



Flip Facts



Qalipu
FIRST NATION

*Understanding the Act respecting First Nations, Inuit and Métis
children, youth and families*





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These Flip Facts should not be used as a substitute for a careful reading of the Act respecting First Nations, Inuit and Métis children, youth and families. Users must refer to the Act for a more detailed understanding of the provisions contained therein. This document should not be considered legal advice.

Did you know?



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The Act respecting First Nations, Inuit and Métis children, youth and families that came into force has two main parts:

Federal Rules Regarding Provision of Indigenous Child Welfare (Sections 9-17)

- Provides for National standards and principles applicable to Indigenous Child Welfare in four areas:
 1. Purpose and principles.
 2. Best Interest of Indigenous Children.
 3. Provision of Indigenous Child and Family Services.
 4. Placement of Indigenous Child.
- Federal rules applies to both Provincial and Indigenous Child Care Services.
- Federal rules come into force January 1, 2020.

Law Making Provisions-Recognizes the inherent right of Indigenous groups to enact Child Welfare legislation (Sections 20-26)

- Indigenous groups may give notice to Minister (ISC) and the Province of its intent to enact Child Welfare Legislation.
- Indigenous groups may request that Minister and Province enter into coordination agreement in relation to its exercise of legislative authority.
- Law making provisions only applies to Indigenous groups that have a coordination agreement in place but Indigenous law can come into effect after one year if reasonable efforts are made to reach a coordination agreement.



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The Act sets out minimum standards and rights for Indigenous children and families interacting with child welfare services (Sections 9-17). The Act also provides stronger principles for the Best Interests of the Child such as:

- Affirmation of the right of children to be raised in their families, with their language, culture and identity supported.
- Right to receive services in their communities, to preserve the child's culture, connections and belonging.
- Right of the child to be connected to their family and community.
- Account for the intergenerational impacts of residential schools and affirm right of families to not be blamed for trauma and struggles they may experience when parenting.

***Did you know?
The Act provides
stronger, best interest
of child principles.***

***Did you know?
The Act provides an order of
placement of an Indigenous
Child when apprehension is
in best interest of child.***



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1. The Act seeks to preserve a child's connection to his or her family, community and culture. It provides the following order of placement of an Indigenous Child when apprehension is in the best interest of that child:
 - one of the child's parents;
 - another adult member to the same Indigenous group or people;
 - an adult who belongs to an Indigenous community or people other than the one to which the child belongs; and
 - any other adult.
2. The Act stresses that Indigenous siblings should be kept together provided it is in their best interest.
3. The Act also ensures that Indigenous children in care keep strong emotional ties with their family and stay connected to their communities and culture.



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***Did you know?
The Act prioritizes
preventive care:***

1. The Act emphasizes the need for the system to shift from apprehension to prevention, with priority given to services that promote preventive care to support families. It gives priority to services like prenatal care and support to parents.
2. The Act also clearly indicates that no Indigenous child should be apprehended solely on the basis or as a result of his or her socio-economic conditions, including poverty, lack of housing or related infrastructure, or state of health of the child's parent or care provider.



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***Did you know?
The Act applies to:***

The Act applies to all First Nations, regardless of Indian Act status and/or residency. This means:

- First Nations have the authority and jurisdiction to determine their own governance structure in relation to child and family services, defined in the Act as an “Indigenous Governing Body,” which can designate who acts on behalf of the children and families they represent (e.g. Band Council, Tribal Council, Treaty Government).
- In the development and enactment of First Nations laws, First Nations can define concepts, such as membership and kinship, according to their own laws and practices.
- A child does not have to live on-reserve for the Act or First Nations child and family services laws to apply. In the development of First Nations laws and negotiation of coordination agreements, First Nations can assert jurisdiction over their children, regardless of where they live.

Did you know?
The Act strengthens First Nations notice and gives standing to parents and caregivers.



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The Act strengthens the obligation to keep First Nations and families informed about decisions related to their children and families. Section 12(1) of the Act articulates that the parent, care provider/guardian, First Nation and governing body of a First Nations child must be informed of decisions regarding the child before any significant actions are taken.

As well, Section 13(a) and (b) of the Act expands who can be a full party in a child welfare matter relating to a First Nations child. The Act expands participation to include parents and care providers (a person who cares for the child day-to-day, in accordance with the First Nation's practices, including a grandparent, aunt, etc.) as parties and their right to make representations, and also includes the First Nations governing body's right to make representations.



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***Did you know?
The Act provides two options
for First Nations in exercising
jurisdiction.***

Bill C-92: section 20

Exercising jurisdiction over child and family services as a section 35 rights-bearing Indigenous group



Option 1

An Indigenous governing body has **developed its own legislation**

Indigenous governing body sends a **notice** to the Minister of Indigenous Services and relevant provincial or territorial governments

Indigenous governing body exercises their jurisdiction over child and family services but their laws on child and family services **do not prevail** over federal, provincial and territorial laws

Option 2

An Indigenous governing body has **developed its own legislation** and intends to exercise their jurisdiction over child and family services

Indigenous governing body **sends a request to enter into a tripartite coordination agreement** with Indigenous Services Canada and relevant provincial or territorial governments

Coordination agreement **reached within 12 months**

or

Reasonable efforts to reach a coordination agreement were made during the period of 12 months, including use of alternative dispute resolution mechanism

Indigenous governing body exercises their jurisdiction over child and family services and their laws on child and family services **prevail** over federal, provincial and territorial laws





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Did you know?
The following summary of
all sections in the Act:

1: definitions

defines terms used in the act, including "family" and "Indigenous governing body".

5: Nunavut Act

Respects the legislative powers of the legislature for Nunavut.



16 and 17: placement of Indigenous child

Sets out certain requirements respecting the placement of an Indigenous child.

25 and 26: publication and accessibility

Sets out requirements respecting the publication and accessibility of certain information.



2: rights of Indigenous peoples

States that the act is to be construed as upholding the rights of Indigenous peoples recognized and affirmed by section 35 of the *Constitution Act, 1982*.

6: designation of minister

Authorizes the Governor in Council to designate a federal minister for the purposes of the act.



18: jurisdiction, child and family services

Affirms the jurisdiction of Indigenous peoples in relation to child and family services.

27 to 30: information

Sets out certain powers respecting the gathering and use of information respecting child and family services provided to Indigenous children and information about individuals in relation to whom those services are provided.

3: conflict with existing agreement

Provides that agreements, which are legally binding, prevail over the act in the case of conflict or inconsistency if they predate the coming into force of the act.

7: Her Majesty

Provides that the act is binding on Canada and the provinces and territories.

10: best interests of Indigenous child

Explains how the principle of the best interests of the child should be understood and applied in the context of the act.

19: application of *Canadian Charter of Rights and Freedoms*

Addresses the application of the *Canadian Charter of Rights and Freedoms*.

31: five-year review and report

Requires that the act be reviewed periodically and that a report be tabled in Parliament.

33 and 34: transitional provisions

Describes how transitional matters arising from the coming into force of the act are handled.

4: minimum standards

Confirms that the act creates minimum standards respecting child and family services provided in relation to Indigenous children.

8 and 9: purpose and principles

Establishes the purposes of the act and the principles according to which the act is to be interpreted and administered.

11 to 15: provision of child and family services

Sets out certain requirements and rights related to the provision of child and family services to an Indigenous child.

20 to 24: coordination and application

Addresses the exercise of jurisdiction in relation to child and family services as well as the application and coordination of laws of Indigenous groups, communities or peoples.

32: regulations

Sets out authority for the making of regulations.

35: coming into force

Specifies that the provisions of the act come into force on a day or days to be fixed by order of the Governor in Council.

This document provides an overview of the act and should be read in conjunction with the act. The act can be accessed at: <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-92/royal-assent>

Did you know?
**QFN is currently
considering its
approach to the
Act?**



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QFN will have three-four regional consultations and an online presence regarding the Act. The intent is to solicit feedback that will help inform QFN Chief and Council's next steps with respect to the Act. For more information visit:

<http://qalipu.ca/child-youth-family>



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**Did you know many
First Nations across
Canada have been
providing children,
youth and family
service prevention
services since before
the Act came into
force?**

Qalipu First Nation is a vibrant Mi'kmaq First Nation established in 2011 as an Indigenous Band under the Indian Act. With a large membership spread across 67 traditional Newfoundland Mi'kmaq communities and abroad.

ISC provides funding to First Nations child and family services agencies, which are established, managed and controlled by First Nations and delegated by provincial authorities to provide prevention and protection services. QFN could be one such First Nation that has been providing prevention and or protection services to its members.

Qalipu has four satellite offices located in Glenwood, Grand Falls-Windsor, St. George's, and Stephenville and its central administrative office is in Corner Brook. These offices give representation to the regions of our dispersed Mi'kmaq communities.

For More Information Contact:

Qalipu Mi'kmaq First Nation Band
3 Church Street
Corner Brook, NL
A2H 2Z4
Phone: 709-634-0996
Fax: 709-639-3997

<http://qalipu.ca>

Internet Sites of Interest:

<https://laws.justice.gc.ca/eng/acts/F-11.73/index.html>

<https://www.sac-isc.gc.ca/eng/1579468554846/1579468577638>

<https://www.afn.ca/an-act-respecting-first-nations-inuit-and-metis-children-youth-and-families/>