

An Act respecting First Nations, Inuit & Métis children, youth & families (formerly Federal Bill C-92)



BEST INTERESTS OF THE INDIGENOUS CHILD

The Federal Act sets out the best interests test for Indigenous children in Section 10. This legislation prevails over the best interests of the child (BIOC) provisions in the CFCSA in the context of providing child and family services to Indigenous children. Key differences include:

FEDERAL ACT BEST INTERESTS

Applies broadly to making decisions and taking actions

Must be the primary consideration when making decisions and taking actions when providing child and family services to Indigenous peoples

Must be the paramount consideration when making decisions and taking actions related to a child's removal

Three primary considerations must be considered with greater weight than the remaining factors:

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

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 their parent, the care provider and any member of their family who plays an important role in their 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;

CFCSA BEST INTERESTS

Applies where it is specifically referenced, mostly in the context of court decisions

Guiding principles say CFCSA must be interpreted and administered so that safety and well-being of children are the paramount considerations

BIOC not specifically referenced in the context of removal.

All relevant factors must be considered equally, including similar factors as follows:

- Child's safety
- Quality of the child's relationship with parent, and effect of maintaining that relationship
- Importance of an Indigenous child learning about and practising their Indigenous traditions, customs and language and belonging to their Indigenous community

Substantially similar factors already addressed in s. 4, which is not an exhaustive list.

- a) the child's safety;
- b) the child's physical and emotional needs and level of development;
- c) the importance of continuity in the child's care;
- d) the quality of the relationship the child has with a parent or other person and the effect of maintaining that relationship;
- e) the child's cultural, racial, linguistic and religious heritage;
- f) the child's views;

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Additional factors to consider:

- 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.

These factors not addressed in BIOC.

However, similar considerations are in CFCSA s. 13 list of circumstances when a child needs protection.

Not addressed, but no conflict or inconsistency

Existing factor to consider (not included in the Federal Act):

- The effect on the child if there is a delay in making a decision



Questions? Comments? Need practice support?
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