

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

Technical Information Package



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i. Key highlights: The *Act respecting First Nations, Inuit and Métis children, youth and families*

On January 1, 2020: What happens?

- The *Act respecting First Nation, Inuit and Métis children, youth and families* (the Act) will come into force on January 1, 2020.
- This is a comprehensive reform of child and family services affirming the inherent right to self-government under section 35 includes jurisdiction in relation to child and family services, including legislative authority and the right to administer and enforce these laws. The purpose of the Act is to affirm the rights of Indigenous governments and organizations to exercise jurisdiction over First Nation, Inuit and Métis child and family services.
- The law establishes national principles including best interests of the child, cultural continuity, and substantive equality to guide the interpretation and administration of the Act; and contribute to the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP).
- As of January 1, 2020, every service provider providing child and family services in relation to Indigenous children will need to follow the minimum standards found in the Act.
- From January 1, 2020, until a community determines how it will exercise jurisdiction, existing agencies will continue to provide services to Indigenous children.
- As of January 1, 2020, agreements related to existing delegated agencies will remain valid unless the parties decide otherwise.
- The Act provides that agreements in relation to child and family services between Indigenous groups and federal, provincial, or territorial governments that predate the coming-into-force of the Act prevail in case of conflict.
- If Indigenous groups are at discussions tables to conclude agreements, they can still take advantage of the Act.
- Depending on their chosen service delivery model, Indigenous groups may take measures to end or renegotiate their contract with the delegated agency providing services to their children.

How can the Act help children return to their families?

- The Act requires that a reassessment occur on an ongoing basis, to determine whether it would be appropriate to return an Indigenous child to his or her parents or family, if the child was placed elsewhere.
- Should a child, parent, family or community believe that such a reassessment is not taking place, they could request that the Court redress the situation.
- However, it is important to mention that the Act does not result in an automatic return of Indigenous children to their parents, family or community.
- The Act will help shift the programming focus to prevention and early intervention, and will also ensure that Indigenous children receive culturally appropriate services and grow up immersed in their communities and cultures.
- Furthermore, the Act will help children stay with their families and communities through the order of priority for the placement of Indigenous children which prioritizes family and community. It states that priority should be given to a placement with one of the child's parents and, if impossible, with one of the child's family members.
- We will help children and families understand their rights under the Act by providing updated and clear communications products on the Act, and by making sure the appropriate parties have access to the necessary information.

ii. Frequently Asked Questions for the public on *An Act respecting First Nations, Inuit and Métis children, youth and families*

1. What is the purpose of the Act?

- The purpose of the Act is to:
 - o affirm the inherent right of Indigenous Peoples to self-government, which includes jurisdiction in relation to child and family services;
 - o establish national principles such as the best interests of the child, cultural continuity, and substantive equality to guide the provision of child and family services in relation to Indigenous children; and
 - o contribute to the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*.
- The Act is not about imposing solutions but is rather about opening the door for Indigenous Peoples to choose their own solutions for their children and families.

2. What will be the impact of the Act on Indigenous children and families?

- help shift the programming focus to prevention and early intervention;
- help Indigenous children stay with their families and communities;
- promote Indigenous children's connections to their culture
- help ensure that Indigenous children receive culturally appropriate services and grow up immersed in their communities and cultures;
- have the principle of the best interests of the child always applied in making decisions in the context of the provision of child and family services in relation to Indigenous children; and
- provide a framework that Indigenous communities can use when exercising jurisdiction in relation to child and family services.

3. What does this Act mean for children who are in care now? How can they go home to their extended family or communities?

- In the preamble of the Act, the importance of reuniting Indigenous children with their families and communities is recognized.
- Even if a community is not exercising its jurisdiction, Section 16 of the Act aims to help reunite separated families and communities. This section sets out an order of priority for the placement of Indigenous children which prioritizes family and community. This section also requires that a reassessment occur on an ongoing basis, to determine whether it would be appropriate to return an Indigenous child to his or her parents or family, if the child was placed elsewhere.
- As specified in the definition section of the Act, the notion of extended family is captured by the term “family.”
- However, it is important to mention that the Act does not result in an automatic return of Indigenous children to their parents, family or community.

4. Which Indigenous groups does the Act apply to?

- The Act applies to all section 35 rights-bearing Indigenous groups, communities or peoples.

5. Does the Act apply off-reserve or outside of Inuit Nunangat?

- Yes, the Act applies to child and family services provided in relation to all Indigenous children, regardless of where they reside in Canada.

6. How was the Act developed with partners?

- The Government of Canada engaged broadly at all levels during the co-development of the Act to ensure that a variety of stakeholders and perspectives were heard throughout the process.
- On January 25 and 26, 2018, the Minister of Indigenous Services hosted an emergency meeting on Indigenous child and family services, involving national, regional, and community organizations representing First Nations, Inuit and Métis, as well as Treaty Nations, self-governing First Nations, Provinces and Territories, experts and those with lived experience, including Elders, youth and women.
- Further to this meeting, the federal government committed to six points of action to address the over-representation of Indigenous children and youth in care in Canada. One of the points of action was a commitment to “work with our partners to support communities to exercise jurisdiction in the area of child and family services, including exploring co-developed federal legislation.”
- Following the emergency meeting, the Government of Canada engaged extensively with partners, including those who participated to that meeting. Over 65 engagement sessions were held across the country with nearly 2000 participants.
- In October 2018, the Government of Canada participated in a Reference Group consisting of delegates from the Assembly of First Nations, Inuit Tapiriit Kanatami and the Métis National Council.
- The Reference Group proposed legislative options grounded on what was heard throughout the engagement process.
 - o They recommended the adoption of broad-based legislation that would seek to affirm the right of Indigenous peoples to make laws with regards to child and family services and that would help keep families together.
 - o They also recommended broad principles to guide the delivery of child and family services when provided in relation to Indigenous children.
- In-person engagement sessions were also conducted in January 2019 with Indigenous partners and provincial and territorial representatives on the proposed content of the Bill.
- As a result of the discussions on the content of the Bill, adjustments to strengthen the proposed legislation were suggested and the Bill was modified prior to its introduction in Parliament on February 28, 2019.
- Canada intends to continue with the spirit of co-development during the implementation phase of this Act.

7. What does “Indigenous governing body” mean?

- Under the Act, an Indigenous governing body means a council, government or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.
 - o For example, a “council of the band” as defined in the Indian Act would fit under this definition as well as Inuit Land Claim Organization.

- It is the Indigenous group, community or people that intends to exercise jurisdiction in relation to child and family services that would determine which entity will act as their authorized Indigenous governing body for the purposes of the Act. The Indigenous group, community or people would also determine how this entity is mandated to act on its behalf.
- When acting on behalf of an Indigenous group, community or people for the purposes of the Act, the Indigenous governing body will have to be able to demonstrate that they are in fact authorized to act on behalf of that group, community or people. An Indigenous governing body could use, amongst other means of authorization, a Band council resolution, a board resolution or a referendum.

8. What is the “best interests of the child” principle?

- Section 10 of the Act ensures that the best interests of an Indigenous child is a primary consideration in the making of decisions or the taking of actions in the context of the provision of child and family services in relation to an Indigenous child. In the case of the apprehension of an Indigenous child, the best interests of that child must be the paramount consideration.
- The provisions of the Act with regard to the best interests of the child will have to be followed by provincial and territorial courts and child and family services providers.
- When determining the best interests of an Indigenous child, all factors related to the circumstances of the child must be considered, including the factors set out in the Act. These factors include, but are not limited to, the child’s culture, the child’s needs, the nature and strength of the child’s relationship with his or her parent, the child’s views and preferences, any plans for the child’s care, any family violence and its impact on the child, and any relevant civil or criminal proceeding.
- In addition, when determining the best interests of an Indigenous child, the Act requires that primary consideration be given to the child’s physical, emotional and psychological safety, security and well-being, as well as to the importance, for that child, of having an ongoing relationship with his or her family and with the Indigenous group or community to which he or she belongs and of preserving the child’s connections to his or her culture.
- The Act establishes minimum standards. Nothing precludes Indigenous groups or communities, as well as provincial and territorial governments, from offering greater protection through their child and family services legislation.
- Finally, the best interests of the child requirements established in the Act are to be construed, to the extent possible, in a manner that is consistent with the law of the Indigenous group, community or people to which the Indigenous child belongs.

9. What order of priority for placement of an Indigenous child is set out in the Act?

- To the extent that it is consistent with the best interests of the child, the placement of an Indigenous child in the context of providing child and family services is to occur in the following order of priority:
 - o With one of the child’s parents;
 - o With another adult member of the child’s family;
 - o With an adult who belongs to the same Indigenous group or community as the child;
 - o With an adult who belongs to an Indigenous group or community other than the one to which the child belongs; or
 - o With any other adult.

10. If there is a non-Indigenous parent or family member, does it change the order of placement set out in the Act?

- No, priority should be given to placing the child with one of the child's parents or if that is not possible, with another adult family member, unless it is inconsistent with the Indigenous child's best interests.

11. How can an Indigenous group or community exercise jurisdiction over child and family services under section 20 of the Act?

- The proposed pathway leading to the exercise of jurisdiction included in the Act does not represent a “one size fits all” approach.
- The Act was designed to enable Indigenous groups and communities, once they have an existing legislation, to transition towards exercising partial or full jurisdiction over child and family services at a pace that they choose.
- The **first option** is for an Indigenous group or community to adopt a law on child and family services and to send a notice to the Minister of Indigenous Services and the government of each province or territory in which the Indigenous group or community is located informing them that they are exercising their jurisdiction.
- In that case, the Indigenous law will not prevail over conflicting federal, provincial and territorial laws on child and family services.
- The **second option** is for an Indigenous group or community, once they have a law, to send a request to the Minister of Indigenous Services and the government of each province and territory in which the Indigenous group or community is located to enter into a tripartite coordination agreement related to the exercise of their jurisdiction.
- Within 12 months of the request being made, if an agreement is reached, or if no agreement is reached but reasonable efforts were made to reach an agreement, the Indigenous laws would have the force of federal law and would prevail over conflicting federal, provincial and territorial laws in the event of a conflict or inconsistency.
- To facilitate the conclusion of a coordination agreement, at any given time, the Act allows the parties to benefit from dispute resolution mechanisms, including a dispute mechanism that may be established by regulations co-developed with Indigenous peoples.

12. How will the Act be implemented?

- The provisions of the Act will come into force on January 1st, 2020. At that time, the provisions will apply to child and family services provided in relation to Indigenous children by any agency, whether by Provinces and Territories or by First Nations, Inuit or Métis agencies.
- Indigenous Services Canada has committed to exploring models for distinctions-based governance mechanisms. This would be a continuation of engagement and dialogue with Indigenous partners and Provinces/Territories. These distinctions-based governance mechanisms would be venues for parties to highlight issues relating to transition and effective implementation of the Act which will come into force on January 1, 2020. Such distinctions-based governance mechanisms could, for example, discuss matters such as:
 - o capacity-building, funding needs, and tripartite coordination agreements between Indigenous groups, Provinces and Territories and Canada (should an Indigenous group request to enter into such an agreement);
 - o regulations if required; and
 - o the co-development of a data and reporting strategy with Indigenous, provincial and territorial partners.

13. What happens when an Indigenous group or community wishing to exercise jurisdiction over child and family services within the framework of the Act has members located outside of the Province or Territory in which they are located?

- The Act does not address the scope of Indigenous laws in relation to child and family services, as that is for each Indigenous group, community or people to determine.
- Should an Indigenous group or community decide that its legislation will apply to all of its members, including members located outside of the Province or Territory in which the Indigenous group or community is located, that Indigenous legislation will apply across Canada if it has force of law as federal law under the Act.
- The Act requires that certain information be made available on a website to facilitate the work of social workers and other child and family service providers.
- For example, the Minister of Indigenous Services will have to ensure that all Indigenous child and family services laws given force of law as federal law are made accessible to the public in any manner considered appropriate, after receiving a copy of such a law.
- As a result of this new legal framework, social workers and other service providers will have to identify, as soon as possible, the community, group or people of any Indigenous child receiving child and family services.
- It should be noted that the Act provides that a jurisdictional dispute must not result in a gap in the services that are being provided to Indigenous children. For this reason, services should always be provided to an Indigenous child even if it remains unclear which legal regime applies to his or her situation.

14. When requesting a coordination agreement, does an Indigenous group or community have to make a request to each Province and Territory in which its members are located?

- The request must be made to each Province and Territory in which the Indigenous group or community is located, which will not necessarily be all the Provinces or Territories in which members of the Indigenous group or community are residing.
- For example, in the First Nations context, the request to enter into a tripartite coordination agreement will have to be sent to each Provinces or Territories in which the reserve is situated. If the reserve is situated in more than one Province or Territory, the Indigenous body will submit a request to multiple Provinces or Territories.

15. What happens on January 1, 2020, if provincial and territorial laws on child and family services provide additional rights to Indigenous Peoples with regards to their participation in proceedings and the requirement to provide notice in relation to actions to be taken with regards to Indigenous children?

- The Act is meant to be interpreted as establishing minimum standards for the provision of child and family services in relation to Indigenous children.
- As such, nothing precludes Indigenous groups or communities, as well as provincial and territorial governments, from offering greater protection through their child and family services legislation.
- In addition to the notice sent as per the federal Act, service providers are also expected to continue sending notices of measures to be taken in relation to Indigenous children in accordance to provincial and territorial laws.
- The right to make representations and to have party status under the federal Act were not meant to take away existing greater rights that are provided under provincial and territorial laws.

16. Which courts will have jurisdiction to hear cases under the Act?

- It should be noted that the Act is not intended to oust the jurisdiction of courts presently hearing child protection matters.
 - Accordingly, cases dealing with child and family services involving Indigenous children, including the application of the standards set out in the Act, would continue to be heard according to the current practice either before a provincial court or before the superior court such as through a unified family court.

17. What resources are available for people with legal questions?

- The Government of Canada will not be providing legal representation nor legal advice with regards to the Act and its implementation.
- Partners will be responsible to seek the necessary legal support through appropriate venues. For example, some partners may be eligible to provincial and territorial legal aid services and others may want to obtain private legal representation.

18. How will information sharing be addressed and ensured under the Act?

- Clauses 27 to 30 were added to the Act to flag the importance of collecting and sharing relevant information with regards to Indigenous children in care.
- It was envisioned that the details with regards to the collection, retention, use and disclosure of information respecting the child and family services that are provided in relation to Indigenous child would be established when discussions take place between Indigenous governing bodies, Provinces, Territories and Indigenous Services Canada.
- Once all parties would agree as to the proper way forward, it was envisioned that they would enter into agreements specifying all relevant details with regards to that information, potentially within coordination agreements.
- Discussions surrounding information sharing agreements can occur at all time and can occur prior to an Indigenous governing body being ready to exercise their jurisdiction under the Act.
- Indigenous governing bodies willing to begin these discussions must contact:
 - the Minister of Indigenous Services Canada via email (sac.sefreforme-cfsreform.isc@canada.ca) or mail (Child and Family Services Reform, Indigenous Services Canada, 10 rue Wellington, 7th Floor, Gatineau QC K1A 0H4); and
 - the government of each province and/or territory in which the Indigenous governing body is located
- Of note, the 12 months prescribed period by the Act in relation to coordination agreements do not apply to these distinct information sharing agreement discussions.

1.0 – Introduction

1.1 Background on child and family services legislation

There is an urgent need to change the way that child and family services are provided to First Nations, Inuit and Métis children, who are severely over-represented in the foster care system. In 2016, Indigenous children represented 7.7% of all children living in Canada under the age of 15, but accounted for 52.2% of children in foster care in private homes.¹ Too many children are being removed from their families and separated from their culture and communities, impacting not only the lives of the children, but the lives of future generations.

The first five *Calls to Action* issued by the Truth and Reconciliation Commission in 2015 appeal to federal, provincial, territorial, and Indigenous governments to implement changes to the child and family services system. In response to these Calls to Action, the Government of Canada has been working in partnership with Indigenous peoples, Provinces and Territories to reform child and family services.

The need for reform was also underlined by the Canadian Human Rights Tribunal, who in 2016 found Canada's First Nations Child and Family Services Program to be discriminatory and ordered Canada to amend the program.²

On January 25-26, 2018, the Minister of Indigenous Services hosted an Emergency Meeting involving all provinces and territories, First Nations, Inuit and Métis leaders to address the over-representation of Indigenous children in the child and family services system and to work together toward reform. Coming out of the meeting, and based on the key findings of discussion, Canada committed to six points of action, including supporting communities to exercise jurisdiction and exploring the potential for co-developed federal legislation in the area of child and family services.

New federal legislation was also called for in an Interim Report by the National Advisory Committee on First Nations Child and Family Services Program Reform in January 2018. Such reforms were also supported by resolutions passed in May 2018 and December 2018 by the Assembly of First Nations and in November 2018 by the Métis Nation General Assembly.

Throughout the summer and fall of 2018, Indigenous Services Canada engaged with national, regional, and community organizations, with representatives from First Nations, Inuit and Métis, as well as Treaty Nations, self-governing First Nations, Provinces and Territories, experts and those with lived experience. Over 65 engagement sessions were held with nearly 2,000 participants. Additional engagements took place with Indigenous and provincial and territorial partners in January 2019 to gather feedback on the content of the draft legislation.

Thanks to the efforts of people working across Canada, the *Act respecting First Nations, Inuit and Métis children, youth and families* (the Act), became law on June 21, 2019, and will come into effect as of January 1, 2020. This document is intended to serve as an implementation guide for the Act. This guide is not intended as, and does not provide, legal advice on the Act.

¹ According to Census 2016 data.

² Subsequent remedial orders were made in 2016, 2017, and 2018.

2.0 – Overview of the Act

2.1 What is the purpose of the Act?

The purpose of the legislation is to change the way that child and family services are provided to Indigenous children, with the ultimate goal of reducing the number of Indigenous children in care. The Act affirms the jurisdiction of First Nations, Inuit and Métis over child and family services, contributes to the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) and establishes national principles such as best interests of the child, cultural continuity and substantive equality to help guide the provision of child and family services in relation to Indigenous children.

The Act establishes minimum standards with respect to the provision of child and family services in relation to Indigenous children. Nothing precludes Indigenous groups or communities, as well as provincial and territorial governments, from offering greater protection through their child and family services legislation.

The Act also aims to:

- help shift the programming focus to prevention and early intervention;
- help Indigenous children stay with their families and communities;
- promote Indigenous children’s connections to their culture;
- help ensure that Indigenous children receive culturally-appropriate services and grow up immersed in their communities and cultures;
- have the principle of the best interests of the child always applied in making decisions in the context of the provision of child and family services in relation to Indigenous children;
- provide a framework that Indigenous communities can use when exercising jurisdiction in relation to child and family services; and
- affirm that the inherent right of self-governance includes jurisdiction in relation to child and family services.

The Act applies to child and family services provided in relation to all Indigenous children, regardless of where they reside in Canada.

2.2 Definitions

Care provider - means a person who has primary responsibility for providing the day-to-day care of an Indigenous child, other than the child’s parent, including in accordance with the customs or traditions of the Indigenous group, community or people to which the child belongs

Child and family services - means services to support children and families, including prevention services, early intervention services and child protection services

Coordination agreement - means an agreement referred to in subsection 20(2) of the Act

Family - 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

Indigenous - when this word is used in the Act, it also describes a First Nations person, an Inuk or a Métis person

Indigenous governing body - means a council, government or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*

Indigenous peoples - has the meaning assigned by the definition of aboriginal peoples of Canada in subsection 35(2) of the *Constitution Act, 1982*

Province (not defined in the Act) – The term “province” when used in the Act means a province of Canada, and includes Yukon, the Northwest Territories and Nunavut, unless a contrary intention appears.

2.3 Key Elements of the Act

Best interests of the child

The well-being of the child is at the heart of the Act, which contains mandatory provisions concerning the best interests of the child. These provisions would have to be followed by any person or entity, as well as provincial and territorial courts, providing child and family services in relation to Indigenous children.

The Act requires that the best interests of the child be a primary consideration when providing child and family services in relation to Indigenous children, and the paramount consideration in the case of child apprehension.

When determining the best interests of an Indigenous child, the Act requires that all factors related to the circumstances of the child be considered. The Act sets out a non-exhaustive list of factors, including:

- the nature and strength of the child’s relationship with his or her parent;
- the child’s views and preferences;
- any plans for the child’s care;
- any family violence and its impact on the child; and
- any relevant civil or criminal proceeding.

When considering these factors, the Act would require that primary consideration be given to the child’s physical, emotional and psychological safety, security and well-being as well as to the importance to the child of an ongoing relationship with his or her family and the Indigenous group, community or people to which he or she belongs and of preserving the child’s connections to his or her culture.

The best interests of the child requirements established in the Act are to be construed, to the extent possible, in a manner that is consistent with the law of the Indigenous group, community or people to which the Indigenous child belongs.

Order of placement

Section 16 of the Act establishes an order of priority to be used when determining the placement of an Indigenous child. As long as it is consistent with the best interests of the child, **the placement of an Indigenous child in the context of providing child and family services should follow this order of placement:**

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.

If one of the parents is not Indigenous, this does not change the order of placement.

This section of the Act also requires that a reassessment occur on an ongoing basis, to determine whether it would be appropriate to return an Indigenous child to his or her parents or family, if the child was placed elsewhere. This reassessment could help children already in care reunite with their families and communities, even if a community is not exercising its jurisdiction under the Act, since the priority is placed on family and community. However, it is important to mention that the Act does not result in an automatic return of Indigenous children to their parents, family or community.

The Act also establishes **rights for parents, family members and care providers in the context of child and family services provided to Indigenous children**. For example, family members have the right to have their views and preferences considered in decisions that affect them, and parents and care providers have the right to receive notice of any significant measures to be taken in relation to a child and the right to have party status in civil proceedings concerning child and family services provided to an Indigenous child.

Existing child and family services agencies

As of January 1, 2020, existing agencies will continue to provide child and family services to Indigenous children. However, every person providing services to Indigenous children will need to follow the minimum standards found in the Act.

Agreements in support of the existing delegated Indigenous child and family services agencies will remain valid and in force unless the parties to the agreement decide otherwise. Indigenous groups, communities or people that choose to exercise their jurisdiction could continue working with delegated agencies, or could create their own service delivery model. If Indigenous governing bodies representing Indigenous groups, communities or people are currently at discussions tables to conclude agreements, they can still exercise jurisdiction under the framework of the Act if they choose to do so.

Depending on their chosen service delivery model, Indigenous groups may take measures to end or renegotiate their contract with the delegated agency providing services to their children.

2.4 Other important elements of the Act

Scope of Indigenous Laws in relation to child and family services

The Act does not address the scope of Indigenous laws in relation to child and family services, as that is for each Indigenous group, community or people to determine. Should an Indigenous

group, community or people decide that its legislation will apply to all of its members, including members located outside of the Province or Territory in which the Indigenous group or community is located, that Indigenous legislation would apply across Canada if it has force of law as federal law under the Act.

Indigenous laws that have force of law as federal law under the Act must nevertheless comply with sections 10 to 15 of the Act with respect to the “Best Interests of Indigenous Child” and the “Provision of Child and Family Services” as well as the *Canadian Human Rights Act* and the *Canadian Charter of Rights and Freedoms*.

Liability issues will be addressed within coordination agreements so that the Indigenous governing bodies will be fully informed of their responsibilities and liability resulting from the exercise of their jurisdiction over child and family services.

Coordination agreements will also address conflict of laws scenarios so that it is clear where and when an Indigenous law should be applied.

Publication requirements

The Act requires that certain information be made available on a website to facilitate the work of

social workers and other child and family service providers. For example, the Minister of Indigenous Services will have to ensure that all Indigenous child and family services laws given force of law as federal law are made accessible to the public in any manner considered appropriate, after receiving a copy of such a law.

Services provided to Indigenous children

As a result of this new legal framework, social workers and other service providers will have to identify, as soon as possible, the Indigenous background of any children receiving child and family services. It should be noted that the Act provides that a jurisdictional dispute must not result in a gap in the services that are being provided to Indigenous children. For this reason, child and family services should always be provided to an Indigenous child even if it remains unclear which legal regime applies to his or her situation.

Which courts will have jurisdiction to hear cases under the Act?

The Act does not displace the jurisdiction of courts presently hearing child protection matters. The Act is, however, intended to apply to all proceedings currently pending before the courts, as well as all cases going forward where such proceedings or cases involve an Indigenous child. As such, cases dealing with child and family services involving Indigenous children will now be subject to the application of the standards set out in the Act. However, they will continue to be heard according to the current practice either before a provincial court, or before the superior court,

such as through a Unified Family Court. It is not necessary for the federal Act to state that provincial courts have jurisdiction because a provincial court's jurisdiction to determine these matters is provided for in the province's own child protection laws. The Act does not change the jurisdiction, but merely adds to the relevant applicable law.

With regards to the enforcement of Indigenous laws on child and family services, the Act affirms the authority of Indigenous peoples to establish dispute resolution mechanisms within the context of the administration and enforcement of their laws.

What resources are available for people with legal questions?

- The Government of Canada will not be providing legal representation nor legal advice with regards to the Act and its implementation.
- Partners will be responsible to seek the necessary legal support through appropriate venues. For example, some partners may be eligible to provincial and territorial legal aid services and others may want to obtain private legal representation.

Approach and guidance on implementation

- This technical guide is meant to provide guidance on the implementation of the Act and is intended to be an evergreen document which may be changed at a later date.
- The Department of Indigenous Services Canada will collaborate and cooperate with partners in the creation of documents such as this one, which aims to provide information on the Act and its implementation.
- During the implementation, the Department of Indigenous Services Canada will adopt a distinctions-based approach which will be reflective of the unique traditions and cultures of First Nations, Inuit and Métis.

3.0 – What does the Act mean to me?

The Government of Canada will be supporting Indigenous groups and communities in their path toward the exercise of their jurisdiction, including before they have completed a law on child and family services, but will not be providing legal representation nor legal advice on the Act and its implementation.

The information provided does not, and is not intended to, constitute legal advice.

What does the Act mean to me as an Indigenous child?

Key highlights:

- The Act may help you stay with your family.
- If you are currently in care, the Act may help you return to your family.
- The Act aims to help you stay connected to your family, community, language and culture.
- Financial, health and housing challenges should not be the only reason you are separated from your family.
- If you cannot stay with one of your parents, you should first be placed with another family member.
- If the service provider determines you cannot stay with one of your parents, they should demonstrate that reasonable efforts were made to keep you with your family.

According to the Act...

- Your care provider is the person who has primary responsibility for providing your day-to-day care, if it is not your parent. This includes a care provider in accordance with the customs or traditions of the Indigenous group, community or people to which you belong. (Clause 1)
- Your family are people you consider to be a close relative or that your Indigenous group, community or people considers to be your close relative. This could also include customary adoptive parents. (Clause 1)
- The Indigenous governing body acting on your behalf is the council, government or other entity that is authorized to act on behalf of your Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*. (Clause 1)

The Act...

- Upholds rights as recognized and affirmed by section 35 of the *Constitution Act, 1982*. In case of conflict or inconsistency, the Act would not prevail over any existing agreements that your group, community or people may have signed. (Clauses 2-3)
- Establishes minimum standards to be applied if you ever receive child and family services. These standards have to be applied by provinces, territories and Indigenous service providers. Nothing would stop a service provider from providing services that offer greater protection. (Clauses 4, 7)

- Affirms jurisdiction of Indigenous Peoples in relation to child and family services. As a result, your group, community or people can make their own laws on this matter. If the group, community or people to which you belong have passed a law on child and family services, this law will apply to you unless its application would be contrary to your best interests. (Clauses 8(a), 18(1), 23) In order to exercise their jurisdiction, your Indigenous group, community or people can:
 1. Give notice of their intent to exercise their jurisdiction on child and family services to the Government of Canada and the government of each Province and Territory in which they are located.
 - o Having submitted a notice of intent, your Indigenous group, community or people could exercise their jurisdiction. However, this would not result in your Indigenous laws automatically prevailing over federal, provincial and territorial laws.
 2. Make a request to the Government of Canada and the government of each Province and Territory in which they are located to enter into a tripartite coordination agreement to exercise their jurisdiction on child and family services and have their laws prevail over federal, provincial and territorial laws.
 - o Within 12 months following the request, if a tripartite coordination agreement is reached, or no agreement is reached but reasonable efforts were made to reach an agreement, the laws of your Indigenous group, community or people would have force of law as federal law and would prevail over federal, provincial and territorial laws. (Clauses 20(2), 21)
- Sets out principles applicable, on a national level, such as best interests of the child, cultural continuity and substantive equality to help guide the provision of child and family services you could receive. (Clauses 8(b), 9)
- Contributes to the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*. (Clause 8(c))

Your best interests should always be considered when making decisions or taking actions in the context of the provision of child and family services. (Clause 10)

- When doing so, primary consideration has to be given to your physical, emotional and psychological safety, security and well-being, as well as to the importance to you having an ongoing relationship with your family and Indigenous group, community or people, and of preserving your connection to your culture.
- Other factors to be taken into consideration include: your cultural, linguistic, religious and spiritual upbringing and heritage, your needs, and the nature and strength of your relationship with your parent, care provider and family.
- Preserving your cultural identity and connection to the language and territory of your Indigenous group, community or people must be considered.
- In determining what is in your best interests, the Act states that your views and preferences have to be considered.

If you are receiving child and family services, these services must take into account your need for safety, security, and well-being, your culture, allow you to know your family origins, and promote substantive equality between you and other children. (Clause 11)

Before taking a significant measure in regards to you, notice must be given to your parents, care provider and your Indigenous governing body. This requirement applies unless providing notice before the significant measure is taken would not be in your best interests.

- The notice sent to the Indigenous governing body acting on your behalf should not contain personal information other than that which is necessary to explain the proposed measure or that which is required by your Indigenous governing body's coordination agreement. (Clause 12)

If you are involved in a civil proceeding in respect of the provision of child and family services in relation to you, your parents and care provider have the right to make representations and to have party status and your Indigenous governing body has the right to make representations. (Clause 13)

- If, at the time of the coming into force of the Act, you are already involved in a civil proceeding, these rights can only be exercised where it would be consistent with your best interests and appropriate in the circumstances. (Clause 33)

Provided it is in your best interests...

- If you are receiving child and family services, priority should be given to a service that promotes preventive care to support you and your family over other services. (Clause 14(1))
- You should not be taken from your family solely on the basis of your socio-economic conditions, which includes poverty, lack of adequate housing or infrastructure, or the state of your parent or care provider's health. (Clause 15)
- Before taking you from one of your parents or another adult member of your family, the service provider should demonstrate that reasonable efforts were made to have you reside with that person. (Clause 15.1)
- If you are taken from your family, there is a priority order of placement that should be followed: first with one of your parents, second with another adult member of your family, third with an adult who belongs to the same Indigenous group, community or people as you, fourth with an adult who belongs to an Indigenous group, community or people other than the one to which you belong, and last, with any other adult. (Clause 16)
 - o When determining whether a placement would be in your best interest, consideration must be given to the possibility of keeping you with your siblings.
 - o The placement must take into account Indigenous customs and traditions such as with regards to customary adoption.

If you are currently in care...

- The Act may help you reunite with your family and community. Though the Act does not automatically result in you being able to return to your parents, family or community, it states that a review of whether it would be appropriate for you to return to your parents or family needs to be done on an ongoing basis. (Clause 16)
- The Act seeks to ensure that you keep strong emotional ties with your family and stay connected to your community and culture. If you are not placed with a member of your family, your attachment and emotional ties to your family are to be promoted. (Clause 17)

If you belong to two different Indigenous groups, communities or peoples with laws respecting child and family services and there is a conflict or inconsistency between their laws, the laws of the group, community or people to which you have stronger ties will prevail in your situation. (Clause 24)

What does the Act mean to me as a Parent or Care Provider of an Indigenous child?

Key highlights:

- The Act may help the children you care for stay with you.
- If a child you cared for was already taken away from you, the Act may help that child return to you or a family member.
- The Act aims to help Indigenous children stay connected to their family, community, language and culture.
- Financial, health and housing challenges should not be the only reason a child under your care will be taken away from you.
- If a child under your care cannot stay with you, he or she should first be placed with a family member.
- If the service provider determines a child you have under your care cannot stay with you, they should demonstrate that reasonable efforts were made to keep that child with you.

According to the Act...

- A child's care provider is the person who has primary responsibility for providing the day-to-day care of an Indigenous child other than his or her parent. This includes a care provider in accordance with your customs or traditions. (Clause 1)
- The term family includes persons that you or the child considers a close relative in accordance with your customs and traditions. Customary adoptive parents are included in this definition. (Clause 1)
- An Indigenous governing body is the council, government or other entity that is authorized to act on behalf of an Indigenous group or community that holds rights recognized and affirmed by section 35 of the Constitution Act, 1982. (Clause 1)

The Act...

- Does not affect any existing agreements that an Indigenous group or community may have signed. In case of conflict or inconsistency, the Act would not prevail over any existing agreements that your group, community or people may have signed. (Clause 3)
- Establishes minimum standards to be applied if an Indigenous child receives child and family services. These standards have to be applied by Provinces, Territories and Indigenous governing bodies. Nothing would preclude a service provider from providing services with higher standards. (Clauses 4, 7)
- Affirms the jurisdiction of Indigenous Peoples in relation to child and family services. Indigenous groups and communities can make their own laws with respect to child and family services. These laws will apply to children from their groups or communities unless the application of these laws would be contrary to a child's best interest. (Clauses 8(a), 18(1), 23) In order to exercise their jurisdiction, an Indigenous group, community or people can:
 1. Give notice of their intent to exercise their jurisdiction on child and family services to the Government of Canada and the government of each Province and Territory in which they are located.
 - o Having submitted a notice of intent, your Indigenous group, community or people could exercise their jurisdiction. However, this would not result in your Indigenous laws automatically prevailing over federal, provincial and territorial laws.

2. Make a request to the Government of Canada and the government of each Province and Territory in which they are located to enter into a tripartite coordination agreement to exercise their jurisdiction on child and family services and have their laws prevail over federal, provincial and territorial laws.
 - o Within 12 months following the request, if a tripartite coordination agreement is reached, or no agreement is reached but reasonable efforts were made to reach an agreement, the laws of your Indigenous group, community or people would have force of law as federal law and would prevail over federal, provincial and territorial laws. (Clauses 20(2), 21)
- Sets out principles applicable, on a national level, such as best interests of the child, cultural continuity and substantive equality to help guide the provision of child and family services to Indigenous children. (Clauses 8(b), 9)
- Contributes to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples. (Clause 8(c))

The best interests of the child under your care will need to be considered when making a decision affecting his or her life. (Clause 10)

- When doing so, primary consideration has to be given to that child's physical, emotional and psychological safety, security and well-being, as well as to the importance of that child having an ongoing relationship with his or her family and with his or her community, and of preserving that child's connection to his or her culture.
- Other factors to be taken into consideration include: the child's cultural, linguistic, religious and spiritual upbringing and heritage, his or her needs, and the nature and strength of his or her relationship with you, parent or care provider, and with his or her family.
- Preserving the child's cultural identity and connection to the language and territory of his or her Indigenous group, community or people must be considered.
- In making this determination, the Act states that the child's views and preferences have to be considered.

If a child under your care is receiving child and family services, these services must take into account that child's need for safety, security, well-being and culture, allow that child to know his or her family origins, and promote substantive equality between that child and other children. (Clause 11)

Before taking a significant measure in regards to a child under your care, notice must be given to you, the parent or care provider, as well as to the Indigenous governing body acting on behalf of the group or community to which that child belongs. This requirement applies unless providing notice before the significant measure is taken would not be in your best interests.

- The notice sent to the Indigenous governing body should not contain personal information other than that which is necessary to explain the proposed measure or that which is required by that Indigenous governing body's coordination agreement. (Clause 12)

If a child under your care is involved in a civil proceeding in respect of the provision of child and family services in relation to him or her, you, that child's parent and care provider, have the right to make representations and to have party status. The Indigenous governing body acting on behalf of the group or community to which that child belongs, also has the right to make representations. (Clause 13)

- If, at the time of the coming into force of the Act, a child under your care is already involved in a civil proceeding, these rights can only be exercised where it would be consistent with that child's best interests and appropriate in the circumstances. (Clause 33)

Provided it is in the **best interest of the child under your care...**

- If that child is receiving child and family services, priority should be given to a service that promotes preventive care to support that child and his or her family over any other services. (Clause 14(1))
- That child should not be taken from you the parent or care provider, as well as his or her family solely on the basis of his or her socio-economic conditions, which includes poverty, lack of adequate housing or infrastructure, or your state of health. (Clause 15)
- Before taking the child from his or her parent, or any other adult member of his or her family, the service provider should demonstrate that reasonable efforts were made to have him or her continue reside with you or that other family member. (Clause 15.1)
- If that child is taken from you or any other member of his or her family, there is a priority order of placement that should be followed: first with one of his or her parents, second with another adult member of his or her family, third with an adult from your community, fourth with an adult who belongs to another Indigenous community, and last, with any other adult. (Clause 16)
 - o When determining whether a placement would be in a child's best interest, consideration must be given to the possibility of keeping that child with his or her siblings.
 - o The placement must take into account your customs and traditions such as with regards to customary adoption.

If a child you had under your care was already taken away from you...

- The Act can help that child reunite with his or her parent or family. Though the Act does not automatically result in that child being able to return to his or her parent or family, it states that a review of whether it would be appropriate for that child be returned to his or her parent or family. (Clause 16)
- If that child is placed with someone who is not a member of his or her family, that child's attachment and emotional ties with his or her family members are to be promoted, provided it is in the child's best interest. (Clause 17)

If a child under your care has connections to two different groups, communities or peoples with laws respecting child and family services and there is a conflict or inconsistency between those two laws, for that situation, the laws of the community to which that child has stronger ties will prevail. (Clause 24)

Regarding data collection, the Act provides for a framework for the Minister to enter into agreements with Indigenous governing bodies, Provinces and Territories respecting the collection, retention, use and disclosure of information relating to child and family services provided to Indigenous children. These agreements could provide for the identification of Indigenous children as a First Nations person, an Inuk or a Métis person, as the case may be, and the identification of the communities of origin of these children and their parents when possible. (Clause 28)

What does the Act mean to me as an Indigenous group, community or people?

Key highlights:

- The Act affirms the jurisdiction of Indigenous Peoples over child and family services. It encompasses all section 35 rights holders, which includes First Nation, Inuit and Métis.
- In exercising this jurisdiction, you can enact your own laws respecting child and family services. These laws could extend to all of your members no matter where in Canada they are located.
- If you conclude a coordination agreement or make reasonable efforts to do so, your Indigenous laws will have force of law as federal law and prevail over conflicting federal, provincial and territorial laws with respect to child and family services.
- For a child from your community, you have the right, through the Indigenous governing body you authorized to act on your behalf, to:
 - o have a say in decisions affecting that child;
 - o receive notice of any significant measures to be taken in relation to that child; and
 - o make representations in any civil proceedings regarding that child's care.

According to the Act...

- A child's care provider is the person who has primary responsibility for providing the day-to-day care of an Indigenous child other than his or her parent. This includes a care provider in accordance with your customs or traditions. (Clause 1)
- The term family includes persons that you or the child considers a close relative in accordance with your customs and traditions. Customary adoptive parents are included in this definition. (Clause 1)
- An Indigenous governing body is the council, government or other entity that is authorized by you to act on your behalf, provided you hold rights recognized and affirmed by section 35 of the *Constitution Act, 1982*. (Clause 1)

The Act...

- Upholds your rights as recognized and affirmed by section 35 of the *Constitution Act, 1982* and provides that agreements that have been entered into prior to January 1, 2020, such as treaties or self-government agreements, will prevail over the Act in case of conflict. (Section 3)
- Establishes minimum standards to be applied in the provision of child and family services for Indigenous children by any authority, whether provincial, territorial or Indigenous. These standards are not intended to affect the application of legislation respecting child and family services that provides greater protections (Sections 4, 22)
 - o Note that with the exception of sections 10 to 15 of the Act, which address the "Best Interests of Indigenous Child" and the "Provision of Child and Family Services, your laws would prevail over conflicting federal laws respecting child and family services where you have concluded a coordination agreement or have made reasonable efforts to do so. In this case, your laws would also remain subject to the *Canadian Charter of Rights and Freedoms* and the *Canadian Human Rights Act*

- Affirms your jurisdiction in relation to child and family services. As a result, you can make your own laws on this matter. These laws will apply to children from your community unless their application would be contrary to a child’s best interest. (Clauses 8(a), 18(1), 23)
- Sets out principles applicable, on a national level, such as best interests of the child, cultural continuity and substantive equality to help guide the provision of child and family services to Indigenous children from your community. (Clauses 8(b), 9)
- Seeks to contribute to the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*. (Clause 8(c))

With regards to **exercising your jurisdiction...**

- There are two ways to exercise your jurisdiction. You can:
 1. Give notice of your intent to exercise your jurisdiction on child and family services to the Government of Canada and the government of each Province and Territory in which you are located.
 - o Having submitted a notice of intent, you could exercise your jurisdiction. However, this would not result in your laws automatically prevailing over conflicting federal, provincial and territorial laws.
 2. Make a request to the Government of Canada and the government of each Province and Territory in which you are located to enter into a tripartite coordination agreement with respect to your exercise of jurisdiction on child and family services.
 - o Within 12 months following the request, if a tripartite coordination agreement is reached, or no agreement is reached but reasonable efforts were made to reach an agreement, your laws would have force of law as federal law and would prevail over federal, provincial and territorial laws. (Clauses 20(2), 21)
 - However, your laws must still comply with sections 10 to 15 of the Act with respect to the “Best Interests of Indigenous Child” and the “Provision of Child and Family Services” as well as the *Canadian Human Rights Act* and the *Canadian Charter of Rights and Freedoms*. (Clause 22)
 - Funding, liability issues and conflict of laws scenarios will be addressed via coordination agreement discussions.
 - To promote entering into a coordination agreement, your Indigenous governing body can benefit from a dispute resolution mechanism. (Clause 20(5))
 - This dispute resolution mechanism will be created by regulations co-developed with partners. Meanwhile, nothing precludes the parties to jointly identify an independent body to help resolve any issues arising during the discussions surrounding coordination agreements.
 - o At all times, should you wish to do so, nothing prevents your Indigenous governing body from making a new request to enter into a coordination agreement or from entering into a coordination agreement after the 12-month period following the request. (Clauses 20(6), 20(7))
- Your authority to administer and enforce laws in relation to child and family services includes the authority to provide for dispute resolution mechanisms. (Clause 18(2))
- The *Canadian Charter of Rights and Freedoms* applies to your Indigenous governing body when exercising jurisdiction in relation to child and family services on your behalf. (Clause 19)

The Act sets out three requirements with respect to the principle of the best interests of an Indigenous child (Clause 10):

- **The best interests of an Indigenous child** must be a primary consideration when making a decision or taking action when providing child and family services. In the case of apprehension, the best interests of the child must be the paramount consideration.

- All factors related to the circumstances of an Indigenous child must be considered, including a non-exhaustive list of factors set out in the Act and which include: that child's cultural, linguistic, religious and spiritual upbringing and heritage, that child's needs, and the nature and strength of the child's relationship with his or her parent, care provider and family. Other factors included are: the importance to the child of preserving the child's cultural identity and connections to your language and territory, and any plans for the child's care, including care in accordance with your customs or traditions.
- When these factors are being considered, primary consideration has to be given to that child's physical, emotional and psychological safety, security and well-being, as well as to the importance for that child of having an ongoing relationship with his or her family and with his or her community, and of preserving that child's connection to his or her culture.

The Act provides that these three requirements with respect to the best interests of the child be construed, to the extent possible, in a manner consistent with the provisions of the laws of the Indigenous groups to which the child belongs.

If a child from your community is receiving child and family services, these services must take into account that child's need for safety, security, well-being and culture, allow that child to know his or her family origins, and promote substantive equality between that child and other children. (Clause 11)

Before taking a significant measure in regards to a child from your community, notice must be given to that child's parents, care provider and your Indigenous governing body. This requirement applies unless providing notice before the significant measure is taken would not be in the child's best interests.

- The notice sent to your Indigenous governing body acting on behalf of the child should not contain personal information other than that which is necessary to explain the proposed measure or that which is required by your Indigenous governing body's coordination agreement. (Clause 12)

If a child from your community is involved in a civil proceeding in respect of the provision of child and family services in relation to him or her, that child's parents and care provider have the right to make representations and to have party status and your Indigenous governing body has the right to make representations. (Clause 13)

- If, at the time of the coming into force of the Act, a child from your community is already involved in a civil proceeding, these rights can only be exercised where it would be consistent with that child's best interests and appropriate in the circumstances. (Clause 33)

Provided it is in a child from your community's best interest...

- If that child is receiving child and family services, priority should be given to a service that promotes preventive care to support that child and his or her family over any other services. (Clause 14(1))
- That child should not be taken from his or her family solely on the basis of his or her socio-economic conditions, which includes poverty, lack of adequate housing or infrastructure, or the state of that child's parent or care provider's health. (Clause 15)
- Before taking the child from his or her parents or another adult member of his or her family, the service provider should demonstrate that reasonable efforts were made to have him or her reside with that person. (Clause 15.1)
- If that child is taken from his or her family, there is a priority order of placement that should be followed: first with one of his or her parents, second with another adult member of his or her family, third with an adult from your community, fourth with an adult who belongs to another Indigenous community, and last, with any other adult. (Clause 16)
 - o When determining whether a placement would be in a child's best interest, consideration must be given to the possibility of keeping that child with his or her siblings.

- o The placement must take into account Indigenous customs and traditions such as with regards to customary adoption.

If a child from your community is currently in care...

- The Act can help that child reunite with you or his or her family. Though the Act does not automatically result in that child being able to return to you or his or her family, it states that a review of whether it would be appropriate for that child to return to his or her parents or family needs to be done on an ongoing basis. (Clause 16)
- If that child is placed with someone who is not a member of his or her family, that child's attachment and emotional ties with his or her family are to be promoted, provided it is in the child's best interest. (Clause 17)

If a child from your community has connections to two different groups, communities or peoples with laws respecting child and family services and there is a conflict or inconsistency between those two laws, for that situation, the laws of the community to which that child has stronger ties will prevail. (Clause 24)

Regarding data collection, the Act provides for a framework for the Minister to enter into agreements with your Indigenous governing bodies, Provinces and Territories respecting the collection, retention, use and disclosure of information relating to child and family services provided to Indigenous children from your community. These agreements could provide for the identification of Indigenous children as a First Nations person, an Inuk or a Métis person, as the case may be, and the identification of the communities of origin of these children and their parents when possible. (Clause 28)

The Act provides that affected Indigenous governing bodies are to be afforded a meaningful opportunity to collaborate in the policy development leading to the making of regulations. Regulations can be made providing for any matter relating to the application of this Act or respecting the provision of child and family services in relation to Indigenous children. (Clause 32)

What does the Act mean to me as a provincial or territorial government?

Key highlights:

- The Act establishes binding national standards with respect to the provision of child and family services provided in relation to Indigenous children. These standards are intended as minimum standards – provincial, territorial or Indigenous legislation on child and family services can provide greater protection.
- The Act will apply concurrently with provincial and territorial legislation on child and family services. The Act will prevail in case of conflict only.
- The Act provides that the laws of Indigenous groups that have concluded or made reasonable efforts to conclude a tripartite agreement will have force of law as federal law and will prevail over conflicting provincial and territorial legislation.
- The Act is not intended to oust the jurisdiction of courts presently hearing child protection matters in provinces and territories. The Act creates obligations with respect to child and family services provided in relation to Indigenous children under the authority of other statutory schemes (e.g. provincial and territorial legislation). Cases dealing with child and family services involving Indigenous children, including the application of the standards set out in the Act, would continue to be heard according to the current practice either before a provincial court or before the superior court, such as through a Unified Family Court.

As per the Act...

- A child's care provider is the person who has primary responsibility for providing the day-to-day care of an Indigenous child other than his or her parent. This includes a care provider in accordance with the customs or traditions of the Indigenous group or community to which that child belongs. (Clause 1)
- The term family includes persons that the child or group or community to which the child belongs considers a close relative in accordance with that group or community's customs and traditions. Customary adoptive parents are included in this definition. (Clause 1)
- An Indigenous governing body is the council, government or other entity that is authorized to act on behalf of an Indigenous group or community that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*. (Clause 1)
- You will remain the service provider until an Indigenous group or community determines otherwise.

The Act...

- The Act provides that agreements that have been entered into prior to January 1, 2020, such as treaties or self-government agreements, will prevail over the Act in case of conflict. (Clause 3)
- Establishes minimum standards to be applied in the provision of child and family services for Indigenous children. These standards have to be applied by both you and Indigenous governing bodies. Nothing would preclude a service provider from providing services with higher standards. (Clauses 4, 7)
 - o For Nunavut, nothing in this Act affects your legislative powers referred to in section 23 of the Nunavut Act to the extent that your laws do not conflict with the Act. (Clause 5)

- Affirms Indigenous jurisdiction in relation to child and family services. As a result, Indigenous groups and communities can make their own laws on this matter. These laws will apply to children from their groups or communities unless the application of these laws would be contrary to a child's best interest. (Clauses 8(a), 18(1), 23)
- Affirms that an Indigenous group's, community's or people's authority to administer and enforce laws in relation to child and family services includes the authority to provide for dispute resolution mechanisms. (Clause 18(2))
- Sets out principles applicable, on a national level, such as best interests of the child, cultural continuity and substantive equality to help guide the provision of child and family services to Indigenous children. (Clauses 8(b), 9)
- Contributes to the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*. (Clause 8(c))

This Act allows for Indigenous groups or communities to **exercise their jurisdiction in relation to child and family services**.

- There are two ways to exercise jurisdiction. An Indigenous group or community can:
 1. Give notice of their intent to exercise their jurisdiction on child and family services to the Government of Canada and the government of each Province and Territory in which they are located.
 - o Having submitted a notice of intent, they could exercise their jurisdiction. However, this would not result in the Indigenous laws automatically prevailing over federal, provincial and territorial laws.
 2. Make a request to the Government of Canada and the government of each Province and Territory in which they are located to enter into a tripartite coordination agreement to exercise their jurisdiction on child and family services and have their laws prevail over federal, provincial and territorial laws.
 - o Within 12 months following the request, if a tripartite coordination agreement is reached, or no agreement is reached but reasonable efforts were made to reach an agreement, those Indigenous laws would have force of law as federal law and would prevail over federal, provincial and territorial laws. (Clauses 20(2), 21)
 - The exceptions to this paramountcy rule are sections 10 to 15 of this Act with respect to the "Best Interests of Indigenous Child" and the "Provision of Child and Family Services" and provisions of the *Canadian Human Rights Act*. (Clause 22)
 - To promote entering into a coordination agreement, an Indigenous governing body acting on behalf of an Indigenous group or community can benefit from a dispute resolution mechanism before or after the period of one year following the request. (Clause 20(5))
 - This dispute resolution mechanism will be created by regulations co-developed with partners. Meanwhile, nothing precludes the parties to identify an independent body to help resolve any issues arising during the discussions surrounding coordination agreements.
 - o At all times, should an Indigenous group or community wish to do so, nothing prevents the Indigenous governing body acting their behalf from making a new request to enter into a coordination agreement or from entering into a coordination agreement after the 12-month period following the request. (Clauses 20(6), 20(7))
- The Indigenous group or community's authority to administer and enforce laws in relation to child and family services includes the authority to provide for dispute resolution mechanisms. (Clause 18(2))
- The *Canadian Charter of Rights and Freedoms* applies to an Indigenous governing body when exercising jurisdiction in relation to child and family services on behalf of an Indigenous group or community. (Clause 19)

When child and family services are provided to an Indigenous child, his or her best interests will need to be considered when making a decision affecting his or her life. (Clause 10) **Many factors need to be considered in determining that child's best interest:**

- Primary consideration has to be given to that child's physical, emotional and psychological safety, security and well-being, as well as to the importance of that child having an ongoing relationship with his or her family and group or community, and of preserving that child's connection to his or her culture.
- Other factors to be taken into consideration include: that child's cultural, linguistic, religious and spiritual upbringing and heritage, that child's needs, and the nature and strength of that child's relationship with his or her parent, care provider and family.
- Preserving that child's cultural identity and connection to the language and territory of the group or community to which that child belongs, as well as any plans for the child's care, including care in accordance with the customs or traditions of the group or community to which that child belongs, must be considered.
- That child's views and preferences are an important factor that needs to be considered.
- Any family violence and its impact on that child, as well as any civil or criminal proceeding, order, condition or measure relevant to that child's safety, security and well-being also have to be considered.
- This clause on best interests of the child will be construed, to the extent it is possible to do so, in a manner consistent with provisions of Indigenous laws.

When providing child and family services to an Indigenous child, these services must take into account that child's need for safety, security, well-being and culture, allow that child to know his or her family origins, and promote substantive equality between that child and other children. (Clause 11)

Before taking a significant measure in regards to an Indigenous child, notice must be given to that child's parents, care provider and the Indigenous governing body acting on behalf of the group or community to which that child belongs. This requirement applies unless providing notice before the significant measure is taken would not be in the child's best interests.

- The notice sent to the Indigenous governing body should not contain personal information other than that which is necessary to explain the proposed measure or that which is required by that Indigenous governing body's coordination agreement. (Clause 12)

If an Indigenous child is involved in a civil proceeding in respect of the provision of child and family services in relation to him or her, that child's parents and care provider have the right to make representations and to have party status and the Indigenous governing body acting on behalf of the group or community to which that child belongs has the right to make representations. (Clause 13)

- If, at the time of the coming into force of the Act, an Indigenous child is already involved in a civil proceeding, these rights can only be exercised where it would be consistent with that child's best interests and appropriate in the circumstances. (Clause 33)

Provided it is in an Indigenous child's best interest or, in the case of prenatal care, that which is likely to be in the best interests of an Indigenous child after he or she is born...

- If that child is receiving child and family services, priority should be given to a service that promotes preventive care to support that child and his or her family over any other services. (Clause 14(1))
- The provision of prenatal services is to be given priority over other services in order to prevent the apprehension of the child at the time of the child's birth. (Clause 14(2))

- That child should not be taken from his or her family solely on the basis of his or her socio-economic conditions, which includes poverty, lack of adequate housing or infrastructure, or the state of that child's parent or care provider's health. (Clause 15)
- Unless immediate apprehension is consistent with the child's best interests, before removing an Indigenous child from his or her parents or another adult member of his or her family, the service provider should demonstrate that reasonable efforts were made to have the child continue to reside with that person. (Clause 15.1)
- If that child is taken from his or her family, there is a priority order of placement that should be followed: first with one of his or her parents, second with another adult member of his or her family, third with an adult from the Indigenous group or community from which that child belongs, fourth with an adult who belongs to another Indigenous community, and last, with any other adult. (Clause 16)
 - o When determining whether a placement would be in a child's best interest, consideration must be given to the possibility of keeping that child with his or her siblings.
 - o The placement must take into account the customs and traditions of the Indigenous group or community to which that child belongs such as with regards to customary adoption.

If an Indigenous child is currently in care...

- The Act can help that child reunite with his or her family or Indigenous group or community. Though the Act does not automatically result in that child being able to return to his or her family or Indigenous group or community, it states that a review of whether it would be appropriate for that child to return to his or her parents or family needs to be done on an ongoing basis. (Clause 16)
- If that child is placed with someone who is not a member of his or her family, that child's attachment and emotional ties with his or her family are to be promoted, provided it is in the child's best interest. (Clause 17)

If an Indigenous child has connections to two different groups or communities with laws respecting child and family services and there is a conflict or inconsistency between those two laws, for that situation, the laws of the community to which that child has stronger ties will prevail. (Clause 24)

Regarding data collection, the Act provides for a framework for the Minister to enter into agreements with you and Indigenous governing bodies respecting the collection, retention, use and disclosure of information relating to child and family services provided to Indigenous children. These agreements could provide for the identification of Indigenous children as a First Nations person, an Inuk or a Métis person, as the case may be, and the identification of the communities of origin of these children and their parents when possible. (Clause 28)

You may be involved in the policy development leading to the making of regulations. These regulations may be made in relation to any matter relating to the application of this Act or respecting the provision of child and family services in relation to Indigenous children. (Clause 32)

4.0 – Exercising jurisdiction over child and family services

Process for exercising jurisdiction over child and family services

As of January 1, 2020, existing agencies will continue to provide services to Indigenous children. However, every Indigenous child and family services provider will need to follow the minimum standards found in the Act.

Agreements related to existing delegated agencies will remain valid unless the parties decide otherwise. If Indigenous groups are at discussions tables to conclude agreements, they can still take advantage of the Act. The Indigenous governing body could continue working with delegated agencies, or could create their own service model in the context of a coordinated agreement.

Depending on their chosen service model, Indigenous groups may take measures to end or renegotiate their contract with the delegated agency providing services to their children.

It should be noted that the Act is not intended to oust the jurisdiction of courts presently hearing child protection matters.

- Accordingly, cases dealing with child and family services involving Indigenous children, including the application of the standards set out in the Act, would continue to be heard according to the current practice either before a provincial court or before the superior court such as through a unified family court.

The proposed pathway leading to the exercise of jurisdiction included in the Act does not represent a “one size fits all” approach. The Act was designed to enable Indigenous groups and communities to transition toward exercising partial or full jurisdiction over child and family services at a pace that they choose.

Indigenous Governing Body

Before exercising jurisdiction under the framework established by the Act, a section 35 rights-bearing Indigenous group must first authorize an Indigenous governing body to act on its behalf. Under the Act, an Indigenous governing body means a council, government or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the Constitution Act, 1982. For example, a “council of the band” as defined in the Indian Act would fit under this definition as well as Inuit Land Claim Organizations. The Indigenous group, community or people that intends to exercise jurisdiction in relation to child and family services would determine which entity will act as their authorized Indigenous governing body for the purposes of the Act.

When acting on behalf of an Indigenous group, community or people for the purposes of the Act, the Indigenous governing body will have to be able to demonstrate that they are in fact authorized to act on behalf of that group, community or people. An Indigenous governing body could use, amongst other means of authorization, a Band council resolution, a board resolution or a referendum.

Options to exercise jurisdiction over child and family services under the Act

A section 35 rights-bearing Indigenous group, that has authorized an Indigenous Governing Body to act on its behalf and developed legislation, has two options for exercising jurisdiction over child and family services under the Act.

Option 1 (notice as per subsection 20 (1) of the Act):

Under this option for exercising jurisdiction, the authorized Indigenous Governing Body would send a notice to the Minister of Indigenous Services and the government of each Province and Territory in which the Indigenous group or community is located indicating their intent to exercise their jurisdiction. Through this option, their Indigenous law would not prevail over conflicting federal, provincial and territorial laws on child and family services.

Option 2 (request as per subsection 20 (2) of the Act):

Under this option for exercising jurisdiction, the authorized Indigenous Governing Body would send a request to enter into a tripartite coordination agreement to the Minister of Indigenous Services and the Province or Territory in which the Indigenous group or community is located. Within 12 months following the request, if a tripartite coordination agreement is reached, or no agreement is reached but reasonable efforts were made to reach an agreement, the laws of the Indigenous group and community would have force of law as federal law and would prevail over federal, provincial and territorial laws.

Checklist for providing a notice as per Section 20 (1) of the Act

Before submitting a notice or request, Indigenous governing bodies can choose to continue dialogue with Indigenous Services Canada to explore options for the exercise of jurisdiction over child and family services.

Before submitting a notice:

- develop a child and family services law
- determine scope of the child and family services law
- define how services will be delivered and by whom
- authorize an Indigenous governing body to act on behalf of the Indigenous group, community or people
- confirm mandate of Indigenous governing body

Notice must include the following information:

- the name of your Indigenous governing body as well as the name of each group or community who has authorized this body to act on their behalf
- an explanation of the process through which this Indigenous governing body was authorized by each group or community
- the name of the province or territory in which each group or community being represented by the Indigenous governing body is located
- the name of your current child and family services provider
- a brief summary of your child and family services model as well as a copy of your legislation
- a description of where your child and family services model and legislation would apply and to whom it would apply
- a copy of any previous notices sent to the Government of Canada or to the provinces or territories of your intent to exercise your jurisdiction
- a list of all treaties or self-government agreements you have signed that could be impacted by your exercise of jurisdiction

Send the notice to:

- the Minister of Indigenous Services via email (sac.sefreforme-cfsreform.isc@canada.ca) or mail (Child and Family Services Reform, Indigenous Services Canada, 10 rue Wellington, 7th Floor, Gatineau QC K1A 0H4)
- the government of each province and/or territory in which the Indigenous governing body is located

After submitting the notice:

- receive a response from Indigenous Services Canada within 10 days to acknowledge the receipt of request. ISC will respond within 30 days of receipt of request to confirm the request and advising the next steps.
- a response confirming the exercise of jurisdiction under section 20 (1) of the Act will be provided once all the required documentation mentioned above is received.
- Indigenous laws would not prevail over federal, provincial or territorial laws in the event of a conflict or inconsistency.

In order to have an Indigenous law addressing child and family services prevail over conflicting federal, provincial, and territorial laws, a request must be made to enter a coordination agreement, as described in section 20 (2) of the Act.

Checklist for submitting a request per Section 20(2) of the Act

Before submitting a notice or request, Indigenous governing bodies can choose to continue dialogue with Indigenous Services Canada to explore options for the exercise of jurisdiction over child and family services.

Before submitting a request:

- develop a child and family services law
- determine scope of the child and family services law
- define how services will be delivered and by whom
- authorize an Indigenous governing body to act on behalf of the Indigenous group, community or people
- confirm mandate of Indigenous governing body

Request must include the following information:

- the name of your Indigenous governing body as well as the name of each group or community who has authorized this body to act on their behalf
- an explanation of the process through which this Indigenous governing body was authorized by each group or community
- the name of the province or territory in which each group or community being represented by the Indigenous governing body is located
- the name of your current child and family services provider
- a brief summary of your child and family services model as well as a copy of your legislation
- a description of where your child and family services model and legislation would apply and to whom it would apply
- a copy of any previous requests sent to the Government of Canada or to the provinces or territories of your intent to exercise your jurisdiction
- a list of all agreements, including treaties and self-government agreements that you have signed that address child and family services

Send the request to:

- the Minister of Indigenous Services via email (sac.sefreforme-cfsreform.isc@canada.ca) or mail (Child and Family Services Reform, Indigenous Services Canada, 10 rue Wellington, 7th Floor, Gatineau QC K1A 0H4)
- the government of each province and/or territory in which the Indigenous governing body is located

After submitting a request to enter a coordination agreement:

- receive a response from Indigenous Services Canada within 10 days to acknowledge the receipt of request. ISC will respond within 30 days of receipt of to confirm the request and advising the next steps.
- the request will be deemed complete and the beginning of the 12-month period will begin once all the required documentation mentioned above is received
- ISC Regional Office will organize a kick off meeting with the Indigenous governing body as well as with the relevant province and territory within 60 days
- ISC Regional Office will set up a table for the coordination agreement discussions to take place within 60 days if a CIRNAC table does not already exist or if a community chooses not to use the existing table

- Indigenous governing body will submit a funding proposal to support the coordination agreement process accompanied by a proposed work-plan within 60 days
- ISC will assess the funding proposal and funding arrangements will be made to support participation of the Indigenous governing body and/or the Indigenous groups in the initial coordination agreement discussions
- ISC Regional Office will provide the funds to the Indigenous governing body and/or the Indigenous groups in accordance with the funding arrangements and will facilitate a first coordination agreement meeting during which the participants to the table would agree on a final work-plan
- within 12 months of the request being made, if an agreement is reached, or if no agreement is reached but reasonable efforts were made to reach one, Indigenous laws would have the force of federal law and would prevail over federal, provincial and territorial laws in the event of a conflict or inconsistency
- if needed, a dispute resolution mechanism can be used to promote the conclusion of a coordination agreement before or after the 12 months following the request. This dispute resolution mechanism will be created by regulations co-developed with partners
- before this dispute resolution mechanism is created, nothing precludes the parties from identifying an independent body to help resolve any issues arising during the discussions surrounding coordination agreements
- Indigenous laws could prevail after a 12-month period even if a coordination agreement is not concluded
- an Indigenous governing body can make a new request to enter into a coordination agreement at all times, and can enter into a coordination agreement even after the 12-month period
- The discussions at the coordination agreement table can be extended beyond the 12 months at the request of the Indigenous governing body.

5.0 – Resources

Links:

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

www.parl.ca/DocumentViewer/en/42-1/bill/C-92/royal-assent

Infographic: Short Section 20 of the Act

www.sac-isc.gc.ca/eng/1568071056750/1568071121755#sec3

Infographic: What does the Act Mean

www.sac-isc.gc.ca/eng/1568071056750/1568071121755#sec1

Infographic: Section by section explanation of the Act

www.sac-isc.gc.ca/eng/1568071056750/1568071121755#sec2