

Regulations to support the transition from the Child and Family Services Act (CFSA) to the Child, Youth and Family Services Act, 2017 (CYFSA) respecting child protection

Regulation Number(s):

N/A

Bill or Act:

Child, Youth and Family Services Act, 2017

Summary of Proposal:

The majority of the proposed provisions are to clarify that certain processes and procedures related to child protection service delivery that commenced pursuant to provisions under the CFSA are to continue under the corresponding provisions of the CYFSA, including:

- A warrant issued under Part III of the CFSA but not fully executed is continued as a warrant under Part V of the CYFSA
- Where a child has been apprehended under Part III of the CFSA but no proceeding has been commenced, the matter should proceed under the CYFSA
- Agreements made under the CFSA (e.g. Temporary Care Agreements, Voluntary Youth Service Agreements, and Customary Care Agreements for which a subsidy is paid) that are in force immediately before the CYFSA comes into force, are continued under the CYFSA
- Alternative Dispute Resolution processes commenced under the CFSA but not concluded are continued under the CYFSA
- Orders made under Part III of the CFSA that are in force immediately before the CYFSA comes into force are continued under Part V of the CYFSA
- Appeals commenced under the CFSA are continued under the CYFSA
- The best interests of the child test under the CYFSA is proposed to apply to proceedings commenced under the CFSA and continued under the CYFSA
- The test for access to a child in extended society care under the CYFSA is proposed to apply to proceedings commenced under the CFSA and continued under the CYFSA.

Under Part III of the CFSA, where the child is an "Indian" or "native person", a court must make certain considerations, and certain rights to notice and participation are given to a child's band or native community. The terms "Indian" and "native" in the CFSA have changed to "First Nations, Inuk/Inuit and Métis" in the CYFSA. The CYFSA will provide for the listing of First Nations, Inuit and Métis communities. The rights to notice and participation that are given to a child's band or native community in the CFSA are expanded to the bands or listed First Nations, Inuit and Métis communities with whom the child identifies or is a member of under the CYFSA (s.79(1)). The CYFSA also includes changes to the best interests of the child test relating to child protection (s.74(3)).

Accordingly, the ministry is proposing additional regulatory provisions respecting child protection and status review proceedings commenced under Part III of the CFSA but not concluded at the time Part V the CYFSA comes into effect, including:

- The parties to a case continuing under Part V of the CYFSA are expanded to include any new Bands or listed First Nations, Inuit or Métis communities as may be required under the CYFSA,

unless a court orders otherwise on the basis of a modified best interests of the child test that includes consideration of the type of disposition sought, the status of the proceeding, the time the child has been in society care and the potential delay in the proceedings

- The above provision is proposed to also apply to future situations where new communities are listed in regulation under the CYFSA during the course of a proceeding under Part V of the CYFSA
- Statutory findings made under Part III of the CFSA are proposed to continue under Part V of the CYFSA. The court shall, as soon as practicable after proclamation of CYFSA, determine whether the child is a First Nations, Inuk and Métis child, and if so, the child's bands and communities under the CYFSA, even where statutory findings have been made under the CFSA.