

# Policy 1.1 Working with Indigenous Children, Youth, Families and Communities under the CFCSA

MCFD Core Policy	Child Safety, Family Support & Children in Care Services
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## A: Policy

This policy has the following purposes:

- To provide guidance respecting the director’s duties under the CFCSA related to:
  - confirming whether a child or youth is Indigenous and, if they are, confirming their Indigenous community, whether an Indigenous law applies to them, and whether there is an applicable Indigenous authority, and
  - consulting and cooperating with Indigenous communities when there is no Indigenous law that applies to the child or youth (when it is confirmed that an Indigenous law applies to a child or youth, follow [Policy 1.2 – Upholding Indigenous Jurisdiction over Child and Family Services](#)); and
- To outline how [An Act respecting First Nations, Inuit and Métis children, youth and families](#) (Federal Act) modifies a director’s powers and duties under the [Child, Family and Community Service Act](#) (CFCSA).

The Federal Act sets out national standards for the provision of CFCSA services in relation to Indigenous children and youth both on and off reserve (Sections 9-17).

If there is a conflict or inconsistency between this policy and any other child welfare policy or practice guideline, follow this policy.

An Indigenous community or an Indigenous governing body representing the community may enter into an agreement under section 90.1(1)(a) (coordination agreement) or section 92.1 of the *Child, Family and Community Service Act* (CFCSA). When there is such an agreement in place, a director must adhere to it. If there is a conflict or inconsistency between any policy (including this policy) and an agreement with the Indigenous community or Indigenous governing body, the agreement prevails to the extent of the conflict or inconsistency.

**Note:** For readability, this policy uses the singular “community”, “Indigenous authority” and “Indigenous law” throughout. Unless otherwise specified, these terms refer respectively to all Indigenous

communities to which a child/youth belongs and all applicable Indigenous authorities and Indigenous laws.

### **1. Confirming whether a child/youth is Indigenous**

- (a) Promptly take all reasonable steps to confirm whether a child/youth is Indigenous when performing duties under the CFCSA. Do so at initial contact with the child/youth and family, when obtaining information from collateral contacts under [Policy 1.6 Working with Service Providers and Collateral Contacts](#), and whenever new information is received respecting the child/youth's identity while providing any services under the CFCSA (e.g., a new family member is identified).
- (b) If a child/youth is Indigenous, identify and document the Indigenous community or communities to which they belong, including both maternal and paternal Indigenous identities.

### **2. Confirming whether an Indigenous law applies to a child/youth and whether there is an Indigenous Authority**

- (a) Upon confirming that a child/youth is Indigenous, promptly take all reasonable steps to confirm whether an Indigenous law applies to them and whether there is an applicable Indigenous authority.
- (b) If an Indigenous law applies to the child/youth, see [Policy 1.2 Upholding Indigenous Jurisdiction over Child and Family Services](#).
- (c) If no Indigenous law is confirmed as applying to the child/youth, and information is later received to suggest that an Indigenous law does apply while the director is providing services to the child/youth or family, see [Policy 1.2 Upholding Indigenous Jurisdiction over Child and Family Services](#).

### **3. Providing CFCSA services to Indigenous children/youth and families when an Indigenous law does not apply**

- (a) Adhere to any CFCSA section 92.1 agreement with the child/youth's Indigenous community.
- (b) Consult and cooperate with the child/youth's Indigenous community, disclosing information either with parental consent or with authority under section 74(2)(e)(v.1) or 79 of the CFCSA (including section 79(a.3)) – for example, when:
  - (I) identifying the child/youth's connections to their Indigenous communities;
  - (II) identifying family and community members who can support the child/youth; and
  - (III) considering the impact of residential schools, to assess strengths and recognize resiliency when planning and delivering services specific to the child/youth and their family (CFCSA s. 3(c.1)).
- (c) If the child/youth is in a continuing custody order, consult and cooperate with the child/youth's Indigenous community at least on an annual basis.

## How the Federal Act modifies the CFCSA

### 4. Best interests of Indigenous child/youth (Federal Act s. 10)

- (a) The best interests of the child/youth must be considered when making all decisions and taking all actions respecting Indigenous children and youth under the CFCSA, not just where there is a reference to best interests of the child/youth in the CFCSA.
- (b) When determining best interests, give primary consideration to the following three factors:
  - (I) the child/youth's physical, emotional and psychological safety, security, and well-being;
  - (II) the importance of the child/youth having an ongoing relationship with their family; and
  - (III) the importance of the child/youth belonging to the child/youth's Indigenous community and learning about and practising the child/youth's Indigenous traditions, customs, and language.
- (c) In addition to the factors listed in s. 4 of the CFCSA, the Federal Act requires consideration of the following additional factors:
  - (I) any plans for the child/youth's care, including any plans in accordance with the customs or traditions of the child/youth's Indigenous community;
  - (II) the impact of family violence on the child/youth's safety, security, and well-being whether the child/youth is directly or indirectly exposed to the family violence; and
  - (III) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security, and well-being of the child/youth.

### 5. Notice before taking significant measures for non-court proceedings (Federal Act s. 12)

- (a) Before taking any significant measure in relation to an Indigenous child/youth, provide notice, when consistent with the best interests of the child/youth, to:
  - (I) the [parent](#);
  - (II) the [care provider](#) (Federal Act s. 1); and
  - (III) the [Indigenous governing body](#) (Federal Act s. 1).
- (b) Provide notice before taking the following significant measures under the CFCSA:
  - (I) entering or renewing voluntary care agreements (s. 6);
  - (II) entering or renewing special needs agreements (s. 7);
  - (III) entering or renewing agreements with youth (s. 12.2);
  - (IV) removing a child/youth (s. 30, s. 36, s. 42);
  - (V) returning a child/youth before presentation hearing related to a removal (s. 33(1), s. 33(1.1));

- (VI) withdrawing from court proceedings:
  - withdrawal before an order is made at presentation hearing (s. 33.01);
  - withdrawal from CFCSA proceedings after presentation hearing (s. 48(1));
  - withdrawal from CFCSA proceeding without returning to a parent (s. 48(1.1));
- (VII) placing the child/youth in an out-of-home living arrangement, by taking into account the placement priorities for Indigenous children and youth (Federal Act s. 16):
  - starting a new placement or changing the placement for a child/youth;
  - requesting placement of child/youth for adoption (s. 50.1, Federal Act s. 16); and
- (VIII) consenting to a child/youth's adoption (s. 50(2)).

**6. Court proceedings – notice, right to make representations and party status (Federal Act s. 12 and 13)**

- (a) Continue to provide notice of court proceedings as required under the CFCSA. Those who are entitled to be parties under the CFCSA if they appear at the commencement of a hearing continue to have a right to party status.
- (b) For court proceedings where notice to any party is required under the CFCSA, provide the same notice to the parent, care provider and Indigenous governing body, with the exception of applications for orders under s. 17, 65, or 97 of the CFCSA, which are not considered significant measures.
- (c) A child/youth's parent and care provider have the right to make representations and have party status in the court proceedings.
- (d) The Indigenous governing body acting on behalf of the Indigenous community to which the child/youth belongs has the right to make representations in the court proceedings.

**7. Prioritizing preventive care (Federal Act s. 14)**

- (a) When working with Indigenous children/youth and families, give priority to preventive and support services, including prenatal services, over more disruptive measures, if consistent with the best interests of the child/youth.

**8. Decisions or actions respecting removals (Federal Act s. 10(1), 14, 15, 15.1)**

- (a) Give paramount consideration to the best interests of an Indigenous child/youth in making decisions and taking actions related to a removal of the child/youth.
- (b) Do not remove a child/youth solely on the basis of socio-economic conditions, including poverty, lack of adequate housing or infrastructure, or the state of health of their parent or the care provider. Section 13(3) of the CFCSA clarifies that a child/youth does not need protection solely on the basis of these factors.
- (c) Unless the child/youth's health or safety is in immediate danger, prior to removing a child/youth:

- (I) prioritize prevention and support services; and
  - (II) make reasonable efforts to have the child/youth continue to reside with one of the child's parents or another adult member of the child/youth's family.
- (d) Prior to removing the child/youth, provide notice as per the notice section of this policy, unless inconsistent with the best interests of an Indigenous child/youth.
- (e) Give paramount consideration to an Indigenous child/youth's best interests when deciding whether to return a child/youth or withdraw prior to the conclusion of a presentation hearing.

**9. Placement priority for an Indigenous child/youth (Federal Act s. 10, 16)**

- (a) When deciding where to place an Indigenous child/youth, consider the child/youth's best interests.
- (b) Unless inconsistent with an Indigenous child/youth's best interests, give priority to placing the child as follows:
- (I) with one of the child/youth's parents;
  - (II) with another adult member of the child/youth's family;
  - (III) with an adult who belongs to the same Indigenous community as the child/youth;
  - (IV) with an adult who belongs to an Indigenous community other than the one to which the child/youth belongs;
  - (V) with another caregiver.
- (c) When determining if a placement is in a child/youth's best interests, take into account:
- (I) the possibility of placing the child/youth with or near children/youth who have the same parent as the child/youth, or who are otherwise members of the child/youth's family; and
  - (II) the customs and traditions of the child/youth's Indigenous community such as customary care and adoption.

**10. Ongoing reassessment of placement (Federal Act s. 16(3))**

- (a) When an Indigenous child/youth has been placed with anyone other than their parent or adult member of their family, reassess the placement on an on-going basis to determine if it is in their best interests to be placed with their parent or other adult member of their family.

**11. Promoting the child/youth's attachment and emotional ties to family when separated (Federal Act s. 17)**

- (a) Where a child/youth has not been placed with one of their parents or another adult member of their family, promote their attachment and emotional ties to each such member of their family if consistent with the child/youth's best interests. Document the planning for involvement of each member of the family.

## **B: Procedures**

1. Confirming whether a child/youth is Indigenous
2. Confirming whether an Indigenous law applies to a child/youth and whether there is an Indigenous authority
3. Consulting and cooperating with the Indigenous community
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5. Determining the best interests of an Indigenous child/youth
6. Notice before taking significant measures
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8. Prioritizing preventive and support services
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10. Placement with a parent
11. Considering Indigenous customs and traditions in placement priorities
12. Ongoing reassessment of placement
13. Promoting child/youth's attachment and emotional ties to family when separated

## C: Policy Visual

The table below shows where there is an impact to the existing child welfare policy chapters and the Federal Act applies. The policy chapters in the below table have not yet been updated to reflect the impact of Federal Act.

Summary of the Federal Act national standards impacts on existing child welfare policy

Policy 1.1 Reference (Federal Act provision)	Chapter 2 Family support services & agreements	Chapter 3 Child Protection	Chapter 4 Out of Care/ Kinship Placements	Chapter 5 Children & Youth in Care	Chapter 6 Permanency	Youth	Resource Work	Contracted Agencies
Principles (s.9)	✓	✓	✓	✓	✓	✓	✓	✓
Best Interests of Indigenous Child (s.10)	✓	✓	✓	✓	✓	✓	✓	✓
Notice before taking significant measures (s.12)	✓	✓	✓	✓	✓			
Court Proceedings – notice, right to make representations and party status (s. 13)		✓		✓				
Prioritizing preventive care (s.14)	✓	✓	✓					
Decisions or actions respecting removals (ss. 14, 15, 15.1)		✓						
Placement priority for an Indigenous child (s. 16)		✓	✓	✓	✓		✓	
Ongoing reassessment of placement (s. 16)		✓	✓	✓	✓		✓	
Promoting the child’s attachment and emotional ties to family when separated (s.17)		✓	✓	✓	✓	✓	✓	✓

## D: Procedures | Detailed

### 1. Confirming whether a child/youth is Indigenous

(a) For every new protection report or request/referral for voluntary services under the CFCSA, ask the caller if they are aware of whether the child/youth or family have an Indigenous identity and conduct an electronic record search (both ICM and Best Practices) to determine if an electronic record exists that identifies the child/youth as Indigenous in accordance with the procedures in the following, as applicable:

- (I) [Policy 2.1 Receiving and Screenings Calls for Voluntary Support Services](#) (if a request or referral for voluntary services has been made), or
- (II) [Policy 3.1 Assessing the Report and Determining the Most Appropriate Response, Gathering Information from a Report](#) (if a protection report has been made).

- (b) If the child/youth's identity is not confirmed via the procedure above, ask any collateral contacts if they are aware of whether the child/youth is Indigenous and if so, the community/communities to which they belong. See [Policy 1.6: Working with Collateral Contacts](#).
- (c) If identity has not been confirmed or if further confirmation is needed, at initial contact with the child/youth or family (in person or via telephone), ask about their identity and whether they self-identify as Indigenous.
- (d) If the child/youth or family is Indigenous, ensure both maternal and paternal Indigenous identities are explored so that all communities are identified and documented.
- (e) For children/youth who are not identified as Indigenous via the process above, make reasonable efforts to obtain information pertaining to their cultural identity on an ongoing basis and when any new information comes to light, including but not limited to the following intervals:
  - (I) when a previously unknown parent or family member is identified;
  - (II) whenever a change of placement or legal status is being considered;
  - (III) when the child/youth's care plan is reviewed, at a minimum of every six months; and
  - (IV) if notified by an Indigenous community, including an Indigenous authority providing services under the community's Indigenous law, that the child/youth is Indigenous
- (f) When inquiring into and documenting the unique identity of an Indigenous child/youth, determine whether they belong to a First Nation, Nisga'a Nation or Nisga'a Village, Treaty First Nation, Métis community, or Inuit region and indicate this in the Integrated Case Management (ICM) documentation, including completing the Aboriginal tab information in ICM when appropriate.
- (g) Use culturally appropriate methods to map out family relationships and other significant relationships that can assist with the identification of a child, youth, and/or family's Indigenous community.
- (h) When there are questions about whether a child/youth is Métis, explore their identity by consulting with the child/youth and their parent(s), and if applicable, gather further information from the:
  - (I) members of a child/youth's family;
  - (II) local Métis service provider or organization where the child/youth or family has indicated a connection;
  - (III) [Métis Nation of British Columbia](#);
  - (IV) [Métis Commission](#); and/or
  - (V) Métis organizations and communities outside BC.



- (i) When there are questions about whether a child/youth is from one of the four Inuit regions, including Inuvialuit, Nunatsiavut, Nunavik, and Nunavut, explore their identity by consulting with the child/youth and their parent(s), and if applicable, gather further information from the:
  - (I) members of a child/youth's family;
  - (II) relevant cultural organizations in the appropriate region; and
  - (III) [Inuit Tapiriit Kanatami](#), which represents Inuit Nunangat (including the four regions above).
- (j) When a child/youth is from the Nunavut region, explore their potential Inuit identity by consulting the appropriate sub-region, including:
  - (I) Qikiqtani Region – via the [Qikiqtani Inuit Organization](#);
  - (II) Kitikmeot Region – via the Kitikmeot Inuit Organization; or
  - (III) Kivalliq Region – via the [Kivalliq Inuit Organization](#).
- (k) When a child/youth identifies as Indigenous but is unclear about which specific communities they may belong to, review any available records, and seek information from the following:
  - (I) members of a child/youth's family;
  - (II) Indigenous Child and Family Services Agencies (ICFS Agencies);
  - (III) off-reserve Indigenous organizations; and/or
  - (IV) Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC).
- (l) If direct community connections are not available with a child/youth's Indigenous community, contact local Indigenous agencies and organizations, such as Friendship Centres, for information about events and activities open to or specifically for Indigenous children, youth, and families.

## **2. Confirming whether an Indigenous law applies to a child/youth and whether there is an Indigenous Authority**

- (a) For every new protection report or request/referral for voluntary CFCSA services, when a child/youth has been identified as Indigenous, check on [this Repository](#) whether their community has an Indigenous law, and whether there is an applicable Indigenous authority. If there is an Indigenous authority, contact it to confirm whether the Indigenous law applies to the child/youth. If it does apply, proceed as set out in [Policy 1.2 Upholding Indigenous Jurisdiction over Child and Family Services](#).
- (b) When working with Indigenous children and youth, confirm on [this Repository](#) whether the child/youth's community has an Indigenous law prior to initiating services. If it does, contact the Indigenous authority for the community as set out in [Policy 1.2 Upholding Indigenous Jurisdiction over Child and Family Services](#).
- (c) When working with Indigenous children and youth, confirm whether the child/youth's community has an Indigenous law prior to initiating services (Indigenous laws and coordination

agreements entered into under CFCSA section 90.1(1)(a) will be made readily available to delegated staff). If it does, contact the Indigenous authority for the community as set out in [Policy 1.2 Upholding Indigenous Jurisdiction over Child and Family Services](#).

- (d) If a child/youth belongs to more than one Indigenous community and more than one set of laws may apply, see [Policy 1.2 - Upholding Indigenous Jurisdiction over Child and Family Services](#).

### **3. Consulting and cooperating with the Indigenous community**

- (a) Determine if the child/youth's Indigenous community has an agreement under CFCSA section 92.1 and conduct assessments, engage in planning, and make decisions in accordance with the agreement. See the [Repository of Agreements](#) for the current list of agreements.
- (b) Consult and cooperate with the child/youth's Indigenous community – even in the absence of an agreement with the community – to uphold the guiding principles in section 2 of the CFCSA, the service delivery principles in section 3, and the principles in section 9 of the Federal Act, including those related to the promotion of [substantive equality](#), as well as to consider the best interests of an Indigenous child/youth in section 10 of the Federal Act. Determine if the Indigenous community may be a party to:
- (I) A child/youth-specific agreement (sections 5, 6, and 7 of the CFCSA), with a child/youth's parents' consent;
  - (II) An Extended Family Program agreement (section 8 of the CFCSA), with a child/youth's care provider's consent (and the consent of the parent if they are a party to the agreement); and
  - (III) A youth agreement (section 12.2 of the CFCSA), with the youth's consent.
- (c) Consider the impact of colonization, in particular residential schools, to assess strengths and recognize resiliency when planning and delivering services specific to the child/youth and their family, pursuant to section 3 (c.1) of the CFCSA. Plan and deliver services in ways that promote substantive equality and cultural continuity pursuant to section 3(b.1) of the CFCSA.
- (d) Use the Circle as outlined in the [Aboriginal Policy and Practice Framework in British Columbia](#) as a restorative process to strengthen relationships and ensure collaborative decision making.

### **4. Contacting the Indigenous community**

- (a) Prior to making contact, determine how to approach the child/youth's Indigenous community by:
- (I) referring to any local protocol or applicable agreement in place with the community;
  - (II) consulting the child/youth and/or family;
  - (III) consulting the ICFS Agency serving the community, where applicable;
  - (IV) consulting the local MCFD office serving the community; or
  - (V) consulting the organization equivalent to MCFD/ICFS Agency if the Indigenous community is outside of BC.

- (b) Where there is a requirement to involve a child/youth's Indigenous community under the CFCSA, and reasonable efforts have been made (including multiple unsuccessful attempts through multiple communication channels such as in-person, telephone, email) and a reasonable amount of time has passed without receiving a response, consider:
  - (I) consulting with the ICFS Agency serving the Indigenous community, where applicable;
  - (II) providing a deadline for a response in writing (with a copy to the identified representative of the Indigenous community); and/or
  - (III) requesting guidance from MCFD Aboriginal Services at [mcf.asb.pdcw@gov.bc.ca](mailto:mcf.asb.pdcw@gov.bc.ca).
- (c) Document all efforts to contact and involve the Indigenous community.

## **5. Determining the best interests of an Indigenous child/youth**

- (a) When considering the best interests of an Indigenous child/youth, consider all relevant factors and give primary consideration to the three factors as listed in under Best Interests of Indigenous Child/Youth in [section A](#) of this policy.
- (b) Work with the child/youth, the child/youth's family, and the child/youth's Indigenous community to identify how these best interest factors impact decision making.
- (c) Consider the principle of cultural continuity, that an Indigenous child/youth's best interests are often promoted when the child/youth resides with members of the child/youth's family and the culture of the Indigenous community to which the child/youth belongs is respected (Federal Bill s. 9(2)(c)).
- (d) Document consideration of the best interest factors, and in particular the three primary best interest factors, when making decisions and taking actions for an Indigenous child/youth.

## **6. Notice before taking significant measures**

- (a) Provide prior notice of intended significant measures to:
  - (I) each parent;
  - (II) the care provider; and
  - (III) the Indigenous governing body.
- (b) When to provide prior notice of significant measures:
  - (I) Provide notice of an intended significant measure to the extent that such notice is consistent with the best interests of the child/youth. If notice is not in the best interests of the child/youth, with a supervisor's approval, do not provide notice.
  - (II) Determine the notice period based on the type of significant measure to be taken and the level of urgency.
    - The notice period should balance the urgency to make a decision with providing sufficient time for a response. The notice period should allow an opportunity for

those affected by the significant measure to express their views for the director's consideration.

- A notice period of 10 days is required for most notices.
- In urgent circumstances if notice must be less than 10 days, the notice period should be determined in consultation with a supervisor.
- A schedule of notice periods is included in Appendix K.

(c) How to provide notice of significant measures:

- (I) Provide notice through provision of the [“Notice to Parent, Care Provider and Indigenous Governing Body” form \(cf0092\)](#) via fax, registered mail or personal service.
- (II) It is best practice to phone the Indigenous governing body prior to faxing forms to confirm the name of the contact and make them aware that the faxed notice form is coming.
- (III) Where a parent is actively involved in creating and signing a voluntary care agreement or special needs agreement, written notice to that parent is not required.
- (IV) With the approval of a supervisor:
  - Notice to a parent or care provider may be provided only verbally.
  - Notice does not have to be given where a parent or care provider cannot be located after reasonable efforts.

(d) Notice of significant measures does not require the parents' consent. If a parent objects to the involvement of the Indigenous governing body, notice must still be provided, unless it is not in the best interests of the child/youth.

(e) If an Indigenous child/youth is under a continuing custody order, provide notice of significant measures to the parent, if consistent with the best interests of the child/youth.

(f) If a parent, care provider or Indigenous governing body provided their views during the notice period, it is best practice to follow up with those who provided input and inform them of the final decision about the significant measure.

(g) If circumstances change during the notice period and it is determined that it is in the best interest of the child/youth to take the proposed significant measure without delay or to take a different significant measure, inform those who were provided notice on the significant measure taken about the decision.

(h) Documenting prior notice of significant measures

- (I) If notice was not provided because it was not in the child/youth's best interest to provide notice prior to taking a significant measure, document the reasons.
- (II) If notice was provided only verbally to a parent or care provider, record provision of notice in the case notes.

- (III) If notice was through provision of a [“Notice to Parent, Care Provider and Indigenous Governing Body” form \(cf0092\)](#), save a copy of the document and fax or registered mail receipt in the case file.
- (IV) If the notice was for a removal and there will be a subsequent presentation hearing, document prior notice in Form A Report to Court.

## **7. Court proceedings – notice, right to make representations and party status**

- (a) Only Indigenous governing bodies, not other designated representatives listed in the CFCSA, are entitled to notice in CFCSA proceedings pursuant to ss. 28(2), 29(2), 44(2), 57(2), 58(2), 59(2) and 98(2). In these proceedings, Indigenous governing bodies have a right to make representations.
- (b) For notice of all CFCSA proceedings, serve notice in accordance with the CFCSA and Provincial Court CFCSA Rules as if the person or Indigenous governing body was referenced in provision for receiving notice in the proceeding.
- (c) If it is not in an Indigenous child/youth’s best interests to serve notice of any CFCSA proceeding, apply under s. 69 of the CFCSA to dispense with notice.
- (d) A parent or care provider is entitled to party status at these additional CFCSA hearings.

## **8. Prioritizing preventive and support services**

- (a) Where it is consistent with the child/youth’s best interests, give priority to the provision of support and preventive services to support the child/youth’s family.
- (b) Explore with parents the support services as outlined in Family Support Services and Agreements Policy 2.2, including services to expectant parents.
- (c) Review with the supervisor what support services and less disruptive measures have been explored before concluding that further child protection action is required in the child/youth’s best interests.
- (d) Document the provision or consideration of support and preventive services.

## **9. Decisions and actions respecting removal**

- (a) In deciding whether to remove an Indigenous child or youth, give paramount consideration to the child/youth’s best interests with the three best interest factors as listed in Best Interests of Indigenous Child/Youth in [section A](#) of this policy.
- (b) Unless the child/youth’s health or safety is in immediate danger, make reasonable efforts to support less disruptive measures by:
  - (I) prioritizing the provision of support and preventive services provided by the director, the Ministry of Children and Family Development, the Indigenous Child and Family Services Agency, other Ministries, the Indigenous community or support system of the family to have the child/youth continue to reside with one of the child’s parents or another adult member of the child/youth’s family;

- (II) prioritizing other less disruptive measures, as outlined in Child Protection Response Policy 3.5;
  - (III) either with parental consent or without parental consent (pursuant to s. section 74(2)(e)(v.1) or 79(a) of the CFCSA), engaging with the child/youth's extended family and the child/youth's Indigenous community to explore the less disruptive measures;
  - (IV) reviewing with the supervisor what reasonable and active efforts were made to keep the child/youth with one of the child/youth's parents or another adult family member as less disruptive measures, and what support and preventive services have been provided before concluding with a supervisor that reasonable efforts to use less disruptive measures have been made.
- (c) If, in consultation with a supervisor, it is determined that a removal is in the best interests of an Indigenous child/youth, provide notice of the intended removal and placement of the child/youth, if consistent with the child/youth's best interests, as per Best Interests of Indigenous Child Youth in [section A](#) of this policy:
- (d) Provide notice using the [“Notice to Indigenous Governing Body, Parent and Care Provider”](#) form. Supervisor approval is needed to rely on verbal notice of an intended removal and placement. If verbal notice is provided, details of the notice should be documented.
- (e) Unless circumstances change and necessitate a removal before the notice period has ended, consider all views received about the proposed removal and placement and reassesses whether a less disruptive measure or a different placement would be in the child/youth's best interests.
- (f) Documentation of considerations prior to removal
- (I) Document why the removal is in the best interests of the child/youth in the incident notes and [Form A: Report to Court](#).
  - (II) Document any less disruptive measures, any support or preventive services provided, and any measures the director took for the child/youth to continue to reside with one of the child/youth's parents or another adult member of the child/youth's family in the incident notes and include in [Form A: Report to Court](#).
- (g) Mandatory removal clause as a term of supervision order
- (I) Do not recommend a mandatory removal clause in a supervision order respecting an Indigenous child/youth because a mandatory removal precludes the consideration of a child/youth's best interests.
  - (II) An Indigenous child/youth should not be removed under s. 36(1)(b) or s. 42(1)(b) unless it is in the best interests of the child/youth. If there is a breach and it is not in the best interests of the child/youth to remove the child/youth, promptly consult a Team Leader.

## 10. Placement with a parent

- (a) A child/youth should not be removed where it is in the best interests of the child/youth to live with a parent. See procedure “When a parent is protecting a child from harm by another parent

living separately” in [Policy 3.5](#) (pages 50-51) for less disruptive measures than removal when parents live in separate households. Note:

- (I) When a supervision order is needed to override parenting time under an existing *Family Law Act* (FLA) or *Divorce Act* (DA) order or agreement in order to protect the child/youth, the director’s supervision must not exceed 12 months total.
  - (II) If longer term measures are needed to protect the child/youth, a FLA order or written agreement between the parents may need to be put in place by the protecting parent prior to the expiration of the supervision order.
- (b) After a removal, if the child/youth cannot be returned in a timely way to the parent, and if there is a second parent who is apparently entitled to custody and who lives in a separate household, consider if the child/youth’s best interests requires placing the child/youth to the second parent. A parent can be considered a parent apparently entitled to custody if that parent has guardianship and has been exercising parenting time in which the parent has responsibility for the care, control, and supervision of the child/youth (even if just weekend parenting time). If the parents can agree to a change in the parenting time arrangements that will keep the child/youth safe, the director can withdraw from proceedings. But if the parents cannot agree to a change in the parenting time arrangements:
- (I) The timing of return to the second parent would need to be coordinated with a supervision order or protective intervention order under the CFCSA to temporarily override an existing FLA or *Divorce Act* (DA) order or agreement between the parents.
  - (II) Supervisory approval and consultation with legal counsel is necessary regarding potential conflicts of the director’s CFCSA application with existing FLA or DA court orders, particularly when:
    - the FLA/DA order was recent;
    - some or all of the same issues were before the court that made the recent FLA/DA order; or
    - there is no significant change in circumstances since the recently made FLA/DA order.
  - (III) If longer term measures are needed to protect the child/youth, a FLA order or written agreement between the parents may need to be put in place by the protecting parent prior to the expiration of the supervision order.
- (c) When in the child/youth’s best interests, while the child/youth is in the care or custody of the director, place the child/youth with a parent who does not have guardianship or a parent who does have guardianship but does not have the parental responsibility of care, control, and supervision of the child (parent not apparently entitled to custody) using a Restricted Caregiver Agreement under section 94 of the CFCSA. The parent would be required to be assessed as a restricted caregiver according to [Resource Work Policy 8.2](#). Use Agreement Type 007, Family Care Home Agreement – No Payment, and encourage the parent to apply for the [Canada Child](#)

[Benefit](#). If the director determines that the child/youth cannot be returned to the parent from whom the child was removed,

- (I) Encourage the parent who is acting as a caregiver to make an FLA application for guardianship and/or a change in parenting arrangements which can travel along with CFCSA proceedings. See procedure “FLA Guardianship Applications for a Child under a CFCSA Custody Order” in [Policy 3.5](#) (page 58).
- (II) If the parent obtains FLA guardianship and the parental responsibility for the care, control, and supervision of the child/youth, return the child/youth to that parent as the parent apparently entitled to custody.

## **11. Considering Indigenous customs and traditions in placement decisions**

- (a) Consult with the child/youth’s Indigenous community to determine if customary care or custom adoption traditions specific to the child/youth’s Indigenous community may be considered when determining placement.
- (b) Customary care arrangements can be financially supported through interim or temporary custody orders with a person other than a parent or through a parent giving care of the child/youth to another person who is supported by an Extended Family Program agreement under section 8 of the CFCSA.

## **12. Ongoing reassessment of placement**

- (a) When an Indigenous child/youth has been placed with anyone other than their parent or adult member of their family, reassess on an ongoing basis whether the child/youth may be safely placed with their parent or adult family member. Reasonable times to reassess include but are not limited to:
  - (I) when a previously unknown parent or adult family member is identified;
  - (II) when requested by the child/youth’s Indigenous community;
  - (III) whenever a change of placement or legal status is being considered; and
  - (IV) when the child/youth’s care plan is reviewed, at a minimum of every six months.
- (b) If a child/youth has been placed with an adult family member, continue to re-assess placement with a parent.
- (c) Document all actions that have been taken in the ongoing reassessment of placing an Indigenous child/youth with their parent or adult member of their family, and where applicable, the reason(s) why such placement is not in the child/youth’s best interests.
- (d) Continually work with parents, other adult family members, and the child/youth’s Indigenous community to address concerns identified during reassessment and support them in establishing safe placement for the child/youth.



### 13. Promoting child’s attachment and emotional ties to family when separated

- (a) Develop a plan to promote the child/youth’s attachment and emotional ties to family members when separated, including but not limited to:
  - (I) visitation and access;
  - (II) role of the caregiver in promoting attachment and emotional ties through supporting ongoing contact with family members; and
  - (III) promoting attachment and emotional ties through changes in placement and transitioning out of care.

## E: Related Resources

Type of Resource	Resource
Legislation/Regulation	<a href="#"><i>An Act respecting First Nations, Inuit and Métis children, youth and families</i></a> <a href="#"><i>Child, Family and Community Service Act</i></a>
Form	<a href="#"><i>“Notice of Significant Measure to Parent, Care Provider and Indigenous Governing Body” (cf0092)</i></a>

## F: Table of Changes

Amendment Date	Cliff #	Section	Change Type	Notes
2021/02/11	N/A	Procedures ‘Involving the Indigenous community’	am	Clarify who consents for determining if the Indigenous community may be a party to an agreement.
2022/11/25	N/A	Policies, Procedures, and Glossary		Reflect Bill 38 CFCSA amendments
2023/03/17	N/A	Procedures ‘Confirming whether an Indigenous law applies to a child/youth’		Clarifies where to find Indigenous laws and how to initiate contact with an Indigenous authority.

## G: Glossary

Term	Definition
Care provider	<p>A person who has primary responsibility for the day-to-day care of a child/youth, other than a child/youth’s parent, including in accordance with the customs or traditions of the Indigenous group, community, or people to which the child/youth belongs.</p> <p>This term includes a person who cares for a child/youth in an out-of-care living arrangement but does not include caregivers (foster parents).</p>
Consultation and cooperation	<p>When used in relation to an Indigenous community, denotes a process that respects the community’s right to influence the outcome of decision-making processes affecting its children/youth. This moves beyond the community simply having its views heard or having information shared with it, with the objective being a mutually acceptable outcome.</p> <p>Where the director has a duty under the CFCSA to consult and cooperate and there is uncertainty over whether the action taken meets that duty, legal advice should be obtained.</p>
Coordination agreement	<p>The mechanism established under the Federal Act for Canada, BC, and an Indigenous governing body to address coordination measures for the exercise of Indigenous jurisdiction over Indigenous child and family services. The Province may enter into a coordination agreement under section 90.1(1)(a) of the CFCSA.</p> <p>The purpose of a coordination agreement is to harmonize service delivery to reduce the risks of gaps, confusion, and uncertainty. Note – a coordination agreement is not necessary for an Indigenous community to enact laws and provide Indigenous child and family services under those laws. If a coordination agreement exists for a community, the director must act in accordance with it when determining actions in relation to a child/youth to whom the community’s Indigenous law applies.</p>
Designated representative of the child’s Indigenous community	<p>The position identified as the designated representative of a child’s Indigenous community in s. 12 and schedules 1, 1A, 1B and 2 in the <a href="#">Child, Family and Community Service Regulation</a>.</p>
Family	<p>A person whom a child/youth considers to be a close relative or whom the child/youth’s Indigenous community considers, in accordance with customs and traditions, to be a close relative of the child/youth.</p>
Indigenous authority	<p>A body or entity, including an Indigenous governing body, that is authorized by an Indigenous governing body to provide Indigenous child and family services under Indigenous law</p>
Indigenous child and family services	<p>Services provided by an Indigenous authority to support Indigenous children and families, including prevention services, early intervention services and child protection services</p>

Indigenous governing body	<p>An entity that is authorized to act on behalf of Indigenous peoples that hold rights recognized and affirmed by section 35 of the <i>Constitution Act</i>, 1982.</p> <p>For more information, see “Indigenous Governing Bodies in the <i>Declaration on the Rights of Indigenous Peoples Act</i>”.</p> <p>Once it is clear which Indigenous governing body has been authorized to act on behalf of an Indigenous group, community, or people, that information will be added to a table of Indigenous governing bodies and the communities they represent.</p>
Indigenous law	A law in relation to Indigenous child and family services that is made in respect of Indigenous children and families by an Indigenous governing body in accordance with the law-making authority of the Indigenous governing body.
Less disruptive measures	<p>All measures less disruptive than removal for protecting the child/youth. Less disruptive measures are listed in policy 3.5, including:</p> <ul style="list-style-type: none"> <li>• Informal and formal preventive and support services</li> <li>• Supervision orders</li> <li>• Agreements with the parent(s) ensuring that the individual who has caused the child/youth to need protection will leave the family home;</li> <li>• Protective Intervention Orders</li> <li>• Necessary health care Orders</li> <li>• Extended Family Program Agreement arrangements</li> <li>• Voluntary Care Agreements</li> <li>• Special Needs Agreements</li> <li>• Youth Agreements</li> </ul>
Parent	<p>Parent under the CFCSA includes:</p> <p>(a) a person to whom guardianship or custody of a child/youth has been granted by a court of competent jurisdiction or by an agreement, and</p> <p>(b) a person with whom a child/youth resides and who stands in place of the child/youth's parent or guardian, but does not include a caregiver, prospective adoptive parent, or director.</p> <p>For the purposes of the law of British Columbia, parentage is further defined under Part 3 of the <a href="#">Family Law Act</a></p>
Parent apparently entitled to custody	A person who is (1) a parent; (2) a guardian; and (3) exercises parenting time (day-to-day care, control, and supervision of the child/youth under an order, formal agreement, or informal parenting agreement)
Paramount consideration	That which should be considered above all other considerations
Party Status	The right to participate in a court case, receive disclosure of evidence and consent to court orders.
Primary consideration of Best Interest factors	Among all best interest factors, these factors carry more weight than other best interest factors.

Reasonable efforts or reasonable steps	Prompt and continual efforts, including using all known resources and contacts as well as reaching out to individuals, agencies and organizations that might be able to provide helpful information.
The right to make representations	The right to make representations in court is the ability to provide information about the relevant facts of a matter and views on the proposed intervention, without including party status.

## H: List of Acronyms

Acronym in Policy	Full Term
CFCSA	Child, Family and Community Service Act
ICFS Agency	Indigenous Child and Family Services Agency
MCFD	Ministry of Children and Family Development

## I: Appendix | Principles from An Act respecting First Nations, Inuit and Métis children, youth and families

The Federal Act must be interpreted and administered according to the purpose and principles set out in Sections 8 and 9.

### Purposes

- Affirming the inherent right of Indigenous self-government which includes jurisdiction (law making authority) respecting child and family services;
- Establishing national standards for providing child and family services to Indigenous children/youth; and
- Contributing to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

### Principles

The following principles outlined in s.9 of the Federal Act can assist workers and courts in interpreting and understanding the national standards:

Best interests of child – the national standards set out in the Federal Act should be administered and interpreted in accordance with the best interest of the child principle. See [Appendix J: Best Interests of the Indigenous Child](#).

Cultural continuity – the national standards set out in the Federal Act should be interpreted and administered with the understanding that cultural continuity is essential to the well-being of

Indigenous children/youth, families, and communities. This principle is reflected in these concepts:

- The transmission of Indigenous languages, cultures, practices, customs, traditions, ceremonies, and knowledge is integral.
- An Indigenous child/youth's best interests are often promoted when the child/youth resides with family members and the culture of their Indigenous community is respected.
- Services provided to Indigenous children/youth and families must not be provided in a way that contributes to the assimilation of their Indigenous community or the destruction of their Indigenous culture.
- Characteristics and challenges of the region in which an Indigenous child/youth, family, or community is located must be considered.

Substantive equality – the national standards set out in the Federal Act should be interpreted and administered in accordance with these concepts, which apply to Indigenous children/youth, families, and communities:

- the rights and distinct needs of a child/youth with a disability are to be considered in order to promote the child/youth's participation, to the same extent as other children/youth, in the activities of their family or Indigenous community;
- a child/youth must be able to exercise their rights under the Federal Act, including the right to have their views and preferences considered in decisions that affect them, and they must be able to do so without discrimination, including discrimination based on sex or gender identity or expression;
- a child/youth's family member must be able to exercise their rights under the Federal Act, including the right to have their views and preferences considered in decisions that affect them, and they must be able to do so without discrimination, including discrimination based on sex or gender identity or expression;
- the Indigenous governing body acting on behalf of the child/youth's Indigenous community must be able to exercise without discrimination the rights of the Indigenous community under the Federal Act, including the right to have its views and preferences considered in decisions that affect them; and
- in order to promote substantive equality between Indigenous children/youth and other children/youth, a jurisdictional dispute must not result in a gap in the child and family services that are provided in relation to Indigenous children/youth.

## **J: Appendix | Best Interests of the Indigenous Child**

The Federal Act sets out the best interests test for Indigenous children and youth 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 and youth.

Key differences include:

Federal Act - BIOC	CFCSA - BIOC
Applies broadly to making decisions and taking actions	Applies where it is specifically referenced, mostly in the context of court decisions
Must be the <u>primary</u> consideration when making decisions and taking actions when providing child and family services to Indigenous peoples	Guiding principles say CFCSA must be interpreted and administered so that safety and well-being of children and youth are the paramount considerations
Must be the <u>paramount</u> consideration when making decisions/taking actions related to a child/youth's removal	BIOC not specifically referenced in the context of removal.
<p>Three primary considerations must be considered with greater weight than the remaining factors:</p> <ul style="list-style-type: none"> <li>(a) the child/youth's physical, emotional and psychological safety, security, and well-being;</li> <li>(b) the importance of the child/youth having an ongoing relationship with their family and Indigenous community; and</li> <li>(c) the importance of preserving the child/youth's connection to their culture.</li> </ul>	<p>All relevant factors must be considered equally, including similar factors as follows:</p> <ul style="list-style-type: none"> <li>• Child/youth's safety</li> <li>• Quality of the child/youth's relationship with parent, and effect of maintaining that relationship</li> <li>• Importance of an Indigenous child/youth learning about and practising their Indigenous traditions, customs and language and belonging to their Indigenous community</li> </ul>
<p>All factors related to the circumstances of the child/youth must be considered including:</p> <ul style="list-style-type: none"> <li>(a) the child/youth's cultural, linguistic, religious and spiritual upbringing and heritage;</li> <li>(b) the child/youth's needs, given the child/youth's age and stage of development, such as the child/youth's need for stability;</li> <li>(c) the nature and strength of the child/youth's relationship with their parent, the care provider and any member of their family who plays an important role in their life;</li> <li>(d) the importance to the child/youth of preserving the child/youth's cultural identity and connections to the language and territory of the Indigenous group, community, or people to which the child belongs; and</li> <li>(e) the child/youth's views and preferences, giving due weight to the child/youth's age and maturity, unless they cannot be ascertained.</li> </ul>	<p>Substantially similar factors already addressed in s. 4, which is not an exhaustive list.</p> <ul style="list-style-type: none"> <li>(a) the child/youth's safety;</li> <li>(b) the child/youth's physical and emotional needs and level of development;</li> <li>(c) the importance of continuity in the child/youth's care;</li> <li>(d) the quality of the relationship the child/youth has with a parent or other person and the effect of maintaining that relationship;</li> <li>(e) the child/youth's cultural, racial, linguistic and religious heritage;</li> <li>(f) the child/youth's views;</li> </ul>
<p><u>Additional</u> factors to consider:</p> <ul style="list-style-type: none"> <li>(a) any plans for the child/youth's care, including care in accordance with the customs or traditions of the Indigenous group, community or people to which the child/youth belongs;</li> </ul>	<p>These factors not addressed in BIOC.</p> <p>However, similar considerations are in CFCSA s. 13 list of circumstances when a child/youth needs protection.</p>

<p>(b) any family violence and its impact on the child/youth, including whether the child/youth 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/youth; and</p> <p>(c) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security, and well-being of the child/youth.</p>	
<p>Not addressed, but no conflict or inconsistency</p>	<p><u>Existing factor</u> to consider (not included in the Federal Act):</p> <ul style="list-style-type: none"> <li>The effect on the child/youth if there is a delay in making a decision</li> </ul>

## K: Appendix | Notice Schedule

**For court proceedings** where notice to any party is required under the CFCSA, provide the same notice to the parent, care provider and Indigenous governing body, with the exception of applications for orders under s. 17, 65, or 97 of the CFCSA, which are not considered significant measures.

Where notice to a designated representative of an Indigenous community is required under the CFCSA, provide notice to the child/youth’s Indigenous community only through the designated representative of the community where:

- there is no identified Indigenous governing body for the same Indigenous community; or
- the designated representative is the same as the Indigenous governing body contact.

Otherwise, provide notice to both the designated representative and the Indigenous governing body.

Where notice is required under the CFCSA, a court order under s. 69 is necessary to dispense with the requirement for notice.

**For all other significant measures that do not require notice under the CFCSA**, a default guideline of 10 days is recommended for notice to the parent, care provider and Indigenous governing body. In urgent circumstances, if notice must be less than 10 days, the notice period is determined in consultation with a supervisor. The purpose of notice is to provide those affected by the measure with an opportunity to express their views for the decision maker’s consideration. Notice must be provided unless not in the best interests of the child/youth.

X = current notice requirements under CFCSA

O = new notice requirements under Federal Act)

**Note:** Where notice is required under both the CFCSA and the new Federal Act, serve notice only once as required by the CFCSA.

Significant Measure (by section of CFCSA)	Prior notice provided to the following persons	Notice period
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<b>Current court proceedings requiring notice under CFCSA</b>	<b>Parent</b>	<b>Care Provider if having care of child/youth</b>	<b>Designated Representative of Indigenous Community</b>	<b>Indigenous Governing Body</b>	<b>Notice period (as required under CFCSA)</b>
Applying for a protective intervention order (s. 28)	XO	XO	N/A	O	2 days
Applying for necessary health care order (s. 29)	XO	X*O	N/A	O	2 days
Applying for supervision orders (s. 29.1)	XO	XO	Informed	O	7 days
Applying for orders made at a protection hearing (s. 41)	XO	X*O	X	O	10 days
Applying for an order at a subsequent hearing about enforcement of supervision order (s. 42.2)	XO	XO	X	O	10 days
Applying for extension of orders (s. 44, s. 44.1)	XO	XO	X	O	10 days
Applying for a supervision order of child/youth after temporary custody order ends (s. 46)	XO	XO	X	O	10 days
Applying for a continuing custody order (s. 49)	XO	XO	X	O	10 days
Director's intent to consent to adoption (s. 50(2))	X*O	X*O	N/A	O	30 days
Cancelling a continuing custody order (s. 54)	XO	X*O	X	O	10 days
Transferring custody under s. 54.01	XO	XO	X	O	10 days
Transferring custody under s. 54.1	X*O	XO	X	O	10 days
Applying for access orders (s. 55, s. 56 s. 57.01, and s. 57.1)	XO	X*O	X*	O	10 days
Making changes to supervision, temporary custody and access orders (s. 57)	XO	X*O	X*	O	10 days



Applying for the Public Guardian and Trustee to be a temporary property guardian (s. 58)	XO	X*O	X	O	10 days
Applying for an order that a child/youth undergo a psychiatric or medical examination (s. 59)	XO	O	N/A	O	2 days
Apply for a restraining order in relation to a child/youth in care (s. 98)	O	O	N/A	O	2 days

\*Notice may have been required under the CFCSA, depending on circumstances.

<b>Significant measures not involving court proceedings requiring notice under the CFCSA</b>	<b>Parent</b>	<b>Care Provider, if having care of child/youth</b>	<b>Designated Representative of Indigenous Community</b>	<b>Indigenous Governing Body</b>	<b>Notice period (suggested guidelines)</b>
Entering or renewing a voluntary care agreements (s. 6)	O Unless signing the agreement	O	N/A	O	Default minimum 10 days
Entering or renewing a special needs agreements (s. 7)	O Unless signing the agreement	O	N/A	O	Default minimum 10 days
Entering or renewing agreements with youth (s. 12.2)	O	O	N/A	O	Default minimum 10 days
Removing child/youth (s. 30, s. 36, s. 42)	O	O	N/A	O	Default minimum 10 days
Withdrawal before an order is made at presentation hearing (s. 33.01)	O	O	N/A	O	Default minimum 10 days
Withdrawing from CFCSA proceedings after presentation hearing (s. 48(1))	O	O	N/A	O	Default minimum 10 days
Withdrawing from CFCSA proceeding without returning to a parent (s. 48(1.1))	O	O	N/A	O	Default minimum 10 days
Returning child/youth before presentation hearing related to a removal (s. 33(1) and s. 33(1.1))	O	O	N/A	O	Default minimum 10 days

Requesting placement of child/youth for adoption (s. 50.1 and Federal Act s. 16)	O	O	N/A	O	Default minimum 10 days
Beginning or changing the placement for a child/youth in an out of home living arrangement (Federal Act s. 16)	O	O	N/A	O	Default minimum 10 days

**L: Metadata**

<b>Description</b>	Working with Indigenous children, youth, families and communities
<b>Keywords</b>	C-92, Federal Indigenous Child Welfare, Federal Act, Policy 1.1
<b>Synonyms</b>	Indigenous child protection