in relation to an Indigenous child and, in the case of decisions or actions related to child apprehension, the best interests of the child must be the paramount consideration.

Primary consideration

(2) When the factors referred to in subsection (3) are being considered, primary consideration must be given to the child's physical, emotional and psychological safety, security and well-being, as well as to the importance, for that child, of having an ongoing relationship with his or her family and with the Indigenous group, community or people to which he or she belongs and of preserving the child's connections to his or her culture.

Factors to be considered

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

(a) the child's cultural, linguistic, religious and spiritual upbringing and heritage;

(b) the child's needs, given the child's age and stage of development, such as the child's need for stability;

- (c) 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;
- (d) 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;
- (e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
- (f) 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;
- (g) 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
- (h) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

Consistency

(4) Subsections (1) to (3) are to be construed in relation to an Indigenous child, to the extent that it is possible to do so, in a manner that is consistent with a provision of a law of the Indigenous group, community or people to which the child belongs.

Provision of Child and Family Services

Effect of services

11 Child and family services provided in relation to an Indigenous child are to be provided in a manner that

- (a) takes into account the child's needs, including with respect to his or her physical, emotional and psychological safety, security and well-being;
- (b) takes into account the child's culture;
- (c) allows the child to know his or her family origins; and
- (d) promotes substantive equality between the child and other children.

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.

Personal information

(2) The service provider must ensure that the notice provided to an Indigenous governing body under subsection (1) does not contain personal information about the child, a member of the child's family or the care provider, other than information that is necessary to explain the proposed significant measure or that is required by the Indigenous governing body's coordination agreement.

Representations and party status

13 In the context of a civil proceeding in respect of the provision of child and family services in relation to an Indigenous child,

(a) the child's parent and the care provider have the right to make representations and to have party status; and

(b) the Indigenous governing body acting on behalf of the Indigenous group, community or people to which the child belongs has the right to make representations.

Priority to preventive care

14 (1) In the context of providing child and family services in relation to an Indigenous child, to the extent that providing a service that promotes preventive care to support the child's family is consistent with the best interests of the child, the provision of that service is to be given priority over other services.

Prenatal care

(2) To the extent that providing a prenatal service that promotes preventive care is consistent with what will likely be in the best interests of an Indigenous child after he or she is born, the provision of that service is to be given priority over other services in order to prevent the apprehension of the child at the time of the child's birth.

Socio-economic conditions

15 In the context of providing child and family services in relation to an Indigenous child, to the extent that it is consistent with the best interests of the child, the child must not be apprehended solely on the basis of his or her socio-economic conditions, including poverty, lack of adequate housing or infrastructure or the state of health of his or her parent or the care provider.

Reasonable efforts

15.1 In the context of providing child and family services in relation to an Indigenous child, unless immediate apprehension is consistent with the best interests of the child, before apprehending a child who resides with one of the child's parents or another adult member of the child's family, the service provider must demonstrate that he or she made reasonable efforts to have the child continue to reside with that person.

Placement of Indigenous Child

Priority

16 (1) The placement of an Indigenous child in the context of providing child and family services in relation to the child, to the extent that it is consistent with the best interests of the child, is to occur in the following order of priority:

(a) with one of the child's parents;

(b) with another adult member of the child's family;

(c) with an adult who belongs to the same Indigenous group, community or people as the child;

(d) with an adult who belongs to an Indigenous group, community or people other than the one to which the child belongs; or

(e) with any other adult.

Placement with or near other children

(2) When the order of priority set out in subsection (1) is being applied, the possibility of placing the child with or near children who have the same parent as the child, or who are otherwise members of the child's family, must be considered in the determination of whether a placement would be consistent with the best interests of the child.

Customs and traditions

(2.1) The placement of a child under subsection (1) must take into account the customs and traditions of Indigenous peoples such as with regards to customary adoption.

Family unity

(3) In the context of providing child and family services in relation to an Indigenous child, there must be a reassessment, conducted on a ongoing basis, of whether it would be appropriate to place the child with

(a) a person referred to in paragraph (1)(a), if the child does not reside with such a person; or

(b) a person referred to in paragraph (1)(b), if the child does not reside with such a person and unless the child resides with a person referred to in paragraph (1)(a).

Attachment and emotional ties

17 In the context of providing child and family services in relation to an Indigenous child, if the child is not placed with a member of his or her family in accordance with paragraph 16(1)(a) or (b), to the extent that doing so is consistent with the best interests of the child, the child's attachment and emotional ties to each such member of his or her family are to be promoted.

Jurisdiction — Child and Family Services

Affirmation

18 (1) The inherent right of self-government recognized and affirmed by section 35 of the *Constitution Act, 1982* includes jurisdiction in relation to child and family services, including legislative authority in relation to those services and authority to administer and enforce laws made under that legislative authority.

Dispute resolution mechanisms

(2) For greater certainty and for the purposes of subsection (1), the authority to administer and enforce laws includes the authority to provide for dispute resolution mechanisms.

Application of *Canadian Charter of Rights and Freedoms*

19 The *Canadian Charter of Rights and Freedoms* applies to an Indigenous governing body in the exercise of jurisdiction in relation to child and family services on behalf of an Indigenous group, community or people.

Laws of Indigenous Groups, Communities or Peoples

Coordination and Application

Notice

20 (1) If an Indigenous group, community or people intends to exercise its legislative authority in relation to child and family services, an Indigenous governing body acting on behalf of that Indigenous group, community or people may give notice of that intention to the Minister and the government of each province in which the Indigenous group, community or people is located.

Coordination agreement

(2) The Indigenous governing body may also request that the Minister and the government of each of those provinces enter into a coordination agreement with the Indigenous governing body in relation to the exercise of the legislative authority, respecting, among other things,

(a) the provision of emergency services to ensure the safety, security and well-being of Indigenous children;

(b) support measures to enable Indigenous children to exercise their rights effectively;

(c) fiscal arrangements, relating to the provision of child and family services by the Indigenous governing body, that are sustainable, needs-based and consistent with the principle of substantive equality in order to secure long-term positive outcomes for Indigenous children, families and communities and to support the capacity of the Indigenous group, community or people to exercise the legislative authority effectively; and

(d) any other coordination measure related to the effective exercise of the legislative authority.

Application — sections 21 and 22

(3) Sections 21 and 22 apply only in respect of an Indigenous group, community or people on whose behalf an Indigenous governing body

(a) entered into a coordination agreement; or

(b) has not entered into a coordination agreement, although it made reasonable efforts to do so during the period of one year after the day on which the request is made.

Clarification

(4) For the purposes of paragraph 3(b), sections 21 and 22 apply beginning on the day after the day on which the period referred to in that paragraph ends.

Dispute resolution mechanism

(5) If the Indigenous governing body, the Minister and the government of each of those provinces make reasonable efforts to enter into a coordination agreement but do not enter into a coordination agreement, a dispute resolution mechanism provided for by the regulations made under section 32 may be used to promote entering into a coordination agreement.

New request

(6) If sections 21 and 22 do not apply in respect of an Indigenous group, community or people, nothing prevents the Indigenous governing body that has already made a request under subsection (2) on behalf of the Indigenous group, community or people from making a new request.

Coordination agreement entered into after one year

(7) For greater certainty, even if sections 21 and 22 apply in respect of an Indigenous group, community or people on behalf of which an Indigenous governing body has not entered into a coordination agreement, nothing prevents the Indigenous governing body from entering into a coordination agreement after the end of the period referred to in paragraph (3)(b).

Force of law

21 (1) A law, as amended from time to time, of an Indigenous group, community or people referred to in subsection 20(3) also has, during the period that the law is in force, the force of law as federal law.

Interpretation

(2) No federal law, other than this Act, affects the interpretation of a law referred to in subsection (1) by reason only that subsection (1) gives the law the force of law as federal law.

Application of federal laws

(3) No federal law, other than this Act and the *Canadian Human Rights Act*, applies in relation to a law referred to in subsection (1) by reason only that subsection (1) gives the law the force of law as federal law.

Conflict — federal laws

22 (1) If there is a conflict or inconsistency between a provision respecting child and family services that is in a law of an Indigenous group, community or people and a provision respecting child and family services — other than any of sections 10 to 15 of this Act and the provisions of the *Canadian Human Rights Act* — that is in a federal Act or regulation, the provision that is in the law of the Indigenous group, community or people prevails to the extent of the conflict or inconsistency.

Clarification

(2) The reference to a “federal Act or regulation” in subsection (1) does not include a reference to a law that has the force of law under subsection 21(1).

Conflict — provincial laws

(3) For greater certainty, if there is a conflict or inconsistency between a provision respecting child and family services that is in a law of an Indigenous group, community or people and a provision respecting child and family services that is in a provincial Act or regulation, the provision that is in the law of the Indigenous group, community or people prevails to the extent of the conflict or inconsistency.

Application to Indigenous children — exception

23 A provision respecting child and family services that is in a law of an Indigenous group, community or people applies in relation to an Indigenous child except if the application of the provision would be contrary to the best interests of the child.

Conflict — stronger ties

24 (1) If there is a conflict or inconsistency between a provision respecting child and family services that is in a law of an Indigenous group, community or people and a provision respecting child and family services that is in a law of another Indigenous group, community or people, the provision that is in the law of the Indigenous group, community or people with which the child has stronger ties — taking into consideration his or her habitual residence as well as his or her views and preferences, giving due weight to his or her age and maturity, unless they cannot be ascertained, and the views and preferences of his or her parent and the care provider — prevails to the extent of the conflict or inconsistency.

References to laws

(2) Subsection (1) also applies in respect of the provisions of a law that has the force of law under subsection 21(1).

Publication and Accessibility

Publication

25 The Minister must

(a) as soon as feasible after receiving a notice under subsection 20(1), or a request under subsection 20(2), post on a website the name of the Indigenous group, community or people on whose behalf an Indigenous governing body has given the notice or made the request, as the case may be, and the date on which the notice or request was received;

(b) as soon as feasible after a coordination agreement is entered into, post on a website the name of the Indigenous group, community or people on whose behalf an Indigenous governing body has entered into the coordination agreement and the date on which it was entered into; and

(c) as soon as feasible after receiving notice that a law made on behalf of an Indigenous group, community or people contains a provision respecting child and family services, post on a website the name of that Indigenous group, community or people and the date on which the law comes into force.

Accessibility

26 After receiving a copy of a law that contains a provision respecting child and family services made on behalf of an Indigenous group, community or people referred to in subsection 20(3), the Minister is to ensure that the law is made accessible to the public in any manner that the Minister considers appropriate, and to that end may publish the law, as amended from time to time, in the *Canada Gazette*.

General

Role of Minister

27 The Minister may gather information respecting the child and family services that are provided in relation to Indigenous children and information about individuals in relation to whom those services are provided and facilitate the disclosure of that information to affected families and communities.

Agreements — information

28 The Minister may enter into agreements with a provincial government and any Indigenous governing body regarding the collection, retention, use and disclosure of information respecting the child and family services that are provided in relation to Indigenous children in order to, among other things,

- (a) ensure that Indigenous children are identified as a First Nations person, an Inuk or a Métis person, as the case may be, and that their communities of origin and those of their parents are identified, when possible, when child and family services are provided in relation to them;
- (b) support the improvement of those services; and
- (c) facilitate the disclosure of that information to affected families and communities.

Powers of Minister

29 For the purposes of section 27, the Minister may disclose information respecting the child and family services that are provided in relation to Indigenous children and information about individuals in relation to whom those services are provided.

Disclosure of information

30 For the purposes of implementing an agreement referred to in section 28, a provincial government or a public body established under a provincial Act may collect and disclose information respecting the child and family services that are provided in relation to Indigenous children and information about individuals in relation to whom those services are provided.

Five-year review

31 (1) Every five years after the day on which this section comes into force, the Minister must, in collaboration with Indigenous peoples, including representatives of First Nations, the Inuit and the Métis, undertake a review of the provisions and operation of this Act.

Provincial governments

(2) For greater certainty, when undertaking the review, the Minister may also collaborate with provincial governments.

Report

(3) The Minister must prepare a report on the review that sets out his or her conclusions and recommendations, including any improvements to the provisions of this Act that he or she recommends.

Tabling of report

(4) The Minister must cause the report to be tabled in each House of Parliament on any of the first 30 days on which it is sitting after the day on which the report is completed.

Regulations

Regulations

32 (1) If affected Indigenous governing bodies were afforded a meaningful opportunity to collaborate in the policy development leading to the making of the regulations, the Governor in Council may make regulations providing for any matter relating to the application of this Act or respecting the provision of child and family services in relation to Indigenous children.

Provincial governments

(2) For greater certainty, subsection (1) does not prevent provincial governments from collaborating in the policy development referred to in that subsection.

Transitional Provisions

Representations and party status

33 In the context of a proceeding referred to in section 13 that is pending on the day on which that section comes into force, the right referred to in that section may be exercised only if its exercise is consistent with the best interests of the child and is appropriate in the circumstances.

Regulations

34 (1) If affected Indigenous governing bodies were afforded a meaningful opportunity to collaborate in the policy development leading to the making of the regulations, the Governor in Council may make any regulations that the Governor in Council considers necessary to provide for any other transitional matter arising from the coming into force of this Act.

Provincial governments

(2) For greater certainty, subsection (1) does not prevent provincial governments from collaborating in the policy development referred to in that subsection.

Coming into Force

Order in council

35 The provisions of this Act come into force on a day or days to be fixed by order of the Governor in Council.

