

Reclaiming Our Children

Exercising Métis Child and Family
Services Jurisdiction Under Act C-92

**RUPERTSLAND CENTRE FOR MÉTIS
RESEARCH IN COLLABORATION WITH
THE OTIPEMISIWAK MÉTIS GOVERNMENT**

 **UNIVERSITY OF ALBERTA**
FACULTY OF NATIVE STUDIES

RUPERTSLAND CENTRE

FOR MÉTIS RESEARCH



The research for this booklet was carried out by the Rupertsland Centre for Métis Research (**RCMR**), housed within the Faculty of Native Studies, University of Alberta, under the supervision of Dr. Nathalie Kermaal, Professor and Director of RCMR. This booklet has been prepared for the Otipemisiwak Métis Government by Angie Tucker, PhD Student in the Faculty of Native Studies, and Dr. Nathalie Kermaal. Thank you to Amber Yarmuch, Kelsey Bradburn, and Alissa Saieva-Finnie for their feedback.

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For the most up-to-date and relevant information related to Act C-92, please visit the Government of Canada's website or contact Indigenous Services Canada at 1-800-567-9604 or isc.indigenousfamieliestogether@canada.ca.

For further information on the provision of or recent developments related to child and family services by the Otipemisiwak Métis Government, please visit the Otipemisiwak Métis Government's website at albertametis.com or contact mnacfs@metis.org.

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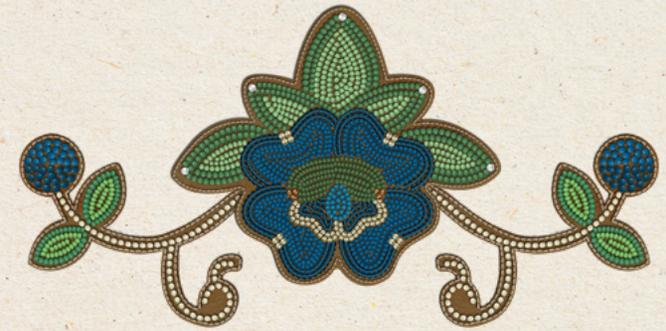
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This booklet has been created by RCMR and the Otipemisiwak Métis Government to provide a general overview of the background and context leading up to Canada's adoption of An Act respecting First Nations, Inuit, and Métis children, youth, and families (Act C-92 or "Act"), explain its key provisions, and highlight the Métis experience in Alberta.

The Act provides a pathway for Indigenous communities — through authorized Indigenous Governing Bodies (IGBs) — to exercise their inherent jurisdiction over the provision of child and family services to their citizens. Act C-92 establishes national principles and standards that seek to promote the well-being of Indigenous children by, among other things, supporting connections to their Indigenous communities, languages, customs, traditions, practices, cultures, spiritualities, kinship systems, and more. Act C-92 opens the door for Indigenous communities to build their own child intervention systems and related laws so that they can better care for their children, youth, and families.

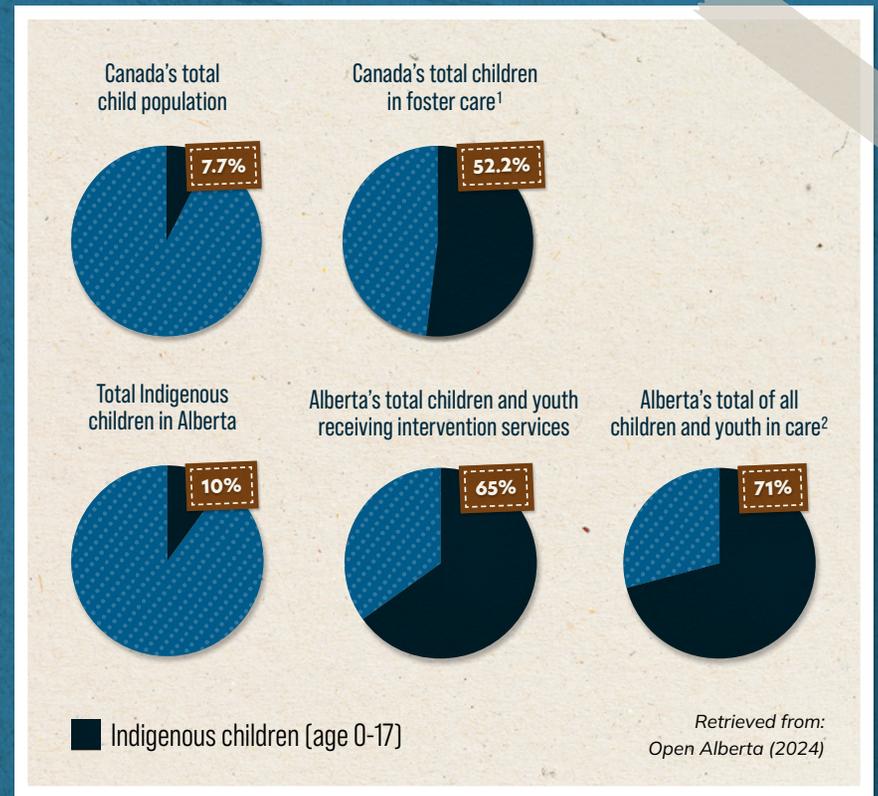


The Métis Way

Nurturing children and supporting families aligns with traditional Métis kinship principles. These principles include the importance of sharing, reciprocity, and the responsibilities we have to all our relations. Kinship teachings include caring for all our children, maintaining our traditional ways of life, and preserving our individual and collective identities. The foundation for Métis identity and belonging is infused in the land, home, community, and family. Kinship teachings include caring for our children, maintaining our traditional ways of life, and preserving language and our individual and collective identities.



Background and Context



Indigenous overrepresentation in Canada's child intervention system

The Truth and Reconciliation Commission of Canada (TRC) has called the overrepresentation of Indigenous children in Canada's child intervention system a "growing crisis."³

- <https://www.sac-isc.gc.ca/eng/1541187352297/1541187392851>
- <https://open.alberta.ca/dataset/de167286-500d-4cf8-bf01-0d08224eeadc/resource/62722a62-7679-4045-9736-855cfdc381c9/download/cs-deaths-of-children-youth-or-young-adults-receiving-child-intervention-2021-04.pdf> [Tables 4 and 5]
- https://www.ohrc.on.ca/en/interrupted-childhoods#:~:text=children%20into%20care._The%20number%20of%20Indigenous%20children%20in%20care%20is%20staggering%2C%20and,accounting%20for%207.7%25%20of%20the

Truth and Reconciliation Commission's Calls to Action

In 2007, Canada established the TRC as part of its implementation of the Indian Residential Schools Settlement Agreement. The purpose of the TRC was to retrieve and honour the countless stories of those who were directly or indirectly affected by Canada's residential schools system.⁴ Through the preparation of various reports, the TRC helped to increase awareness of the systemic harms to Indigenous peoples caused and perpetuated by colonization, the residential schools system, the Sixties Scoop, and the present-day child intervention system.

In 2015, the TRC published 94 Calls to Action (CTAs) to redress the legacy of the residential schools system and advance the process of reconciliation between Indigenous and non-Indigenous peoples in Canada. The first five CTAs relate directly to the child intervention system:

CTA #1

Calls on all levels of government to commit to minimizing the number of Indigenous children in care through resourcing, assessing, monitoring, and educating child and family services organizations

CTA #2

Calls on all levels of government to produce and publish annual reports with Indigenous-specific data, including the number of Indigenous children in care (as compared to the number of non-Indigenous children in care), the reason for apprehension, total spending on services, and the effectiveness of interventions

CTA #3

Calls on all levels of government to fully implement Jordan's Principle,⁵ which is a child-first principle that ensures Indigenous children get the care they need when they need it

CTA #4

Calls on the federal government to enact Indigenous child intervention legislation establishing national standards for apprehension and custody cases and various principles, including affirmation of the right of Indigenous peoples to establish and maintain their own child and family services agencies, the importance of taking the history of Residential Schools into consideration, and the prioritization of culturally appropriate placements

CTA #5

Calls on all levels of government to develop culturally-appropriate parenting programs for Indigenous families⁶

4. <https://www.rcaanc-cimac.gc.ca/eng/1450124405592/1529106060525>

5. Jordan's Principle is named in memory of Jordan River Anderson, a First Nations child from Norway House Cree Nation in Manitoba, who died in hospital at the age of five — never having spent a day in a family home — due to a financial dispute between the federal and provincial governments over which level of government was responsible for paying for Jordan's home care.

6. A copy of the TRC's Calls to Action report is available online: https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/calls_to_action_english2.pdf



Canada's six points of action

In January 2018, at the Emergency Meeting on Indigenous Child and Family Services, Canada committed to six points of action to address the over-representation of Indigenous children and youth in care and to reform Indigenous child and family services.

THE SIX POINTS OF ACTION INCLUDE:

- 1** Continuing the work to fully implement all orders of the Canadian Human Rights Tribunal, and reforming child and family services, including moving to a flexible funding model
- 2** Shifting the programming focus to prevention and early intervention
- 3** Supporting communities to exercise jurisdiction and explore the potential for co-developed federal child and family services legislation
- 4** Accelerating the work of trilateral and technical tables that are in place across the country⁷
- 5** Supporting Inuit and Métis Nation leadership to advance reform
- 6** Developing a data and reporting strategy with provinces, territories, and Indigenous partners⁸

7. Trilateral and technical tables – Meetings between the federal, provincial and Indigenous governments that serves as a mechanism to support ongoing discussions and planning.

8. To track Canada's progress on the six points of action, see: <https://www.sac-isc.gc.ca/eng/1541188016680/1541188055649>

Overview of Act C-92



Why is Act C-92 important?

Act C-92 is the first federal legislation passed on the subject of Indigenous child and family services within Canada. As further discussed below, Act C-92 is important because it reaffirms the inherent rights of Indigenous peoples, recognized and protected by section 35 of the Constitution Act, 1982, includes jurisdiction (i.e. law-making authority) over child and family services, as well as establishes core principles and standards specific to the provision of services to Indigenous children across the country. Central to this is the importance of maintaining an Indigenous child's connection to his or her family, community, culture, language, and traditions.

When did Act C-92 enter into force?

Bill C-92, the precursor to Act C-92, was formally introduced in the House of Commons on February 28, 2019. It received royal assent (i.e. became law) on June 21, 2019, and officially entered into force on January 1, 2020.⁹

Act C-92 was co-developed with Indigenous partners, including delegates from the Métis National Council, the Assembly of First Nations, and Inuit Tapiriit Kanatami.

Where does Act C-92 apply?

As a federal law, Act C-92 is binding across Canada, including on the federal, provincial, and territorial governments (section 7).

Who does Act C-92 apply to?

Act C-92 applies to any agency — including provincial, territorial, First Nations, Inuit, and Métis delegated agencies — that provide child and family services to Indigenous children and families.

Act C-92 also has provisions specific to Indigenous Governing Bodies (IGBs), which are defined as:

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 (section 1).

When acting on behalf of an Indigenous group, community, or people for the purposes of Act C-92, an IGB must demonstrate they are in fact authorized to act on behalf of that group, community, or people (e.g. by a Band council resolution, a board resolution, or a referendum).

In the First Nations and Inuit context, a council or band as defined in the Indian Act, as well as an Inuit Land Claim Organization, would fall within the definition of an IGB for the purposes of Act C-92. Canada has also expressly confirmed the Otipemisiwak Métis Government is the authorized IGB of the Métis Nation within Alberta for the purposes of Act C-92.

9. <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-92/royal-assent>

What does Act C-92 do?

Act C-92 has three primary purposes:

1. Affirms the inherent right of self-government, including jurisdiction over child and family services
2. Sets out national principles for the provision of child and family services to Indigenous children
3. Contributes to Canada's implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (section 8)

Each of these purposes is further examined on the following pages.

INDIGENOUS JURISDICTION

Section 18 of Act C-92 recognizes the inherent right of self-government protected by section 35 of the Constitution Act, 1982, including law-making authority over, and dispute resolution related to, child and family services.¹⁰

There are two ways an IGB can exercise child and family services jurisdiction under Act C-92 on behalf of an Indigenous group, community, or people that have authorized it:

1. **Notice** – Under section 20(1) of the Act, an IGB can give notice to the federal and provincial ministers of its intent to exercise child and family services jurisdiction. Any Indigenous law under this option would be recognized immediately (once all the required information has been provided) but would be subject to federal and provincial laws.
2. **Request** – Under section 20(2) of the Act, an IGB can submit a request to the federal and provincial ministers to enter into a Coordination Agreement detailing, among other things, the provision of emergency services, support measures, financial arrangements, etc. Once a Coordination Agreement has been reached — or if reasonable efforts have been made to do so for a minimum of one year — any Indigenous laws under this option would be binding as federal law (section 20(3)).

Both options require the development and adoption of an Indigenous child and family services law before initiating the notice or request process.

Regardless of the option pursued, an Indigenous law must comply with the Canadian Human Rights Act and the national standards set out in sections 10-15 of Act C-92 (further discussed below) (section 22(1)), as well as be consistent with the best interests of the child (section 23).

10. 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.

NATIONAL PRINCIPLES AND STANDARDS

Act C-92 establishes a series of national principles and standards intended to “level the playing field” between Indigenous and non-Indigenous children involved in the child intervention system, as well as remedy any potential discrepancies between the various provincial and territorial child intervention legislation and policies across Canada.

Act C-92 recognizes three main national principles:

- 1. Best interest of the child** – Act C-92 requires the best interests of the child be considered when making decisions or taking actions related to child and family services for an Indigenous child. Act C-92 outlines a list of factors to consider when evaluating the best interests of an Indigenous child under Act C-92 (some of which may overlap with provincial factors). These factors include, but are not limited to:
 - The child’s cultural, linguistic, religious, and spiritual upbringing and heritage
 - The child’s needs, views, preferences, and the nature and strength of particular relationships
 - The importance 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
 - Any care plans, including care in accordance with the customs or traditions of the Indigenous group, community, or people to which the child belongs

In all instances, the primary consideration is to be given to the child’s physical, emotional, and psychological safety, security, and well-being, and to the importance 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” (section 10).

- 2. Cultural continuity** – Act C-92 prohibits the provision of child and family services to Indigenous children in a manner that would contribute to assimilation or cultural destruction of the Indigenous group, community, or people to which a child belongs. It recognizes cultural continuity as not only essential to the well-being of an Indigenous child, but also to his or her family and Indigenous group, community, or people. This principle recognizes transmission of language, culture, practices, customs, traditions, ceremonies, and knowledge are all integral to cultural continuity and the best interests of an Indigenous child are often promoted when the child resides with members of his or her family and within the culture of the Indigenous community to which he or she belongs.
- 3. Substantive equality** – Act C-92 provides, among other things, that Indigenous children, their families, and their communities must be able to exercise their rights under Act C-92 without discrimination.



Act C-92 also sets additional national standards related to the provision of child and family services and placement of Indigenous children:

- Services provided must consider, among other things, the child's culture and allow the child to know his or her family origins (section 11).
- Notice must be provided to the child's parent, caregiver, and IGB before significant measures are taken related to the child (section 12).
- A child's parent, caregiver, and IGB have the right to make representations in court proceedings related to the child (section 13).
- Priority is to be given to preventative and prenatal care over other services and apprehension when in the child's best interests (section 14).
- A child must not be apprehended solely on socio-economic conditions (e.g. poverty, housing, parents' health) and reasonable efforts must be made to allow the child to remain with their parent or an adult family member before considering apprehension (section 15).
- When placing an Indigenous child, the placement priority must be followed, and consideration must be given to: placing the child with or near siblings, any applicable Indigenous customs and traditions (e.g. customary adoptions), and promoting family attachment and emotional ties. Placements must also be reassessed on an ongoing basis if a child is placed with someone outside of their family or community (sections 16-17).



PLACEMENT PRIORITY FOR INDIGENOUS CHILDREN (LISTED IN ORDER OF PRIORITY)

- a With one of the children'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 the children belong to;
- d With an adult who belongs to another Indigenous group, community, or people other than the one the child belongs to; or
- e With any other adult.

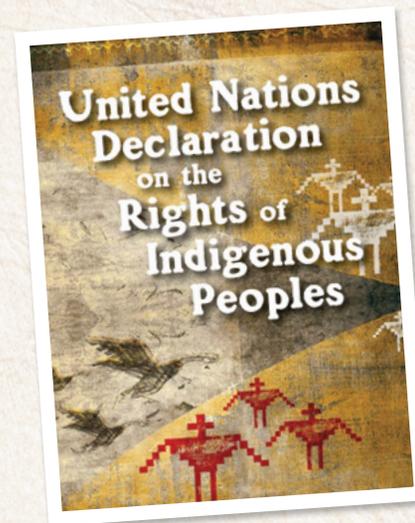


UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLE ACT (UNDRIP) IMPLEMENTATION

UNDRIP is an international declaration adopted by the United Nations on September 13, 2007. As outlined in Article 43, UNDRIP sets out “the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.”¹¹ Act C-92 is in response to Canada’s 2016 commitment to fully implement UNDRIP — after previously being one of four countries to initially vote against it (along with the United States, New Zealand, and Australia). Act C-92 aligns with UNDRIP by eliminating discrimination and promoting good relations, therefore shaping how provinces and territories work to strengthen Indigenous child and family services and programs. There are several UNDRIP provisions that relate to child and family services, including:

- ❖ **Article 7.2** – Indigenous peoples “shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children.”
- ❖ **Article 8** – Indigenous peoples have the right “not to be subjected to forced assimilation or destruction of their culture.”
- ❖ **Article 9** – Indigenous peoples have the right “to belong to an Indigenous community or nation, in accordance with the[ir] traditions and customs.”
- ❖ **Article 11** – Indigenous peoples have the right “to practice and revitalize their cultural traditions and customs.”
- ❖ **Article 13** – Indigenous peoples have the right “to revitalize, use, develop, and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems, and literatures.”

11. For more information, see: https://www.un.org/esa/socdev/unpfi/documents/DRIPS_en.pdf.



In December 2020, Canada introduced Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples, as a first step to aligning Canadian laws with the international declaration. The bill became law (now known as the United Nations Declaration on the Rights of Indigenous Peoples Act) and entered into force on June 21, 2021.

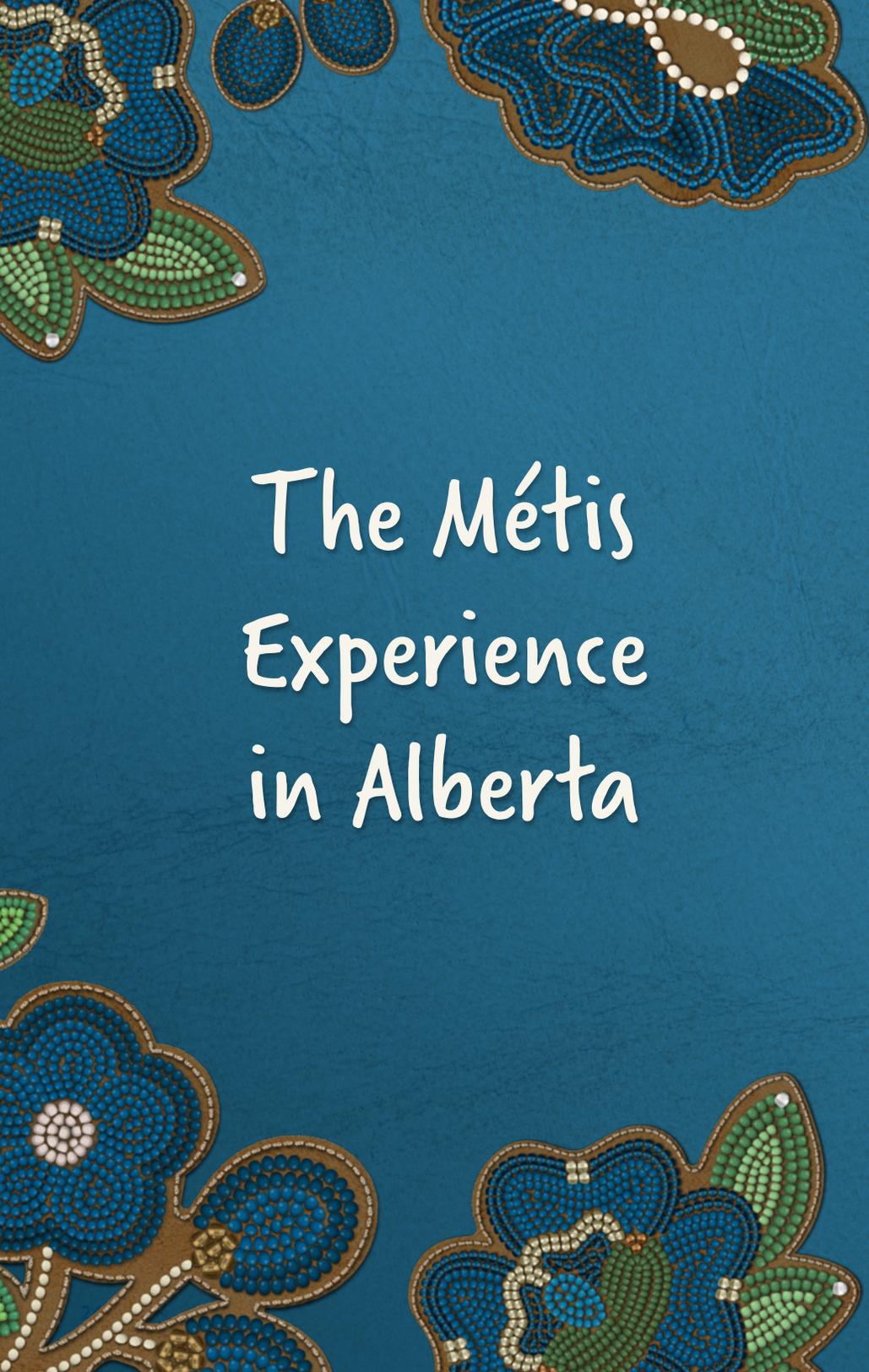


What else does the Act do?

Act C-92 also:

- ❖ Authorizes Canada to enter into information sharing agreements to collect, retain, use, and disclose information to, among other things, assist in the identification of Indigenous children and their community of origin, improve services, and facilitate disclosure to affected families and communities (sections 27-28)
- ❖ Requires Canada to publicly post information on IGBs that have provided notice or submitted a request, as well as a copy of any applicable Indigenous law that has entered into force (section 25)¹²
- ❖ Provides in cases where an Indigenous child connects to multiple Indigenous communities with conflicting Indigenous laws, the law of the community the child has “stronger ties” to will prevail (section 24(1))

12. For more information on the status of current notices and requests under Act C-92, see: <https://www.sac-isc.gc.ca/eng/1608565826510/1608565862367>.



The Métis Experience in Alberta

The landscape prior to Act C-92

Prior to Act C-92 coming into force, Canada had no defined role in child and family services for Métis children in Alberta but has provided funding for First Nations-related child and family services in the province. The Government of Alberta, on the other hand, has set the legislative and policy standards for the provisions of child and family services through the Child, Youth and Family Enhancement Act, RSA 2000, c C-12 (CYFEA), the Enhancement Policy Manual (Manual), and the Kinship Care Handbook (Handbook).¹³

While Alberta delegates its authority to administer all or parts of the CYFEA to agencies, including Indigenous-specific agencies, there are currently no Métis agencies with delegated authority to service off-Settlement Métis in Alberta, although some Métis-specific programs and services may be available.

Although the CYFEA, manual, and handbook contain a number of Indigenous-specific provisions, the opportunities and protections heavily favour First Nations and on-Settlement Métis. Furthermore, prior to Act C-92, the Otipemisiwak Métis Government's involvement in the provision of child and family services to Otipemisiwak Métis Government Citizens has been mostly dependent on initiation by affected families.

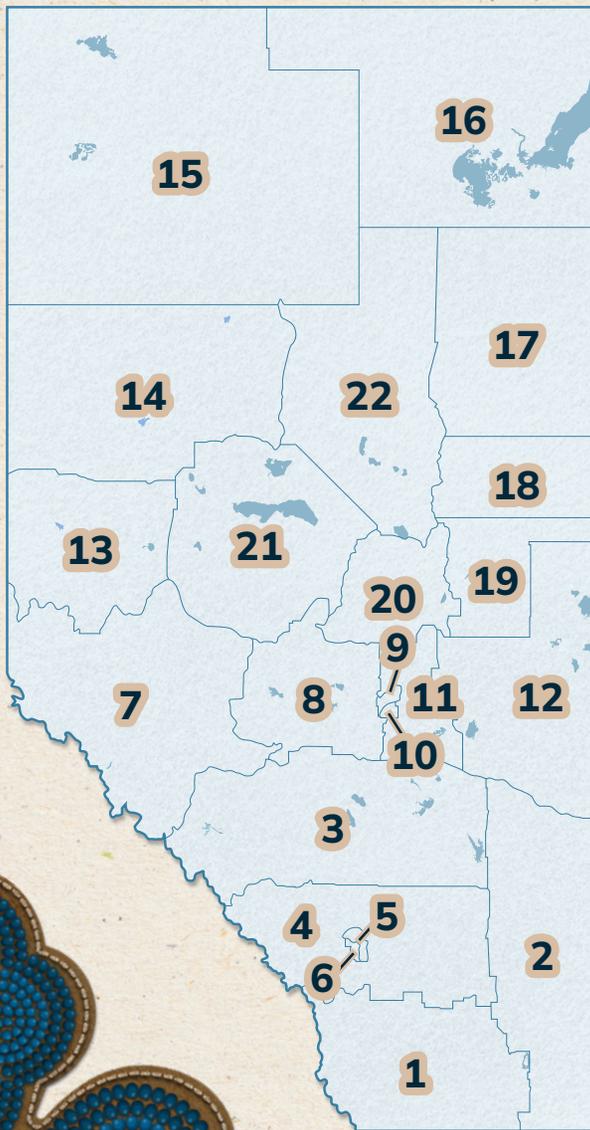
Act C-92's national principles and standards seek to not only help level the playing field between Indigenous and non-Indigenous children but, in doing so, may also help close the gap between First Nation/Settlement Métis and off-Settlement Métis in Alberta.

13. For copies of these resources, see: https://www.canlii.org/en/ab/laws/regu/alta-reg-160-2004/latest/alta-reg-160-2004.html#document_CYFEA, <https://open.alberta.ca/publications/3607542> (Manual), and <https://open.alberta.ca/publications/kinship-care-handbook-a-toolkit-for-kinship-caregivers> (Handbook).

Otipemisiwak Métis Government resolutions

The health and well-being of Métis children, youth, and families in Alberta have been and remains one of the Otipemisiwak Métis Government's top priorities. This has been reflected in resolutions passed by the Otipemisiwak Métis Government Annual General Assembly (AGA) dating back to at least 1998, and has been most recently confirmed in a resolution passed at the 93rd AGA in August 2021, which states that:

The Otipemisiwak Métis Government is authorized to exercise the Métis Nation within Alberta's inherent jurisdiction over child and family services, including through the development of a Métis law related to child and family services, the negotiation of related interim agreements, and/or any other necessary or related actions required to advance or exercise that jurisdiction.



MÉTIS DISTRICTS

1. Foothills
2. Medicine Hat
3. Red Deer
4. Rocky View
5. Calgary Nose Hill
6. Calgary Elbow
7. Jasper House
8. Lac Ste. Anne
9. Fort Edmonton
10. Edmonton Whitemud
11. St. Albert
12. St. Paul-Cold Lake
13. Grande Prairie
14. Peace River
15. Fort Vermilion
16. Fort Chipewyan
17. Fort McMurray
18. Conklin
19. Lac La Biche
20. Athabasca Landing
21. Lesser Slave Lake
22. Wabasca-Desmarais

Negotiated Crown agreements

On February 1, 2017, the Métis Nation of Alberta (MNA) (now known as the Otipemisiwak Métis Government) and the government of Alberta signed a 10-year Framework Agreement, evidencing the provincial government's commitment to advance Métis rights and promote reconciliation within the province. The agreement lists "increas[ing] economic opportunities for Alberta Métis with a view to enhancing community and individual wellbeing" by, among other things, "pursu[ing] initiatives to support Métis children, youth, and seniors" as one of its priority action items (section 2.4). This agreement also sets the foundation for the bilateral sub-table between the Otipemisiwak Métis Government and Alberta's Ministry of Children and Family Services.

On November 16, 2017, the MNA (now known as the Otipemisiwak Métis Government) and Canada signed the Framework Agreement for Advancing Reconciliation, opening the doorway for the Otipemisiwak Métis Government to continue government-to-government negotiations with the federal government in an effort to advance Métis governance, rights, and claims. The Framework Agreement, among other things, confirms the following shared objectives:

- Acknowledgment of the Otipemisiwak Métis Government's jurisdiction and law-making authority
- Promoting and enhancing the "cultural, social, physical, emotional, and economic well-being of the Métis Nation within Alberta" (section 2.1)



On June 27, 2019, the MNA (now known as the Otipemisiwak Métis Government) and Canada also signed a Métis Government Recognition and Self-Government Agreement (MGRSA) in accordance with the Framework Agreement processes and objectives. The MGRSA, among other things, expressly:

- Provides for the immediate recognition of the Métis Nation within Alberta's inherent rights of self-determination and self-government (section 3.01)
- Contemplates federal laws related to IGBs (section 27.09)
- Allows for the negotiation of Additional Jurisdiction Implementation Agreements related to, among other things, child and family services, childcare, and early childhood development (section 21.01 and Schedule A)

Conclusion and Next Steps



Act C-92 provides a pathway for Métis communities — and all Indigenous communities, generally — to exercise their inherent rights and jurisdiction over the welfare of some of their most vulnerable community members: their own children and youth. Ongoing challenges to Act C-92’s constitutionality,¹⁴ as well as the mechanics of its implementation, are still being worked out. As such, it remains to be seen how effective Act C-92 will be in addressing the overrepresentation of Indigenous children in Canada’s child intervention system and fulfilling the mandate to shift the primary care of Indigenous children back to their home communities.

14. We note that Quebec submitted a reference to the Court of Appeal for Quebec to determine whether or not Canada exceeded its constitutional powers by enacting Act C-92. The matter was heard by the Quebec Court of Appeal in September 2021, but a decision was not available as of the date of writing.

Many Indigenous communities have already given notice or submitted requests under the Act, signalling their intent to exercise jurisdiction over the care of their own children. As stated, Otipemisiwak Métis Government Citizens through the AGA have already clearly authorized the Otipemisiwak Métis Government to exercise its inherent jurisdiction through the development of a Métis child and family services law, the negotiation of agreements, and “any other necessary or related actions” needed to advance jurisdiction. In response to this, the Otipemisiwak Métis Government has developed a community-based action plan for exercising its child and family services jurisdiction in Alberta.

In terms of the next steps, the Otipemisiwak Métis Government intends to implement a phased approach to Act C-92.

PHASED APPROACH TO ACT C-92

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



Phase 1 Information Sharing

- Community learning series
- Information booklet
- Web and social media updates



Phase 2 Form Advisory Committee

- Métis Albertans with expertise in Children and Family Services



Phase 3 Draft Models of Care

- Internal research
- Provincial engagement report
- Advisory committee



Phase 4 Citizen Engagement

- Surveys, focus groups, in-person and virtual meetings
- Revise and finalize drafts



Phase 5 Community Approval

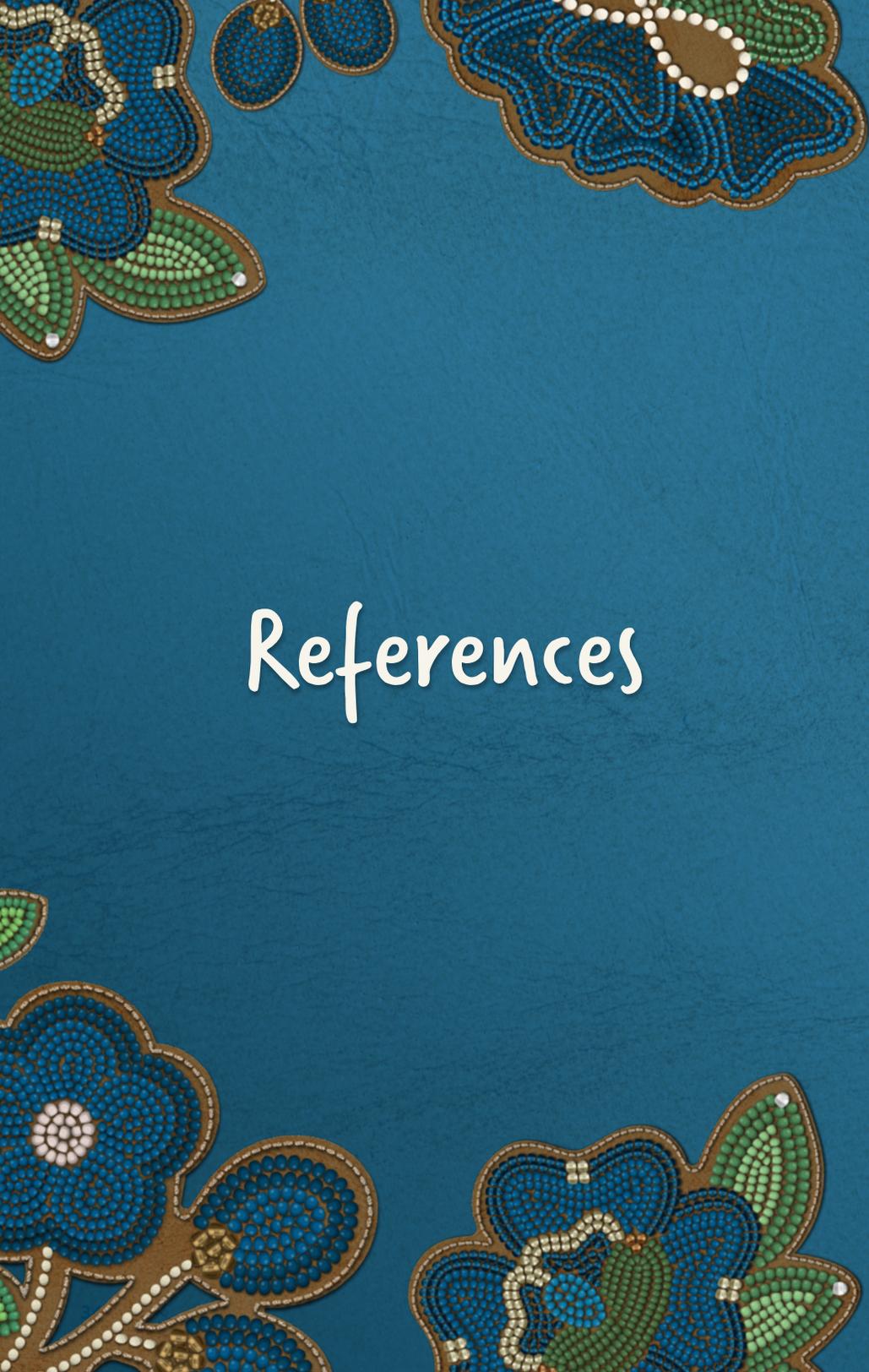
- Citizens vote on final drafts
- Notify appropriate parties of intent to enact
- Request tripartite coordination agreement



Phase 6 Implementation

- Develop transition plan
- Enter into coordination agreement
- Implement and deliver





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