

First Nations Child and Family Caring Act

An act to enable First Nations to exercise jurisdiction over all child and family matters for their members, develop their own institutions, and administer requisite prevention and protection programs and services based on their own respective laws, customs, practices, and traditions.

Preamble

WHEREAS the Government of Canada has fully adopted, without reservation, and agreed to implement the *United Nations Declaration on the Rights of Indigenous Peoples*, A/RES/61/295;

AND WHEREAS the Articles of the Declaration provide a framework for reconciliation, and specifically recognize that Indigenous peoples, in exercising their right to self-determination, have the right to self-government in matters relating to their affairs, including Indigenous children and families;

AND WHEREAS the Government of Canada recognizes the inherent rights of self-determination and self-government of Indigenous peoples, and the corresponding right of First Nations to exercise jurisdiction and authority over matters involving First Nation children and families;

AND WHEREAS the Government of Canada recognizes that jurisdiction and authority over laws, policies, and practices that relate to Indigenous children and families is at the core of Indigenous self-determination and self-government;

AND WHEREAS the Government of Canada recognizes that First Nations are best suited to make decisions for the well-being of their children and families;

AND WHEREAS the creation of child and family services regimes for First Nation members, and the administration of those regimes through First Nations institutions, based on First Nations' respective laws, customs, practices, and traditions, is an essential part of Indigenous peoples' inherent right of self-government and self-determination;

AND WHEREAS the creation of First Nation child and family services regimes and a First Nation Child and Family Services Caring Institute will benefit the communities administering that jurisdiction and Canada as a whole, and is an essential element of reconciliation in Canada;

AND WHEREAS the Touchstones of Hope is a set of principles to guide the reconciliation process within all aspects of society, and is the basis for a respectful and meaningful relationship between Indigenous and non-Indigenous peoples working in the area of children and family services;

CSFS November 5, 2018 WORKING DRAFT FOR DISCUSSION PURPOSES ONLY

AND WHEREAS on November 20, 1989, the *United Nations Convention on the Rights of the Child* was adopted in the United Nations General Assembly, and has been ratified by the Government of Canada;

AND WHEREAS the Convention provides that the best interests of the child shall be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies;

AND WHEREAS the Truth and Reconciliation Commission of Canada’s Calls to Action #1 through #5 affirm the need to address First Nations child welfare and, in particular, Call to Action #4 calls upon the Government of Canada to enact Indigenous child-welfare legislation that establishes national standards for Indigenous child apprehension and custody cases;

AND WHEREAS the Canadian Human Rights Tribunal has determined that the Government of Canada’s design, management, and control of its First Nation Child and Family Services Program, along with its corresponding funding formulas and the other related provincial/territorial agreements, have resulted in denials of services and various adverse impacts for many First Nations children and families living on reserves;

AND WHEREAS Jordan’s Principle addresses the needs of First Nations children on and off-reserve by ensuring there are no gaps in government services to them;

AND WHEREAS while Jordan’s Principle applies to jurisdictional disputes between governments, a dispute among government departments or between governments is not a necessary requirement for its application;

AND WHEREAS Jordan’s Principle ensures First Nations children and youth receive the services they need when they need them;

AND WHEREAS First Nations have led an initiative in partnership with Canada to enable First Nations to assume jurisdiction and authority over child and family services, and the implementation of this initiative requires the enactment of an Act of Parliament;

AND WHEREAS First Nations are prepared to assume jurisdiction and authority over child and family services;

NOW, THEREFORE Her Majesty by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short Title

Short Title

1 This Act may be cited as the First Nations Child and Family Caring Act.

Interpretation

Definitions

2 (1) The definitions in this subsection apply in this Act.

child and family services regime means a child and family services code enacted pursuant to subsection 7(1).

council in the context of a band, has the same meaning as the term *council of the band* in subsection 2(1) of the *Indian Act*, as amended from time to time, and in the context of any other entity or body, means the governing body of that entity or body.

Director means the Director appointed under the *Canada Not-for-Profit Corporations Act*, as amended from time to time.

First Nation means, as the context requires:

a *band* within the meaning of in subsection 2(1) of the *Indian Act*, as amended from time to time; or

any successor entity to a band established pursuant to a self-government agreement between Canada and one or more bands and/or representative institutions acting on behalf of a collective of first nation persons; or

any body having the authority over child and family services for First Nation members, or that has been duly authorized by one or more bands to exercise authority on their behalf in connection with the administration of child and family services, and includes but is not limited to a First Nation national government, tribal council or treaty institution.

First Nations Child and Family Services Caring Institute or Institute means the institute established pursuant to subsection 22(1) to assist in the carrying out of the objectives of this Act.

First Nation law means a law referred to in section 18.

First Nation member means a person whose name appears on the band or membership list of a First Nation, or who is entitled to have their name appear on that list.

Minister means the Minister of Indigenous Services.

Words and expressions in Indian Act

(2) Unless the context otherwise requires, words and expressions used in this Act have the same meaning as in the *Indian Act*, as amended from time to time.

Non-derogation

(3) This Act is not intended to, and does not, define, limit, amend, abrogate or derogate from the existing aboriginal and treaty rights that are recognized and affirmed by section 35 of the *Constitution Act, 1982*, or any inherent Indigenous rights.

Not land claims agreement

(4) For greater certainty, this Act is not a land claims agreement referred to in section 35 of the *Constitution Act, 1982*.

Without Prejudice

(5) This Act does not in any way preclude, affect or prejudice self-government or other negotiations, including in relation to First Nations' self-governance over child and family matters.

Her Majesty

Binding on Her Majesty

3 This Act is binding on Her Majesty in right of Canada and any reference in this Act to Her Majesty means Her Majesty in right of Canada.

Primary Objective

4 The primary objective of this Act and the First Nations Child and Family Services Caring Institute is to restore the holistic health and well-being of First Nation children and families by strengthening the protective factors of culture, language, traditions, and customs of each First Nation.

Purposes

5 (1) The purposes of this Act are:

- (a)** to prescribe universal principles that will apply to the delivery of services to First Nation children and families;
- (b)** to enable First Nations to exercise jurisdiction over all child and family matters in respect of First Nation members, and administer them through their own institutions, based on their respective laws, customs, practices, and traditions;
- (c)** to provide First Nations with long-term, stable sources of funding to provide child and family services to First Nation members that are comparable in quality to those offered to non-First Nation children and families in Canada, while taking into account the specific needs of First Nation children and families and the costs of providing those services in First Nation communities;

- (d) to establish the First Nations Child and Family Services Caring Institute; and
- (e) to establish a national database that is administered by the First Nations Child and Family Services Caring Institute to facilitate the delivery of child and family services to First Nation members.

General Principles

- 6 (1)** The following principles shall apply to the delivery of services to First Nations children and families, either pursuant to a child and family services code or provincial child and family services legislation:
- (a) every First Nation child has the right to live up to his or her full potential, which requires access to shelter, clothing, food, support, security, nurturing, love, culture, medical care, education, special needs, sense of identity and other related matters;
 - (b) the best interests of the First Nation child shall be a primary consideration in all actions and decisions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies;
 - (c) the best interests of the First Nation child shall be assessed based on the child's traditions, customs, culture, values, language, religious upbringing, community, and the need to maintain all of the foregoing:
 - (i) Every indigenous child has the right to a safe and nurturing environment so that they are able to live up to their full potential;
 - (ii) Every Indigenous child has the right to a sacred interconnection with their family, community and nation;
 - (iii) An Indigenous child has the right to kinship care and extended family care;
 - (iv) Every Indigenous child has the right to live their culture and speak their language;
 - (v) Every Indigenous child has the right to access to their traditional land and resources;
 - (vi) Every Indigenous child has the right to have their wishes considered and taken into account in all matters related to them;
 - (vii) political considerations shall not factor into any determination as to the best interests of the First Nation child;

CSFS November 5, 2018 WORKING DRAFT FOR DISCUSSION PURPOSES ONLY

- (viii)** no First Nation child shall be removed on the basis, or as a result, of poverty, socio-economic conditions, or a lack of housing or related infrastructure;
- (ix)** First Nations are best positioned to make decisions that affect their children, youth, family and communities; and
- (x)** First Nation health and wellbeing is intrinsically linked to distinct First Nation cultures, ceremonies, lands, histories, and languages;
- (d)** when considering the living situation of a First Nation child, the decision-maker:
- (i)** shall strive to keep First Nation families together wherever it is safe to do so;
- (ii)** where placement is necessary, shall give priority to placing a First Nation child into care as follows:
- (A)** with the First Nation child's extended family or within the First Nation child's First Nation community;
- (B)** with another First Nation family, if the First Nation child cannot be safely placed under paragraph (A); or
- (C)** if the First Nation child cannot be safely placed under paragraph (A) or (B) of this subsection wherever possible:
- (I)** in a location where the First Nation child can maintain contact with relatives and friends;
- (II)** in the same family unit as the First Nation child's brothers and sisters; and
- (III)** in a location that will allow the First Nation child to continue in the same school;
- (iii)** shall ensure First Nation children live in culturally appropriate environments, regardless of where they reside;
- (e)** where a government service is available to all other children and a jurisdictional dispute arises between Canada, a province/territory and/or a First Nation, or between departments in the same government regarding services to a First Nation child, the government department of first contact shall pay for the service and seek reimbursement from the other government/department after the child has received the service; and

- (f) all programs and services shall:
 - (i) be compatible with Canada's international obligations; and
 - (ii) encourage the long-term social and economic sustainability of First Nation families and communities.

Establishment of Child and Family Services Regime

Child and Family Services Code Requirements

Adoption of child and family services code

- 7 (1) A First Nation that wishes to establish a child and family services regime in accordance with this Act may adopt a child and family services code applicable to all its First Nation members in a manner consistent with the principles and purposes of this Act, which must include and address the following matters:
- (a) one or more of the following:
 - (i) primary, secondary, and tertiary child and family prevention services for the First Nation's members;
 - (ii) child protection services for the First Nation's members; and
 - (iii) the adoption of a child who is a member of the First Nation;
 - (b) the guiding principles and service delivery principles that shall apply to the child and family services regime;
 - (c) the factors to be considered when assessing the best interests of a First Nation child based on First Nation law, customs, practices, and traditions;
 - (d) the rules that apply to the enactment and publication of First Nation law;
 - (e) the rules that apply to ethics and conflicts of interest in the delivery of child and family services;
 - (f) the structure of the child and family services regime, how it will be administered, and the institutions responsible for administering it;
 - (g) the age at which the child and family services regime ceases to apply to First Nation members;
 - (h) the collection and management of all data, and maintenance of records, necessary for the administration of the child and family services regime, in accordance with any standards prescribed by a resolution or bylaw of the First

CSFS November 5, 2018 WORKING DRAFT FOR DISCUSSION PURPOSES ONLY

Nations Child and Family Services Caring Institute pursuant to subsection 23(1);

- (i) the establishment or identification of a forum for the resolution of disputes related to the administration of the First Nation's child and family services regime;
- (j) the general rules and procedures by which the council of the First Nation will empower a body that is independent of itself to deliver child and family services to its members;
- (k) liability in connection with the delivery of child and family services;
- (l) prohibitions, offences, and penalties;
- (m) transitional provisions and the coming into force of the child and family services code; and
- (n) an amending procedure that is not likely to unduly fetter the ability of the First Nation to amend the child and family services code in the future.

[NTD: consider non-FN members living on reserve?]

Individual Agreement

(2) A First Nation that chooses to assume child and family jurisdiction under this Act shall enter into an individual agreement with the Minister describing the funding the Minister will provide to the First Nation to develop, verify, and ratify a child and family services code.

[NTD: need to consider: (1) how Canada will provide funding to administer the child and family services regime, including core funding, operational funding, capital funding, age of cut-off etc. It is likely more strategic to do this through legislation or regulation rather than through individual agreements with FNs. This may also need to provide for the transition of funding from current arrangements to the permanent arrangement created by the legislation or regulation; and (2) whether a tripartite agreement is necessary to provide for the orderly transition of child and family services from provincial regime to FN child and family services regime. Downside risk is that certain provinces could refuse to enter into these agreements. Consider options]

Verification

Appointment of verifier

- 8** (1) A First Nation shall appoint a verifier who shall:
- (a) determine whether a proposed child and family services code is consistent with this Act;
 - (b) determine whether the conduct of a community approval process is in accordance with the process confirmed under paragraph 8(2)(b); and
 - (c) certify the validity of a child and family services code that has been approved in accordance with this Act.
- (2) The First Nation will submit the following information to the verifier:
- (a) a copy of the proposed child and family services code; and
 - (b) a detailed description of the community approval process that the First Nation proposes to use.

Notice of determination

- 9** (1) The verifier shall, within thirty days after receiving a First Nation's documents under subsection 8(2), make a determination under subsection 8(1)(a) and give notice of the determination to the First Nation and the Minister.
- (2) If the verifier determines that a proposed child and family services code is not in accordance with this Act, the verifier shall give written reasons to the First Nation.

Community Approval and Certification

Submission for approval

- 10** If the verifier determines that a proposed child and family services code is in accordance with this Act, the council of the First Nation may submit the proposed child and family services code for approval pursuant to the community approval process it has submitted to the verifier under paragraph 8(2)(b).

Approval by members

- 11** A proposed child and family services code that has been submitted for community approval is approved if it is approved in accordance with the community approval process the First Nation has submitted to the verifier pursuant to paragraph 8(2)(b).

Copy and declaration

CSFS November 5, 2018 WORKING DRAFT FOR DISCUSSION PURPOSES ONLY

12 If a child and family services code has been approved, the council of the First Nation shall transmit to the verifier a true copy of the approved child and family services code and a declaration that the child and family services code was approved in accordance the community approval process it has submitted to the verifier pursuant to paragraph 8(2)(b).

Report of irregularity

13 A member of a First Nation may, within five days after the conclusion of the community approval process, report any alleged irregularity in the approval process to the verifier.

Certification

14 (1) The verifier shall, after receiving the documents referred to in section 12 and following the expiration of the time period referred to in section 13, certify the validity of the child and family services code unless the verifier, after giving the First Nation a reasonable opportunity to make submissions on the matter but within 10 days after the child and family services code has been approved, is of the opinion that:

- (a) the community approval process confirmed under paragraph 8(2)(b) was not followed or the community approval was otherwise irregular in some material respect; and
- (b) the child and family services code would not have been approved, but for that irregularity.

Transmittal

(2) The verifier shall, without delay, transmit a true copy of the certified child and family services code to the First Nation, the First Nations Child and Family Services Caring Institute, and the Minister.

Presumption

(3) Following the transmittal of a certified child and family services code pursuant to subsections 14(1) and (2), the child and family services code shall be deemed to have been validly approved by the First Nation and recognized in law.

Coming into Force of Child and Family Services Code

Coming into force

15 (1) Subject to subsection 15(2), a child and family services code has the full force of law on the day on which it is certified, or on such later date as may be specified within the child and family services code.

Access to child and family services code

(2) A true copy of the child and family services code of a First Nation that is in force shall be maintained by the council for public inspection at all times, at a place designated by the council.

Child and Family Services Regime

First Nation Powers

Power to administer child and family services regime

16 (1) A First Nation has, after the coming into force of its child and family services code and subject to this Act, the power to administer the child and family services regime.

Legal capacity

(2) For any purpose related to First Nation child and family services, a First Nation has the legal capacity to exercise its powers and perform its duties and functions and, in particular, may

- (a) acquire and hold property;
- (b) enter into contracts;
- (c) borrow money;
- (d) expend and invest money; and
- (e) be a party to legal proceedings.

Exercise of power

(3) The power of a First Nation to administer and deliver child and family services shall be exercised by the council of a First Nation, or by any person or body to whom a power is conferred by the council in accordance with the First Nation's child and family services code, and that power shall be exercised for the use and benefit of the First Nation.

Administration body

(4) A body established under a child and family services code for the purpose of administering and delivering child and family services is a legal entity having the capacity, rights, powers and privileges of a natural person, including the matters set out in subsection 16(2).

Collection and management of data

17 (1) A First Nation, after the coming into force of its child and family services code, shall collect and manage all data and maintain all records necessary for the administration of its child and family services regime, in accordance with any standards prescribed by the First Nations Child and Family Services Caring Institute pursuant to paragraph 29(1)(i).

(2) A First Nation shall provide data and information to the First Nations Child and Family Services Caring Institute to be included in the First Nations Child and Family Database, as set out in section 31.

[NTD: consider frequency of provided information pursuant to subsection 17(2). Also consider privacy implications and potential application of privacy legislation; provision requiring provision of provincial and territorial data]

First Nation Laws

Power to enact laws

18 (1) The council of a First Nation has, in accordance with its child and family services code, the power to enact laws respecting any matter set out in section 7 or any matter arising out of or ancillary to the exercise of that power.

Enforcement measures

(2) A First Nation law may provide for entry and enforcement measures, such as the power to enter any premises or vehicle or board any vessel for the purpose of removing a First Nation child in need of protection and the power to inspect, search and seize and to order compulsory sampling, testing and the production of information.

Offences and punishment

19 (1) A First Nation law may create offences punishable on summary conviction and provide for the imposition of fines, imprisonment, restitution, community service and any other means for achieving compliance.

Incorporation by reference

(2) A First Nation law may adopt or incorporate by reference the summary conviction procedures of Part XXVII of the Criminal Code, as amended from time to time.

Prosecution

(3) A First Nation may, in relation to prosecutions of contraventions of First Nation law,

- (a) retain its own prosecutors;
- (b) enter into an agreement with Her Majesty and a provincial government for the use of provincial prosecutors; or
- (c) enter into an agreement with Her Majesty for the use of any other agents engaged by Her Majesty.

Evidence

20 In any proceedings, a copy of a First Nation law appearing to be certified as a true copy by an officer of the First Nation is, without proof of the officer's signature or official character, evidence of its enactment on the date specified in the First Nation law.

Appointment of justices of the peace

21 (1) A First Nation may appoint justices of the peace to ensure the enforcement of First Nation law including the adjudication of offences for contraventions of First Nation law.

Judicial independence

(2) A justice of the peace appointed by a First Nation shall have tenure and remuneration, and be subject to conditions of removal, that reflect the independence of the office of a justice of the peace in the province or territory in which the First Nation is situated.

Powers

(3) Justices of the peace have all the powers necessary for the performance of their duties and functions.

Appeals

(4) An appeal lies from a decision of a justice of the peace in the manner in which an appeal lies in summary conviction proceedings under Part XXVII of the *Criminal Code* and the provisions of that Part relating to appeals, as amended from time to time, apply to appeals under this subsection.

Courts of a province

(5) If no justices of the peace are appointed by a First Nation, its First Nation laws shall be enforced through a court of competent jurisdiction of the province or territory in which its First Nation is situated.

First Nations Child and Family Services Caring Institute

- 22 (1) The First Nations Child and Family Services Caring Institute is established pursuant to this Act as a body corporate without share capital.
- (2) The Institute is the administrative body by which the functions of the First Nations Child and Family Services Caring Institute may be carried out and administered.
- (3) Subject to this Act, the Institute has the capacity, rights, powers and privileges of a natural person.

Board of directors

- 23 (1) The board of directors of the Institute consists of [●].
- (2) The board of directors shall direct and manage the activities and affairs of the Institute.
- (3) The board of directors shall formalize its decisions by resolution or bylaw.

Special measures committee

- 24 (1) The board of directors shall maintain a special measures committee consisting of [●].
- (2) The special measures committee shall inquire into and advise the board of directors with respect to issues relating to funding by Her Majesty of First Nations child and family services, whether relating to funds provided pursuant to this Act or not.
- (3) On the advice of the special measures committee, and with notice to the Minister, the Institute may, as of right, request that the Chairperson of the Canadian Human Rights Tribunal established under the *Canadian Human Rights Act*, as amended from time to time, institute an inquiry into any issue relating to the funding by Her Majesty of First Nations child and family services, whether relating to funds provided pursuant to this Act or not.

Bylaws

- 25 Bylaws shall be made for the governance and proper administration of the Institute's activities, affairs, property and interests.

Records

- 26 (1) The Institute shall maintain, at its head office or at any other place in Canada designated in the bylaws, the following:

CSFS November 5, 2018 WORKING DRAFT FOR DISCUSSION PURPOSES ONLY

- (a) the bylaws of the Institute and all amendments to them;
- (b) the minutes of meetings and resolutions of:
 - (i) the directors;
 - (ii) any committee of the Institute; and
- (c) the audited financial statements of the Institute.

Filing

- 27 (1)** Within 15 days after the coming into force of this Act, the Institute shall file with the Director:
- (a) a notice of the names and addresses of the directors of the Institute;
 - (b) a notice of the names and addresses of the members of the special measures committee; and
 - (c) a notice of the location and address of the head office of the Institute.
- (2)** Within 15 days after a change occurs in the name or address of a director of the Institute, members of the special measures committee, or in the location or address of the head office of the Institute, the Institute shall file with the Director, as the case requires:
- (a) a notice of the names and addresses of the directors of the Institute;
 - (b) a notice of the names and addresses of the members of the special measures committee; or
 - (c) a notice of the location and address of the head office of the Institute.
- (3)** Within 90 days after the end of the Institute's fiscal year, the Institute shall file with the Director an audited financial statement of the institute for that fiscal year.

[NTD: consider whether any additional provisions under the Canada Not-for-Profit Corporations Act, SC 2009, c 23 should apply / need to be contemplated]

Dissolution of predecessor corporation

- 28 (1)** In this section, "predecessor corporation" means the First Nations Child and Family Caring Society of Canada, incorporated pursuant to the *Canada Not-for-Profit Corporations Act*, as amended from time to time.
- (2)** The predecessor corporation is dissolved.

- (3)** On the dissolution of the predecessor corporation pursuant to this section:
- (a)** the rights, obligations, assets and liabilities, as at the date of the coming into force of this section, of the predecessor corporation, as the predecessor corporation existed on the day before the coming into force of this section, are transferred to and become the rights, obligations, assets and liabilities of the Institute;
 - (b)** the Institute may, in its own name, commence and maintain any actions or proceedings, exercise any powers and claim any rights or remedies that the predecessor corporation could have commenced, maintained, exercised or claimed before the coming into force of this section; and
 - (c)** any actions or proceedings that could have been brought or maintained against the predecessor corporation, and any rights or remedies that could have been claimed against the predecessor corporation, before the coming into force of this section may be brought or maintained or claimed against the Institute.

Functions of the First Nations Child and Family Services Caring Institute

- 29 (1)** The First Nations Child and Family Services Caring Institute shall be responsible for the following matters:
- (a)** developing model child and family services codes, model First Nation law, and model service delivery systems;
 - (b)** upon receipt of a request by a First Nation, to assist the First Nation in developing and implementing a child and family services code, First Nation law, and service delivery systems;
 - (c)** establishing a list of verifiers;
 - (d)** upon receipt of a request from a verifier, to assist the verifier in any relevant matters which may arise;
 - (e)** establishing a resource centre, curricula, and training programs for managers and others who perform functions pursuant to a child and family services code;
 - (f)** upon receipt of a request from a First Nation, to assist the First Nation in obtaining expertise and resolving any difficulties in administering its child and family services code;
 - (g)** proposing amendments to this Act and to other acts of Parliament;
 - (h)** in consultation with First Nations, negotiating funding methods with the Minister;

CSFS November 5, 2018 WORKING DRAFT FOR DISCUSSION PURPOSES ONLY

- ~~(i)~~ collecting, sharing, and maintaining data in connection with the First Nations Child and Family Database, and other records and data provided to it by First Nations;
- ~~(j)~~ delivering annual reports to the Minister and the Assembly of First Nations; and
- ~~(k)~~ performing other functions or services, as required.

Record Keeping

- 30 (1)** The First Nations Child and Family Services Caring Institute will maintain a record containing
- (a)** the name of each First Nation that approves a child and family services code;
 - (b)** a copy of each child and family services code;
 - (c)** a copy of each amendment to a child and family services code;
 - (d)** the dates on which each child and family services code was approved and certified; and
 - (e)** a copy of each First Nation law and any amendments made thereto.
- (2)** The First Nations Child and Family Services Caring Institute shall receive and record the addition of a First Nation to the Schedule to this Act and advise the Minister that the said First Nation has been listed on the Schedule to this Act.

First Nations Child and Family Database

- 31 (1)** The First Nations Child and Family Services Caring Institute shall establish a national database to be known as the First Nations Child and Family Database, which shall include the following:
- (a)** a list containing information in relation to each First Nation child placed in care;
 - (b)** information in connection with the number of First Nations children receiving child and family services, demographics for the children and their families including their current location, reasons for their apprehension, length of placement in care, cultural placement match, and the funding provided by Canada for the provision of those services;
 - (c)** family wellness outcomes and indicators in relation to each First Nation child placed in care; and
 - (d)** all other information relating to child and family services delivered by First Nations with child and family services regimes established pursuant to this Act

and as may be required by the First Nations Child and Family Services Caring Institute pursuant to subsection 29(1)(i).

[NTD: this will require provincial/territorial participation for those FNs who have not adopted a child and family services code pursuant to this Act; see also note under section 17]

Annual Report

32 Within 90 days following the end of each year of operation, the First Nations Child and Family Services Caring Institute shall deliver to the Minister and the Assembly of First Nations a list of First Nations whose child and family services code has come into force, and an annual report, in both official languages, on the work of the Institute for that year.

Review Process

33 (1) Within four years of this Act coming into force, the Minister and the First Nations Child and Family Services Caring Institute, or their representatives, will:

- (a)** jointly conduct, or cause to be conducted, a review of the provisions of this Act, including, without limitation, in respect of the adequacy and appropriateness of its funding arrangements; and
- (b)** make best efforts to complete the review within one year of its commencement.

(2) Following completion of the review, the Minister will meet with the Executive of the Assembly of First Nations, each First Nation with a child and family services code that has come into force, and the First Nations Child and Family Services Caring Institute to discuss the results of the review.

First Nations Child and Family Services Caring Institute Funding

34 Canada will enter into a funding arrangement with the First Nations Child and Family Services Caring Institute for the five year period following the coming into force of this Act.

[NTD: Funding model/provisions to be developed based on input from IFSD/IFPD]

Liability

First Nation not liable

35 (1) A First Nation shall bear no liability in tort or any other theory of law in respect of anything done or omitted to be done before the coming into force of its child and family services code by Her Majesty or any person or body authorized by Her Majesty to act in relation to any matter undertaken in good faith pursuant to the child and family services code.

Indemnification of First Nation

(2) Her Majesty shall indemnify a First Nation in respect of any proceeding commenced or loss suffered by the First Nation as a result of any act or omission described in subsection 35(1).

Her Majesty not liable

(3) Her Majesty shall bear no liability in tort or any other theory of law in respect of anything done or omitted to be done after the coming into force of the child and family services code of a First Nation by the First Nation or any person or body authorized by the First Nation to act in relation to any matter undertaken in good faith pursuant to the child and family services code.

Indemnification of Her Majesty

(4) The First Nation shall indemnify Her Majesty in respect of any proceeding commenced to loss suffered by Her Majesty as a result of an act or omission described in subsection 35(3).

Master Insurance Plan

(5) In consultation with the First Nations Child and Family Services Caring Institute, the Minister shall secure, and pay for the costs associated with maintaining, a master insurance plan to indemnify each First Nation for any liability in connection with the delivery of child and family services by it pursuant to its child and family services code once that child and family services code has come into effect.

Immunity and Judicial Review

Immunity

36 No person shall commence or maintain criminal or civil proceedings against a verifier appointed under this Act or any member of the First Nations Child and Family Services Caring Institute established by this Act who, in good faith, exercises a power or performs a duty or function in accordance with this Act, for anything done or omitted to be done during the course of the exercise or purported exercise of any power or the performance or purported performance of any duty or function of that person in accordance with this Act.

Determinations final

37 (1) Every determination under this Act by a verifier is final, and no order shall be made, process entered or proceedings taken in any court, whether by way of injunction, *certiorari*, prohibition, *mandamus*, *quo warranto* or otherwise, to question, review or prohibit such a determination.

Actions final

(2) No order shall be made, process entered or proceedings taken in any court, whether by way of injunction, *certiorari*, prohibition, *mandamus*, *quo warranto* or otherwise, to question, review or prohibit any other action under this Act by a verifier.

Review by Federal Court

(3) Notwithstanding subsections 37(1) and (2), the Attorney General of Canada or anyone directly affected by the matter in respect of which relief is sought may make an application under the *Federal Courts Act*, as amended from time to time, on any of the grounds referred to in paragraph 18.1(4)(a) or (b) of that Act for any relief against a verifier by way of an injunction or declaration or by way of an order in the nature of *certiorari*, prohibition, *mandamus* or *quo warranto*.

Other Acts

Other Acts

38 (1) In the event of any inconsistency or conflict between this Act and any other federal law, this Act prevails to the extent of the inconsistency or conflict.

(2) The *Statutory Instruments Act*, as amended from time to time, or any successor legislation, will not apply to a child and family services code or to First Nation law.

Indian Act

39 (1) On the coming into force of a child and family services code pursuant to subsection 15(1), provincial laws of general application respecting children and families shall cease to apply to the First Nation's members respecting the same or similar subject-matter contemplated under the child and family services code, except as expressly provided for under the child and family services code.

Effect of Inconsistency

(2) In the event of any inconsistency or conflict between the child and family services code of a First Nation and the provisions of a First Nation law or of a by-law made by its council under section 81 of the *Indian Act*, as amended from time to time, the child and family services code prevails to the extent of the inconsistency or conflict.

Amendment of Schedule

Addition of First Nation

40 (1) The Governor in Council shall, by order, add the name of a First Nation to the schedule if he or she is satisfied that the child and family services code and individual agreement of a First Nation has been duly approved.

Coming-into-force date of child and family services code

(2) The Minister shall, by order, add to the schedule the date on which a child and family services code comes into force with respect to a First Nation’s members.

Automatic Deletion of First Nation name

(3) The Governor in Council shall, by order, delete from the schedule the name of a First Nation and the date on which a child and family services code comes into force with respect to the First Nation’s members, if that First Nation is no longer subject to this Act under the terms of a land claims agreement or a self-government agreement.

Coming into Force

Order of Governor in Council

41 This Act comes into force on a day to be fixed by order of the Governor in Council.

SCHEDULE

Names of First Nations and Coming-into-Force Dates of Child and family services codes

D

Item

First Nation that has implemented a child and family services code

Child and family services code coming-into-force date

R

A

F

T