Indigenous Child Welfare in Canada: A Métis-Focused Comparative Analysis of *An Act Respecting First Nations, Inuit and Métis Children, Youth and Families*, and Canadian Provincial and Territorial Child Welfare Legislation

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A Report by the Chair in Métis Governance and Policy
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Prepared for the
Métis National Council (MNC)

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1. Executive Summary

1.1 Introduction

The Truth and Reconciliation Commission of Canda’s final report identifies child welfare policies in Canada as a continuation of the Indian Residential Schools (IRS) system, noting the ongoing removal of Indigenous children from their families and communities (TRC, 2015). This practice perpetuates the loss of language, culture, and community ties amongst Indigenous children. In response, some of the TRC's top Calls to Action include calling on Canadian governments to reform Indigenous child welfare by reducing the overrepresentation of Indigenous children in care, publishing detailed data on these children and the costs involved, fully implementing Jordan’s Principle, empowering Indigenous communities to implement their child welfare services, and developing culturally appropriate parenting programs (Louis, 2023).[1] Despite these efforts, systemic barriers persist, contributing to continuing disparities in health, wellness, and achievement outcomes for Indigenous children, particularly those who are Métis (Dorion, 2010). The movement toward Indigenous self-government, especially for the Métis, is crucial to ensure that child welfare services sustain and enhance Métis identity and belonging. This includes recognizing the diversity amongst Indigenous Nations and avoiding a one-size-fits-all approach.

The lack of Métis-specific considerations in child welfare legislation and policy is a significant oversight that perpetuates systemic inequities. Many legislative frameworks tend to use broad terms like "Indigenous" or "Aboriginal" which can obscure the unique needs and governance structures of the Métis. This can result in Métis children being underserved and overlooked in the child welfare system. Under *An Act Respecting First Nations, Inuit and Métis children, Youth and Families* (the *Act*), and provincial legislation, the unique legal and jurisdictional challenges faced by the Métis, who often operate within a complex framework of federal, provincial, and local jurisdiction, are not adequately addressed. This absence of clear recognition and tailored support hinders the development and implementation of effective child and family services for Métis people, and consequently, Métis self-determination and self-governance. Addressing these gaps requires a more nuanced approach that explicitly recognizes and supports the distinct cultural, legal, and social needs of Métis children and families to ensure that they receive equitable and culturally appropriate care.

1.2 Objective

The objective of this report is to inform the MNC of any provincial or territorial legislation that may impact the advancement of Métis self-determination and self-governance under the jurisdiction of child welfare. This analysis compares existing provincial and territorial child welfare legislation and its compatibility with the *Act* to make policy

[1] This list is not exhaustive.

recommendations to support and advance Métis self-government. It also reinforces the significance for Métis governments to have jurisdiction over their own child welfare systems to protect Métis children in a manner that is both safe and grounded in Métis values and culture.

1.3 Key Findings

The analysis of provincial and territorial child welfare legislation in comparison with **An Act Respecting First Nations, Inuit and Métis Children, Youth and Families** (the Act) has led to several key findings that have significant implications for Métis children, families, and the advancement of Métis self-governance:

- **Lack of Métis-Specific Provisions in Legislation**
  - **Absence of Distinct Recognition**: Provincial and territorial child welfare laws generally lack Métis-specific provisions. The legislation often uses broad terms like "Indigenous" or "Aboriginal," which do not account for the unique cultural, historical, and social contexts of the Métis Nation.
  - **One-Size-Fits-All Approach**: This generalized approach fails to recognize the distinct needs and governance structures of Métis communities, leading to services that may not be culturally appropriate or effective for Métis children and families.
- **Inadequate Alignment with the Act**
  - **Pan-Indigenous Legislation**: Most jurisdictions have not amended their child welfare laws to fully align with the national standards established by the Act, particularly concerning the recognition of Métis self-governance and jurisdiction over child welfare.
  - **Limited Recognition of Indigenous Jurisdiction**: While some provinces, like British Columbia and Manitoba, have provisions acknowledging Indigenous self-government, these are not specific to the Métis and often prioritize First Nations or Inuit peoples.
- **Jurisdictional and Legal Complexities**
  - **Ambiguities in Definitions and Terms**: The lack of clear definitions for "Indigenous governing body" and other key terms creates uncertainty about the applicability of legislation to Métis governance structures.
  - **Challenges in Exercising Jurisdiction**: Métis governments face legal and jurisdictional hurdles in asserting their rights to self-determination and self-government in child welfare, often operating within a complex interplay of federal, provincial, and local laws.

- **Data Sovereignty Issues**
    - **Limited Control Over Data**: Métis governments often lack control over data related to their communities, hindering their ability to manage, utilize, and protect information effectively.
    - **Impact on Service Delivery**: The inability to access and manage data impedes the development and implementation of tailored child welfare services that meet the specific needs of Métis children and families.
- **Funding Inequities and Capacity Constraints**
    - **Inadequate and Inequitable Funding**: There is a lack of adequate, stable, and equitable funding specifically allocated to Métis child welfare services, affecting the quality and availability of support for Métis children.
    - **Need for Capacity Building**: Métis governments often require additional resources for capacity building, including training, infrastructure, and administrative support, to effectively implement and manage child welfare services.
- **Cultural Continuity and Kinship Considerations**
    - **Insufficient Emphasis on Métis Culture**: Provincial and territorial legislation generally does not adequately prioritize the preservation of Métis culture, language, and traditions in child welfare practices.
    - **Legislating Kinship**: Definitions of kinship and family in legislation may not align with Métis concepts, potentially disrupting the cultural continuity and identity of Métis children in care.
- **Implications of the Supreme Court Reference Ruling**
    - **Affirmation of Indigenous Self-Government**: The Supreme Court of Canada's ruling in 2024 upheld the constitutionality of the Act, affirming the rights of Indigenous peoples, including the Métis, to self-government in child welfare.
    - **Clarification of Paramountcy**: The ruling clarifies that Indigenous laws relating to child welfare have the same force as federal laws, superseding provincial laws where conflicts arise.
- **Intergovernmental Coordination Challenges**
    - **Lack of Effective Collaboration**: There are ongoing challenges in coordination between federal, provincial, and Métis governments, impacting the implementation of child welfare services and the negotiation of coordination agreements.

- **Jurisdictional Disputes**: Historical tensions and disputes over jurisdiction continue to hinder progress, often resulting in delays and inadequate support for Métis children and families.

- **Preventative and Prenatal Care Overlooked**
  - **Insufficient Focus on Prevention**: Provincial legislations often lack provisions for preventative services and prenatal care, which are crucial for addressing root causes and supporting the well-being of Métis children and families.
  - **Alignment with the Act Needed**: Sections 14 and 15 of the Act emphasize the importance of preventative care, but this emphasis is not reflected in most provincial and territorial laws.
- **Data Gaps and Lack of Reporting**
  - **Insufficient Data Collection**: There is a lack of comprehensive data on Métis children in the child welfare system, making it difficult to assess needs, outcomes, and the effectiveness of services.
  - **Transparency and Accountability**: Without detailed reporting and data, it is challenging to hold governments accountable and to develop evidence-based policies and programs.

The current legislative landscape across Canadian provinces and territories does not adequately meet the national minimum standards outlined in the Act, particularly concerning the rights and needs of Métis children, youth, and families. The lack of Métis-specific provisions, combined with legal ambiguities and funding inequities, perpetuates systemic barriers to the advancement of Métis self-determination and self-governance in child welfare.

Addressing these key findings is essential to ensuring that Métis children receive equitable, culturally appropriate care that supports their well-being and preserves their identity. The advancement of Métis self-government in child welfare is critical to overcoming these challenges and requires concerted efforts from all levels of government to implement the necessary legislative and policy changes.

1.4 Recommendations

Based on our analysis of legislative and policy frameworks affecting Métis children in the child welfare system, we propose the following recommendations to ensure the well-being of Métis children and to support Métis self-government:

Data Sovereignty and Management

- Provide Métis governments with the resources and infrastructure needed to manage their data independently.

- Establish data sovereignty protocols to ensure that data collection, management, and usage respects the privacy and governance rights of Métis people.
- Adress the reliability of data collected regarding Métis children in care or interventions undertaken to provide child welfare services to children and families.

Adequate and Equitable Funding

- Ensure that funding for child welfare services are equitable and adequately tailored to the needs of Métis children.
- Include direct funding to Métis governments to develop and sustain culturally appropriate child and family services.

Capacity Building

- Invest in capacity-building initiatives for Métis governments and organizations.
- Provide training, administrative support, and infrastructure development to enable effective implementation and management of child welfare services.

Legal and Jurisdictional Clarity

- Clarify the legal and jurisdictional status of Métis child welfare governance.
- Recognize the unique legal status of Métis people and ensure that their authority is respected within federal, provincial, and local jurisdictions.

Culturally Appropriate Services

- Develop and promote culturally appropriate parenting programs and child welfare services that reflect Métis traditions, values, and practices.
- Place Métis children within their communities and families whenever possible to maintain cultural continuity.

Monitoring and Accountability

- Establish robust monitoring and accountability mechanisms to track the implementation and outcomes of child welfare services for Métis children.
- Conduct and share regular reporting and evaluation with Métis governments to ensure that standards are being met and to identify areas for improvement.

Intergovernmental Coordination

- Foster effective coordination between federal, provincial, and Métis governments to support the implementation of child welfare services. This includes defining the role of the provinces and dispute resolution processes to handle jurisdictional disagreements in a timely and effective manner.
- Enter into coordination agreements that respect the jurisdiction and authority of Métis governing bodies and provide for adequate, equitable, and stable funding.

By enacting these recommendations, policymakers and stakeholders can work toward a more equitable and effective child welfare system that respects the rights and cultural heritage of Métis communities, ultimately improving outcomes for Métis children and families.

2. Methodology

2.1 Structure

This report provides an analysis of the legislative and policy landscape affecting Métis children within the child welfare system in Canada. It begins with an introduction and outlines the objective and importance of the study, followed by a methodology section that explains the research approach, and a background section that highlights historical and contemporary issues related to Indigenous child welfare, with a specific focus on Métis children and families.

The report then examines the *Act*, summarizing its key provisions, critiques, and potential implications for Métis self-governance. Next, a comparative legislative analysis explores how provincial and territorial laws align with or diverge from the standards set by the *Ac*t, particularly in regard to the needs of Métis children. Subsequent sections identify challenges and emphasize the gaps and barriers faced by Métis governments and families.

The report concludes with policy recommendations and strategies to enhance the well-being of Métis children and families in relation to child welfare through the strengthening of Métis self-governance.

2.2 Analysis

2.2.1 The *Act*

Analyzing the *Act* requires examining its key provisions and definitions as well as engaging with relevant scholarly literature and critique.

2.2.2 Provincial/Territorial Legislation

To conduct a comparative analysis, we looked at the differences and similarities in the language, content, and definitions present in current provincial/territorial child welfare legislation and the *Act*. Overall, we reviewed numerous pieces of legislation, with some provinces/territories having multiple relevant Acts.[2] This analysis helped us to identify gaps, overlaps, and areas requiring coordination to enhance the protection and well-being of Métis children.

3. Background

The overrepresentation of Indigenous children in child welfare systems is an ongoing crisis in Canada (NCCAH, 2017; TRC, 2015). In the final report of the TRC, this

[2] A full list of this legislation can be found in the references section of this report.

system is identified “as a continuation of IRS [Indian residential schools] in which the removal of Indigenous children from their families and communities continues through a different system” (NCCAH, 2017, p. 1; TRC, 2015). The removal of Indigenous children from their families continues to enforce the assimilation mandate of the IRS system by disrupting the access to and transmission of their languages, culture, and communities for Indigenous children (NCCAH, 2017; TRC, 2015). Because of this continuing injustice, the TRC has classified child welfare reforms as its “top Calls to Action” (p. 1; TRC, 2015).

The Calls to Action relating to child welfare include:

> reducing the overrepresentation of Indigenous children in the care of child welfare; publishing data on the exact numbers of Indigenous children in child welfare and the reasons for apprehension and costs associated with these services; fully implementing Jordan’s Principle; ensuring that legislation allows for Indigenous communities to be in control of their own child welfare services; and developing culturally appropriate parenting programs. (NCCAH, 2017, p. 1)

In response to TRC’s findings, and in the spirit of truth and reconciliation with Indigenous peoples, Canada has committed to enacting the 94 Calls to Action. Accordingly, the *Act*, which deals with jurisdiction and standards for Indigenous child welfare, is a necessary step in this process. However, despite this promise and the *Act* receiving Royal Assent, Indigenous families continue to face extensive systemic barriers, which further contribute to the well-known and documented disparities in health, wellness, and achievement outcomes for Indigenous children (Ball & Benoit-Jansson, 2023). For First Nations children living on reserve or in the Yukon Territory, child welfare services are federally funded (NCCAH, 2017, p. 3). This means that Métis children fall under the jurisdiction of the province/territory in which they reside and may be less likely to receive culturally appropriate care and resources, especially if provincial and territorial child welfare legislation does not account for the distinct Métis needs.

Today, most Métis governments across the Métis Homeland are working toward self-government through the negotiation of nation-to-nation relationships with Canada. For the Métis, the pursuit of self-governance stems from self-determination and recognition of their unique history and identity as Indigenous peoples. It reflects a desire for governance that truly embodies their culture, history, traditions, and values. Although many are determined to achieve this, the path to self-governance is challenging and Métis-Canada relations are complex.

A central rationale for Indigenous self-determination and self-government is that effective services must sustain and enhance Indigenous belonging and identity in children and their family members (Anderson, 2016). Therefore, it is vital that Métis governments exercise jurisdiction in the area of child welfare through self-government, that they are supported with adequate financial and other resources to maintain the

services, and that all Canadian legislation reflects the unique needs of Métis children, families, and communities.

Although many Indigenous organizations and scholars agree on the general dimensions and processes of promoting cultural connectedness and reaffirming and reinforcing the continuation of cultural practices (Ball & Benoit-Johnson, 2023), a pan-Indigenous approach to child welfare would not be meaningful. It is only through the recognition of the diversity amongst First Nation, Métis, and Inuit Nations, and consideration of their geographical space, whether remote, rural, or urban, that we can strive toward culturally appropriate and safer child welfare systems.

In 2021, "the foster child rate for Métis was highest among those aged 0 to 4 (15.6 per 1,000) and 5 to 9 (15.6 per 1,000)" (Hahmann et al., 2024). Further, "just over half of First Nations and Inuit children and three-fifths of Métis children in foster care lived with non-Indigenous foster parent(s)" (Hahmann et al., 2024), making this a timely and necessary inquiry. We aim to assess whether or not Canadian provinces and territories are meeting the national standard for Indigenous children in the welfare system, with a specific focus on the impacts for Métis children.

A recent decision by the Supreme Court of Canada (SCC) upheld the constitutionality of the *Act* and reinforced its significance for Indigenous children and its continued enactment (Reference re *An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024). In order to properly assess how current provincial and territorial child welfare legislation impact Métis children, a Métis-focused evaluation, that honours the diversity of Indigenous Nations and families, is required.

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

4.1 Overview

The *Act*, which was introduced in the House of Commons as Bill C-92 in February 2019, received Royal Assent in June 2019, and came into force in January 2020, affirms the rights of Indigenous peoples to self-determination and self-government in the jurisdiction of child and family services. Its primary goals are to address the overrepresentation of Indigenous children in the child welfare system and to support the preservation of Indigenous cultures and family structures (*An Act Respecting First Nations, Inuit and Métis children, Youth and Families*, 2019).

4.2 Main Objectives

4.2.1 Affirmation of Jurisdiction

The *Act* recognizes and affirms the inherent right of First Nations, Inuit, and Métis peoples to have jurisdiction over child and family services. This means that Indigenous Nations can establish and administer their own child welfare laws and systems that are tailored to the needs of their communities.

4.2.2 National Standards

The *Act* establishes national standards for the provisions of child and family services to Indigenous children, which must be adhered to by provincial and territorial child welfare agencies.

4.2.3 Implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

The *Act* aims to contribute to the implementation of UNDRIP in Canada.

4.3 Principles

4.3.1 Best Interests of the Child

The *Act* is meant to be understood and operationalized in accordance with the best interests of the child (outlined in section 10).

4.3.2 Cultural Continuity

The *Act* highlights the necessity of promoting the cultural, linguistic, and familial ties of Indigenous children to ensure cultural continuity.

4.3.3 Substantive Equality

Indigenous children must be treated with fairness and equality. This means recognizing and addressing the historical disadvantages and discrimination they face.

4.4 Key Provisions

4.4.1 Best Interests of the Child (Section 10)

This section emphasizes the best interests of the child as the primary consideration in the context of child welfare decisions. Primary consideration is 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, community or people to which he or she belongs…" (*An Act Respecting First Nations, Inuit and Métis children, Youth and Families*, 2019, p. 6).

4.4.2 Preventative Services (Section 14)

The *Act* emphasizes preventative services to reduce the need for child apprehension.

4.4.3 Cultural and Family Connections (Section 16)

The *Act* prioritizes placing Indigenous children with family members or within their community to maintain cultural and familial connections. If this is not possible, efforts must be made to place the child in a setting where their cultural identity and connections can be preserved, including kinship provisions.

4.4.4 Coordination and Application (Section 20)

The *Act* legislates the ability of Indigenous Nations to create their own child and family service legislation and systems. It specifies that Indigenous governments must give notice of their intention to do so to Canadian governments. They may enter into a Coordination Agreement (CA) with the federal government and the

province/territory in which they are located to ensure that there are necessary resources available to Indigenous Nations to be able to enact and sustain their legislative authority.

4.4.5 Accountability and Oversight (Section 21)

The *Act* includes provisions for regular reporting and accountability to ensure that its standards and objectives are being met. This includes monitoring its implementation and outcomes to ensure it is effectively serving the interests of Indigenous children and families.

4.5 Critiques

4.5.1 Yellowhead Institute Report: Evaluating the Proposed Legislation

Prior to its enactment, the Yellowhead Institute published a report that provided an analysis of Bill C-92, *An Act Respecting First Nations, Métis and Inuit Children, Youth and Families* (the Bill), with the goals of highlighting oversights and suggesting improvements as it went through the legislative process and to "[help Indigenous] people reach informed conclusions" (Metallic et al., 2019a, p. 4). The report identifies five main areas of importance and analyzes the sufficiency of each, ultimately concluding that all could use improvement.

4.5.1.1 National Standards

While the legislation mentions multiple factors that align with the best interests of the child, including relationships and cultural considerations, they are subordinate to the "child's physical, emotional and psychological safety, security and well-being" (*An Act Respecting First Nations, Inuit and Métis children, Youth and Families*, 2019, p. 6) The report argues that the Bill uses much of the same definition of the best interests of the child in the amended *Divorce Act* (Metallic et al., 2019a), signalling that it was not as carefully thought out, in the context of Indigenous child welfare, as it would seem. There are some noted positives, including the principles of cultural continuity and substantive equality, but "the factors listed under [them] are vague and the lack of mandatory language regarding funding and Jordan's Principle, is of concern" (Metallic et al., 2019a, p. 5). Additionally, the Bill requires notice of a child's apprehension to be given, not only to the parents and caregivers, but also to relevant Indigenous governing bodies, so that they may have standing. Standing means that these parties can be represented in the court proceedings. While this improves upon most provincial legislation, it only applies to First Nations and fails to account for the financial barriers in place for interested parties to have acceptable representation. Most importantly, for the purposes of this analysis, it leaves out the families of Métis children.

The Bill mentions the priority of prevention over apprehension and includes that socio-economic status is not a legitimate reason to remove a child from their home; however, it does not account for funding or compliance, and all are subject to the best interests of the child, which is left to be determined by judges in Canadian courts.

The Bill outlines placement priority for Indigenous children, ongoing re-evaluation, and an emphasis on relationships, which is, along with notice and standing, an improvement from most provincial child welfare legislation.

One of the main issues left unaddressed by the Bill is that provincial legislation has mandatory requirements for the length of time a child can be in care before "becoming a permanent ward" (p. 6). This means that after this time has passed, the child's relationships are legally relinquished, even if it is not in their best interests. The re-evaluation required for the placements of Indigenous children attempts to make up for this shortfall, but the language is too vague.

A second major issue is that the best interest of the child is left to be interpreted and applied by judges in Canadian courts. The report argues that "without strong mandatory language to address judicial bias and clearly overtake binding precedent, the Bill will continue to maintain the status quo" (p. 6).

Overall, the proposed legislation appears to have potential for some improvements to provincial laws but may not lead to sufficient change because of its lack of adequate provisions to address the status quo when judges are interpreting and applying the best interests of the child and compliance mechanisms for accountability and financial obligations.

4.5.1.2 Funding

The need for adequate funding for Indigenous capacity building and self-government is nothing new. The 1996 Report on the Royal Commission of Aboriginal Peoples recognized that in order for Indigenous Nations self-govern effectively, they will need financial support to build capacity. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), to which Canada is a signatory, also requires that Indigenous Nations have the inherent right to the "ways and means for financing their autonomous functions" (UNDRIP, as cited by Metallic et al., 2019a, p. 9). Thus, it has long been recognized that adequate and equitable funding is necessary to the success of Indigenous self-government. However, in the First Nations Caring Society case, Canada was found to have been "discriminating against First Nations children by knowingly underfunding child welfare services" (Metallic et al., 2019a, p. 9). This has had detrimental impacts on First Nations children and families and has continued the effects of the Indian Residential School System. The report argues that despite these recognitions and Canada's commitments to reconcile them, there is no commitment in the Bill to fund current First Nations child welfare, in accordance with substantive equality, future Indigenous self-government in the jurisdiction of child welfare, capacity building, or essential services that impact child welfare, like housing and health. Moreover, simply acknowledging the need for adequate funding for Indigenous family services is not equivalent to making it happen.

There is no reason to believe that the inclusion of the provincial governments will translate to the successful implementation of this legislation. Historically, the provinces

have generally resisted taking on the delivery of services for First Nations unless it was federally reimbursed. The report argues that this inclusion may perpetuate the "longstanding game of jurisdictional hot-potato the federal government and provinces have played over First Nations services for decades" (Metallic et al., 2019a, p. 10). The death of Jordan Anderson, which resulted in the creation of Jordan's principle, was supposed to resolve this tension, but the Bill does not address this issue. This section concludes that "[w]hile Canada is presenting Indigenous jurisdiction as the main selling feature of this Bill, without adequate funding, this will simply be jurisdiction to legislate over our own poverty" (Metallic et al., 2019a, p. 10).

4.5.1.3 Accountability

The legislation fails to identify binding requirements on Canada, and does not provide comprehensive compliance mechanisms or detailed dispute resolution provisions. There is also a significant power imbalance between Indigenous peoples and Canadian governments and Indigenous governments and Canadian governments. Thus, the report suggests an "independent decision-making body with the ability to make binding decisions against Canada set out directly in the legislation" to ensure that Canada is held accountable to its obligations (Metallic et al., 2019a, p. 13).

4.5.1.4 Jurisdiction

The report highlights that jurisdictional disputes between Canada's governments has had a negative impact on the health and well-being of Indigenous children. It argues that Indigenous peoples should have jurisdiction over their children. The wide discretion of the best interests of the child results in the concern that there will be "an almost limitless path for federal and provincial government to assert authority and over-ride Indigenous jurisdiction under…" this principle (Metallic et al., 2019a, p. 16). The paramountcy provisions of Sections 20 and 21 work to undermine the nation-to-nation relationship between Canada and Indigenous Nations as Indigenous laws are only treated as having federal force if they negotiate a CA or make the effort to do so within the period of one year. The report calls for clearer provisions around jurisdiction, including revising paramountcy rules and compelling coordination between Indigenous, federal, and provincial governments.

4.5.1.5 Data Collecting and Reporting

The report argues that "obligations to collect data should be set out in legislation (and therefore be enforceable)" (Metallic et al., 2019a, p. 19) and concludes with a number of recommendations for amendments in each area, most of which have been mentioned above, in hopes of positively influencing the legislation to better align with the realities of Indigenous-Canada relations for the benefit of Indigenous children and families.

4.5.1.6 Progress?

In July 2019, the Yellowhead Institute published a report revisiting the status of the *Act* to analyze any progress made as a result of suggested amendments to the Bill (Metallic et al., 2019b). Two of the authors of the report presented evidence before the House of

Commons (HOC) and the Senate. Ultimately, some amendments were made but concerns remained, prompting them to suggest further changes to the Senate. In the final vote on the Bill in the HOC, these additional amendments were rejected.

Primary amendments included the recognition of the significance of a child's relationships and cultural continuity "as a primary consideration in the best interests of the child" (Metallic et al., 2019b, p. 5); the requirement for the best interests of the child to be "interpreted in a manner consistent with Indigenous law whenever possible" (p. 5); the requirement for child and family services workers to make reasonable efforts to avoid apprehension; the addition of wording referencing UNDRIP; and some slight wording changes to fiscal provisions.

For the authors of the report, the changes were an improvement, but not sufficient. Remaining concerns included the statutory limitations in provincial legislation that permanently severs a child's legal relationships; lack of continued care for children in care once they "age out" of the system; the still present complication of jurisdictional disputes between levels of governments; the fact that Indigenous laws will not have paramountcy unless the Indigenous Nation negotiates or attempts to negotiate a CA; the exclusion of Indigenous law paramountcy in relation to the best interests of the child; and the continued lack of clear provisions for funding.

The report concludes with 21 implementation strategies to potentially aid Indigenous Nations in overcoming some of the limitations of the *Act*. The authors note that the list is not exhaustive.

4.5.2 Yellowhead Institute Report: 2020 Update on Child Welfare Calls to Action

Since the publication of the Yellowhead Institute report on Bill C-92 in March of 2019, Canada has made "insufficient progress…meaning that, a year later, Call to Action #4 remains incomplete" (Jewell & Mosby, 2020, p. 9). Executive Director of the First Nations Child and Family Caring Society, Dr. Cindy Blackstock, points out that "the federal government has fought against Jordan's Principle for over 15 years" (p. 9), requiring multiple legal orders to comply with its implementation, and that "any credit for this Call to Action falls to Jordan's family and everyone who advocates strongly for the full implementation of Jordan's Principle" (p. 9). This history of fighting against providing adequate funding for First Nations child welfare does not bode well for the application of the provisions under the *Act*. At the time of this report, five years had passed since the TRC Calls to Action, and Canada had yet to answer the call for the federal and provincial governments to publish annual reports on Indigenous children interacting with the child welfare system. Up-to-date data would allow the situation of Indigenous children in care to be properly evaluated.

4.5.3 Other Critiques

In April 2019, the Canadian Bar Association (CBA) published a report with suggested changes to the Bill. Contributors to the report consisted of lawyers familiar with the areas of Indigenous, child and youth, and family law. The report's suggestions included calls for more binding commitments to funding, independent dispute resolution, Indigenous children's rights considerations in alignment with international standards, and the clarification and improvement of definitions. Despite these suggested amendments made by legal professionals, these changes were not implemented in the final version of the *Act*.

While it appears that the *Act* provides an improvement from provincial child welfare legislation (Garrett, 2021; Metallic et al., 2019a), one of its main critiques is the lack of detailed provisions related to funding. This oversight has been criticized as being insufficient for stable support (CBA, 2019), and being at odds with the "nature, purposes, and context of the legislation" (Garrett, 2021, p. 45). For example, Garrett argues that the gap in funding impacts Indigenous children in "communities that have assumed jurisdiction over their own child and family services without having signed a coordination agreement, as well as for children in communities that have not assumed jurisdiction" (pp. 45-46). Thus, there is an inequity in financial distribution that helps some Indigenous children, while others remain impoverished (p. 46).

4.6 [*Act*]ion?: Cowessess First Nation

The *Cowessess First Nation Miyo Pimatisowin Act* (2020), which sets out the First Nation's laws for child and family services, has been in force since April 2021 (Reconcili-ACTION YEG, 2023). This Indigenous law was created with the best interests of the child in mind and a focus on prevention rather than intervention (2023). In July 2021, a CA in accordance with the *Act*, between Cowessess First Nation (Cowessess), Saskatchewan, and the federal government was established (Reconcili-ACTION YEG, 2023). The CA returned the jurisdiction of child welfare to Cowessess and was the first of its kind in Canada (Reconcili-ACTION YEG, 2023). On the Prime Minister's website, the agreement is cited as a "historic step forward in Canada's journey to reconciliation" and it is noted that, as per the agreement, Canada would invest $38.7 million in funds over the next two years to support Cowessess with the transition and enactment of child and family services (Prime Minister of Canada, 2021).

As part of the practical implementation of their reclaimed jurisdiction, Cowessess constructed the Chief Red Bear Children's Lodge to provide "protection and prevention measures related to family services" (Kurz, 2022). As of January 2022, Cowessess reported that, "no children from Cowessess are currently in the care of the Ministry of Social Service on reserve lands" (2022). Additionally, several children were returned to their families, and some learned about and/or met family at Cowessess for the first time (2022). Although there was some early success, an updated evaluation of the outcomes

of the CA and Cowessess' child and family service system is required to determine its current effectiveness.[3]

In July 2023, a newly elected Cowessess Chief and Council announced a pivot in direction for Cowessess child welfare with "changes rooted in inherent and treaty rights" (Cowessess First Nation, 2023). The press release stated that this change would not affect current funding agreements and that Cowessess and Canada would negotiate a 10-year fiscal agreement (2023).

In February 2024, following the SCC ruling in Reference re *An Act respecting First Nations, Inuit and Métis children, youth and families* (the Reference), Cowessess put out a press release in support and concluded that "they look forward to Canada fulfilling its obligations to Cowessess First Nation by adequately and meaningfully funding Cowessess First Nation in providing this critical need to Cowessess children and families" (Cowessess First Nation, 2024). There was no mention of the status of current funding agreements, and as of October 2024, there have been no further updates.

4.7 Québec's Legal Challenge & The Supreme Court's Reference re *An Act Respecting First Nations, Inuit and Métis Children, Youth and Families*

In 2022, the Attorney General of Québec (AGQ) challenged the constitutionality of the *Act*, believing that it infringed upon provincial jurisdiction over social services and child welfare. The Québec Court of Appeal (QCA) ruled that the *Act* is constitutional apart from ss. 21 and 22(3), which provide prioritization of Indigenous laws over provincial ones. Québec and Canada both appealed the QCA's decision to the SCC. In defence of the legislation, the Attorney General of Canada (AGC), argued that the *Act* fell within its constitutional powers, particularly its authority over "Indians and lands reserved for Indians" under s. 91(24) of the *Constitution Act, 1867*. The SCC agreed and in its 2024 reference decision (*Reference*) found that the *Act* did not infringe upon provincial jurisdiction under the Constitution of Canada, dismissing the appeal of the AGQ and allowing the appeal of the AGC.

Of particularly note is the SCC's dismissal of the AGQ's argument in relation to s. 22(3) of the *Act* changing Canada's Constitution through federal paramountcy. The Supreme Court's opinion is that this section of the legislation does not alter the Constitution, but simply restates the federal paramountcy doctrine. In its own words, "the laws of Indigenous groups, communities or peoples that are incorporated by reference will have the force of law as federal law: laws incorporated into federal law apply as federal law" (*Wewaykum Indian Band*, at para. 114, as cited by SCC).

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[3] This research is beyond the scope of this report.

4.8 Current Status

As of May 2024, 79 Indigenous governments, representing over 110 communities, have submitted either a notice of intention to pursue child welfare jurisdiction or have requested a CA (Government of Canada, 2024a). Out of the 79, two of the requests are from Métis Nation of Alberta and Métis Nation-Saskatchewan (Government of Canada, 2024b). Since January 1, 2020, seven CAs have been signed, including the one with Cowessess, and 10 more may be signed by 2025 (2024a). So far, Indigenous Services Canada has committed $32 million dollars in funds for Indigenous Nations to participate in CA negotiations. The 2024 federal budget includes $1.8 billion dollars over 11 years, beginning in 2023-24, to provide support to Indigenous Nations implementing jurisdiction under the *Act*.

A full review of the outcomes of this legislation and its impacts on Indigenous child welfare is beyond the scope of this report. The *Act* has not been amended since it came into force in January 2020; however, the 2024 SCC reference has provided additional guidance and clarifications, to be discussed in the analysis below.

4.9 Analysis

The implementation of the *Act* represents a jurisdictional shift towards greater self-determination and self-governance for Indigenous Nations in Canada in the area of child welfare. However, the success of the *Act* depends on effective coordination between Indigenous, federal, provincial, and territorial governments, and judicial interpretations of the best interests of the child. Jurisdictional disputes between Canadian federal and provincial governments have historically been marred by resistance and tension, resulting in the delay and lack of adequate funding and services to Indigenous children and families. This does not lend confidence to the ability of Canadian governments to effectively work together to provide adequate funding for Indigenous Nations to implement and sustain child welfare systems.

Of important note is Cowessess returning to rights-based negotiations with Canada in relation to child welfare. This may be an indication of the inadequacies of the *Act* to effectively address the realities of Indigenous children and families. Further research would be required to confirm.

In a brief for the Yellowhead Institute, Scott Franks (2024) explores potential short and long-term impacts of the SCC reference ruling. While the SCC affirmed the constitutionality of the *Act* and the rights of Indigenous peoples to self-government, limitations still exist in the national standards regarding the best interests of an Indigenous child. Franks suggests that the overall results of the reference ruling are positive because it allows Indigenous Nations to provide services through a self-governance framework rather than as an agency of a province or territory. However, significant oversights still exist. For example, there is no requirement or specifications for funding in CA's in the *Act*. Negotiations of CA's between Indigenous Nations and

Canadian governments are discretionary, which leaves room for the possibility that insufficient funding can be negotiated.

Franks discusses other complications concerning the *Act* and Indigenous self-government. He notes that not only is self-government limited by the national standards set out in the *Act*, but it is also limited by the Canadian Charter of Rights and Freedoms and *R. v. Van der Peet* and *R. v. Pamajewon*, in which the Court created a test for Indigenous rights that may be difficult to apply to Indigenous self-government. Franks makes an interesting observation in relation to the application of Charter. He notes that under section 25 of the Charter, it requires that it shall not apply in a way that ""abrogates or derogates" from the rights of the "Aboriginal peoples of Canada"". Thus, "if s. 25 shields Aboriginal rights from the Charter, then the Act's application of the Charter to the exercise of self-government will likely be unconstitutional". Further, the SCC's reliance on the federal government's jurisdiction over "Indians and lands reserved for them", may actually reinforce Canada's sovereignty assertions over Indigenous peoples rather than support Indigenous self-government.

While it is beyond the scope of this report to provide an overview and analysis of each critique of the *Act*, it is significant that there are many. The *Act* provides a positive, albeit incremental step, toward the recognition and implementation of Indigenous self-government in child welfare. However, as noted by its various critiques, it also has room for improvement. The SCC reference ruling ultimately clarifies that Indigenous laws relating to child welfare shall have the same force as federal laws, meaning that the provinces/territories cannot override them. Unfortunately, this does not mean that they will not try. Finally, and perhaps of most significantly, is that the *Act* continues to place limitations on Indigenous self-government through its assertion of the paramountcy of the best interests of the child as determined by Canadian judges.

5. Provincial and Territorial Legislation

5.1 Overview

This section provides an overview of Canadian provincial and territorial child welfare legislation with an emphasis on its compliance with the *Act* and Métis-specific provisions. A full assessment of the status of Indigenous child welfare in each province and territory since the implementation of the *Act*, is beyond the scope of this report.

5.2 Legislation Review

5.2.1 British Columbia

The *Child, Family and Community Service Act* (CFCSA) (2024), is the legislation that governs child welfare in British Columbia (BC). The CFCSA relies on the "best interests of the child" to guide decision making and includes provisions for Indigenous child welfare in alignment with the national standards set out by the *Act*. These provisions include the recognition of Indigenous self-government, laws, and paramountcy in

relation to Indigenous child and family services, the importance of cultural continuity, and the need to work in collaboration with Indigenous communities and authorities.

Of particular note is the absence of Métis-specific language and mention of the unique relationship between Métis peoples and Canada. The CFCSA reads that:

> "Indigenous child" means a child
> (a) who is a First Nation child,
> (b) who is a Nisga'a child,
> (c) who is a Treaty First Nation child,
> (d) who is under 12 years of age and has a biological parent who
> (i) is of Indigenous ancestry, including Métis and Inuit, and
> (ii) considers themselves to be an Indigenous person,
> (e) who is 12 years of age or over, of Indigenous ancestry, including Métis and Inuit, and considers themselves to be an Indigenous person, or
> (f) who an Indigenous governing body or Indigenous authority confirms, by advising a director, is a child belonging to an Indigenous community

This definition includes two of the three times that the term Métis appears in the legislation, the other being its appearance in the title of the *Act* in the definition of "federal Act".

In reference to the inclusion of other parties regarding an Indigenous child, the CFCSA uses specific language for First Nation, Nisga'a, and Treaty First Nation children but only includes other Indigenous children in the last point, stating that "if the youth is not a First Nation child, a Nisga'a child nor a Treaty First Nation child, the legal entity representing the youth's Indigenous community" may be included.

Overall, there are no Métis-specific provisions in the CFCSA. While it is possible for Métis children to be captured in the general provisions and language of the legislation, it does not account for the distinct needs of Métis children and families.

Recommendations:

1. **Include Métis-Specific Definitions and Provisions:**
   - Amend the CFCSA to include clear definitions of Métis children and Métis governing bodies.
   - Ensure that Métis children are explicitly recognized in all relevant sections, not just under broad "Indigenous" categories.
2. **Recognize Métis Governance Structures:**
   - Establish provisions that acknowledge the unique governance structures of the Métis Nation in British Columbia.

- Facilitate collaboration with Métis governing bodies in child welfare decisions affecting Métis children.

3. **Enhance Cultural Continuity Measures:**
    - Develop guidelines to preserve and promote Métis culture, language, and traditions in child welfare practices.
    - Prioritize placement of Métis children with Métis families or within Métis communities whenever possible.
4. **Support Métis Self-Government in Child Welfare:**
    - Align provincial legislation with the Act by recognizing Métis jurisdiction over child and family services.
    - Engage in coordination agreements with Métis governing bodies to support the implementation of Métis child welfare laws.

5.2.2 Alberta

Alberta's child welfare legislation includes the *Children First Act* (CFA) and the *Child, Youth and Family Enhancement Act* (CYFEA). The CFA does not explicitly mention Indigenous children but includes a general provision for the recognition and respect of "a child's familial, cultural, social and religious heritage". It also mentions the importance of prevention and the shared responsibility of "individuals, families, communities and governments" for child welfare. The CYFEA defines "First Nation Individual" and "Indigenous" (First Nations, Métis, and Inuit) in its interpretation section. It also provides provisions for the best interests of the child, the benefits of familial, community, and cultural connections, and the need for collaboration with Indigenous peoples in relation to child welfare. The CYFEA further includes specific considerations for Indigenous children that align with cultural continuity. Neither the CFA nor the CYFEA mentions the *Act* or Indigenous self-government and jurisdiction.

The CYFEA contains various Indigenous specific provisions. There is a provision for notice of proceedings, but only if the child is a "First Nation Individual" or a member of a band, which excludes Métis and Inuit populations. Section 57.01 relates to private guardianship of an Indigenous child and requires that the guardian take reasonable steps for the child to exercise First Nations rights and know their status; however, the determination of when a child should be informed of their status is left up to the guardian. Section 67(1) requires that a band be consulted in relation to the adoption of a "First Nation Individual". Section 71.1 sets out obligations of the adopting parent to an Indigenous child, with same requirements as section 57.01 applying in regard to First Nations rights and status. Section 74(1) sets out the parties that should receive a copy of the adoption order and includes the "Registrar under the *Indian Act* (Canada), if the adopted child is a First Nation Individual". Section 74.4(1) sets out general disclosure stipulations. This section may override 74.1 at the discretion of the Minister, which is defined as "determined under section 16 of the *Government Organization Act* as

the Minister responsible for this Act". Under this section, if an Indigenous child is adopted under the CYFEA or any predecessor to it, the Minister may:

> on the request of the child, whether a minor or an adult, the child's guardian or a descendant of a deceased adoptee, at any time, may provide a copy of the original registration of birth of the child, identifying information about the child's biological parents and any other information sealed under section 74.1 that the Minister considers relevant to the Registrar under the *Indian Act* (Canada), a settlement council of a Metis settlement, a federal or provincial official responsible for providing benefits to persons of Inuit ancestry, or an organization for purposes relating to a First Nation Individual's, a Metis person's or an Inuit person's status, registration or rights

Of particular note is the explicit reference to "a settlement council of a Metis settlement", which the legislation does not define. Although Métis governing bodies, like the Métis Nation of Alberta (MNA), are captured under the mention of an "organization for purposes related to…a Métis person's…status, registration or rights", it is of note that the legislation chose to specifically mention Métis settlements.

Section 131.2(3)(a)(i) provides review provisions and includes that the CYFEA must be reviewed every five years with at least one representative of Indigenous communities on the review board. Because representative of Indigenous communities is not clearly defined, there is room for interpretation. It could mean that there must be one or more representatives from a First Nation, Métis, or Inuit community, or that having one representative who is Indigenous would be representation for all three Indigenous groups.

Overall, the term Métis appears in the CYFEA a total of four times. There are no Métis-specific child welfare provisions in the Alberta legislation aside from the mention of providing notice to a settlement council of a Métis settlement in the event of the adoption of a Métis child and a definition under section 75(1)(c)(iv) stating that "an adult member of any band or Métis settlement of which the adopted person is a member or could become entitled to be a member can be considered to be a "family applicant".

Recommendations:

1. **Expand Métis Inclusion in Definitions and Notices:**
    - Amend the CYFEA to include Métis children and Métis governments explicitly in definitions and procedural notices.
    - Ensure that Métis settlements and the Métis Nation of Alberta are recognized as key stakeholders in child welfare matters.
2. **Collaborate with Métis Governing Bodies:**
    - Establish formal mechanisms for involving Métis governing bodies in child welfare cases involving Métis children.

- Provide Métis governments with standing in court proceedings and decision-making processes.

3. **Develop Métis-Specific Child Welfare Services:**
    - Support the creation and funding of Métis-specific child and family services agencies.
    - Provide resources for culturally appropriate programs that address the needs of Métis children and families.
4. **Implement Cultural Connection Plans:**
    - Require cultural connection plans for Métis children in care to maintain their cultural identity and connections to the Métis community.
    - Involve Métis elders and knowledge keepers in developing these plans.

5.2.3 Saskatchewan

Child welfare services are legislated by *The Child and Family Services Act* (TCFSA) in Saskatchewan. The interpretation section defines the term "Indigenous" as meaning First Nations, Métis or Inuit in relation to a child, group, community or people, and the term "Indigenous governing body" as defined in the *Act*. It also defines "band", "band list", and "status Indian" pursuant to the *Indian Act*. TCFSA does not mention Indigenous jurisdiction or self-government over child welfare and instead, includes wording that suggests it would be *delegating* to an Indigenous Nation if agreed to.

Section 4 of TCFSA sets out criteria to be considered by the Court when determining the best interest of the child. General considerations are defined in subsection (1) and additional Indigenous-specific considerations are outlined in subsection (2). Subsection (3) specifies that "for the purposes of subsections (1) and (2), the best interests of the child are to be a primary consideration with respect to decisions or actions taken by the person or court".

The legislation includes specific wording in section 23 which allows the court to decide who is a member of a child's extended family or kinship network for the purposes of designating "a person having a sufficient interest in a child". Specifically, it reads:

> Subject to subsection (2), where an application for a protection hearing has been made, the court may, on an oral or written request, by order designate as a person having a sufficient interest in a child:
>
> (a) a person who, in the opinion of the court, is a member of the child's extended family;
>
> (b) where the child is a status Indian:
>
> (i) whose name is included in a Band List; or
>
> (ii) who is entitled to have his or her name included in a Band List; the chief of the band in question or the chief's designate; or
>
> (c) any other person who is not a parent of the child but who, in the opinion of the court, has a close connection with the child.

Of particular note is the inclusion of a child who is a “status Indian” but not Métis or Inuit. In regard to giving notice of a protection hearing in section 24, the legislation states that notice shall be given to “the chief, chief’s designate or agency”. Because Métis communities or governing bodies do not have chief’s, this would not be applicable in the case of a Métis child.

Section 37(4)(c)(ii) mentions that the recommendations of “a member of the Indigenous governing body which the child is affiliated who is authorized by the Indigenous governing body” may be considered by the court when making a child protection order. It is significant to note that Indigenous governing bodies, aside from Bands associated with “status Indians”, are not mentioned in sections 23 and 24, which leads to the question of how an Indigenous governing body, other than a First Nation, can provide recommendations to the court if they are not able to be designated as a sufficient person of interest or be given notice.

Section 37 subsections (10)(11)(12) include requirements for notice to a child’s band or the agency “that is providing family services to members of the child’s band”. If notice has been received, the chief, chief’s designate or agency may appear in court as a party and give recommendations in relation to the matter. Additionally, and subject to section 68, which sets out expiry provisions like aging out and adoption, orders made according to this section expire when the child is “placed in the custody of an Indigenous governing body”. There is an inconsistency in language in this section with subsections (10) and (11) using terms generally associated with First Nations but not Métis or Inuit and then using the term “Indigenous governing body” in subsection (12).

In relation to responsibilities of the Minister under TCFSA, section 52(4) relinquishes “the rights and responsibilities of the minster and the Public Guardian and Trustee of Saskatchewan” mentioned in subsections (1) and (3) if the child is put in the care of an Indigenous governing body.

Under priority of the placement of an Indigenous child, if a child is not going to be placed with its extended family or community an officer or court must “consider” placing the child where their Indigenous identity will be supported and preserved.

The legislation includes a section setting out provisions for “Aboriginal child welfare agreements” which includes wording, such as, “the minister may, having regard to the aspirations of Indigenous people to provide services to their communities…” in relation to entering into an agreement with “a band or any other legal entity…”.

Section 74(4) discusses confidentiality and disclosure of information. Subsection (4)(b) includes Indigenous governing bodies receiving information mentioned in subsection (2) if there are “significant measures being taken with a child” and/or “with respect to information about the child’s parents, siblings, extended family members, care providers, and affiliation with an Indigenous community or Métis authority”. Subsections (4)(c)(d)(e) mention “bands receiving child and family services directly from the ministry”, “First Nations Child and Family Services Agencies”, and “Indigenous,

provincial, and federal entities, as the case may be, for the purposes of advancing registration and membership of Indigenous children". This section includes inconsistent language in relation to Indigenous peoples and terms. For example, it mentions Indigenous governing bodies and uses Indigenous as a blanket term but also mentions First Nations specific entities and "Métis authority".

The term Métis appears in this legislation three times with two out of the three being in the definition of "Indigenous" and the last in the title of the *Act* mentioned in the interpretation of "Indigenous governing body". There are no Métis-specific provisions in TCFSA. While general provisions of the legislation may be able to be interpreted to include Métis children and families, there is no distinct recognition of Métis history or governance.

Recommendations:

1. **Clarify Definitions and Extend Provisions to Métis:**
   - Amend definitions to explicitly include Métis children, families, and governing bodies.
   - Ensure that provisions regarding notice, participation, and recommendations apply equally to Métis communities.
2. **Recognize Métis Governing Bodies:**
   - Include Métis Nation—Saskatchewan as an Indigenous governing body with authority in child welfare matters.
   - Provide Métis representatives the opportunity to be designated as persons of sufficient interest in court proceedings.
3. **Enhance Kinship and Cultural Continuity Provisions:**
   - Strengthen the focus on Métis kinship care and the importance of cultural continuity for Métis children.
   - Prioritize placement of Métis children with extended Métis family or within Métis communities.
4. **Facilitate Métis Self-Government in Child Welfare:**
   - Align provincial legislation with the Act by acknowledging Métis jurisdiction over child and family services.
   - Support capacity building for Métis governments to develop and administer child welfare programs.

5.2.4 Manitoba

Child welfare in Manitoba is governed by the *Child and Family Services Act* (CFSA).The legislation includes an expansive definition section with wording that is inclusive of Indigenous kinship and family structures. For example, it includes terms like customary care and customary caregiver. The definition of "family" also includes family as defined by Indigenous customs. Finally, it also defines Indigenous as including First Nation, Métis and Inuit; Indigenous governing body, in alignment with the *Act*; and Indigenous law, in alignment with the *Act*.

Manitoba's CFSA requires that it be interpreted and operationalized by three principles:

Best interests of the child. This principle is to be the primary consideration for services and the paramount consideration for the removal of a child. It places the "physical, emotional and psychological safety, security and well-being" of a child as the most important factors, with "the importance, for that child…" to have a relationship with their family, to maintain a relationship with "the Indigenous group, community or people to which the child belongs" (if they are Indigenous), and to preserve cultural connections, appearing in addition. The way these considerations are set up, with the latter three being put in a list rather than in the same paragraph as the former, may indicate that the latter factors, which include cultural connection for Indigenous children, may not be considered to be of the same level of importance. It is also important to consider the ambiguous language used in the lead up to the latter factors. The phrase "importance, [*for that child*]" is particularly interesting. Section 2.1(5) provides that all circumstances of a child must be taken into consideration when determining the best interests of a child. It includes two Indigenous-specific factors including preservation of culture and identity to language, territory, and community, and plans for care pursuant to traditions or practices of the Indigenous group or community to which the child belongs.

Substantive equality. Two of the provisions in this section discuss the requirements for Indigenous families and governing bodies to be heard and considered without discrimination, including on the basis of "sex or gender identity or expression". In addition, there is a provision that explicitly states that to promote this principle "between Indigenous children and other children, a jurisdictional dispute must not result in a gap in the child and family services that are provided in relation to Indigenous children". This indicates Manitoba's commitment to ensuring the implementation of Jordan's Principle.

Indigenous cultural continuity. This section recognizes the significance of cultural continuity to Indigenous children and families. It specifically includes the stipulation that child and family services should not contribute to the assimilation or destruction of the culture of Indigenous groups.

Manitoba's CFSA also includes a section dedicated to Indigenous governing bodies and Indigenous service providers for the purpose of collaboration with Indigenous authorities and their application of jurisdiction in child welfare and to support case management and the coordination of services. While it is beyond the scope of this report to provide an in-depth review of this section, its inclusion suggests a respectable effort toward the alignment of Manitoba's CFSA with the *Act*.

Sections 2.5 and 2.6 relate to preventative care and prenatal care and their priority "to the extent that…[they are] consistent with the best interests of the child".

The term Métis appears in the content of this legislation five times but there are no Métis-specific child welfare provisions. However, there are also no provisions for First Nation or Inuit children either, aside from a transitional provision for previous First

Nations child welfare agencies. The term Indigenous is used as a generalization throughout the legislation, making Manitoba's CFSA pan-Indigenous with respect to its inclusion of considerations for Indigenous children and families.

Recommendations:

1. **Develop Métis-Specific Provisions:**
   - Incorporate explicit references to Métis children, families, and governing bodies throughout the CFSA.
   - Acknowledge the unique cultural heritage and needs of the Métis Nation in Manitoba.
2. **Strengthen Collaboration with Métis governments:**
   - Establish formal partnerships with the Manitoba Métis Federation in delivering child welfare services.
   - Include Métis representatives in planning and decision-making processes affecting Métis children.
3. **Culturally Appropriate Services and Programs:**
   - Fund and support Métis-specific child welfare agencies and culturally relevant programs.
   - Ensure that services provided to Métis children align with Métis customs, traditions, and values.
4. **Data Collection and Reporting:**
   - Collect and publish data specific to Métis children in the child welfare system to inform policy and program development.
   - Respect data sovereignty by involving Métis governments in data management.

5.2.5 Ontario

Ontario's child welfare is legislated by the *Child, Youth and Family Services Act* (CYFSA). Its preamble includes the recognition of Ontario's relationship with First Nations, Inuit and Métis peoples and their constitutional status, laws, and "distinct cultural, political and historical ties to the Province of Ontario". In addition, it includes the recognition that inter- or intra-jurisdictional dispute should not prevent timely services pursuant to Jordan's Principle and "the importance of belonging to a community or nation, in accordance with the traditions and customs of the community or nation concerned" pursuant to UNDRIP. The preamble concludes with a commitment from the province, in the spirit of reconciliation, to work with First Nations, Inuit and Métis peoples to "help ensure that wherever possible, they care for their children in accordance with their distinct cultures, heritages and traditions".

The CYFSA's paramount purpose is to "promote the best interests, protection and well-being of children". Other purposes include First Nations, Inuit and Métis peoples being entitled, "wherever possible" to provide their own child welfare services. Further, services provided should be done in a way that recognizes "their cultures, heritages, traditions, connection to their communities, and the concept of the extended family".

Indigenous-specific definitions include "band" pursuant to the *Indian Act*; "customary care", "extended family", and "First Nations, Inuit or Métis community". Further interpretation of a First Nations, Inuit or Métis community includes any band a child identifies with or is a member of and any First Nations, Inuit or Métis community a child identifies with or is a member of.

Part IV of the CYFSA sets out provisions for First Nations, Inuit and Métis communities. This section outlines the Minister's responsibilities in relation to services it provides to these communities. It also includes a provision for the establishment and role of a prevention-focused Indigenous service provider. The section includes that the Minister may enter into agreements for service provision with Indigenous communities and provide funding pursuant to those agreements. It does not appear to recognize the jurisdiction of Indigenous Nations in child welfare in alignment with the *Act*.

Section 79(1), includes the provision that in the case of an Indigenous child, a representative of a child's band and First Nations, Inuit or Métis communities is considered to be a party to a proceeding under this section. Section 80 requires that reasonable effort be made to provide customary care for an Indigenous child. Section 101(5) stipulates that if a child is determined to need protection and cannot be placed with extended family, the child should be place with a family of the same Indigenous background.

The adoption section requires that notice be given to an Indigenous child's community, who may submit their own proposed care plan. There is also a provision for an openness agreement which includes a member of a child's Indigenous community that might not have a significant relationship with the child but will help the child to create and/or maintain a connection to the community for cultural continuity.

The CYFSA includes a provision for its review, which requires that the Minister shall review First Nations, Inuit and Métis issues, but does not require this to be informed by a representative of any of these groups.

The term Métis appears in this legislation many times but there are no Métis-specific provisions. There are no specific provisions for First Nations or Inuit peoples either. Instead of using the "Indigenous" as a blanket term, Ontario's CYFSA uses "First Nations, Inuit and Métis" every time it describes Indigenous peoples. Because there are no express child welfare provisions for any Indigenous group, aside from the occasional inclusion of the word "bands", the CYFSA is essentially pan-Indigenous legislation. Simply stating the groups considered to be Indigenous by Canada does not mean that considerations have been made for the distinctiveness of Indigenous peoples within these groups and from each other.

Recommendations:

1. **Enhance Métis-Specific Recognition:**
    - Amend the CYFSA to include specific provisions and definitions related to Métis children and governing bodies.
    - Ensure that Métis Nation of Ontario is recognized in legislation as an Indigenous governing body.
2. **Implement Customary Care Practices:**
    - Adapt customary care provisions to reflect Métis customs and kinship practices.
    - Encourage the use of Métis cultural practices in child welfare services and placements.
3. **Collaborate with Métis Communities:**
    - Involve Métis representatives in case planning, service delivery, and policy development for Métis children.
    - Provide Métis communities with resources to participate actively in child welfare matters.
4. **Training and Education:**
    - Mandate cultural competency training for child welfare workers on Métis history, culture, and practices.
    - Develop educational materials in partnership with Métis governments.

5.2.6 Quebec

Child welfare in Québec is primarily governed by the *Youth Protection Act* (YPA). There are sections in this legislation that are currently not in force. These sections have not been analyzed. The legislation does not define “Indigenous” or mention First Nations, Métis or Inuit. It does, however, mention “bands” and “band councils” in section 131.20 and in their absence refers to other Indigenous peoples as “any other Indigenous group”. The YPA does not mention the *Act* or Indigenous self-governance or jurisdiction in relation to child welfare. While the general provisions of this legislation may be interpreted to include Métis children and families, there are no Métis-specific provisions.

This legislation considers the best interests of the child to be the primary consideration when making decisions in regard to a child. It also recognizes that Indigenous peoples are “best suited to meet the needs of their children in the manner that is the most appropriate” and the significance of cultural safety to their well-being.

Section 1(d) defines “body” to mean any Indigenous organization, along with other organizations, persons, or groups that are “child-related or whose function is to offer services to children and their family”.

Chapter V.1 sets out specific provisions for Indigenous people with the purpose of adapting other provisions in the legislation to Indigenous people and to create a holistic approach that considers cultural continuity, the responsibility of Indigenous communities to children and families, "the priority intervention of providers offering health services and social services to the community to prevent the situation of an Indigenous child from being taken in charge by the director" (including urban Indigenous child welfare organizations), and the child's relationships.

In addition to general provisions for the best interest of the child, Indigenous children must also have cultural continuity, kinship and family structures, access to territory, and historical and socioeconomic conditions considered. Section 131.5 sets out priority living environments in accordance with cultural continuity and Indigenous family structures, which include extended family and members of the child's community. Further, section 131.8 requires the director to notify the "person who assumes a role in matters of child and family services in the community of the child's situation" and then work together with them to ensure the child's living situation aligns with section 131.5.

Under the section setting out provisions for agreements in Indigenous matters, Québec ascribes itself a significant amount of discretion in relation to Indigenous child welfare. The wording of this section suggests that Québec provincial law would govern any agreements and that it could "entrust" responsibilities to Indigenous Nations or communities. This is not surprising given the province's legal challenge of the *Act* in the QCA.

Recommendations:

1. **Include Métis in Definitions and Provisions:**
    - Amend the YPA to explicitly include Métis children and recognize Métis communities and governing bodies.
    - Ensure that Métis children are afforded the same considerations as other Indigenous children in the legislation.
2. **Acknowledge Métis Self-Government:**
    - Recognize the Métis Nation of Ontario (given the presence of Métis communities in Quebec's borders) and collaborate on cross-jurisdictional issues.
    - Support the development of agreements with Métis governing bodies concerning child welfare services.
3. **Cultural Continuity and Identity:**
    - Emphasize the importance of preserving Métis culture and identity in child welfare practices.
    - Implement policies that prevent the assimilation of Métis children and support their connection to Métis heritage.

4. **Intergovernmental Coordination:**
    - Facilitate discussions between provincial authorities and Métis governments to address jurisdictional challenges.
    - Ensure that provincial policies align with the Act, respecting the rights of Métis children and families.

5.2.7 New Brunswick

Child welfare in New Brunswick is governed by the *Child and Youth Well-Being Act* (CYWBA) and its subsequent regulations. Its purposes "include promoting the interests, protection, participation and well-being of children and youth and health and well-being of families" and the principles of early detection and intervention. In relation to social services for Indigenous children, the CYWBA recognizes that an inter- or intra-jurisdictional dispute should not result in the "timely provision of social services under this Act".

The legislation defines family for an Indigenous child as a person that the child, or the Indigenous community to which the child belongs, considers to be a relative in accordance with the customs of the Indigenous group or community. It also provides a definition for "kin" and "kinship caregiver", neither of which include a parent. Of particular note is that kinship is generally used to describe all Indigenous relations, but the definition in the CYWBA is neither specific to Indigenous peoples nor does it include all relations as it leaves out a child's parents.

The best interests of the child are discussed in section 5 and are to be the paramount consideration for decisions affecting a child. Section 5(2)(c) includes the consideration of "Indigenous upbringing and heritage".

Section 41(2) requires that a Minister should consider using a collaborative approach to engage with families or others who have connections to the child. These collaborative approaches may include "models for the transmission of traditional knowledge, Indigenous ceremonies and Indigenous-led decision-making practices".

Sections 69(3) and 70(4) state that neither a guardianship order nor any change in guardianship impacts a child's Indigenous rights. Section 90(4)(b) states that in relation to an application to the Court for an adoption order where an Indigenous child is placed with a non-Indigenous family or community, it is necessary to include a cultural connection plan formed in collaboration with the Indigenous child's community. Additionally, an adoption order has no affect on Indigenous rights (101(3)).

The term Métis appears in this legislation only once in the definition of "Indigenous" (definition also includes "Indian" and "Inuit, which do not appear aside from the definition and a reference to the *Indian Ac*t regarding the disclosure of information to an adopted person in relation to registration as an "Indian"). Aside from this mention of "Indian", the CYWBA uses the term "Indigenous" to refer to all three groups collectively and does not

distinguish between them. Thus, there are no Métis-specific provisions in the legislation, and it takes a pan-Indigenous approach to Indigenous child welfare.

The *Child and Youth Social Services Regulation* (CYSSR) of the CYWBA sets out regulations for child and youth social services in New Brunswick. The term "Indigenous" appears a total of three times, all in the same paragraph (50(3)(b)(v)). This lone mention of an Indigenous child or youth is in reference to the Minister being required to provide notice to an Indigenous governing body acting on behalf of the group, community, or people to which the child belongs, pursuant to the *Act*.

Recommendations:

1. **Explicit Recognition of Métis Children:**
    - Amend definitions to explicitly include Métis children and governing bodies.
    - Ensure that Métis representatives are involved in child welfare decisions affecting Métis children.
2. **Cultural Connection Plans:**
    - Require the development of cultural connection plans for Métis children in care.
    - Collaborate with Métis governments to maintain cultural ties and identity.
3. **Enhance Data Collection:**
    - Collect data on Métis children in the child welfare system to inform policy and practice.
    - Respect data sovereignty by involving Métis communities in data management.
4. **Capacity Building:**
    - Provide resources and support to Métis governments to participate effectively in child welfare services.
    - Offer training to child welfare workers on Métis culture and traditions.

5.2.8 Nova Scotia

Nova Scotia governs child welfare pursuant to its *Children and Family Services Act* (NSCFSA). The legislation's preamble includes the recognition that the "preservation of a child's cultural, racial and linguistic heritage promotes the healthy development of the child" and "the cultural identity of Mi'kmaq and aboriginal children is uniquely important for the exercise of the child's aboriginal and treaty rights". The wording of the latter lacks

emphasis on the significance for Indigenous children to maintain their culture. The NSCFSA's purpose and paramount consideration is the best interests of the child.

The legislation does not use the term "Indigenous". Instead, it uses "aboriginal child", defined as a "child who is registered under the *Indian Act* (Canada) and includes a Mi'kmaq child". This definition excludes Métis and Inuit children who are not registered under the *Indian* Act and should also be included in the definition of aboriginal. The term "First Nation" is used once within the definition of "cultural connection plan" which is a plan that offers guidance on cultural continuity that specifies "where the child is a Mi'kmaq child, is developed with input from the child's band and fosters the child's connection with the child's First Nation…". "Customary care" is defined as the "care and supervision of a Mi'kmaq child or aboriginal child…according to the custom of the child's band or Aboriginal community". This language appears to recognize only First Nations children registered under the *Indian Act*, with a specific distinction for Mi'kmaq children. "Kinship placement" is defined as being a placement with a foster parent who is related to the child or has an "established relationship with the child".

Section 42(1)(ca) requires that an aboriginal child shall be placed in the "customary care and custody of a person, with the consent of that person, subject to the supervision of the agency". In the NSCFSA, "agency" includes Mi'kmaw Family and Children's Services of Nova Scotia. Subsection (3) requires that the court consider whether it is possible to place an aboriginal child in their community.

Section 44(3)(e) stipulates that for an aboriginal child, the ideal placement should be "a kinship placement with a relative" or "in a kinship placement". If this is not possible, the child should be placed with a member of their community "who is approved as a foster parent" or "with an aboriginal foster parent".

Section 78A(1) allows the court to recognize, using its discretion, that an adoption pursuant to the custom of a "band or an aboriginal community" has the same effect of one under the NSCFSA.

Section 80(3A) states that an adoption order does not have any impact on the aboriginal and treaty rights "of the aboriginal peoples of Canada that are recognized and affirmed in section 35 of the *Constitution Act*, 1982".

There are no Métis-specific child welfare provisions in this legislation. In fact, there only appears to be provisions for what it has defined as "aboriginal" or Mi'kmaq children. Additionally, there is no recognition of Indigenous self-government or jurisdiction over child welfare.

Recommendations:

1. **Inclusion of Métis Children:**
    - Amend the NSCFSA to include Métis children in definitions and provisions.
    - Recognize Métis governing bodies and communities within the province.
2. **Collaborative Decision-Making:**

- Involve Métis representatives in child welfare proceedings involving Métis children.
- Establish formal mechanisms for consultation and collaboration with Métis governments.

3. **Cultural Competency Training:**
    - Provide training for child welfare professionals on Métis culture, history, and practices.
    - Encourage the inclusion of Métis perspectives in service delivery.
4. **Preventative Services:**
    - Implement preventative and early intervention services tailored to Métis families.
    - Support programs that strengthen Métis family units and community connections.

5.2.9 Prince Edward Island

Prince Edward Island's (PEI) child welfare is primarily governed by the *Child, Youth and Family Services Act* (PEICYFSA). The paramount consideration for decision making under this legislation is the best interests of the child. Section (2)(1) outlines relevant factors to be considered and includes a general provision for a child's cultural background.

The legislation defines "Indigenous" in relation to a person as a "First Nations person, and Inuk or a Métis person". It also defines "Indigenous governing body" as 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 buy section 35 of the *Constitution Act*, 1982".

Section 7 of the PEICYFSA outlines the application of this legislation in relation to an Indigenous child:

> (1) The application of this Act in respect of an Indigenous child is subject to
>
> > (a) the exercise of inherent jurisdiction and legislative authority in relation to child and family services by an Indigenous governing body on behalf of an Indigenous group, community or people to which the child belongs;
> >
> > (b) a coordination agreement between the Indigenous governing body and the Government of Prince Edward Island; and
> >
> > (c) *An Act respecting First Nations, Inuit and Métis children, youth and families* (Canada).

Of particular note is the PEICYFSA's mention of CAs and recognition of Indigenous jurisdiction in child welfare matters.

The term Métis appears in the PEICYFSA five times, four of which being in the title of the *Act* and one being in the definition of Indigenous. There are no Métis-specific child welfare provisions in this legislation, although general and Indigenous-specific provisions can be interpreted to include Métis children and families.

Recommendations:

1. **Strengthen Métis Provisions:**
   - Include explicit references to Métis children and Métis governing bodies in relevant sections.
   - Ensure that Métis-specific needs are considered in child welfare practices.
2. **Support Self-Governance:**
   - Recognize the Métis Nation's jurisdiction over child and family services in alignment with the Act.
   - Facilitate coordination agreements with Métis governing bodies.
3. **Cultural Continuity Measures:**
   - Develop policies to preserve Métis cultural identity and heritage for children in care.
   - Prioritize placement with Métis families or within Métis communities.
4. **Data Management:**
   - Collect and report data on Métis children in the child welfare system.
   - Collaborate with Métis governments to ensure data sovereignty and appropriate use.

5.2.10 Newfoundland and Labrador

Child welfare in Newfoundland and Labrador (NL) is governed by the *Children, Youth and Families Act* (NLCYFA) and its regulations. The paramount consideration for decisions made under this legislation is the best interests of the child/youth.

The NLCYFA includes the following terms in relation to Indigenous peoples:

“cultural connection plan” is defined as a plan in relation to an Indigenous child’s cultural continuity.

“Indigenous child” is defined as an Inuit, Métis, Innu, Mi’kmaq or other First Nations child, and a child whose parent considers them to be Indigenous or is between the ages of 12-16 and considers themselves Indigenous.

"Indigenous government or organization" means the entities prescribed in the Schedule;

"Indigenous representative" is defined as a designate of an Indigenous government or organization.

“Indigenous youth” is defined as an Inuit, Métis, Innu, Mi’kmaq or other First Nations youth or a youth who considers themself Indigenous. Youth is defined as a person who is 16 or 17.

“kin” is defined as family and others who are significant to a child and whom the child has a connection to.

Section 3 of the legislation provides the explicit recognition of Inuit rights in Labrador and requires that the legislation be applied in combination with the *Labrador Inuit Land Claims Agreement Act*, which takes precedence over any provisions or regulations made under the NLCYFA.

Section 9(2) lists relevant criteria to be included when determining the best interests of the child. Along with general provisions for the importance of a child’s cultural connection, subsection (f) emphasizes the necessity of cultural continuity for an Indigenous child/youth.

Section 25(2)(c) requires that when a child is removed, notice is to be provided to an Indigenous representative of the Indigenous government or organization to which the child is believed to belong. Subsequent sections in relation to court proceedings also require this notice to be given.

Section 29(e)(iv) includes the requirement for a cultural connection plan for an Indigenous child upon removal from a parent.

Section 65(3) highlights considerations for the placement of an Indigenous child, which are in alignment with the *Act*.

Section 95 allows the minister to enter into an information sharing agreement with an Indigenous government or organization.

Section 105 relates to delegation agreements with an Indigenous government or organization “who satisfies the eligibility requirements prescribed in the regulations for the provision of services or the administration of all or part of this Act”. This section includes provincial monitoring requirements and funding arrangements that can be terminated in public interest.

In section 107(c), the minister is given permission to make regulations in relation to designation of representatives by an Indigenous government or organization. Similarly, section 108 allows the Lieutenant-Governor in Council (LGC) to create criteria that Indigenous governments or organizations must satisfy before negotiating an agreement with the minister under section 105. Section 109(1) further gives the LGC the power to “add or remove an Indigenous government or organization to or from the Schedule”. As of November 2024, the Indigenous governments or organizations that appear on the schedule are Miawpukek First Nation, Mushuau Innu First Nation, Nunatsiavut Government, NunatuKavut Community Council, and Sheshatshiu Innu First Nation.

In the *Indigenous Government or Organization Delegation Regulations* under the NLCYFA, the LGC requires that the Indigenous government or organization wanting to

negotiate an agreement under section 105 of the NLCYFA, provide the minister with a written request and satisfactory proof that they have authorization from its respective Indigenous community to enter into the agreement.

The NLCYFA mentions the term Métis twice, both being in the definitions of “Indigenous child” and “Indigenous youth”. While general and Indigenous-specific provisions can be interpreted to include Métis children and families, there are no Métis-specific provisions in this legislation, and it does not mention the *Act*.

Recommendations:

1. **Recognize Métis Governing Bodies:**
    - Update the schedule of Indigenous governments or organizations to include Métis representation, such as the NunatuKavut Community Council.
    - Ensure that Métis governments are involved in child welfare matters affecting Métis children.
2. **Amend Delegation Agreements:**
    - Allow Métis governments to enter into delegation agreements under section 105.
    - Provide Métis communities with the authority to administer child welfare services for Métis children.
3. **Cultural Connection Plans:**
    - Require cultural connection plans specifically for Métis children in care.
    - Involve Métis elders and cultural advisors in developing and implementing these plans.
4. **Data Collection and Reporting:**
    - Collect data on Métis children receiving services under the NLCYFA.
    - Ensure transparency and respect for data sovereignty in collaboration with Métis governments.

5.2.11 Yukon

Child welfare in the Yukon is governed by its *Child and Family Services Act* (YCFSA). The legislation’s preamble acknowledges that the *Act* sets out national standards in relation to Indigenous child and family services. It also affirms that the “Government of Yukon will continue working with the Yukon First Nations to fulfill commitments to the Truth and Reconciliation Commission’s Calls to Action” and implement the recommendations of “Changing the Story to Upholding Dignity and Justice: Yukon’s Missing and Murdered Indigenous Women, Girls and Two-spirit+ People Strategy”. It also expresses a commitment to reconciliation and to honouring Final and Self-Government Agreements, to addressing the overrepresentation of Indigenous children

in the child welfare system, and the importance of cultural continuity. Finally, it identifies that the legislation was created in collaboration with Yukon First Nations, the Government of Yukon, and other organizations with an interest in child welfare.

The paramount consideration of decision making under the YCFSA is the best interests of the child. General best interests of the child principles include cultural continuity, the well-being of families being essential to the well-being of children, involvement of Indigenous community or group to which the parent(s) or child belongs, and preventative services.

The following terms appear in relation to Indigenous peoples:

"final agreement" is defined a final land claim between the federal government, Yukon government and a Yukon First Nation that has the force of law under the *Act*.

"Indigenous" is defined as a "First Nations person, and Inuk or a Métis person".

"Indigenous governing body" is defined as having the same meaning as in the *Act*.

"member of a Yukon First Nation" is defined as a member that has a final agreement or is enrolled or able to be enrolled under that agreement. It is also defined as a member that belongs to a Yukon First Nation as a band under the *Indian Act* and has been determined to be a member of that band.

"self-government agreement" is defined as being an approved self-government agreement between a Yukon First Nation, the Government of Canada, and the Government of Yukon, under the *First Nations (Yukon) Self-Government Act*.

The definition of "Yukon First Nation" includes a list of Yukon First Nations.

"Yukon First Nation service authority" is defined as an authority designated under section 169 of the YCFSA.

Sections of note:

Section 1.01 provides clarity on Indigenous persons and includes that:

> For greater certainty, for the purposes of this Act
>
> (a) an Indigenous person may be a member of a Yukon First Nation and also belong to an Indigenous group, community or people; and
> (b) an Indigenous governing body may include a Yukon First Nation.

Section (3)(a)(xi) relating to service delivery principles calls for substantive equality for Indigenous children. Subsection (f) recognizes the importance of collaboration with Yukon First Nations and other Indigenous peoples.

Section 27 (2) gives the director discretion in regard to contacting a Yukon First Nation or Indigenous governing body. The criteria includes if they believe contact would harm the investigation, any person, or put the child in danger.

Section 32(2)(d) includes the provision requiring notice to be served on the Indigenous community(s) to which the child or their parent(s) belong to. Subsequent provisions of this same nature are included in various other sections of the legislation.

Section 89.01(5) sets out the priority of placement for an Indigenous child. The first priority being extended family and with any siblings, second being with “a person who is a member of the Yukon First Nation of which the child is a member, and third being an Indigenous person belonging to the same community or people as the child. If none of these options are acceptable, the child should be placed with an Indigenous person or be placed where they can maintain contact with family or stay in their community.

Section 98(2) requires that the director give notice to a designated representative of each Yukon First Nation or Indigenous governing body to which the child or their parent(s) belongs prior to placing the child for adoption.

Section 103(3) requires the consent of a Yukon First Nation or Indigenous governing body where the child or their parent(s) is a member before the child can be adopted.

A provision for the recognition of an adoption pursuant to the customs of a Yukon First Nation or an Indigenous people is included in section 134.

Section 166 outlines the minister’s authority to enter into an agreement for the purposes of the legislation and includes a Yukon First Nation and an Indigenous governing body.

Section 187 requires an annual report to be prepared by the director and submitted to the minister and made public on the Government of Yukon website that must include the number of Indigenous children who received services and intervention under this legislation. In addition, it must also specify the number of children belonging to a Yukon First Nation.

The term Métis appears in the YCFSA three times, all of which are either in reference to the *Act* or in the definition of Indigenous. There are no Métis-specific child welfare provisions in this legislation. In fact, it heavily specifies provisions for Yukon First Nations. While the general provisions of the YCFSA may be interpreted to include Métis children and families, it may be harder to capture them in the Indigenous-specific provisions of the legislation, especially when it is primarily focused on Yukon First Nations.

Recommendations:

1. **Explicit Inclusion of Métis Children:**
    - Amend definitions to clearly include Métis children and Métis governing bodies.
    - Ensure that Métis children are considered in all Indigenous-specific provisions.
2. **Recognize Métis Governance:**

    - Acknowledge Métis Nation British Columbia's presence in the Yukon and collaborate on cross-border issues.
    - Include Métis representatives in decision-making processes for Métis children.
3. **Enhance Cultural Continuity:**
    - Develop policies that support the preservation of Métis culture and identity for children in care.
    - Provide training for child welfare workers on Métis culture and traditions.
4. **Intergovernmental Collaboration:**
    - Facilitate coordination between Yukon government, federal government, and Métis governments.
    - Support the negotiation of agreements respecting Métis self-governance in child welfare.

5.2.12 Northwest Territories

Child welfare in the Northwest Territories (NWT) is governed by the *Child and Family Services Act* (NWTCFSA) and its regulations. The paramount consideration for decision making under the NWTCFSA is the best interests of the child. This legislation does not include the term “Indigenous” or other related terms, including Métis, aside from “aboriginal”. It also does not define “aboriginal” or “aboriginal organization”, which also appears in the legislation. There are no Métis-specific child welfare provisions and the NWTCFSA does not refer to the *Act*.

Within the NWTCFSA, a “corporate body” is defined as a “not for profit corporate body of an aboriginal organization”. Sections 58.1(1) and (2) set out permissions for a “corporate body” to enter into an agreement with the Minister to define which aboriginal children the body may represent. Further, it includes the limitation that delegation may only be made “in respect of aboriginal children represented by the aboriginal organization referred to in the definition of “corporate body””. There is no recognition of Indigenous governments or governing bodies.

Section 25(2) and (3) include the requirements for a Child Protection Worker to serve the application for protection and a child protection order on “the applicable aboriginal organization set out in the regulations, if the child is an aboriginal child” and for this organization to be at the hearing and to provide evidence and representation. Section 27(2)(vi) requires that, prior to making a child protection order, the court shall consider case plan recommendations from any applicable Indigenous organization. These provisions are positive, outlining the requirement for “aboriginal organization[s]” to be involved.

The NWTCFSA does include general provisions that may be applicable to Indigenous children. For example, the preamble of the legislation includes general wording that

recognizes that “differing cultural values and practices must be respected” in decisions relating to child welfare. In addition, it also recognizes the importance of the role of community and a child’s extended family. This can be interpreted to be in alignment with the cultural continuity principle of the *Act*. These same recognitions also appear in section 3 as relevant factors to determining the best interests of the child.

Additionally, section 2(g) states that “communities should be encouraged to provide, wherever possible, their own child and family services”; however, community is defined as “a municipality, an unincorporated community and a prescribed community” and the only term used that would even come close to an Indigenous community is “aboriginal organization”, which is undefined in the NWTCFSA, but is defined by the *Child and Family Services Regulations* as including Aboriginal governments.

While the *Child and Family Services Regulations* under the NWTCFSA do not define “Aboriginal”, they do provide provisions for “applicable aboriginal organizations”. Subsection (a) defines any agreements that the regulations could be referring to, including the *Gwich’in Comprehensive Land Claim Agreement*, and the *Sahtu Dene and Metis Comprehensive Land Claim Agreement*, and “any legally binding land, resources, and self-government agreement between an “Aboriginal people of Canada” and the federal and/or provincial or territorial government. The regulations define “band” and “band council” in accordance with the *Indian Act* and clarify that an “aboriginal organization” includes an “aboriginal government”. Subsequent sections require that a list of Aboriginal organizations be made and kept by the Director and that Aboriginal organizations must be added to it pursuant to the criteria listed in subsection (4). Notably, subsection (7) gives the Director the discretion to add an Aboriginal group, community, or people if they deem it to be in the best interests of Aboriginal children and youth belonging to that community or people.

Recommendations:

1. **Clarify Definitions:**
    - Define "Indigenous," "Aboriginal," and specifically include Métis children and governing bodies.
    - Ensure clarity in terminology to avoid ambiguity in application.
2. **Include Métis in Provisions:**
    - Amend the NWTCFSA to include Métis governments in notices, participation, and service delivery.
    - Recognize the role of Métis governments as Indigenous governing bodies.
3. **Cultural Competency and Training:**
    - Provide training for child welfare workers on Métis culture, history, and kinship practices.
    - Incorporate Métis perspectives into service delivery models.

4. **Support Métis Self-Governance:**
    - Align territorial legislation with the Act by acknowledging Métis jurisdiction over child welfare.
    - Facilitate capacity building for Métis governments to manage child and family services.

5.2.13 Nunavut

Nunavut's child welfare is governed by its *Child and Family Services Act* (NCFSA). The legislation's paramount consideration is the best interests of the child. The only terms that appear in relation to Indigenous peoples are Inuit and Inuk. There are no Métis-specific provisions nor any Indigenous-specific provisions that can be generalized to include other Indigenous peoples, like First Nations.

Sections (2) and (3) list Inuit societal values from which the NCFSA should be administered and understood.

Section 25 provides a list of people that an application for a protection order needs to be served on. This list does not include all Indigenous communities or governments, but it does include that if the child is Inuk, it should be served on whichever listed Inuit associations in subsection (c).

The general provisions for best interests of the child include considerations for "the child's cultural, linguistic and spiritual or religious upbringing and ties" and the child's relationships. While these provisions may be interpreted to include Métis and other Indigenous children, the legislation heavily focuses on Inuit children and families. This makes sense given the geographic location and population of Nunavut.

5.3 Cross-Provincial & Territorial Analysis

All provinces and territories include the explicit requirement that child welfare legislation be applied and interpreted in accordance with the best interests of the child as the paramount consideration. The best interest of the child includes general considerations, such as the importance of family and cultural connection, but often appears to place these as a lower priority than a child's physical and emotional safety and well-being, which fails to recognize them as being equally significant for Indigenous children.

General provisions of child welfare legislation across Canada may be interpreted to be mostly in alignment with the *Act* and to include Métis and other Indigenous children in the absence of specific provisions in relation to them. However, this represents a failure to recognize distinct Indigenous Nations and communities, most notably the Métis. Where Indigenous-specific provisions exist, it either takes a pan-Indigenous approach, or privileges First Nations and/or Inuit peoples. For example, Nunavut's legislation is focused on Inuit peoples and Nova Scotia's is primarily specific to Mi'kmaq.

Most provincial and territorial legislation includes wording that captures cultural continuity and as previously mentioned, the best interests of the child, but fails to

account for substantive equality in relation to Indigenous children. Manitoba is one of the only provinces that specifically includes substantive equality in its child welfare legislation.

None of the provinces or territories have Métis-specific provisions that recognize the Nation's distinctiveness from other Indigenous Nations and/or their unique legal and jurisdictional status. Although Alberta mentions Métis settlements, it neither defines this term nor uses it in a way that is useful to child welfare for Métis children and families.

Finally, only a few of the provinces explicitly acknowledge or recognize Indigenous rights to self-governance and jurisdiction of child welfare. British Columbia and Manitoba provide adequate recognition of this.

Whether or not provincial and territorial legislation aligns with the *Act* may no longer be an issue in light of the SCC's reference ruling clarifying the paramountcy of Indigenous law as federal law. While there is a risk that provinces and territories could hold matters up in Canadian courts, the ruling appears to negate provincial paramountcy in child welfare matters involving Indigenous children and families pursuant to the *Act*.

Recommendations:

1. **Acknowledge Métis Presence:**
    - Recognize any Métis communities or individuals residing in Nunavut within the legislation.
    - Include provisions that address the needs of Métis children if applicable.
2. **Cross-Jurisdictional Coordination:**
    - Work with neighboring jurisdictions to address the needs of Métis children who may move between regions.
    - Establish protocols for collaboration on child welfare cases involving Métis children.
3. **Cultural Awareness Training:**
    - Ensure that child welfare workers are aware of Métis culture and traditions in cases where Métis children are involved.
    - Provide resources and support for culturally appropriate services.

6. Implications for Métis Children, Families, and Self-governance

6.1 Overview

Métis governments, children, and families face specific challenges within the implementation and scope of this legislation. These challenges stem from historical,

legal, and practical issues that need to be addressed to ensure the *Act* effectively meets their needs.

6.2 One-Size-Fits-All

6.2.1 No Distinction

The *Act* includes Métis children within the term “Indigenous”; however, the diversity of the identified groups within that term and within the groups themselves is not acknowledged. Thus, the *Act* attempts a one-size-fits-all approach to child welfare for all First Nations, Inuit, and Métis peoples. For Métis children and families, the implication of this is that their unique needs and governance structures are not defined or considered, which may lead to inadequate services and funding.

Using broad terms like "Indigenous" and "Aboriginal" is inclusive, ensuring that Métis are covered by the protections and services provided by these laws. However, this inclusivity can also lead to ambiguity, making it less clear when specific provisions or programs are intended to address the needs of the Métis. This can further lead to confusion regarding who is Métis, and the services afforded to those who claim Métis citizenship.

6.2.2 “Indigenous Governing Body”

In various provincial and territorial legislation, the term "Indigenous governing body" is defined to include a range of structures and organizations that govern Indigenous peoples. However, these definitions are often vague and do not clarify how or if they apply to Métis governments, which typically have different governance structures than First Nations and Inuit peoples. This lack of specificity can create uncertainty regarding the application of these definitions to Métis governance structures, which are often provincial rather than community centered.

There is a need for child welfare legislation at all levels of government to provide clearly defined terms in relation to Métis peoples, governing bodies, and communities. This can help to ensure that the unique governance structures of the Métis are recognized and understood so that Métis-specific approaches to child welfare can be constructed.

6.3 Preventative Care

Despite sections 14 and 15 of the *Act* emphasizing the importance of preventative care, most provincial and territorial legislation lacks provisions for preventative services and prenatal care. Ensuring adequate Métis-specific prevention measures and prenatal care are included in the legislation is crucial for addressing the root causes of the need for child welfare and supporting the well-being of Métis children and families.

6.4 Data Sovereignty

Métis governments and communities face difficulties in accessing and managing data related to their communities. For example, they lack control over this data, which impacts their ability to manage and utilize information effectively. Further, they may lack the capacity to independently manage and protect data. There is a critical need to create this capacity and remove these barriers to Métis data sovereignty.

6.5 Funding

The primarily pan-Indigenous or First Nations and Inuit focused child welfare legislation may not be adequate to address the specific funding needs of Métis communities. The legislative ambiguity regarding the Métis may mean longer and more complex negotiations and may lead to inadequate funding amounts for Métis children and families. Métis governing bodies will have to spend a lot of time identifying themselves and Métis communities in order to provide an accurate depiction of their needs. This could mean significant delays and/or misunderstanding.

6.6 Legal and Jurisdictional Complexities

The Métis have unique legal and jurisdictional challenges that differ from those of First Nations and Inuit. The lack of clear definition, legal recognition, and jurisdictional authority can complicate the implementation of the *Act* for Métis governments, which operate within a complex framework of federal and provincial laws. This is further amplified by multiple provincial Métis Nation governments working independently of one-another to establish modern-day treaties with the Government of Canada.

6.7 Capacity building

Many Métis governments require capacity to develop and implement child and family services effectively. This includes training, infrastructure, and administrative support to meet the standards and requirements set out in the *Act*. Greater capacity would allow Métis governments to provide Métis-specific child and family services grounded in Métis values and customs.

6.8 Legislating Kinship

The term kin or kinship is included in child welfare legislation in the prairie provinces and Ontario. For Métis children, kinship care is especially important as it helps to preserve their unique cultural heritage and identity; however, it is important that these terms be guided by Métis values rather than as defined in provincial and territorial legislation.

8. Concluding Thoughts

This report has illustrated the significant challenges and gaps within the provincial or territorial child welfare systems that disproportionately affect Métis children. The lack of Métis-specific factors in existing policies and practices has resulted in systemic inequities and inadequate support for this vulnerable population. The analysis underscores the urgent need for targeted interventions that recognize and address the unique cultural, social, and historical contexts of Métis communities.

By developing or including Métis-specific language in legislation, ensuring equitable funding, and promoting culturally relevant services, we can move towards a more inclusive and supportive environment for Métis children and their families. Strengthening community involvement, governance, and intergovernmental coordination will further empower Métis communities to take an active role in shaping their child welfare services, ensuring they are tailored to their specific needs and circumstances.

Investing in data sovereignty, capacity building, and robust monitoring mechanisms will provide the foundation for sustainable improvements and accountability. Additionally, fostering research and knowledge sharing will enable continuous learning and adaptation, ensuring that policies and practices remain relevant and effective.

Ultimately, the successful implementation of these recommendations will require a collaborative effort from federal, provincial, and Métis governments, alongside child welfare agencies and community organizations. By working together, we can create a child welfare system that not only addresses the immediate needs of Métis children but also supports their long-term well-being and development.

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