

PROTOCOL
regarding
An Act Respecting First Nations, Inuit and Métis children, youth and families
in relation to the Assembly of First Nations

(the “Protocol”)

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as
represented by the Minister of Indigenous Services

(hereinafter referred to as “Canada”)

AND:

ASSEMBLY OF FIRST NATIONS,
as represented by the National Chief

(hereinafter referred to as “AFN”)

Together hereinafter referred to as “The Parties”

This Protocol is dated the 25th day of June, 2020 for reference.

WHEREAS:

- A. Canada and the Assembly of First Nations have a shared commitment to support the affirmation and recognition of the rights of First Nations peoples as they relate to child and family services, in accordance with section 35 of the *Constitution Act, 1982*, and as they relate to First Nations children, youth, families, communities, and peoples, pursuant to the *United Nations Declaration on the Rights of Indigenous Peoples* (hereinafter referred to as “the UN Declaration”);
- B. Canada has enacted federal legislation to “support a comprehensive reform of child and family services” in relation to First Nations children, youth, and families with *An Act respecting First Nations, Inuit, Métis children, youth and families* (Statutes of Canada, chapter 24, June 21, 2019, commencement January 1, 2020, hereinafter called “the Legislation”);
- C. The Parties acknowledge that there will be a distinctions-based approach to implementing the Legislation and recognize that there are distinct issues that pertain to the First Nations peoples, given the history of Canadian law, policy, and practice and the socio-historical context of child and family services for First Nations peoples;



Indigenous Services
Canada

Services aux
Autochtones Canada



- D. The Assembly of First Nations places a priority on supporting children, youth, and families by planning for the implementation of sections 18 and 20 of the Legislation, and seeks to support the self-determined priorities of First Nations governments relating to the manner, form, and scope of the exercise of First Nations' jurisdiction;
- E. The Chiefs-in-Assembly of the Assembly of First Nations has mandated a Chiefs Committee on Child and Family Services and Self-Determination (resolution 16/2019), and the Committee has adopted terms of reference with representation from First Nations governments and organizations representing member First Nations from all provinces and territories in Canada;
- F. The Parties recognize that bilateral discussions on the implementation of the Legislation are necessary for First Nations; however, they are not a substitute for Canada's direct engagement with First Nations' governing bodies on child and family services. The Parties adopt the view that the priority for all bilateral work is to respect the inherent rights, autonomy, and authority of First Nations decision-makers at the individual First Nation level, acting on behalf of their rights-holders;
- G. The Parties recognize that individual First Nations governments have the autonomy to enter into constructive arrangements or agreements, or to take other implementation steps according to their own priorities, including to enact their own laws and policies, and, therefore, any bilateral work undertaken within the context of this Protocol will align to this approach to implementation of the Legislation;
- H. Canada and the Assembly of First Nations seek to reduce the over-representation of First Nations children in care, address gaps in prevention and other child and family services, promote substantive equality for First Nations children and youth, and commit to encouraging and increasing First Nations peoples' direct input, engagement, and control in relation to child and family services;
- I. The parties identify that specific collaborative work towards implementation of the Legislation at the federal level may require discussion of some of the following areas:
- i. Implementing legislation and regulations;
 - ii. Aligning policies and programs to reflect the implementation of the Legislation and the co-development of more effective and responsive policies and supports for First Nations peoples and governments;
 - iii. Exploring fiscal relationships or funding models to support First Nations child and family services in respects of the legislation;
 - iv. Preparing accurate materials on the Legislation; communicating information related to implementing the Legislation to First Nations children, youth, families, and First Nations; and promoting greater education on First Nations' rights to participate in decisions and authority to pass laws, administrative shifts, opportunities for information sharing, and other measures; and



- v. To collaborate, as appropriate, with other governments and stakeholders on matters arising from the implementation of the Legislation in relation to First Nations, including
- Other Departments and officials within the Government of Canada;
 - Provincial and Territorial government representatives on child and family services;
 - External stakeholders in the child and family service system, including statutory decision makers such as provincial and territorial directors of child welfare and family services;
 - All Indigenous peoples, including the Métis and Inuit, when determined necessary based on respect for the distinct rights, position, and context of all Indigenous peoples and to address conflicts of laws and practices; and
 - To inform members of the Public on the changes in federal law and policy in relation to First Nations peoples.

NOW, THEREFORE, the Parties agree as follows:

1.0 Purpose

1.1 The Parties identify the purposes of this Protocol, consistent with the stated purposes of the Legislation (section 8 of the Legislation), include the following:

- a) Explore principles and processes to prepare for and support the transition and transformation of First Nations child and family services' jurisdiction and authority, with greater input, control, and decision-making by First Nations peoples at the local, Nation, child, and family levels;
- b) Identify steps to promote and coordinate, as necessary, shifts in First Nations child and family services resulting from the Legislation so that the safety and well-being of First Nations children, youth, and families can be supported across all systems with active notification and collaboration, as required;
- c) Support greater understanding and recognition for the First Nations governance and law development work underway across Canada in relation to child and family services based on First Nations' assertion of Aboriginal and Treaty rights in section 35 of the *Constitution Act, 1982*, and to contribute to the implementation of the UN Declaration in the context of child and family services;
- d) To explore how to ensure accurate information on and informed understandings of the governance and service delivery priorities of First Nations, including by identifying and mandating Indigenous Governing Bodies when developing policy or engaging in discussions on the implementation of the Legislation.



- e) To explore accessible measures and arrangements to accommodate notice requirements and associated supports for information-sharing within child and family services in support of work towards the implementation of the Legislation, including efficient processes for maintaining a roster of designated contacts or lead officials for First Nations governments in relation to their children, youth, families, and communities when they are in contact with child and family services providers;
- f) Ensure practical and reasonable measures are developed to support First Nations children, youth, and families to directly engage, inform, and participate in the implementation of the Legislation as it impacts them, and to inform the assessment of whether the implementation of the Legislation has achieved the purposes identified, including to improve outcomes for the cultural continuity, safety, and well-being of children, youth, and families.
- g) Identify, consider, and develop appropriate approaches consistent with the oversight and evaluation of the Legislation, and the impact of Legislative reform and implementation on First Nations peoples consistent with Section 31 of the legislation.

2.0 Common Objectives

2.1 The Parties agree that the objectives of this Protocol are as follows:

- a) Support First Nations peoples, governments, and their designated child and family services entities to become informed, use, and assess new tools, standards, and processes in the Legislation to support increased First Nations input into child and family services decisions;
- b) Ensure that First Nations peoples and their governments are being directly heard and appropriately engaged to set their own priorities for exercising authority over decisions in the area of child and family services, and that disputes regarding these matters are resolved effectively, while sharing best practices;
- c) Discuss potential mechanisms for sharing information and supporting, as appropriate, the pathway in the Legislation for First Nations to operate under their own laws and systems, enter into coordination arrangements or other constructive agreements with other governments or service providers regarding child and family services, where desired, and support the capacity of First Nations governments to inform and engage in information-sharing and decision-making in relation to child and family services;
- d) Address transitional matters in relation to First Nations governments exercising authority by enacting laws and policies over child and family services;
- e) Explore and clarify the meaning of national principles and standards in the Legislation regarding the particular social and political context of First Nations peoples, and seek to ensure awareness and understanding of the historical, social and political context that have impacted First Nations.



- f) Support First Nations, as required, to promote the development and sharing of information that is non-discriminatory and is informed by or developed by First Nations to promote the objectives of the Legislation to create more positive contexts for family reunification and better conditions to support the cultural continuity of First Nations.
- g) Support the principle that First Nations children and youth receive services and supports, and enjoy protection of their rights under the Legislation whether they are residing on or off reserve, so that gaps or barriers to services can be identified and removed;
- h) Inform a process for collaboration and cooperation with First Nations peoples on regulations supporting implementation of the Legislation (consistent with section 32 of the Legislation);
- i) Share information, develop, and identify best practices for the resolution of disputes between Canada and First Nations peoples arising from the implementation of the Legislation;
- j) Discuss and develop a process for First Nations to meaningfully participate in the evaluation of the implementation process, including the mandated statutory review of the Legislation, to ensure First Nations' governments inform any report prepared by Canada on the implementation of the Legislation to Parliament, consistent with Section 31 of the Legislation. This may include any tracking and identifying of areas for improvement for an effective and responsive child and family services system for First Nations peoples.

3.0 Bilateral Process on the Implementation of the Legislation

3.1 Meetings

- a) The Parties will hold regular bilateral meetings on the Legislation and mutually develop a schedule and agenda to support ongoing meaningful discussion on the implementation of the Legislation and First Nations peoples' priorities.

3.1.a.1 The bilateral agenda will focus on First Nations priorities, taking a distinctions-based approach to ensure First Nations children and families, First Nations peoples, governments, and their designated entities are engaged, informed, and have input into child and family services related to the Legislation.

3.1.a.2 The bilateral agenda will support the exercise of authority by First Nations governments, and it will not delay or impact the setting of priorities of any First Nations government in relation to the Legislation.

- 3.2 The Parties will identify and appoint representatives to a **Joint National Working Group on Legislative Implementation of the Act in relation to First Nations** (hereinafter called the "Joint National Working Group").



- 3.3 The Joint National Working Group will support the Parties with work towards the implementation of the Legislation and addressing the distinct rights and interests of First Nations peoples and governments related to the Legislation at the federal level, according to their respective mandates.
- 3.4 The Joint National Working Group may support the development of policy at the federal level and identify steps to support the effective implementation of the Legislation, taking into account:
- a) The unique circumstances of First Nations in relation to the purposes of the Legislation (section 8 of the Legislation);
 - b) Other relevant legislation and policy impacting the implementation of the Legislation;
 - c) The alignment of implementation activities under the Legislation with Canada's implementation of the UN Declaration and ratification of the *United Nations* Convention on the Rights of the Child.
- 3.5 The Joint National Working Group will be responsible for preparing a joint workplan and agenda to support the process, which may include
- a) The creation of sub-committees on topics mutually considered appropriate and helpful to structure the collaborative implementation of the Legislation in relation to First Nations;
 - b) Timeframes for the completion of work;
 - c) Outcomes expected to be achieved from the workplan and agenda;
 - d) Communication on the distinctions-based pathway for the implementation of the Legislation in relation to First Nations.
- 3.6 The Parties confirm that the work of the Joint Working Group is not a barrier to the activities of First Nations Governing Bodies seeking to implement the Legislation and no First Nation government or entity is compelled to work within the process described in this Protocol, in keeping with the Nation-to-Nation relationship between Canada and First Nations.
- 3.7 The Parties agree to identify or establish a Joint Fiscal Table on First Nations Child and Family Services reform to explore and identify fiscal issues relevant to the implementation of the Legislation, and to invite experts or the representatives of provincial and territorial governments, if necessary and appropriate, to participate in aspects of the work of the Joint Fiscal Table.
- a) The parties recognize that other bilateral tables and mechanisms have convened to address fiscal relationships with Canada and First Nations and will explore the most effective and efficient approach to integrate the fiscal relations work in the area of child and family services.



4.0 New Tools and Mechanisms

- 4.1 The Parties agree to discuss the development and creation of tools and mechanisms at the federal level to support work towards the implementation of the Legislation based on the distinct needs and priorities of First Nations, including but not limited to the following areas:
- a) Coordinating and supporting capacity development and technical support for First Nations implementing the Legislation and exercising authority over child and family services;
 - b) Establishing national and/or regional advocacy supports for First Nations children and families during the transition to First Nations systems;
 - c) Consistent with Section 31 of the Legislation, a mechanism to evaluate the effectiveness of the implementation of the Legislation to determine if it is meeting the objectives and the impact of the Legislation on the outcomes of First Nations children, youth, families, communities, and peoples; and
 - d) Instituting information-sharing and reporting for, on, and between First Nations children and families services and programs, and First Nations governments, in relation to child and family services.

5.0 Dispute Resolution

- 5.1 Parties to this Protocol agree to resolve disputes that arise in relation to this Protocol through mutual discussion and mutual commitment to a shared pathway for the reform of child and family services for First Nations peoples and governments.

6.0 Non-Derogation of the Rights of First Nations

- 6.1 The Parties agree that First Nations governing bodies have the authority to set the conditions for child and family services consistent with the legislation, and the work under this Protocol is not to limit or restrict the authority of First Nations governing bodies.
- 6.2 For greater certainty, nothing in this Protocol limits the Aboriginal or Treaty rights of First Nations peoples, nor does it delay or restrict the setting of priorities for the implementation of the Legislation in relation to First Nations peoples and governments at local, regional, or provincial levels, or the conclusion of agreements, constructive arrangements, or other measures in relation to child and family services.

7.0 Funding and Support for the Process

- 7.1 Canada will fund, as appropriate, the First Nations activities mutually agreed upon as undertaken under this Protocol based on the development of a mutually agreed upon budget and workplan.
- 7.2 Reporting on the work undertaken pursuant to this Protocol will occur annually in a joint summary report prepared by the Parties.



8.0 Legal status of the Protocol

8.1 The Parties agree that this Protocol is not intended to be legally enforceable.

8.2 First Nations rights and title holders, and First Nations governing bodies, will freely determine the mechanism to work with Indigenous Services Canada. Nothing in this Protocol binds any First Nation or First Nations governing body to work within this framework.

9.0 Further Mandate

9.1 The Parties identify that the work proposed under the arrangements in this Protocol may require further mandates. The Parties will seek to clarify and establish mandates according to their own processes when required to do so.

10.0 Signature, Duration, and Termination or Severance of the Terms of the Protocol

10.1 This Protocol comes into effect upon the date of signature by both of the Parties.

10.2 This Protocol expires three years after the date of signature by the Parties.

10.3 This Protocol can be renewed by agreement for an additional term of three years upon agreement by the Parties.

10.4 This Protocol can be terminated or severed, in whole or in part, provided advance notice is served by one Party on the other ninety days before the proposed date of termination or severance.

