

Guide to the Federal Legislation:

An Act Respecting First Nations, Inuit and Métis Children, Youth and Families

Release Version 1.0

November 2025

Association of
Native Child and
Family Services
Agencies of
Ontario


ANCFSAO



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INTRODUCTION

Purpose and Scope of the Guide

This guide is developed as a resource to demystify *An Act Respecting First Nations, Inuit, and Métis Children, Youth and Families*—hereafter referred to as "the Federal Act." Designed for a broad audience, including service providers, social workers, community members, Indigenous Child and Family Wellbeing Agencies (ICFWAs), First Nations and Indigenous Governing Bodies (IGBs), this guide aims to deepen general understanding and improve the implementation of the Federal Act at agency, service provider and community levels.



Through Governance Engagement Mechanism forums (GEMs), Indigenous Services Canada (ISC) pledged ongoing dialogue with Section 35 rights-holders and Indigenous partners. Supported by ISC funding, ANCFSAO facilitated seven GEM events between February 2022 and November 2023. These sessions were instrumental in gathering insights about the implementation of the Federal Act in Ontario from a variety of stakeholders. Feedback from these discussions revealed a significant demand for clear, unified approaches to effectively understand and apply the Federal Act in service delivery across the province. This guide is a direct response to these articulated needs, striving to ensure equitable and effective service delivery to Indigenous children, youth and families across Ontario.

ANCFSAO's goal is to support First Nations, ICFWAs and community partners in protecting Indigenous children and advocating for the development and application of Indigenous laws independent of federal or provincial legislation. By providing a detailed exploration of the Federal Act's background, principles and standards, as well as its service delivery implications and relationship to the *Child and Youth Family Services Act, 2017* (CYFSA), this Guide seeks to foster the development of culturally attuned, community-led child and family services. These efforts are in alignment with federal guidelines, Indigenous sovereignty and legal traditions and aim to advance the well-being, cultural integrity and rights of Indigenous children and families within their inherent jurisdiction and sovereignty. This resource encourages a proactive, forward-looking approach to decision-making, inspired by the 'Seventh Generation' principle. This principle is an Indigenous philosophy adopted across many nations that emphasizes making decisions with the long-term welfare of future generations in mind. By adopting this principle, we aim to enhance the welfare of Indigenous children and families to come.

ACKNOWLEDGEMENT OF TRADITIONAL LANDS AND PEOPLE

We recognize that our work takes place on the traditional territories of the Anishinaabeg, Haudenosaunee, Wendat and Métis peoples across Ontario, where First Nations, Inuit and Métis communities have thrived for generations. We honor the Elders past, present and emerging, and recognize the deep connection these communities have to this land. Our understanding of the lasting impacts of colonization shapes our commitment to healing and building a promising future for all generations.

In our journey towards reconciliation, we pledge to collaborate with Indigenous communities, respecting their sovereignty, culture, and rights as the original caretakers of the land. Our work aims to safeguard and improve the well-being of Indigenous children, families and communities, guided by Indigenous laws and the foundational principles of the Federal Act. Together, we are dedicated to a future where Indigenous laws and traditions are acknowledged and respected, fostering the prosperity and resilience of Indigenous cultures and communities.

About ANCFSAO

ANCFSAO is a membership association made up of thirteen Indigenous Child and Family Wellbeing Agencies (ICFWAs), twelve of which are fully mandated and one agency that is pre-mandated to provide child protection services to First Nations, Inuit and Métis people across Ontario. All our member agencies have multi-service functions as delegated within the respective First Nations communities they serve and are integrated service providers offering wholistic, wraparound prevention-focused supports. Collectively, our membership provides services to over 90% of all First Nations Communities in Ontario as well as to the urban Indigenous populations within their jurisdictions





BACKGROUND

Context of Indigenous Child Welfare / Wellbeing

More than 100 years of Indigenous child welfare history in Canada has been marked by deeply troubling policies, laws and practices aimed at systematically separating Indigenous children from their families, cultures and lands. This dark legacy, rooted in attempts to assimilate Indigenous children into Euro-Canadian culture, includes the *Indian Act*, the era of residential schools, the Sixties Scoop and the more recent Millennial Scoop. These efforts have led to a profound loss of culture, language and identity among Indigenous communities, contributing to intergenerational trauma and significant disparities in economic security, health, education and social well-being.

The alarming overrepresentation of First Nations, Inuit and Métis children in the foster care system not only highlights a humanitarian crisis, but also stresses the critical need for a child and family services system that respects Indigenous culture, community and self-determination. Indigenous children constitute a disproportionately high percentage of the foster care population in Canada. Despite representing just 7.7% of all Canadian children under the age of 15, they account for over 53.8% of children in foster care (Statistics Canada, 2021).

A pivotal moment in addressing these systemic biases came with the Canadian Human Rights Tribunal (CHRT) ruling in 2016, which was the result of a complaint filed by the First Nations Child & Family Caring Society of Canada, led by Cindy Blackstock and the Assembly of First Nations. The CHRT found that the Canadian government was discriminating against First Nations children and families living on reserves by providing less funding for child and family services than is available to other children. This landmark decision illuminated the significant disparities in access to services necessary for their safety and well-being, calling for immediate and comprehensive reform.

Several advancements have been made to address these challenges, including the creation of ICFWAs aimed at returning children in child welfare to the care of Indigenous organizations, service providers and ultimately, to their families and communities.

The enactment of the Federal Act, effective January 1, 2020, and upheld by a Supreme Court decision against a challenge from Quebec in February of 2024, marks a pivotal moment in recognizing and empowering Indigenous sovereignty over child and family welfare. [1]

The Federal Act opens new avenues for Indigenous communities to assert jurisdiction over child welfare services, a capacity that was constrained under previous provincial frameworks. By recognizing First Nations authority to legislate and enforce their own child welfare laws, the Federal Act creates space for a system that is rooted in the cultures, values and governance of Indigenous communities themselves, reflecting a significant shift towards First Nations, Inuit and Métis self-determination in child and family services.

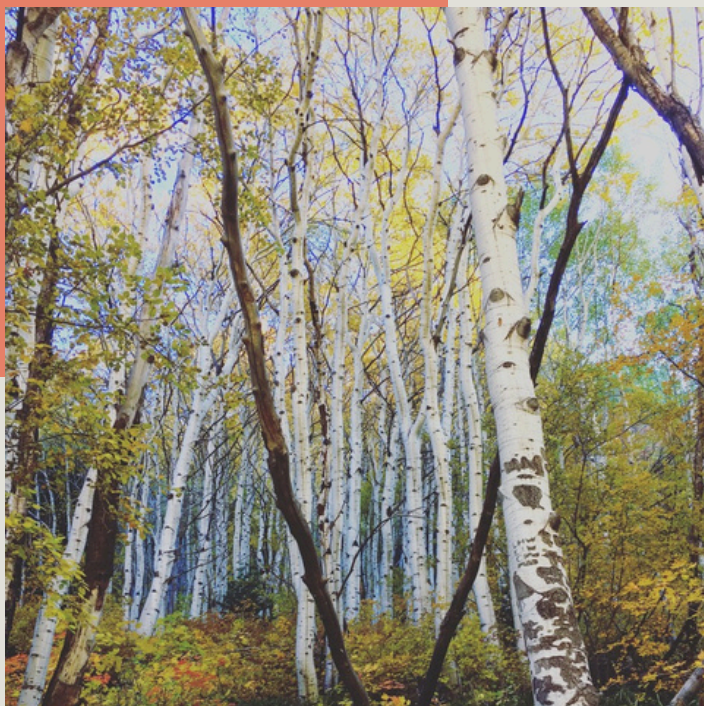
The Federal Act additionally creates national standards in the provision of child protection services to Indigenous children and families which may apply irrespective of whether the provider is mandated by provincial, territorial or Indigenous law. These national standards create a floor of service provision standards specifically in relation to the best interests of the Indigenous child and the provision of child and family services to Indigenous children and families.

These standards are applicable to all providers of child welfare services to Indigenous children and families, including those mandated by provincial child welfare laws and intended to provide a standard of service provision to Indigenous children irrespective of their location in the country that remedies the often arbitrary and traumatic emphasis on protection services. Two particular features of the national standards are:

- a. **the priority on preventative care set out in s.14;**
- b. **and the prohibition on socioeconomic factors alone as the grounds for apprehending an Indigenous child set out in s.15.**

Finally, the Federal Act is intended to contribute to the implementation of the United Nations Declaration on the Rights of Indigenous People (UNDRIP) in Canada.

1. On February 9, 2024, the Supreme Court unanimously upheld the constitutionality of *Bill C-92, An Act Respecting First Nations, Métis, and Inuit Children, Youth and Families*. This landmark decision dismissed Quebec's jurisdictional challenge, affirming Indigenous peoples' jurisdiction over child and family services. The Supreme Court's ruling clarifies that this legislation aligns with Canada's constitutional framework without creating a third level of government, highlighting the recognition of Indigenous rights protected under *the Constitution* and supporting the implementation of the UNDRIP.



The Federal Act changes the legal and service landscape for agencies mandated under the CYFSA in two major ways:

1. The Federal Act creates a floor of minimum standards which agencies must adhere to, where there is a gap in the CYFSA or the standards in the CYFSA are lower still;
2. As Indigenous laws are enacted and come into force, provincially mandated agencies must engage with the legal and service requirements in those laws as they pertain to families who have or continue to receive services from provincially mandated agencies.

As of September 2025, three Ontario First Nations have enacted their Child Wellbeing Laws/Codes under this legislation, with at least 22 more in the planning stages. This movement towards self-governance in child welfare is anticipated to have profound impacts on the well-being of Indigenous children and families, promising a future where services are not only culturally tailored, but are also governed by and for the very communities they serve. The process of developing these laws involves deep community engagement, collaboration with legal experts and a reclamation of Indigenous legal traditions and practices. It represents a hopeful stride towards restoring Indigenous authority over child and family matters and embodies the spirit of reconciliation through action.

This evolving legislative landscape reflects the complexities of enacting new laws, their impact on service provision, legal concerns and Indigenous governance. This Guide aims to clarify these complexities and provide information on the national standards and their implications for service delivery. It is developed to assist service providers and those involved in the child welfare sector in adopting consistent approaches in alignment with the Federal Act that also respects, advocates for, and upholds the unique Indigenous laws and traditions when working with First Nations, Inuit and Métis children, youth, families and communities.

[1] Wabaseemoong Independent Nations Customary Care Code, on January 8, 2021, Kitchenuhmaykoosib Inninuwug Dibenjikewin Onaakonikewin on April 1, 2023, and Algonquins of Pikwàkanagàn First Nation's law, Nigig Nibi Ki-win, on April 19, 2024

[2] Indigenous Services Canada. (2025). Indigenous child and family services legislation. Retrieved from <https://www.sac-isc.gc.ca/eng/1608565826510/1608565862367#wb-auto-4>

It is important to note that the Federal Act sets out the minimum standards for culturally relevant service provision to Indigenous children and families, but where the CYFSA's standard is equivalent or higher, the CYFSA's provisions obtain. Examples of such provisions include:

- **Notice requirements:** the CYFSA mandates consultation for all services provided to Indigenous children and families and more robust notification and consultation for the provision of prescribed services. The Federal Act's provisions on notice and consultation, while strong, are not as robust as those of the CYFSA.
- **Representations and Party status:** under the CYFSA, Indigenous communities have full party status where their children are the subject of child protection proceedings, whereas the Federal Act requires only that Indigenous communities be entitled to make representations.

Customary Care in Ontario

The guide throughout, makes references to customary care. In Ontario, Customary Care is a term utilized broadly, including in the provincial legislation governing child welfare services delivery, to recognize customary practices unique to Indigenous children, families and communities whereby First Nations, Inuit and Métis children are placed in customary care placements with either immediate or extended family members, in their own community or with family outside their community. It is important to note that while customary care is recognized via the relevant sections of the CYFSA (ss. 2, ss. 80), the specifics related to the processes and decisions are made in accordance with the community's unique customary traditions, codes and laws.

In the provincial child welfare framework, Customary Care as a concept arose as a response to the historical systemic separation of Indigenous children from their families, communities and culture, including residential schools and the 60's Scoop.

However, the concept is not new - First Nations, Inuit and Métis communities all across Turtle Island had practiced customary and communal child and family caring since times immemorial prior to colonization. It is an Indigenous natural life view, or philosophy of childcaring that is unconditional and not time stamped, unlike colonial concepts of child placements such as foster care. Customary Care is an inherent practice and right, rooted in the Indigenous ways of thinking and being.

An Act Respecting First Nations, Inuit and Métis Children, Youth and Families

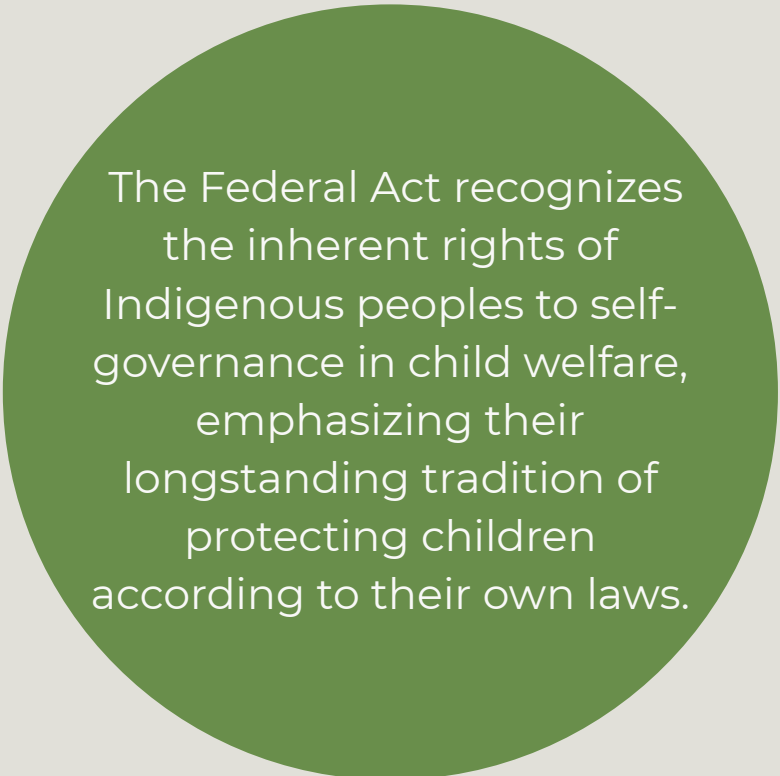


Overview of the Federal Act

The Federal Act signifies a historic leap towards reconciliation, acknowledging the inherent right of Indigenous peoples to self-determine child and family services while also setting standards for all provincially mandated agencies across Canada in the provision of services to Indigenous children and families.

Enacted in June 2019 and in force since January 1, 2020, this legislation marks the first recognition of inherent Indigenous jurisdiction over child and family services in Canada. The Federal Act also establishes national minimum standards for service delivery to Indigenous children and families, both on- and off-reserve and whether served by provincially mandated agencies or through the laws of their community or communities.

The Federal Act is grounded in principles that prioritize children's best interests, cultural continuity and substantive equality, aiming to address systemic disparities and injustices within the child welfare system by acknowledging past policy failures. It introduces a framework for Indigenous communities to assert their jurisdiction, allowing for the articulation and application of their laws in conjunction with federal and provincial/territorial laws.



The Federal Act recognizes the inherent rights of Indigenous peoples to self-governance in child welfare, emphasizing their longstanding tradition of protecting children according to their own laws.

Preamble and Objectives

The preamble of the Federal Act acknowledges Parliament's commitment to correcting historical injustices faced by Indigenous communities, such as those from the residential school system, aligning with the Truth and Reconciliation Commission's Calls to Action. It highlights the federal government's commitment to implement UNDRIP and stresses the importance of respecting Indigenous sovereignty, laws, rights and treaties. It also emphasizes maintaining connections between Indigenous children and their families and communities. Accordingly, the interpretation and application of any part of the Federal Act must align with the principles set out in the preamble, ensuring that all actions under the Federal Act honour these foundational commitments.

The Federal Act's main objectives are:

- » To affirm Indigenous peoples' inherent right to self-governance and jurisdiction over child and family services;
- » To establish national principles and standards for the provision of child and family services to Indigenous children; and,
- » To contribute to the implementation of UNDRIP.

This Federal Act signifies the federal government's dedication to establishing a meaningful partnership with Indigenous communities, opening an avenue to recognition, as federal law of Indigenous communities' own laws, traditions and governance systems concerning child welfare. It acknowledges the Government of Canada's commitment to sustainable, needs-based funding for services and highlights that cooperation among federal, provincial and Indigenous governments is crucial for achieving reconciliation.



Implications for Service Delivery

Provincially mandated agencies providing services under provincial law

The Federal Act establishes a framework for child welfare services across Canada, setting national standards that promote the wholistic well-being of Indigenous children. This legislation requires service delivery that is culturally respectful and honors the unique customs, identities and family connections of FNIM communities.

KEY ELEMENTS OF SERVICE DELIVERY

Communications and Transparency

Effective service delivery requires clear, consistent and respectful communication with all stakeholders, including parents, caregivers, extended family/kin, and IGBs from the start of a file and on an ongoing basis throughout the life of the service provided by the agency. Establishing circles of support and wraparound care ensures that all parties are informed, engaged and actively participating in decision-making processes. This collaborative and open communication approach fosters a wholistic support network for the child.



Substantive Equality

Service provision to Indigenous children and families has been characterized by discriminatory practices and systems, which have exacerbated the marginalization experienced by many Indigenous individuals and communities. The Federal Act sets out an Indigenous child's right to receive services and interact with systems on an even footing with other participants in the system.

KEY ELEMENTS OF SERVICE DELIVERY

Cultural Continuity

Integrating Indigenous cultures, languages and traditions into services is vital. In order to do so, it is vital that provincially mandated service providers are connected to the Indigenous community of each family to whom they are providing services and learn the resources available to families and service providers



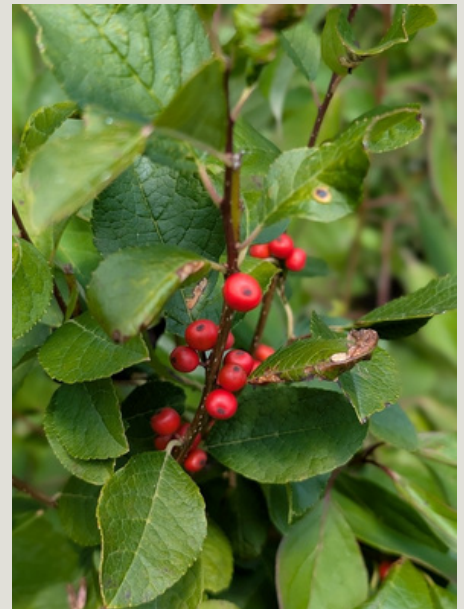
Preventive Care and Early Intervention

A focus on preventive care helps address socio-economic challenges early, maintaining family stability and preventing crises. This proactive approach reduces the need for more invasive interventions, like child apprehensions



Prohibits Discriminatory Practices

The Federal Act strictly prohibits child apprehensions based solely on socio-economic status and promotes service models that prioritize the child's best interests and substantive equality. Emphasizing cultural continuity and family ties, the legislation advocates for placing children with siblings and relatives whenever possible and mandates the active involvement of Indigenous communities in decision-making.



KEY ELEMENTS OF SERVICE DELIVERY

Collaboration with IGBs

Service providers must develop strong partnerships, including protocols and service agreements with IGBs to ensure services are culturally relevant and respect Indigenous governance systems



Data Management

Data management practices must prioritize privacy and confidentiality, ensuring all personal information is handled with the respect and cultural sensitivity required by Indigenous communities. Service providers/agencies should establish clear information sharing protocols and adhere to interagency protocols/agreements and provincial and federal legislation requirements, which may include specific notification processes as outlined by IGBs.

Accurate and respectful documentation and recording of information is crucial to ensure that all data related to the Indigenous child or community is maintained with integrity and is accessible only to authorized parties. In terms of privacy, any notice provided must only contain personal information about the child, family members, or the care provider that is necessary to explain the proposed significant measure or as outlined in a coordination agreement with the IGB.

Service providers are obligated to diligently implement these principles, transforming how services are planned and delivered. Their commitment to these principles must be evident in daily operations, ensuring that Indigenous children and families receive care that is not only compliant with the Federal Act but also deeply embedded in respect for and promotion of Indigenous self-determination and cultural integrity.

Provincially mandated agencies providing services in assistance to Indigenous communities with their own laws

As Indigenous communities revitalize and reclaim their laws and these laws take the full force and effect of federal laws in Canada, provincially mandated service providers will additionally need to:




- familiarize themselves with laws applicable to children and families receiving services from their organization;
- work proactively to identify and build assist and service agreements with Indigenous agencies mandated by Indigenous laws;
- build service processes, policies, and training to ensure that staff is aware of and compliant with Indigenous laws applicable to service provision; and
- provide ongoing and comprehensive information to Indigenous Governing Bodies/mandated agencies in relation to service coordination and assists under Indigenous laws

Provincially mandated agencies providing services to children and families who are subject to Indigenous laws will provide service assists to Indigenous agencies mandated by Indigenous laws. As a result, provincially mandated agencies will need to familiarize themselves with the applicable law where they have been or are providing services to a child or family subject to such a law.

Balancing Indigenous, Federal and Provincial Laws

Three levels of jurisdiction operate in child welfare within Canada: Indigenous, federal and provincial/territorial. The Federal Act represents a landmark recognition of Indigenous jurisdiction over child and family services, establishing a process for Indigenous peoples to legislate in this domain while setting national standards for all child welfare providers to Indigenous children and families.

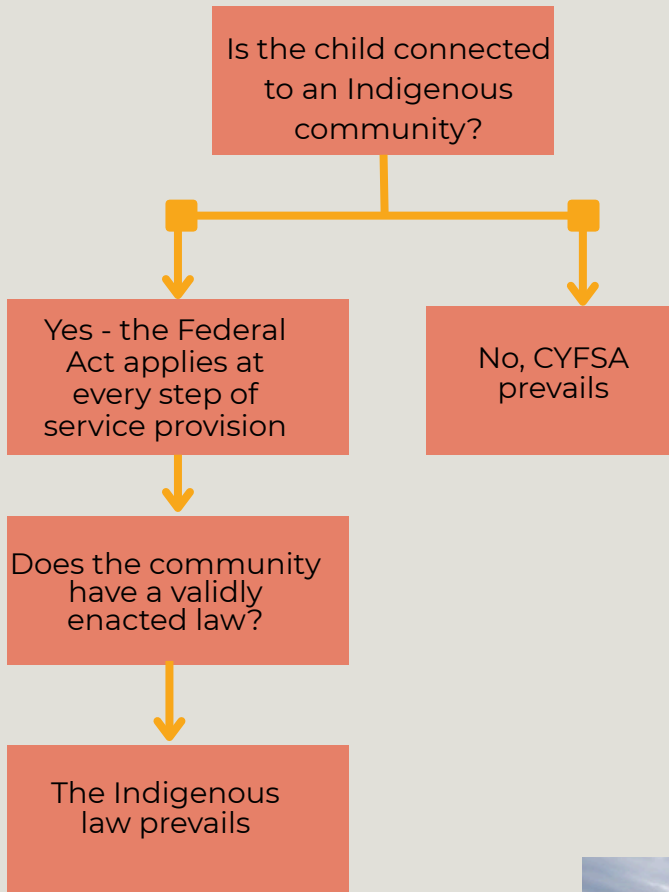
Importantly, once enacted and communicated to the federal government, Indigenous laws override conflicting provincial or federal legislation in child welfare.



Coordination Agreements, protocols, including dispute resolution mechanisms between Indigenous entities and the Canadian government are encouraged, which detail the operational aspects and domains where Indigenous laws are paramount. These arrangements recognize Indigenous communities' authority to legislate according to their customs and traditions.

As a federal law, the Federal Act supersedes a provincial law, or the CYFSA, to the extent of a conflict. A conflict arises where the CYFSA does not rise to the standard of the Federal Act and creates a mandate at odds with the Federal Act. The Federal Act also provides that the national standards, the *Charter of Rights and Freedoms* as well as the *Canadian Human Rights Act* apply to a validly enacted Indigenous law. Indigenous child and family wellbeing laws otherwise have the force of federal law and supersede provincial and federal laws, including the Federal Act.

Balancing Indigenous, Federal and Provincial Laws



Design adapted from diagram developed by Fogler, Rubino LLP

When conflicts arise between Indigenous, federal and provincial/territorial laws in child and family services, the best interests of the child are a primary consideration, ensuring that child welfare/wellbeing decisions across all jurisdictions reflect this principle.

Where a service provider is contemplating the apprehension of an Indigenous child, the best interests are once again paramount.



Challenges and Considerations in the Implementation of the Federal Act

While the Federal Act marks a significant advancement in recognizing the rights and sovereignty of Indigenous communities over child and family services, several concerns have emerged regarding its implementation and effectiveness. These challenges highlight areas where further attention and development are necessary to fully realize the Federal Act's objectives.

National Standards

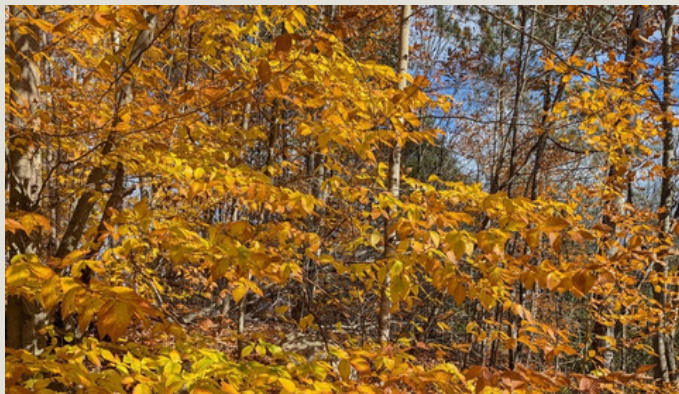
Alignment between provincial and federal systems: A key challenge is integrating the Federal Act with existing provincial and federal child welfare systems. Overlapping jurisdictions can lead to confusion and operational difficulties, which can hinder the smooth rollout of policies.

Provincially mandated service providers must adapt policies, processes and procedures that implement the national standards.

Funding and Resources: Implementing the Federal Act requires substantial financial resources and investments. However, there is often a gap between mandated services and funding provided. This “out of scope” issue means that while compliance measures and responsibility of services providers have expanded, the financial support necessary to fulfill these responsibilities adequately has not always been proportionately increased.



Challenges and Considerations in the Implementation of the Federal Act



Inherent Jurisdiction

Capacity Building:

There is a critical need for capacity building both within communities and among service providers. This includes training for staff to engage meaningfully with families and manage compliance with new requirements. Many communities face the dual challenge of increased demands without corresponding support in terms of additional staffing or resources.

Varied Community Readiness:

The readiness and capacity of different Indigenous communities to take over child and family services vary widely. Some communities may have well-established governance structures and resources ready, while others might struggle due to a lack of infrastructure, historical underfunding, or internal capacities.

Varied Service Provider Readiness:

To meaningfully effect inherent jurisdiction over children and families, provincially mandated service providers must fully understand the extent of concurrent jurisdiction between the Indigenous laws and provincial/federal law and their responsibilities within the new framework.

Addressing these challenges requires concerted efforts from all levels of government, adequate funding allocations, targeted capacity-building initiatives and ongoing collaboration with Indigenous communities to tailor solutions that respect and reinforce their sovereignty and self-determination.

National Principles and Minimum Standards of the Federal Act

The Federal Act is founded on **three 'National Principles'** –

- Best Interests of the Child
- Cultural Continuity
- Substantive Equality

These principles are designed to end racial discrimination, recognize the detrimental impacts of the residential school system, affirm Indigenous sovereignty and preserve the connection of Indigenous children with their families and communities. Embedded at the heart of all decisions affecting Indigenous children, these principles guide the delivery of services and inform the national Minimum Standards.

The National Principles and Minimum Standards must guide all service delivery to Indigenous children and families, ensuring a consistent, culturally respectful approach across jurisdictions.

The Minimum Standards set out by the Federal Act guide the provision of child and family services to Indigenous children and families across Canada, irrespective of service provider. These standards integrate the National Principles into all aspects of child protection services, emphasizing the importance of prioritizing preventive measures over apprehension, enhancing cultural continuity and fostering relationships with family, community and territory. These standards also prioritize the reunification of Indigenous children with their families and communities as a primary goal, ensuring that service delivery aligns with the fundamental values of the Federal Act. It is important to note that these national standards represent the minimum criteria; service providers are encouraged to exceed these standards wherever possible.

National Principles and Minimum Standards of the Federal Act

The Federal Act aims to ensure that child and family services provided to Indigenous children and families are provided in a way that halts the unequal and discriminatory provision of services to Indigenous children and families. It does so by adding substantive equality and cultural continuity principles to the best interests of the Indigenous child test, in particular for all service provision that stops short of apprehension. Additionally, it requires that provincial service providers prioritize preventative care and creates the first prohibition of apprehension solely based on socioeconomic factors.

Read together, requiring cultural continuity as part of the best interest's analysis, ensuring that service providers prioritize preventive care and are prohibited from apprehension solely on socioeconomic grounds, requires provincially mandated agencies in particular to adapt service models to ensure that Indigenous children and families are supported proactively in addressing issues that could otherwise rise to protection concerns. An overview of the National Principles (outlined in Section 9) and Minimum Standards (detailed in Sections 10-17) that guide the interpretation and application of the Federal Act are provided below.



s. 9 - National Principles



The Federal Act establishes three National Principles to guide child and family services for Indigenous children:

Best Interests of the Child:

This principle places the child's physical, emotional, and psychological safety, security, and well-being as the primary consideration in all decisions affecting them. It emphasizes the importance of keeping Indigenous children connected to their families, communities, and culture. It is the paramount consideration in any decisions leading to or concerning the apprehension of an Indigenous child. For all other decisions it must be read together with cultural continuity and substantive equality.

Cultural Continuity

Is recognized as essential for the well-being of an Indigenous child. This principle stresses the importance of strengthening the child's connection to their culture, traditions, language, and community. It supports the idea that Indigenous children should be raised in an environment that respects and preserves their cultural heritage, ensuring that they can participate fully in their Indigenous culture.

- Services must reflect that the transmission of languages, culture, practices, customs, traditions, ceremonies and knowledge is vital. The fact that a child resides with members of their family or community will strengthen the transmission of Indigenous culture and will often promote the best interests of a child.
- Cultural continuity requires that child and family services are delivered in a manner that does not “contribute to the assimilation” of the child, or to the “destruction of the culture” of that First Nation.
- Finally, cultural continuity requires that service providers and caregivers acknowledge the characteristics and challenges of the region in which a child, family or Indigenous group is located.

s. 9 - National Principles (continued)

Substantive Equality

This principle addresses the need for equity in administering services and support to Indigenous children. It recognizes the unique challenges and circumstances faced by Indigenous children and seeks to ensure they have equal opportunities to thrive. Substantive equality considers factors such as disability, family and community connections and the historical context of Indigenous peoples in Canada, aiming to eliminate systemic barriers and achieve equitable outcomes for Indigenous children and families.

Key Focus Areas for 'Best Interests of the Child in CYFSA and the Federal Act

CYFSA (2017)

- Focused on the child's overall well-being, incorporating safety, health, and emotional stability.
- Emphasizes diversity and the importance of cultural and individual identity in welfare decisions.
- Advocates for preventive services and community involvement to support families.

The Federal Act (2020)

- Emphasizes the importance of keeping Indigenous children connected to their families.
- Cultural continuity ensures strong connections to Indigenous culture, language, and community.
- Indigenous jurisdiction and legal traditions guide child and family services.

s. 10 - Best Interests of the Child

The Federal Act mandates that the best interests of Indigenous children are paramount in all decisions affecting them, especially in sensitive situations such as apprehension. The best interest of the child is interpreted through the lens of cultural continuity and substantive equality, which differs from the more generic criteria found in provincial statutes. The Federal Act specifies that key considerations in determining the best interests of Indigenous children include:

- The child's physical, emotional, and psychological safety, security, and well-being.
- The importance of the child having an ongoing relationship with their family and with Indigenous group, community, and people.
- Preserving the child's connection to their culture, including language and traditions.



In emphasizing the child's best interest, the Federal Act gives equal significance for the emotional and psychological safety and the child's need for continual relationships with their family and community. Decisions regarding the best interests must consider a range of factors, including:

- The value of relationships with parents, caregivers, family members, and the broader community.
- The significance of connections to the child's culture, language, and territory.
- Giving appropriate weight to the child's views, considering their age and maturity.
- Aligning care and decisions with the customs and traditions of the Indigenous community.
- The impact of any family violence on the child, including both direct and indirect exposure and the physical, emotional and psychological harm or risk of harm resulting from such violence.
- The relevance of any civil or criminal proceedings, orders, conditions, or measures to the child's safety, security and well-being.

Best Interests of the Child: Scenario

CAS is called in by a school because a child is attending undernourished and in inappropriate clothing for an extended period of time. Preliminary assessment determines that the child has connection to an Indigenous community. The Society must now reach out to the community, as well as any services within the geographic mandate of the Society to connect the family with nutritional and financial support where available.

When providing services under an Indigenous law, the interpretation of 'best interests' will align with that set out in the Indigenous law. In the absence of such a law, determining the 'best interests' must ensure sufficient relationship with Indigenous community to avail the child of all resources, supports and connections available to the child within the community. Any service provider's best interest's analysis should also deeply respect and align with child's Indigenous community customs and traditions, honoring the community's cultural, social, and familial values



s. 11 - Effect of Service

The Federal Act specifies that child and family services provided in relation to an Indigenous child must be delivered in a manner that:

- Considers the child's needs, including their physical, emotional and psychological safety, security, and well-being.
- Takes into account the child's culture, allowing them to know their family origins.
- Promotes substantive equality between Indigenous children and other children.



Scenario

Police notify the agency that due to a wellbeing check; three children were found in a home with dog feces, drug paraphernalia and with the parent absent late in the evening. The agency has determined that this family has a connection to a First Nation located some distance away. In addition to considering the question of how to support the family in remedying the safety and cleanliness of the home, the agency now has an obligation not only to seek out services and supports in its geographic mandate, but to work with the First Nation and the family to attempt to locate family supports and secure services that allow the children and family the opportunity to recover safely.

s. 12 - Notice Requirements


The Federal Act mandates that before any '**significant measure**' concerning an Indigenous child is taken, notice must be provided to the child's parents, care providers and their IGB. This process of notification is continuous and integral at every stage of service delivery, ensuring transparency and upholding the rights of all involved parties. The provisions include:

IGBs are entitled to be informed about all significant measures involving their child members. This right extends throughout the child's time in care, covering both court and non-court related actions.

Notification is required for a broad range of actions, not limited to legal proceedings. Significant measures encompass decisions affecting the child's care, placement changes and any actions that might significantly alter the child's, parents', or care provider's day-to-day life, including those that may affect the course of apprehension, permanency, or reunification.

Notice to an IGB is obligatory only after the IGB has indicated to the service provider its role in representing the child's Indigenous group. The Federal Act specifies that, unless there are immediate risks to the child's health or safety, notice must precede any child removal or significant measure, aligning with the child's best interests.

A critical component is the careful handling of personal information. The Federal Act mandates that any notice provided to an IGB must be mindful of privacy concerns. Specifically, the notice must not contain personal information about the child, family members, or the care provider, except for what is necessary to explain the proposed significant measure or what is outlined in a coordination agreement with the IGB.



The overarching goal of the Federal Act is to involve Indigenous communities in the care decisions for their children right from the start, ensuring their participation extends beyond the technical requirements of formal notifications. This goal is ultimately rooted in the child's entitlement to its roots and connection with the child's family, community, land, language, history and culture.



What is a Significant Measure?

Under the Act, a significant measure refers to decisions or actions that have a substantial impact on an Indigenous child's care, living situation, or well-being. These measures require notification to the child's parents, care providers, and the IGB. Significant measures extend beyond courtroom procedures to include a wide array of actions, including:

- Applying for protective orders, custody changes, or restraining orders concerning a child in care.
- Changes in the child's living arrangements, including changes in foster placements, or transitioning to a new care provider.
- Actions addressing the child's immediate health needs or responses to urgent safety concerns.
- Decisions impacting the child's cultural connections, language learning, or exploration of their sexual identity.
- Measures affecting the child's ability to maintain or establish connections with their family and Indigenous community.
- Could also include decisions related to personal aspects such as haircuts, which typically have traditional significance to Indigenous peoples, or other personal choices typically overseen by a parent or guardian, ranging from participation in religious activities, getting ears pierced, or making educational decisions.

The CYFSA requires that Societies consult with a representative of the Indigenous Governing Body representing the community to which the child or family has ties in contemplation of providing services to the child or family. The Regulations to the CYFSA set out the manner by which those reasonable efforts are to be carried out and documented.

The mandated agencies have considerable ability to share the information required for the community to determine what complementary services, if any are available to the child and/or family. The provincial standard here meets and exceeds the floor set out by the Federal Act and the provincial service providers obligations set out in ss. 72 and 73 of the CYFSA therefore continue to apply.



Scenario

During a home visit with a family who has been receiving ongoing services for a long time, the father mentions that his family was recently at a pow wow in a community at some distance from the family's residence. No Indigenous connection had previously been established and this is the first the worker is hearing of a possible connection. It is the worker's obligation to follow up on this information and reach out to the Band Representative program in the community to allow the community to determine whether services are being provided to a member.

s. 13 - Representations and Party Status

In child protection proceedings, the Federal Act contemplates party standing only for parents and care providers while Indigenous governing bodies have the right to make representations.

A First Nations, Inuit or Métis community whose child is the subject of child protection proceedings pursuant to the CYFSA has automatic party standing in those proceedings.

Additionally, provincially mandated service providers must share information in order to plan for and provide services, must regularly consult with First Nations, Inuit or Métis communities about the provision of those services, and must consult with the affected First Nations, Inuit or Métis community in contemplation of providing a prescribed service or exercise a prescribed power.

This provision is intended to address the imbalance between this standard and provinces such as Alberta, where First Nations may only bring applications to participate more robustly in proceedings terminating parental rights altogether. The CYFSA here again meets and exceeds the national standard and therefore continues to apply.

Service providers are tasked with a crucial role in ensuring the meaningful participation of both parents and IGBs in family court proceedings. It is imperative that service providers undertake active efforts to facilitate this engagement, thereby ensuring the court hears and considers the unique perspectives and cultural insights of Indigenous families and their governing bodies. By fostering active communication and providing support for all parties' involvement, service providers help bridge the gap between legal processes and the lived realities of Indigenous peoples

s. 14 - Priority to Prevention and Prenatal Care

The Federal Act reinforces the shift towards prioritizing preventive measures over intervention, advocating for proactive strategies to support a child and their families at various stages, including prenatal care to prevent the apprehension of children at birth. This shift signifies a move from reactive, intervention-based practices to proactive prevention strategies, emphasizing the active involvement of Indigenous communities in these efforts to prevent children from entering state care in the first place. Even where an Indigenous community has not passed a child welfare law under the Federal Act, preventive services should reflect the Indigenous culture, traditions, and laws of the child's Indigenous community.

Examples of preventative measures include:

- Collaborating with extended family, community members and IGB to proactively support the child and family.
- Involving Elders and other significant community members to offer guidance and support to families.
- Providing respite and assistance to parents in addressing life stressors like housing and food insecurity.
- Support with life skills development (i.e. budgeting), offering educational support (traditional childcare practices).
- Implementing land- or culture-based healing programs that align with Indigenous ways of knowing and healing.



Examples of prenatal preventive care include:

- Addressing the socio-economic conditions of expectant parents by providing essential resources like food and shelter and helping to stabilize their situations.
- Encouraging safe living arrangements with family members and ensuring a supportive environment for parents and unborn child.
- Facilitating access to prenatal medical care that is culturally sensitive and relevant, alongside supporting parents in seeking treatment or harm reduction strategies.
- Offering traditional parenting, life skills, and counseling supports to expectant parents, fostering a nurturing environment from prenatal stages.



Section 1(2) of the CYFSA already mandates provincial agencies to take the least disruptive course of action and opens the door to prevention services to maintain the autonomy and integrity of the family unit. Section 14 of the Federal Act raises the bar on this obligation and requires provincially mandated agencies to prioritize preventive care where protection concerns arise in relation to an Indigenous child or family.

Scenario

The agency receives notice from a hospital that a woman whose previous children are in Extended Society Care has attended at the hospital and given birth to an infant who is presenting with symptoms of neonatal abstinence. From prior experience, the agency knows that this family is connected to a First Nation. The first call of the agency should be to the First Nation so that the mother, the First Nation and the agency can work together proactively to determine the best care for the infant.

s. 15 - Socio-Economic Conditions

Section 15 of the Federal Act establishes a crucial provision that children must not be apprehended solely based on their family's socio-economic conditions, as long as such an approach is consistent with the child's best interests. This includes situations related to poverty, inadequate housing or infrastructure, or the health condition of the parent or care provider.

Examples of socio-economic conditions that should not lead to apprehension include:

- Families facing barriers in accessing necessary counseling, childcare, or other supports.
- Instances where unemployment or underemployment contributes to food insecurity or prevents parents from affording childcare while working.
- Housing insecurity or substandard living conditions, coupled with a lack of access to clean water and sanitation facilities.
- Transportation limitations that hinder families from attending medical appointments or accessing other vital services.



Utilizing a preventative approach to socio-economic conditions could involve:

- Offering support to parents to maintain housing while addressing other life challenges or seeking treatment.
- Providing free or affordable childcare solutions to support working parents or those in education/training.
- Ensuring families have access to necessary technology (such as cell phones and internet) and transportation for daily needs and cultural participation.

Examples: in the scenarios for Sections 10 and 11 above, where the agency determines that services are required to mitigate the concerns, and that these concerns stem from the fact that the family is under-resourced, the agency, working with the family and First Nation must explore what supports could be put in place for the family that would allow the children in those scenarios to remain safe in the care of the family.

s. 15.1 - Reasonable Efforts

The Federal Act requires that before any consideration of apprehending an Indigenous child who resides with their parent or another adult family member, service providers must demonstrate that reasonable efforts were made to ensure the child could continue residing within their family unit, unless immediate apprehension is deemed necessary for the child's best interests. "Reasonable efforts" imply proactive, comprehensive, and timely actions aimed at maintaining or reuniting an Indigenous child with their family. This goes beyond instructing families on how to address welfare concerns and requires a collaborative approach to address the underlying issues.

Although the Federal Act mandates the demonstration of 'reasonable efforts' to prevent the apprehension of Indigenous children, it does not provide a precise definition of what these efforts should encompass. This lack of a precise definition allows agencies the flexibility to develop approaches to meet the unique needs of each family.

What are Reasonable Efforts?

Reasonable Efforts vs. Active Efforts

- Rather than simply making a referral, active efforts involve arranging necessary services, providing transportation and engaging extended family members.
- Moving beyond general case management, proactive engagement requires regular, meaningful interactions with parents, family and the Indigenous community, complemented by diligent follow-ups to ensure ongoing support.
- While meeting policy standards is essential, actively understanding and creatively addressing the specific needs of the family often require more intensive face-to-face contact.
- Instead of merely updating the Indigenous community, active efforts should include seeking their input on service and case management, co-managing the case with the community and adhering to the community's articulated traditions, practices and laws where they exist.

It's important to acknowledge that despite the need for active efforts, resource or capacity limitations often pose significant challenges for service providers/agencies that can affect the depth and extent of engagement.

Reading together priority to preventive care and ensuring that children are not apprehended solely based on socioeconomic conditions requires that any reasonable efforts policies reflect robust and explicit processes for engaging with a child's Indigenous community from the moment of intake proactively and collaboratively.



s. 16 - Placement Priorities

This section establishes a hierarchy for the placement of Indigenous children, prioritizing placements that maintain cultural connections and support family unity, and always in alignment with the child's best interests. The Federal Act is more prescriptive in terms of placement priorities than the CYFSA provisions requiring that placement occur in order of the following priority:

1. with one of the child's parents;
2. with another adult member of the child's family;
3. with an adult who belongs to the same Indigenous group, community or people as the child;
4. with an adult who belongs to an Indigenous group, community, or people other than the one to which the child belongs; or
5. with any other adult.

The Federal Act also emphasizes the importance of considering placement with or near siblings and respecting customs and traditions, such as customary adoption, when determining the best interests of the child.

The Federal Act includes a requirement for continuous reassessment of the possibility of returning the child to their parents or extended family, promoting family unity and the child's reintegration with their immediate or extended family when it aligns with their best interests.

Section 1(2) of the CYFSA already sets out the additional purposes of the CYFSA, which include supporting the integrity of the family unit.

To be effective, regular reviews of a child's placement should consistently ask how it is possible to **ensure maximum cultural and family contact for a child**. While the Federal Act does not specify timelines for reassessment, times for a reconsideration of a child's placement could include when:

- the child or the child's Indigenous community asks for this review, including when they identify extended family members recognized under Indigenous tradition or custom;
- a change of placement or legal status is being considered; and
- the child's care plan is reviewed.



Scenario

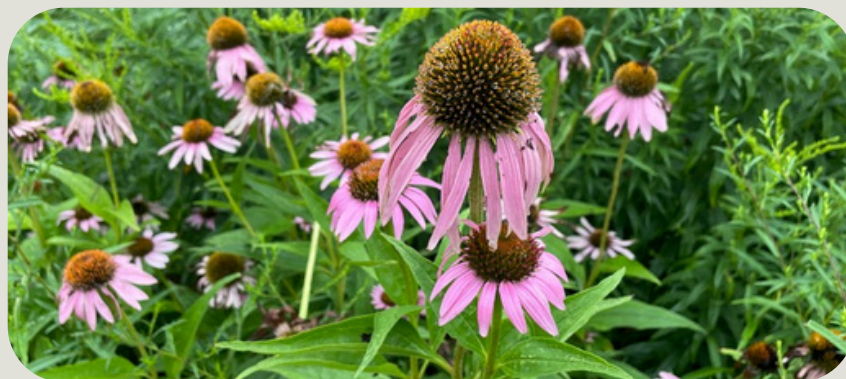
After considerable efforts to secure a community placement for a child whose parents are struggling with mental health and addictions and acknowledge that they are unable to parent, the child is placed in the care of a non-Indigenous caregiver licensed by the provincially mandated service provider. The service provider must now:

1. work with the community in contemplation of this placement to ensure that the child can remain connected to the community and receive cultural supports while in this placement;
2. ensure that the child has regular access to her siblings who are living in community an hour away; and
3. work with the community to set timelines or milestones for the reassessment of the child's placement.

s. 17 - Attachment and Emotional Ties

The Federal Act emphasizes the importance of fostering attachment and emotional ties between Indigenous children and their families, including parents, extended family members, and caregivers. This section is particularly concerned with situations where an Indigenous child is not placed with their immediate or extended family. It mandates that, provided it aligns with the best interests of the child, efforts must be made to promote and maintain the child's attachment and emotional ties to their family. This reinforces the child's right to stay connected to their family, community, and heritage, recognizing these connections as vital to their sense of identity and well-being.

Where preventative efforts have proven insufficient or a child is in need of a temporary placement, the relationships an agency builds with the family's First Nation, Inuit or Métis community are integral to securing a family or community-based placement and placement arrangement, such as customary care. Especially where children must ultimately be removed from their home, the disruption and emotional peril of that rupture must be considered alongside the risk factors of remaining in the home for a final determination.



Scenario: a pair of siblings are in the care of extended family whose home is not already assessed as an appropriate home and which may not initially qualify as such for socioeconomic reasons. The agency's efforts to work with the family and the Indigenous community must extend to a robust and supportive approach, arrived at by collaboration with the First Nation on planning and service provision.

Compliance and Effective Implementation of the Federal Act in Service Delivery



The following table encapsulates the core elements of compliance with the Federal Act and the mandatory provisions, aiming to guide social workers and service providers in their service delivery with respect to FNIM children, youth and families.

Compliance Area	Key Objective	Mandatory Provisions	Suggested Practices/ Implications
Assessment of Indigenous Identity	Identify if the child is Indigenous (First Nations, Inuit, and Métis), their community ties, and IGB.	<p>All files should include an Indigenous child's IGB(s) and their preferred contact information.</p> <p>Family mapping and genograms should be completed.</p>	<p>Ensure service delivery models incorporate comprehensive identity assessments, including family and community connections.</p> <p>Where multiple generations of a family are involved in child welfare system, child welfare checks can help trace connections that may have been severed. Interviews with parent, extended family and child (if appropriate).</p> <p>Use standardized intake forms that include sections for identifying and documenting the child's Indigenous community and governing body.</p> <p>Incorporate tools such as cultural competency training for staff to better understand and respect Indigenous identities and community connections</p> <p>Build family finding and robust questions on connections to Indigenous communities into intake and assessment models.</p>

Compliance Area	Key Objective	Mandatory Provisions	Suggested Practices/ Implications
Notification Requirements	Notify the child's parents, care providers and IGB before any significant measures related to the child.	How and when notice was provided to the child's IGB, parents, and/or care providers, or document why it was not possible.	<p>Service delivery must adapt to ensure timely and documented notifications to all relevant parties, facilitating transparency and collaboration.</p> <p>Active, ongoing efforts to notify and involve the IGB in decision making.</p> <p>Implement a digital case management system that automatically flags the need for notifications to parents, care providers, and IGBs before significant measures, ensuring compliance with notification timelines.</p> <p>Develop:</p> <ul style="list-style-type: none"> comprehensive maps of First Nation, Inuit or Métis community within the geographic mandate of the service provider; an understanding of any First Nation, Inuit or Métis communities whose children and families the service provider serves in large numbers; and an internal list of persons or departments delegated by the above First Nation, Inuit or Métis communities

Compliance Area	Key Objective	Mandatory Provisions	Suggested Practices/ Implications
Jurisdiction and National Standards	<p>Check if the child is a member of a Nation with its own Child Welfare legislation under the Federal Act and apply it accordingly.</p> <p>If an Indigenous community has not passed a child welfare law under the Federal Act, services should reflect the Indigenous culture, traditions, and laws of the child's Indigenous community, and adhere to the national principles and standards.</p>	<p>Seek out experts from IGB for their own law.</p> <p>Relationship-building and asking clarifying questions are crucial in implementing the national standards throughout the provision of child and family services to Indigenous children and families.</p>	<p>Services must be adaptable to the laws and standards of First Nations, requiring ongoing communication and collaboration with IGBs.</p> <p>Develop partnerships with Indigenous communities and governing bodies to create protocols that respect and apply Indigenous laws and standards, including joint training sessions for service providers on these laws.</p> <p>Develop relationships as set out above and build on those relationships to understand distinctive obligations of the service provider, e.g.: under exclusive and concurrent jurisdiction.</p>
Prioritizing Prevention and Early Intervention	<p>Give priority to preventative care and efforts to allow the child to continue residing with their family, avoiding socioeconomic conditions as a basis for apprehensions.</p>	<p>Create a policy on what 'reasonable efforts' mean to your organization.</p> <p>Familiarize yourself with Jordan's Principle for accessing resources.</p>	<p>Shift focus towards preventative and early intervention, integrating these approaches into the core of service delivery models. This includes prenatal care and addressing substantive equality issues to ensure equitable access to prevention services.</p> <p>Requires adaptation of processes and assessment tools from intake forward.</p> <p>Launch community-based prenatal and early childhood programs in collaboration with Indigenous health workers, focusing on culturally relevant practices. p. 58, 59 (WOW)</p>

Compliance Area	Key Objective	Mandatory Provisions	Suggested Practices/ Implications
Out-of-Home Placement Priorities	Follow placement priorities if out-of-home placement is necessary, considering family, community members, and maintaining connections with siblings or relatives.	<p>Demonstrate how placement priorities have been followed.</p> <p>Includes knowledge of the child's family tree and consultation with the child's community.</p>	<p>Service planning must rigorously adhere to placement priorities, requiring a deep understanding of the child's familial and community context. This requires ongoing communication with the child's First Nation, Inuit or Métis community or communities.</p> <p>This is to be applied in every placement move, ensuring a consistent approach to placement decisions.</p> <p>Use family finding tools and community consultation to explore all potential family and community placements before considering out-of-home options.</p>
Maintaining Cultural and Family Connections	Promote attachment and emotional ties with the child's Indigenous parents and family and ensure respect for and continuity with the child's culture.	<p>Plans of care should include promoting safe and sustainable attachment and cultural continuity.</p> <p>Access orders should be included wherever possible.</p>	<p>Cultural competency and active efforts to maintain cultural and family connections should be embedded within all service delivery practices.</p> <p>This requires working with First Nation, Inuit or Métis communities within the service provider's geographic mandate to make meaningful connections possible for children in care and understand the particular cultural considerations of the First Nation, Inuit or Métis community.</p> <p>Facilitate the development of cultural connection plans for each Indigenous child in care, including arrangements for participation in cultural ceremonies and language classes. Partner with Indigenous organizations to provide cultural competency training for foster and adoptive parents (ANCFSAO-developed programs)</p>

Compliance Area	Key Objective	Mandatory Provisions	Suggested Practices/ Implications
Ongoing Reassessment of Family Unity	Conduct ongoing reassessment for the possibility of family unity, including reassessing current files and plans for promoting relationships.	Includes provisions for ongoing reassessment in new and current cases.	<p>Schedule regular, structured reassessment meetings involving a multidisciplinary team, including representatives from the child's IGB.</p> <p>Use a standardized reassessment tool that includes criteria for evaluating the possibility of family reunification, ensuring flexibility and responsiveness to family unity goals.</p> <p>Work with First Nation, Inuit or Métis community to establish timelines and avenues for reassessment.</p>
Best Interest of an Indigenous Child	Prioritize the child's physical, emotional, and psychological safety and well-being. Emphasize maintaining connections to family, community, and culture. Consider the child views and align with the Indigenous community's care plans.	Engage with Indigenous communities for inclusive decision-making. Develop and review cultural continuity plans. Regularly reassess care plans for evolving needs. Utilize wholistic assessments and tools focusing on safety and well-being.	<p>Establish participatory decision-making processes that prioritizes the child's safety in all dimensions and actively involves the child, their family, and their Indigenous community in discussions about the child's welfare. This could include structured forums or circles where the child's voice is heard and considered given their age and maturity.</p> <p>Incorporate culturally adapted assessment tools that help evaluate the child's needs in the context of their cultural, emotional, and psychological safety and well-being. Train staff on the importance of cultural preservation in the child's development and well-being, ensuring that all actions taken are in alignment with preserving the child's connection to their culture, language, and territory</p>



Strategies for Compliance and Effective Implementation for Agencies

Implementing the Federal Act effectively requires agencies to adopt a structured, informed approach that not only complies with the Federal Act but also deeply respects Indigenous sovereignty and promotes the well-being of Indigenous children and families.

Some strategies to ensure both compliance and effective implementation include:

- Continuously review and adjust your practices to ensure they meet the national standards set by the Federal Act. Focus on prevention, the preservation of family and community connections and the promotion of Indigenous cultural values, including language and traditions.
- Reference available resources and tools such as the "Bill C-92 Compliance Guide for Social Workers and Service Providers" from Wahkohtowin Lodge, University of Alberta Faculty of Law and the Child and Family Well-Being Law Making Resource Bundle by the Chiefs of Ontario Guide (Please see References).
- Foster strong, respectful collaborations with Indigenous governments, communities, and families. Focus on understanding specific community needs and jointly developing culturally appropriate services. Respect for Indigenous governance structures is paramount in these partnerships.
- Maintain thorough documentation of all actions taken to comply with the Federal Act. This includes detailed records of decisions made in the best interests of Indigenous children, efforts to prioritize family unity and cultural continuity. Transparent documentation practices will support accountability and continuous learning.
- Adopting data governance frameworks such as OCAP aligns with the Federal Act's emphasis on Indigenous sovereignty and self-determination. Agencies are encouraged to integrate these principles to ensure their data practices reflect Indigenous values and governance systems, thereby enhancing transparency and accountability in child and family services.
- Agencies/partners should establish mechanisms for monitoring compliance and evaluating the effectiveness of service delivery models.

Supporting Indigenous Governance (s. 20-23)

Sections 20 and 21 of the Federal Act lay out the path for recognition of Indigenous laws over child and family wellbeing in Canada. With many distinct Indigenous groups in Canada, each with its unique languages, territories and legal traditions, the Federal Act outlines a framework wherein these diverse communities can assert their jurisdiction and enact laws reflecting their distinct cultural values, customs and governance principles. This is achieved by:

Articulating Indigenous Governance:

Indigenous communities are empowered to define their governance mechanisms, principles and laws, reflecting their unique cultural and societal contexts. By choosing an IGB to represent their interests, these communities can develop child welfare laws that resonate with their traditions and oral histories.

Enacting Indigenous Laws:

To operationalize these laws, Indigenous communities must notify the Canadian and provincial/territorial governments of their intention to exercise jurisdiction over child welfare. This notification, as mandated by Section 20(1) of the Federal Act, kick-starts the process for the development and recognition of Indigenous child welfare legislation.

Coordination Agreements

A critical component of implementing Indigenous laws is the negotiation of Coordination Agreements. These tripartite agreements involve the IGB, the federal government, and, where applicable, provincial or territorial governments. Covered under Section 20(2), these tripartite agreements detail essential aspects such as jurisdictional cooperation, funding mechanisms, and how Indigenous laws interacts with existing federal and provincial statutes. This legislation mandates reasonable efforts to reach an agreement within 12 months, although it does not specify what constitutes 'reasonable efforts' to achieve this end. If an agreement isn't reached within this period, it does not prevent the Indigenous laws from taking effect; in cases of conflict, Indigenous laws will have precedence, ensuring that Indigenous governance is respected and upheld. This is further reinforced in Section 21(1), where Indigenous laws are given the force of federal law during their active period.

Indigenous Governing Bodies have flexibility in determining the scope of their child welfare laws under the Federal Act, including:

- **Comprehensive Laws:** Creating a complete legal framework for child welfare that supersedes provincial or territorial laws.
- **Incremental Laws:** Gradually expanding jurisdiction to encompass broader areas of child welfare as capacity and resources allow.
- **Guiding Laws:** Directing how the Federal Act applies specifically to their children and families, which may include unique provisions for preventive care, cultural connection, and the child's best interests as emphasized in Section 23, which stipulates that these laws should apply unless contrary to the child's best interests.

Community involvement, including input from Elders and designated decision-makers is crucial in crafting, implementing, and revising these laws to ensure they accurately reflect the community's values and needs.

Through regular review and adaptation, Indigenous laws can evolve to continually meet the aspirations and wellbeing goals of Indigenous communities.



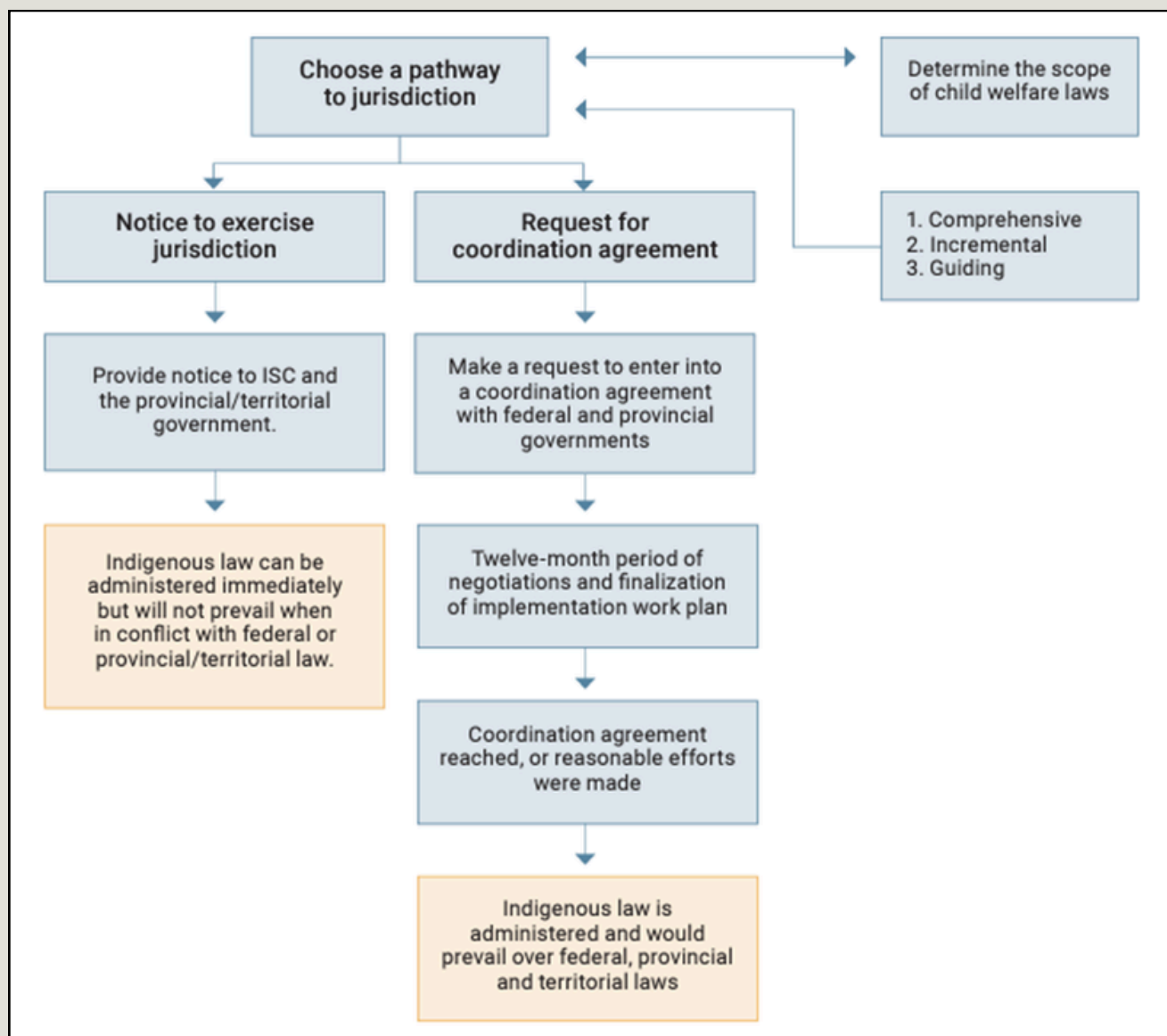
For more information on law-making for recognition under the Federal Legislation please see:

Chiefs of Ontario Child and Family Well-being Law Making Resource Bundle, 2022:

https://chiefs-of-ontario.org/wp-content/uploads/2023/03/02-22-2023-Child-and-Family-Well-Being-Law-Making-Bundle-FINAL-002HL_999.pdf

Indigenous Child and Family Services Directors, Our Children Our Way Society Jurisdiction Tool-Kit 2.0 “Transition Planning in uncharted waters”:

<https://ourchildrenourway.ca/wp-content/uploads/2024/02/Jurisdiction-Tool-Kit-2.0-Transition-Planning-2.pdf>



Source: Chiefs of Ontario Child and Family Well-being Law Making Resource Bundle, 2022, page 31.

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Artist Bios

Original artwork by Zakkarry and Kodah, members of ANCFSAO's Indigenous Youth Advisory Council.

Zakkarry: Hadī. Siy sozī Zakkarry Witset hazdlī. Hello, my name is Zakkarry and I am from Witset First Nation. My pronouns are They/He, and I am a self taught 2 spirit artist and activist. I have so many stories and lived experiences from my life thus far and I use my art as an expression of my past, present, and future. My art is an extension of me. Every piece is made with something connected to me one way or another and I try my best to represent my communities as an intersectional person within my art pieces.

Kodah: Aaniin! I'm Kodah. I'm a proud Métis and Anishinaabe person who is passionate about learning and connecting with my community. I have a background in animation and art, and like to incorporate that into my role on the Indigenous Youth Advisory Council (IYAC). When I'm not doing work in Indigenous child welfare, I enjoy boardgames, painting, being involved in culture and spending time outside with my pets or family. I care a lot about the work IYAC is doing and I'm in this 100%. I'm dedicated to advocating for Indigenous youth and will continue to do so!



Appendix

Federal vs. Provincial Law – Which Leads?

1. Federal sets out high level principles while provincial is more ground level.
2. Federal Act provides national standards throughout, along with a concurrent laws model. Provincial and territorial child welfare legislation continues to apply up to the point of conflict with provisions of the *Federal Act* (WoW Guide, 2020, p. 25)
3. Indigenous laws exist independently of federal or provincial laws and of one another.
4. First Nations laws “tell us that we do not exist apart from each other. We carry obligations to stand with each other to help each other through critical times” [1]
5. Provincial legislation is deficit-based and attempts to use *Ontario Human Rights Code* to affect appropriate service structures; however, it operates on the level of the individual family. In contrast, the Federal Act is remedial in nature and focused on the consistent application of child welfare policies to remedy the harms done by the Canadian child welfare system and open a path for the reclamation of Indigenous law in this area.
6. Provincial legislation is not Indigenous specific except for Part IX, First Nations, Inuit and Métis Child and Family Services. Its primary purpose is to promote best interests, protection and well-being of children.

[1] Wrapping Our Ways Around Them: Indigenous Communities and Child Welfare Guidebook, 2nd edit., pg. 5; https://nntc.ca/wp-content/uploads/2023/05/WOW_Guidebook_2021-1.pdf

Concordance Table

An Act respecting First Nations, Inuit and Metis children, youth and families, SC 2019, c. 24 (Federal Act), and Child, Youth and Family Services Act, 2017, SO 2017, c. 14, Sched. 1 (CYFSA)

Federal Act	CYFSA	Key Differences	Prevailing Provision
Introduction and Context			
Preamble	Preamble	<p>The Federal Act places a strong emphasis on the recognition of Indigenous rights, cultural preservation, and historical context, aiming to affirm the jurisdiction of Indigenous communities over child and family services.</p> <p>The CYFSA, while recognizing cultural diversity and the specific needs of Indigenous children, focuses more on the delivery and regulation of services within the provincial framework without as strong an emphasis on self-governance or historical reconciliation.</p>	
Purpose and Principles			
s. 8 (purpose); s. 9 (principles)	s. 1	<p>The Federal Act recognises Indigenous rights and self-governance, with a strong emphasis on the right to self government, the development of National Standards, and the implementation of the United Nations Declaration on the Rights of Indigenous Peoples. It focuses on the principles of best interests of the child, cultural continuity, and substantive equality. Note that the best interests of the child prevails only in relation to apprehension decisions.</p> <p>In contrast, the CYFSA is focused on the best interests, protection and well-being of all children in Ontario, with an emphasis on service delivery. It does acknowledge the importance of cultural sensitivity and respect for diversity but within a more general framework that applies to all children and families in the province. It also provides that First Nations, Inuit, and Métis peoples should be entitled to provide, wherever possible, their own child and family services, and all services to First Nations, Inuit, and Métis children and young persons and their families should be provided in a manner that recognizes their cultures, heritages, traditions, connection to their communities, and the concept of the extended family.</p>	Arguably, the language of the CYFSA is more broadly focused, but its implementation is narrower (leading to the need to explicitly add cultural continuity and substantive equality to the analytical lens of the Federal Act).

Definitions

s. 2 (1)

s. 1

Federal Act

"Indigenous Governing Body":

- Definition: An entity that is authorized to act on behalf of an Indigenous group, community, or people.
- Importance: Reflects the Federal Act's emphasis on Indigenous self-governance and jurisdiction over child and family services.

"Indigenous Child":

- Definition: A child who is a member of, or entitled to be a member of, an Indigenous group, community, or people.
- Importance: Central to the application of the Federal Act, ensuring services are tailored to Indigenous children.

"Family":

- Definition: Includes a person whom a child considers to be a close relative or whom the Indigenous group, community, or people to which the child belongs considers, in accordance with the customs, traditions or customary adoption practices of that Indigenous group, community or people, to be a close relative of the child.
- Importance: Acknowledges and validates Indigenous customs and practices in child-rearing and family structures.

Also uses the term "Indigenous" to describe a First Nations person, an Inuk or a Métis person.

CYFSA

"Child":

- Definition: A person under the age of 18.
- Importance: Sets the age parameter for services and protections under CYFSA.

First Nations, Inuk, or Métis child":

- Definition: A child is considered a First Nations, Inuk, or Métis child under CYFSA if the child or their parent identifies the child as such or is a member of or identifies with one or more bands or Indigenous communities; or there is information indicating that a relative or sibling identifies as First Nations, Inuk, or Métis, or there is a connection between the child and an Indigenous community

		<p>"Parent":</p> <ul style="list-style-type: none"> • Definition: The person who has lawful custody of the child and can include the non-biological parent. • Importance: Different to ordinary meaning used under the Federal Act. <p>"Service Provider":</p> <ul style="list-style-type: none"> • Definition: An entity or individual providing child and family services. • Importance: Clarifies who is responsible for delivering services under CYFSA. <p>Refers to First Nations, Inuit or Métis community separately. Limited use of term Indigenous.</p>	
Cultural Continuity			
s.9(2); s. 14(1)	ss. 72-73; 80; 186 (2)	<p>Section 9(2) of the Federal Act asserts that cultural continuity can only be achieved through proactive case planning, when read together with s.14(1), which includes active involvement from the First Nation or IGB in the decision-making process for child and family services and the priority to preventative care.</p> <p>The CYFSA includes provisions that mandate consultation with Indigenous communities at various stages of child and family services. Section 72(a) requires consultation with the band, First Nations, Inuit, or Métis community when preparing care plans for Indigenous children. Section 73 mandates that societies, persons, or entities proposing to provide a prescribed service or exercise a prescribed power on an Indigenous child or family must consult with them beforehand. Section 80 stipulates that societies must make all reasonable efforts to pursue a plan for customary care for Indigenous children in need of protection, who cannot remain with or return to their previous caregivers, and who identify with or are members of an Indigenous community. Section 186(2) allows IGBs to prepare care plans for Indigenous children upon receiving notice that a society plans for their adoption.</p> <p>The key difference lies in the Federal Act's focus on integrating cultural continuity and proactive involvement of Indigenous communities, whereas the CYFSA mandates consultation and efforts towards customary care, particularly when protection and adoption planning are involved.</p>	The Federal Act prevails in weaving the principle of cultural continuity into decisions at every step of the child protection process.

Substantive Equality

s. 9(3)		<p>Section 9(3) sets out the requirement for services to be provided to Indigenous children and families in a manner that is substantively equal to that of other service recipients.</p> <p>There is not equivalent provision in the CYFSA.</p>	The Federal Act prevails in weaving the principle of substantive equality into decisions at every step of the child protection process.
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Role of Best Interests in application

s. 10 (1)	s. 1 (1)	<p>The Federal Act provides that the best interests of the child must be a primary consideration when making decisions or taking actions related to child and family services for Indigenous children. Specifically, in cases involving child apprehension, the best interests of the child are the paramount consideration.</p> <p>The CYFSA provides that the paramount purpose of CYFSA is to promote the best interests, protection, and well-being of all children.</p>	The Federal Act prevails, modifying the analysis of when the best interests of the child is the paramount consideration.
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Physical, emotional and psychological safety

s. 10 (2)	s. 74(3)(c) (i)	<p>Under the Federal Act, the primary consideration is be given to a child's physical, emotional, and psychological safety, security, and well-being, as well as the importance of maintaining relationships with their family, Indigenous group, community, or people, and preserving cultural connections.</p> <p>The CYFSA provides that the child's physical, mental, and emotional needs is a matter that the decision maker may consider, if they deem relevant, in determining the child's best interests.</p>	The Federal Act makes this a primary consideration and prevails over the CYFSA.
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Factors to be considered

s. 10 (3)	s. 74(3)	<p>To determine the best interests of an Indigenous child, the Federal Act mandates that all factors related to the child's circumstances must be considered and provides a non exhaustive enumerated list of relevant factors.</p> <p>The CYFSA only mandates that a child's views and wishes be given age-appropriate weight (s .74(3)(a)) and that an Indigenous child's cultures, heritages and traditions be recognised to preserve their cultural identity and connection to community ((s .74(3)(b)). Section 74 (3)(c) allows for the discretionary considerations of any other circumstances of the case that the decision maker deems relevant.</p>	The Federal Act prevails.
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Heritage

s. 10 (3) (a)	ss. 74(3)(c)(iii) and 74(3)(c)(iv)	<p>The Federal Act requires that an Indigenous child's cultural, linguistic, religious, and spiritual upbringing and heritage be considered in determining their best interests.</p> <p>The CYFSA specifically mandates that an Indigenous child's cultures, heritages and traditions be recognised to preserve their cultural identity and connection to community (s .74(3)(b)). It also allows for the discretionary consideration of the child's race, ancestry, place of origin, ethnic origin, and other personal characteristics (s. 73 (3)(c)(iii)), as well as their cultural and linguistic heritage (s. 73 (3)(c)(iv)), if the decision maker deems this relevant to the determination of best interests (however these provisions apply to non-Indigenous children also).</p>	The Federal Act prevails.
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Needs

s. 10 (3) (b)	ss. 74(3)(c)(ii)	<p>The Federal Act specifies that in determining the best interests of an Indigenous child, consideration must be given to the child's needs based on their age and stage of development, including their need for stability.</p> <p>The CYFSA allows for the discretionary consideration of the child's physical, mental, and emotional level of development. The CYFSA provision provides a broader focus on the child's overall developmental levels without explicitly mentioning stability (s. 74 (3)(c)(i).</p>	The Federal Act prevails.
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Continuity			
s. 10 (3)(b)	s. 74(3)(c)(ii)	<p>The CYFSA places emphasis on considering the importance of continuity in a child's care and the potential impact of disrupting that continuity.</p> <p>The Federal Act does not have a directly comparable provision specifically addressing continuity in the child's care within the best interests provision, but does state that in determining the best interests of an Indigenous child, consideration must be given to the child's need for stability (see s.10(3)(b) above under Needs).</p>	The Federal Act prevails.
Familial Relationships			
s. 10(3)(c)	ss. 74(3)(c)(v); 74(3)(c)(vi), and s. 74(2)	<p>The Federal Act requires consideration of the nature and strength of the child's relationships with their parent, care provider, and any family member who plays an important role in their life.</p> <p>The CYFSA emphasizes the importance of a positive relationship with a parent and a secure place within a family for the child's development, as well as the child's relationships and emotional ties to parents, siblings, relatives, extended family, and community members. These provisions are not specific to Indigenous children. Section 73 (2) does however provide that the decision maker should consider the importance of the preservation of the child's cultural identity and connection to community for a First Nations, Inuk or Métis child.</p>	The Federal Act prevails.
Cultural Identity			
s.10(3)(d)	s. 74(3)(b)	<p>The Federal Act highlights the importance of preserving an Indigenous child's cultural identity and connections to the language and territory of their Indigenous group, community, or people.</p> <p>The CYFSA also emphasizes the importance of preserving a First Nations, Inuk, or Métis child's cultural identity and connection to their community, recognizing the uniqueness of their cultures, heritages, and traditions. While both provisions stress the importance of cultural identity, the CYFSA appears to focus on recognition, as opposed to preservation under the Federal Act. The Federal Act also specifically mentions connections to language and territory.</p>	The Federal Act prevails.

Views and Preferences			
s.10(3)(e)	s. 74(3)(a)	Both the Federal Act and the CYFSA require that a child's views and preferences be considered and given due weight according to their age and maturity, unless these views cannot be ascertained.	Mirror provisions.
Plans of care			
s. 10(3)(f)	s. 74(3)(c)(viii)	<p>The Federal Act requires consideration of any plans for an Indigenous child's care, and specifically includes care in adherence to the customs or traditions of their Indigenous group, community, or people.</p> <p>The CYFSA provision is not specific to Indigenous children and only requires an assessment of the merits of a proposed care plan for a child by a CAS, which may include adoption or placement options, compared to the merits of the child remaining with or returning to a parent.</p>	The Federal Act prevails.
Family Violence			
s. 10(3)(g)	N/A	<p>The Federal Act focuses on considering any instances of family violence and its specific impact on an Indigenous child. This includes assessing whether the child has been exposed directly or indirectly to family violence and evaluating the physical, emotional, and psychological harm or risk of harm to the child.</p> <p>The CYFSA does not contain specific provisions related to family violence.</p>	The Federal Act prevails as there is no corresponding CYFSA provision.
Relevant orders and proceedings			
s. 10(3)(h)	N/A	<p>The Federal Act requires consideration of any civil or criminal proceedings, orders, conditions, or measures that are pertinent to ensuring the safety, security, and well-being of an Indigenous child.</p> <p>No equivalent provision exists in the CYFSA.</p>	As above.

Consistency with Indigenous Law			
s.10 (4)	N/A	<p>The Federal Act requires the considerations concerning the best interests of an Indigenous child to be interpreted, whenever feasible, in a manner consistent with the laws of the Indigenous group, community, or people to which the child belongs.</p> <p>No equivalent provision exists in the CYFSA.</p>	As above.
Delay			
N/A	s. 74(3)(c)(ix)	<p>The CYFSA requires that consideration be given to the effects on the child of delays in resolving their case. This provision directs decision-makers to assess how delays in reaching a resolution could affect the child's stability, emotional state, and overall development, emphasizing the need for timely handling of cases.</p> <p>The Federal Act does not contain any corresponding provision.</p>	The CYFSA provision applies to the extent that it prevents delays in the finality of decisions affecting Indigenous children where that decision is not inconsistent with the Federal Act.
Risk from removal or return			
N/A	s. 74(3)(c)(x)	<p>The CYFSA allows consideration to be given to assessing the risk that a child may suffer harm through various scenarios involving their care arrangements with a parent.</p> <p>The Federal Act does not have a directly comparable provision.</p>	The CYFSA provision operates only to the extent that such consideration would not be inconsistent with s. 10 (3) of the Federal Act.
Risk justifying finding			
N/A	s. 74(3)(c)(x)	<p>The CYFSA allows consideration to be given to assessing the degree of risk that justified the finding that a child is in need of protection.</p> <p>The Federal Act does not have a directly comparable provision.</p>	As above.

Effect of Services

s. 11; s.14	ss.73.1 - 73.3	<p>Section 11 of the Federal Act emphasizes that child and family services must be delivered in a manner that considers the child's specific needs and cultural background. It ensures that children have the opportunity to maintain their connection to their family origins and promotes substantive equality, aiming for fair outcomes despite potential disadvantages. Section 14 prioritizes preventive care, focusing on interventions that aim to prevent the need for more intensive child welfare services by addressing issues early.</p> <p>The CYFSA, specifically sections 73.1 to 73.3 (awaiting Royal Assent and not yet in force), introduces provisions aimed at supporting Indigenous children and families through designated prevention-focused Indigenous service providers. Section 73.1 allows the Minister to designate such providers to deliver prevention services, early interventions, or community-based supports. Section 73.2 mandates that child welfare societies or service providers seek information about services available from these Indigenous providers and from the child's community, ensuring a collaborative approach to service delivery. Section 73.3 requires societies or service providers to establish a circle of supportive persons for Indigenous children, in accordance with their wishes and with involvement from their family where possible, enhancing community and familial support structures.</p>	The Federal Act sets the floor, which the CYFSA amendments aim to meet.
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Notice

s. 12	ss. 72, 73, 104(4), 109(7), 109(10), 113(5), 115(6), 186, 192, and 197(2)	<p>The Federal Act mandates that before taking any significant measure regarding an Indigenous child, the service provider must notify the child's parent and care provider. This ensures that the child's immediate guardians are informed and can participate in the decision-making process. In contrast, ss. 72 and 73 of the CYFSA emphasize regular and specific consultations with the broader Indigenous community when providing services or exercising powers concerning Indigenous children and families.</p> <p>Sections 104(4), 109(7), 109(10), 113(5), 115(6), 186, 192, and 197(2) of the CYFSA also outline specific requirements for notifying and consulting with IGBs regarding various child welfare actions. These provisions ensure that IGBs are informed and involved in critical decisions affecting Indigenous children.</p>	The Federal Act sets the floor and provincial Societies and Agencies must additionally comply with the CYFSA provisions.
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Representations and Party Status			
s.13(b)	s. 79(1)	<p>The Federal Act recognises Indigenous governing bodies' participatory rights in legal proceedings concerning Indigenous children, ensuring their direct involvement, rights, and cultural perspectives are upheld. It emphasizes jurisdictional authority and requires formal agreements to outline their role in decision-making processes.</p> <p>The CYFSA grants full formal party status to a representative of the child's First Nations, Inuit, or Metis community(ies).</p>	The Federal Act sets the floor and the CYFSA continues to apply as the higher standard
Priority to prevention and prenatal care			
s.14		<p>This provision signifies a move from reactive, intervention-based practices to proactive prevention strategies.</p> <p>There is no parallel provision in the CYFSA.</p>	The Federal Act's provision prevails.
Socioeconomic factors			
s.15		<p>This provision for the first-time mandates service providers to exhaust all efforts before resorting to apprehension, where the grounds for apprehension are based solely in socioeconomic factors, including poverty, housing concerns and the health of the parent or caregiver.</p> <p>There is no parallel provision in the CYFSA.</p>	The Federal Act's provision prevails.
Child Protection Services			
s.15.1	N/A	<p>Service providers are required to document that they have actively pursued options to enable the child to continue residing with their parent or family member before making the decision to apprehend on the basis solely of socioeconomic factors such as housing insecurity, poverty, and the health of the caregiver.</p> <p>The CYFSA does not contain parallel provisions.</p>	The Federal Act's provision prevails.

Placement			
s.16	ss. 101(5) and 109(2).	<p>The Federal Act establishes a priority order for placement:</p> <ul style="list-style-type: none"> • first with a parent, • then with an adult family member, • followed by an adult from the same Indigenous group, • then an adult from any Indigenous group, and • finally any other adult. <p>The CYFSA prioritizes placing an Indigenous child with a member of their extended family or, if not possible, with another family from the same Indigenous group (First Nations, Inuit, or Métis), unless there is a substantial reason for placing the child elsewhere. This applies both in court decisions (s. 101(5)) and when a society has care of the child (s. 109(2)).</p>	The Federal Act takes precedence over the CYFSA, introducing this new priority system.
Siblings and Customs			
s.16(2)	s.113 and 117(1)	In addition to the addition of familial relationships to the best interests analysis (see s. 10(3)(c) above), cultural identity (see s. 10(3)(d) above) consistency with Indigenous laws (see s. 10(4) above), this section explicitly requires service providers to consider customs and traditions related to customary adoption, maintaining family unity, and keeping siblings together.	Federal Act provision prevails.
Placement review			
s.16(3)	s.113 and 117(1)	<p>The Federal Act requires an ongoing reassessment of a placement of an Indigenous child where that child is not in the care of their parent, and the interrogation whether an Indigenous child can be placed with an adult member of the family where they are not placed with a parent.</p> <p>The CYFSA provides an avenue for status review of interim society care (s.113) and requires an annual review by the Director of any Indigenous child in extended society care, with consideration of the child's Indigenous identity and heritage, involving consultation with the community but not requiring direct IGB participation for children placed in extended society care only.</p>	Federal Act provision prevails allowing Indigenous governing bodies to participate in placement reviews

Attachment and Emotional Ties

s.17		This section of the Federal Act emphasizes the importance of fostering attachment and emotional ties between Indigenous children, youth, and their families including extended family and caregivers. Read together with the principles of cultural continuity, placement considerations and the modified best interests analysis, this provision prioritizes the child's right to a connection with family, community, land, and language.	
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Glossary of Terms

Care Provider: Defined as a person responsible for providing day-to-day care of an Indigenous child, other than the child's biological parent. This can include individuals recognized under the customs or traditions of the child's Indigenous community. Care providers are entitled to notice of significant measures concerning the child and may become parties in child welfare proceedings.

Coordination Agreements: Legal agreements that facilitate the provision of child and family services between Indigenous governing bodies and federal or provincial governments. These agreements help align services with the needs and cultural practices of Indigenous communities.

Cultural Continuity: Emphasized by the Federal Act as critical for the well-being and identity of Indigenous children. It involves maintaining connections to their culture, community, language, and traditions.

Cultural Experts: May include Elders, cultural leaders, or others recognized by their Indigenous Nation as knowledgeable in the customs and practices regarding child rearing. They play a vital role in maintaining cultural standards and practices within child and family services.

Indigenous Governing Body (IGB): A council, government, or other entity authorized to act on behalf of an Indigenous group, community, or people. These bodies are appointed by Indigenous Nations to exercise child welfare jurisdiction under the Federal Act.

Indigenous Jurisdiction: Refers to the inherent right of self-government recognized and affirmed under section 35 of the *Constitution Act*, 1982. This jurisdiction allows Indigenous peoples to govern themselves in matters related to child and family services, independent of federal or provincial/territorial laws.

Jordan's Principle: A child-first principle aimed at resolving jurisdictional disputes between governments concerning the provision of services to Indigenous children. It mandates that the government of first contact pays for the needed service, with the resolution of jurisdictional and financial responsibilities to follow.

Preventative Care: A focus of the Federal Act on preventing the apprehension of Indigenous children by providing early intervention and support services to families to address issues before they escalate to the need for separation.

Right to Self-Determination: Protects the rights of Indigenous Peoples to govern themselves and make decisions regarding justice, family law, and child welfare laws in accordance with their laws, legal traditions, and institutions.

Substantive Equality: A principle under the Federal Act ensuring that Indigenous children have equal opportunities to services that respect their cultural, social, and linguistic needs.



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