

Bill C-92

Summary sheet for professionals working in Youth Protection in Quebec

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

- Recognizes the inherent right of Indigenous peoples to self-government, which includes jurisdiction in relation to child and family services and the right to develop and implement services provided by these laws.
- Establishes a set of minimum standards that apply to all Indigenous children and their families.

Context

The law was adopted following the Truth and Reconciliation Commission's Calls to Action (2015) which found that:

- since the « Sixties Scoop », Indigenous children are overrepresented in child protection systems;
- Like the residential school policy, youth protection systems contribute to the assimilation of Indigenous peoples.



Puamun & Ka Nikantet, Innu bears, Indigenous children rights ambassadors, First Nations Child & Family Caring Society

The law aims to :

- eliminate the devastating effects of the imposition of child welfare systems based on values and visions that oppose those of Indigenous peoples;
- reduce the number of Indigenous children in care;
- avoid the separation of Indigenous children from their families due to financial, health or housing difficulties;
- promote family unity and family reunification;
- keep Indigenous children with their families and their communities;
- maintain and promote Indigenous children's relationships with their family, community, language, culture and territory;
- prioritize prevention and early intervention.

Minimum standards and their interaction with the *Youth Protection Act*

The minimum standards came into force on January 1st, 2020, apply in Quebec and take precedence over the Youth Protection Act. This means that these standards prevail over provincial legislation that is in conflict or inconsistent with them.

In addition, Bill C-92 recognizes the power of Indigenous governing bodies to enact, administer and enforce youth protection laws. Indigenous laws will prevail over the YPA. These laws could add to the minimum standards.



Who do the minimum standards apply to?

The minimum standards apply to all Indigenous children and families (First Nations, Inuit and Métis), regardless of their place of residence (community, village, urban setting).

Does the child have ties to more than one community, village or nation?

Record the child's nation(s) in their file and whether they are a member of a band, or village (if applicable). All files should also include the contact information of the band council, tribal council (if applicable) or any other council or entity that is authorized to act on behalf of its group or community.

Also check if the child is a member of an Indigenous community or nation that has its own child welfare legislation. If so, this law will prevail over the YPA.

Who are the child's family members ?

A family map or a genogram should be completed as soon as possible to identify family and community members who are related to the child.

Main impacts:

In addition to the legislative changes made to the YPA in 2017 by Bill 99, youth protection professionals will have to pay attention to four important aspects and modify their practice accordingly.



INTEREST OF THE CHILD, CULTURAL CONTINUITY AND SUBSTANTIVE EQUALITY

Three principles guide the interpretation of the minimum standards (s.9 & 10, C-92)

Best interests of the child is paramount. For Indigenous children, primary consideration must be given to their needs to have ongoing relationships with their family, community and culture, as well as their physical, emotional and psychological safety, security and well-being.

The principle of cultural continuity goes further than the preservation of cultural identity (s. 3 & 4, YPA). While “preservation” could simply mean participating in cultural activities and learning the language, cultural continuity requires:

- that ongoing relationships are maintained between the child and their family, community and culture;
- that child and family services are provided in a way that does not contribute to assimilation or cultural destruction;
- that the characteristics and challenges of the region in which a child, family and Indigenous community is located are considered.

The principle of substantive equality requires :

1. that Indigenous children, families and governing bodies be able to exercise their rights without discrimination;
2. consideration for the distinct needs of Indigenous children with disabilities;
3. that jurisdictional disputes (between provincial and federal governments, for example) not result in a gap in the child and family services that are provided.

To ensure substantive equality, it is not enough to offer the same level of service; rather, it is necessary to aim for equal results.

8 FACTORS TO BE CONSIDERED IN THE ASSESSMENT OF THE BEST INTERESTS OF INDIGENOUS CHILDREN

- a) *Their cultural, linguistic, religious and spiritual upbringing and heritage.*
- b) *Their needs, given their age and stage of development, such as their need for stability.*
- c) *The nature and strength of their relationship with their parents, care provider and any member of their family who plays an important role in their life.*
- d) *The importance for them to preserve their cultural identity and connections to their language and territory.*
- e) *Their views and preferences, giving due to their age and maturity.*
- f) *Any plans for their care, including care in accordance with the customs or traditions of their group or community.*
- g) *Any family violence and its impacts on the child, including whether they are directly or indirectly exposed to family violence as well as physical, emotional and psychological harm or risk of harm.*
- h) *Any civil or criminal proceeding, order, condition or measure that is relevant to their safety, security and well-being.*

TO PROMOTE SUBSTANTIVE EQUALITY

Familiarize yourself with Jordan’s Principle. It is a child-first principle, ensuring all First Nations children in Canada (on or off-reserve) get the services they need when they need them. Support requests can cover addiction treatment, traditional healing services, etc. For more information, see:

www.jordansprinciple.ca

PREVENTIVE AND PRENATAL CARE , SOCIOECONOMIC CONDITIONS AND PLACEMENT PREVENTION

Bill C-92 requires that priority be given to preventive care generally and prenatal care (when likely to be in the best interests of the child) in order to prevent apprehension after birth.

Unless the immediate placement of an Indigenous child is consistent with their best interests (e.g. emergency placement), **YOU MUST DEMONSTRATE** that you have made **reasonable efforts** to have the child continue to reside with their parents or, if it is not possible, with a family member.

In addition, Indigenous children **MUST NOT** be apprehended solely on the basis of socio-economic conditions or the poor state of health of their parents or care provider. This means a child cannot be apprehended solely on the basis of poverty, lack of adequate housing or infrastructure. Therefore, it is not possible to intervene on the sole ground of “physical neglect” due to housing conditions (mold, lack of a bedroom for the child, etc.).



HELPFUL HINTS

Be creative. Is there informal or traditional support within the community that could benefit the child and their family?

Mobilize and build on family's strengths. Identify family, village or community members who could be partners in the intervention process. Establish an action plan with them if a placement ever becomes necessary.

Consider the child's views and preferences in every decision that affects him or her.

Discuss with community leaders, governing bodies and child and family services agencies to identify what they consider to be “reasonable efforts”.

Document the means put in place in order to prevent placement. List the preventive services you offered or provided to the family.

Identify individual or systemic barriers to prevention in your region.

Are there problems accessing specific services or programs?

TO HELP YOU RESPECT THE MINIMUM STANDARDS

Child and Family Services (CFS): familiarize yourself with child and family services in the community or village in which the child resides. If he lives in an urban area, find out about culturally safe services that can be offered (for example, Native Friendship Centers).

Non-Insured Health Benefits: familiarize yourself with the Non-Insured Health Benefits Program, including mental health services. For more information : <https://www.sac-isc.gc.ca/eng/1572537161086/1572537234517>

Housing: ask the authorities in charge of the community, the village or certain urban services if they have implemented measures so that Indigenous families at risk of discontinuity (ex: placement) have priority access to adequate housing.

PLACEMENT PRIORITY PROVISIONS

The placement of an Indigenous child must occur in the following order of priority :

- a) parents ;
- b) another adult member of the child's family ;
- c) an adult who belongs to the same Indigenous group, community or people as the child ;
- d) an adult member of another Indigenous group, community or nation;
- e) any other adult.

In a case of a placement, you must :

- consider the possibility of placement "with or near" siblings or relatives (e.g., cousins);
- take into account customs and traditions, such as customary tutorship and adoption.

During a placement, you must **RE-ASSESS, ON AN ONGOING BASIS** :

- (a) whether it would be appropriate to place the child with their parents;
- (b) or (if option (a) is not possible) whether it would be appropriate to place the child with a family member.

If the decision is neither (a) or (b), you **MUST** provide justification (in the child's file) and demonstrate how such options would not be in the best interests of the child.

IF THE PLACEMENT OF INDIGENOUS CHILDREN WITH THEIR PARENTS OR A MEMBER OF THEIR FAMILY, COMMUNITY OR NATION IS NOT POSSIBLE, YOU MUST PROVIDE A PLAN (OBJECTIVES, MEANS AND RESOURCES IN ORDER TO:

- Re-build or promote **attachment** and emotional ties between children and their parents;
- re-build or promote **attachment** and emotional ties between children and each family member with whom they are not placed;
- respect the principle of cultural continuity.



HELPFUL HINTS

Get to know the child's family members.

Consult and collaborate with the experts. Children, their parents, the care provider, the Indigenous governing body and the person responsible for social services (youth protection or child and family services) in the child's community or village must be involved in any significant measure or decision in relation to the child. Do not make decisions alone.

Change your mindset. Your first goal is not just to assess the child's attachment to their care provider in an out of family placement, but rather to demonstrate that you have attempted to re-build and promote attachment and emotional ties between the child and their parents, family, culture, language and territory.

MANDATORY NOTICE, REPRESENTATION AND PARTY STATUS

1. Before taking any “significant measure” in relation to the child, you must inform:

- the child and their parents;
- the care provider (if any);
- the person responsible for social services (youth protection or child and family services) in the child’s community or village and the Indigenous governing body.

Plan in advance a clear process to give notice to everyone concerned, before significant measures are taken.

2. In the context of a civil proceeding in respect of the provision of child and family services in relation to an Indigenous child :

- c) the child’s parents and the **care provider*** have the right to **make representations and to have party status**;
- d) the Indigenous governing body acting on behalf of the Indigenous group or community to which the child belongs and the person responsible for social services have the right to **make representations**.

* **Care provider** : a person who has primary responsibility **for providing day-to-day care of an** Indigenous child, in accordance with the customs or traditions of the Indigenous group or community to which the child belongs.



This summary sheet was prepared by :

Christiane Guay, Ph.D., S.W. emeritus, Associate professor, Université du Québec en Outaouais (UQO).

Lisa Ellington, S.W., Research coordinator, UQO.

Nadine Vollant, S.W., Director of Social Services, Uauitshitun.

Guay, C., Ellington, L. & Vollant, N. (2020). Bill C-92 : Summary sheet for professionals working in Youth Protection in Quebec. Gatineau : Université du Québec en Outaouais.

We would like to thank Professor Hadley Friedland and Koren Lightning-Earle of the University of Alberta - Wahohtowin Law & Governance Lodge for sharing with us the results of their work and thoughts that inspired this summary sheet.