



# **CHILD RIGHTS IMPACT ASSESSMENT**

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*Bill No. 11, Act to Amend the Child and Family Services Act (2022)*

March 2022

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## Executive Summary

Far too often, the impact of a particular piece of legislation only becomes apparent long after it is drafted, or even after it has been repealed. To be sure, some legislators are at least vaguely aware that they are “making history,” but the more pertinent reality is that they are making the present and future, too. Nowhere is that more true than when legislation touches on the lived experience of our children and families, as is the case with the Yukon *Child and Family Services Act* (“CFSA”, the “Act”).

The proposed changes to the CFSA as analyzed in this Child Rights Impact Assessment (“CRIA”) are being contemplated in the same year that hundreds of unmarked graves of children who never returned from residential school continue to be discovered across the country. In 2022, we are faced with the visceral consequences of what happens when children’s rights are violated.

Here in the Yukon, it is a time when government has an opportunity to uphold and realize children’s rights, to lead the rest of the country towards a progressive, child-centered future, and to take a foundational step towards Reconciliation. We are heartened to see that government has taken this opportunity seriously, and are proposing amendments commensurate with the historical moment we’re facing.

The amendments to the CFSA as proposed are strong, and taken as a whole would create a significant positive impact on the rights and well-being of children in need of services under the CFSA. But there are also a few changes that require a second thought, and still other areas where no changes were proposed but may represent a missed opportunity to meaningfully impact children’s lives. If the enclosed recommendations are considered carefully, this CRIA would represent an opportunity for the government to implement exemplary and transformational legislation, providing the benchmark for jurisdictions across the country.

The use of CRIA to assess the potential intended and unintended impacts of changes to policy and legislation is a critical tool of child rights governance, and is recommended and advocated for by the United Nations Committee on the Rights of Child to assess the impact on children’s rights of any proposed government action. The Committee sees such exercises as the responsibility of governments, including Canada and the Yukon, as **duty-bearers** under the United Nations *Convention on the Rights of the Child* (“**UNCRC**”). By conducting this type of analysis and implementing its recommendations, governments including the Yukon are fulfilling their promise to protect and promote children’s rights.



Of course, in the Canadian context, that responsibility is only heightened by the need to restore the rights systematically denied to First Nations, Métis and Inuit children, most specifically through the violence of the Indian Residential School system. Robust child rights governance is consistent with the spirit and intent of the Truth and Reconciliation Commission (“TRC”), and in some cases contributes directly to addressing the Calls to Action as outlined in the TRC final report.

While many past reports and reviews have studied the needs of First Nations, the proposed amendments to the CFSA identify concrete steps that can be taken by government to support children and youth in healing processes that will allow them to develop their trust, skills, and security in participating and expressing their views – to find their own voice.

As the Office of the Legislative Assembly mandated to speak with young people receiving services under this Act, believe us when we say that many young people have a lot to say. If there is one consistent theme that emerges from this CRIA, it is that we must proactively provide children with the opportunity to have their views heard, and to protect their right to have those views given due weight in the decisions that will affect them.

Our hope is that an improved understanding of children’s rights and how institutional decisions impact children and youth will drive everyone to support children and youth as active participants in their own lives, contribute to improved outcomes for Yukon children, and help them to develop and thrive as members of our society.

When we take the rights and views of young people seriously, we empower youth to become contributing members of a safe and healthy society. By teaching young people about their rights, amplifying their voices and encouraging independence, we are building the leaders of the next generation. Let’s begin that work today.

## Summary of Recommendations

### 1. Articulate the rights of children receiving services under the Act

The best way to promote and protect children’s rights is to put those rights at the forefront of legislation like the CFSA. Many of the proposed amendments strengthen the rights of children in the Yukon, but they are not always specifically articulated as such. We therefore recommend:

- a) that the “Purpose” of the CFSA under the proposed s. 1.01(a) be amended to read “to promote the rights, safety and well-being of children [...]”



- b) that “children’s rights under the UNCRC” be identified as a guiding principle of the CFSA;
- c) that s. 88 “Rights of children in care” of the CFSA be moved to the beginning of the Act and expanded to articulate further “rights of all children receiving services under this Act,” including:
  - i) To be treated respectfully by all parties and participate in collaborative planning as full partners, to the greatest extent possible consistent with the young person’s evolving capacities;
  - ii) To express their views, and to have their views given due weight in decisions that will affect them;
  - iii) To be informed of the full range and nature of services available to them;
  - iv) To raise concerns or recommend changes with respect to the services provided to them, without interference or reprisal;
  - v) To change their mind about previous decisions, without interference or reprisal;
  - vi) To be given information about the role of Child and Youth Advocate and how to access their services;
  - vii) To speak in private with the Child and Youth Advocate, legal counsel, and/or a representative of their First Nation or Indigenous community;
  - viii) To be informed of their rights in language they can understand.

These rights should furthermore be extended to all children receiving services under the CFSA, not just those in care of the Director.

## **2. Inform children of their rights, including the existence of the Office of the Child and Youth Advocate and their right to contact the Advocate**

Children receiving services under the CFSA should be informed of their rights under the Act, their rights under the UNCRC, and the existence of the Child and Youth Advocate and their right to access their services. Children should also be informed of how to contact the Child and Youth Advocate.

## **3. Ensure that the role of the Advocate is incorporated into the CFSA**

The functions and powers of the Child and Youth Advocate should be incorporated into the CFSA. The *Child Youth Advocate Act* was enacted after the existing CFSA, per s. 211 of the CFSA and therefore was not referred to in specific clauses of the CFSA at the time of its enactment.



The CFSA should be amended to make specific reference to the Advocate in relevant clauses, including: where children may need support to advocate for their rights and interests; where children are to be informed of the services available to them; where children may need support in expressing their views and ensuring they are heard and given due consideration; and where the Child and Youth Advocate may help to resolve issues through alternative dispute resolution, or in the context of culturally appropriate dispute resolution or solution finding, in keeping with the principle of least intrusive intervention. It should be repeated throughout the Act in all relevant parts.

#### **4. Consider the views of the child in the determination of their best interests**

When making a determination of a child's best interests, the child in question must be given an opportunity to express their views. Meaningful participation is an indivisible component of a child's best interests. Those views should be given due weight and consideration on par with the other relevant factors under s. 4 of the CFSA. A child's sense of time and need for security and stability should be added to the relevant factors.

#### **5. Mandate further opportunities for children to have their views heard, and require that their views are given due weight in decisions that affect them at all stages of service delivery and court proceedings, in accordance with their evolving capacities**

In addition to being included as a consideration in the best interests of the child determination, the CFSA should also require that children be given the opportunity to have their views heard and given due weight when decisions are being made that will affect them, including:

- a. During collaborative planning processes;
- b. In determining if out-of-home care is required;
- c. In considering voluntary placement with an extended family member; and
- d. Whenever a decision is to be made about a child in care, including placement decisions and reviews, consistent with the rights of children in care under s. 88.

Meaningful participation for children is foundational to and indivisible from the recognition of all of their rights under the UNCRC and generally, including their right to privacy.

The CFSA should provide mechanisms for children to initiate a review or complaint with respect to the services they are receiving under the Act, consistent with their



views and evolving capacities, and should include support for First Nations and Indigenous community based dispute resolution models.

Children who are the subject of court proceedings should have the right to legal and/or other representation, including in proceedings where their personal information is being sought from third-party records holders. Determinations regarding child's evidence must be consistent with their right to be heard, evolving capacities, and best interests which includes respect for their views. The ability of the court to exclude a child from the courtroom or make other orders regarding evidence provided by a child could conflict with that child's right to have their views heard, to privacy, and to due process. Any such orders should be consistent with their right to be heard, their best interests, and their evolving capacities.

#### **6. Include “Jordan’s Principle” as a guiding principle of the CFSA**

Include Jordan’s Principle as a guiding principle of the CFSA and include a definition that allows for the broadest possible interpretation, consistent with UNCRC Article 2 regarding non-discrimination.

#### **7. Ensure the inclusion of First Nations and Indigenous governing bodies at all relevant stages of decision-making**

This is strongly reflected throughout the Act, but care should be taken that it is included at all relevant decision-making points, including placement decisions.

#### **8. Acknowledge the unique experiences, needs, and rights of children with disabilities and their families**

Children with disabilities and their families are statistically more likely to require services under the CFSA, but the legislation does not specifically recognize them and their unique needs and rights. Services under the Act should be required to be designed and delivered on the principle that children with disabilities have the right to access services and to enjoy their rights and freedoms on an equal basis with all other children.

#### **9. Include substantive equality for all children under the CFSA**

Different groups of children may require special measures and consideration for their personal contexts and needs, including children with experiences of migration, children with mental health and addictions issues, and children experiencing other grounds of historical disadvantage, social exclusion, and discrimination. A



recognition of the need to achieve substantive equality for all children would signal the need to attend to the unique needs of all children. The collection and reporting of non-identifying demographic data would further assist in ensuring that services are provided equitably.

#### **10. Ensure child-centred and child rights-respecting language throughout the Act**

Language under the Act should accurately capture the circumstances of children and families, promote clarity in service delivery, and avoid blame-laying or moralistic language. Specific recommendations for the definition of emotional harm that includes attachment and use of specific terms such as “with custody” and “absconded” should be reviewed.

#### **11. Provide for adequate funding and resources for service delivery**

The CFSA creates structures that support progressive realization of children’s rights, but for these rights to be operationalized and actualized, sufficient resources must be devoted to supporting preventive, protective, and other services under the Act.

## **What is a Child Rights Impact Assessment (CRIA)?**

A Child Rights Impact Assessment (“CRIA”) is a systematic review of the potential impacts of legislative and policy decisions on children and their rights. A CRIA is a tool that assists legislators, policy-makers, and decision-makers to comply with the United Nations ***Convention on the Rights of the Child*** (“**UNCRC**”, the “**Convention**”), to which Canada is signatory, to predict the impacts of proposed policy, legislation, regulation, budget or other administrative decision on children and the enjoyment of their rights, and to maximize the positive impacts on children’s rights and mitigate negative impacts.

A CRIA uses the rights and principles found in the UNCRC as a framework to assess these impacts, and ensures special regard for the differentiated impact of proposed measures on the rights of children. It should be part of government processes at all levels, and as early as possible in the development of law and policy (see **General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration** of the Committee on the Rights of the Child).





Article 3 of the UNCRC states:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative bodies or legislative bodies, the best interests of the child shall be a primary consideration.

This core principle of the UNCRC includes the need to assess the impact on children of all actions by a country's institutions, including legislatures. A CRIA provides an evaluative tool for this purpose. Policy is strengthened where children's rights are a primary consideration.

Article 4 of the UNCRC states:

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.

A CRIA provides an opportunity to ensure that proposed legislation concerning and affecting children supports the implementation of children's rights. Robust recognition and promotion of children's rights is integral to the achievement of equality and dignity for all members of society.

The CRIA tool used for this assessment has been adapted from the CRIA tool developed by UNICEF Canada by a working group made up of participants from the Yukon Government, Yukon Child Advocate Office, and youth organizations. Similar tools have been used in the assessment of similar legislative proposals elsewhere in Canada.

This CRIA was conducted based on the engagement draft of proposed amendments to the CFSA provided to the Yukon Child and Youth Advocate by the government in February 2022. Analysis focuses on the amendments as proposed, with occasional reference to further changes that were not proposed but may represent missed opportunities to strengthen the rights and well-being of children in Yukon. Where specific clauses are cited in this CRIA, they refer to either the existing provisions of the CFSA or the proposed amendments in the engagement draft.

In the Yukon, as in Canada as a whole, we observe the intergenerational impacts of harm by the systems that are intended to intervene in protective matters. The traumatic legacy of Residential Schools in particular and of colonial oppression and degradation in general, require specific, intentional construction of new systems in order to forge a new and healthy path to protect children, families, and communities. Child rights assessment and intervention is a necessary part of conscientiously building the way forward.



# Objectives of Proposed Amendments to the *Child and Family Services Act* (CFSA)

The *Child and Family Services Act* (“CFSA”) provides the legislative basis for the provision of services to children and families to protect children from harm, and to promote their safety and well-being in their families and in alternative care settings when they cannot be adequately protected and supported in their family home.

This CRIA is being performed independently of the legislators proposing the amendments to the CFSA and as such it can only assess the apparent objectives of the legislation on the basis of the engagement draft, and accessible documents and communications.

The proposed amendments seek to improve the delivery of services and protective interventions in ways that alleviate the need to separate children from families and that promote the reunification of families. The proposed amendments recognize the need to draw upon community-based knowledge, while strengthening partnerships with First Nations and Indigenous communities and building community capacity to respond to children in need of protection and families in need of support.

We understand the proposed changes to the CFSA and service delivery to have been undertaken in recognition of the intergenerational trauma and harms to children, families, and communities from colonialism, Residential Schools, and the disproportionate removal of Indigenous children from their family settings, and as a step toward reconciliation with Yukon’s Indigenous peoples and recognition of the self-government agreements that have been concluded between First Nations and the Crown.

## Engagement

The proposed amendments arise at least in part from the statutory review of the CFSA, undertaken by the Child and Family Services Act Advisory Committee struck under section 183 of the CFSA by the Minister of Health and Social Services. Following community and public engagement, including significant participation from individual First Nations governments and communities, the Committee tabled a report to the Yukon Legislative Assembly in October 2019 entitled **Embracing the Children of Yesterday, Today and Tomorrow**, which set out 148 Required Actions centred on themes of partnership, prevention, support, education, legislative change, and implementation. There is no indication in the report that the Committee specifically gathered input from children and youth.

The Yukon Child and Youth Advocate prepared a **Submission to the Advisory Committee for the Review of the *Child and Family Services Act*** in April 2019, with the intention to provide the perspective of and improve care for Yukon children and young people, with a particular focus on First Nations children. The Submission includes recommendations for prevention, intensive supports for families and caregivers, case planning and permanency planning, and greater supports for children ageing out of care, founded in the Guiding Principles of the CFSA, the principles of the UNCRC, the Truth and Reconciliation Commission's Calls to Action, the United Nations Declaration on the Rights of Indigenous Peoples, traditional values, and the wisdom of communities and families. The recommendations are based upon the Advocate's knowledge of children's lived experiences as gathered from the young people served by the Advocate's office through their direct assistance to children receiving services from Family and Children's Services and children in care in Yukon.

We are also aware that the Department of Health and Social Services has undertaken an ongoing process of engagement with First Nations and Indigenous community partners regarding the proposed amendments. Meaningful engagement is a necessary element of a new approach to improving the provision of care and support to children and families. In the development of the existing CFSA, First Nations identified a lack of engagement and disrespect for their relationship of partnership with the Yukon government. A new approach and commitment to partnership reflected in the amendments will serve to improve outcomes for Indigenous children and families.

As this CRIA was conducted independently of the legislative process, we acknowledge that we may not be privy to the full range and extent of consultations undertaken in the development of the proposed amendments. We encourage the government of Yukon to properly account for all such input when introducing the proposed bill to the Legislative Assembly.

Ideally, legislation that affects the rights and interests of children will include participation of and consultation with children and young people regarding their views and lived experience, expertise, and wisdom. We therefore encourage the Legislative Assembly to actively engage with the Advocate in the review and debate regarding the proposed amendments, and in their implementation through regulations and policy.

We recommend to the Legislative Assembly the Advocate's report concerning children in care, **Empty Spaces, Caring Connections: The Experiences of Children and Youth in Group Care** (April 2019), which draws upon the perspective and voice of children and youth living in group care as a result of child welfare involvement, and highlights the need for recognition of the loss and trauma associated with living outside a family setting, the need



for First Nations participation and meaningful connections to family, culture, and community, permanency and stability, support for children ageing out of care, and meaningful participation by children in decision-making and case planning.

## Relevant Articles of the United Nations Convention on the Rights of the Child (UNCRC)

This section of the CRIA examines the extent to which the proposed amendments to the CFSA support the rights of children as set out in the Articles of the UNCRC, negatively impact those rights, or have an ambiguous or unknown impact on those same rights. Some amendments may both support certain articles in some ways, but negatively impact them in others. The following charts summarize the positive impacts, the negative impacts, and the ambiguous or unknown impacts. Where the impacts are negative or ambiguous, this analysis identifies actions or changes that can address and mitigate them and further support the achievement of children’s rights enshrined in the UNCRC.

It is essential to appreciate that children’s rights, as all human rights, are inherent, interrelated, interdependent and indivisible. Rights are not earned, each right animates and is animated by the others, and to be meaningfully understood and manifest they must be read together, as indivisible parts of the whole.

UNCRC Article	Positive impacts of proposed amendments to the CFSA
Article 2: Non-discrimination	The proposed amendments address discrimination by specifying that services planned and delivered under the Act must be informed by awareness of barriers to services created by systemic racism and biases; must consider cultural, social, economic and historical disadvantages; and in the case of Indigenous children, must focus on achieving substantive equality with non-Indigenous children.
Article 3: Best interests of the child	<p>The existing CFSA states as a guiding principle that the best interests of the child shall be given paramount consideration under the Act. The proposed amendments include the addition of a new “Purposes” section which identifies consideration of a child’s best interests to be a component purpose of the CFSA.</p> <p>The proposed amendments would replace “exceptional circumstances” with consideration of the child’s best interest as the requirement for extending temporary care beyond statutory timelines.</p>

	<p>Best interests are also recognized as the paramount consideration regarding the granting of an adjournment of court proceedings, and all placement priority decisions must be consistent with the child’s best interests.</p>
<p>Article 5: Respect for family guidance in development</p>	<p>The proposed amendments specify that the purpose of the CFSA is to offer services to “maintain, support and preserve” families and to “reunify those children who are in out-of-home care with their families,” in considering their best interests. This purpose is supported by further amendments to recognize the importance of family and cultural continuity; to ensure families are informed of services available and encouraged to participate in decisions; to require the least disruptive interventions be used where necessary; and to ensure all reasonable efforts are made to reunify families that are separated.</p> <p>The importance to the child of residing in their community with their parents and siblings is further included as a relevant factor in determining the best interests of the child. The shift to a more collaborative service planning model throughout the Act is respectful of the participation of families and Indigenous communities. A requirement that parents be notified of protection concerns and provided an opportunity to address them is another proposed amendment supportive of this Article.</p>
<p>Article 6: Life, survival and development</p>	<p>The physical, emotional, and psychological safety and security of the child, as well as their physical, cognitive and emotional needs, are included as relevant factors in determining the best interest of the child. The inclusion of a precise, child-centered definition of emotional harm - which includes reference to poor mental health outcomes and exposure to or use of substances - is a positive measure.</p>
<p>Article 7: Name &amp; nationality</p>	<p>The proposed expanded definition of “member of a First Nation” properly acknowledges the right of First Nations to determine membership.</p>
<p>Article 8: Identity</p>	<p>Multiple proposed amendments respect the right of the child to preserve his or her identity and acknowledge the importance of cultural continuity for the child. Services provided under the Act must respect the child’s cultural heritage and involve the child’s community. Acknowledgement of systemic racism, historical disadvantage, and the need for substantive equality are consistent with the reestablishment of identity where deprived under Article 8.2, as well as the spirit of the Truth and Reconciliation Commission of Canada.</p> <p>This is further supported by the shift to a collaborative planning model that involves First Nations partnerships and ongoing</p>



	involvement with families, and communities. The requirement for a cultural plan and priority for the child or parent’s First Nation or Indigenous community in determining placement are further positive developments.
Article 9: Keeping families together	Keeping families together and reuniting families that have been separated would be a paramount purpose of the CFSA under the proposed amendments, and that purpose is supported by new and existing provisions throughout the Act including: recognition of family continuity as in the child’s best interests; least disruptive intervention required; and all reasonable efforts for reunification and timely review of placement. The increased ability of parents to access supports to ensure family reunification and the identification and expansion of supportive services to be offered is a further positive measure.
Article 16: Privacy	Amendments are proposed to ensure that the Minister’s Annual Report must not contain any information that could be used to identify a child. Section 28(3) of the CFSA is to be repealed, to eliminate any reporting back to a person who reported a protection concern. Indigenous children are to have the right to privacy in their discussions with representatives of their First Nation or Indigenous community.
Article 18: Responsibility of parents	<p>Article 18.2 requires appropriate assistance to parents in their responsibilities of child-rearing, and is supported by the proposed amendments to add prenatal services for expectant parents to the CFSA. Parents who acknowledge protection concerns when raised and who commit to services to alleviate those concerns are not subject to coercive, adversarial measures under the proposed amendments, and can receive services without the need for a report under s. 22, in keeping with the general shift toward more collaborative planning. Birth parents who are not legal parents of a child are to receive notification of protective intervention, unless they have no parental rights or responsibilities.</p> <p>The requirement that the Minister’s Annual Report include information about how many children are receiving services is positive insofar as it will promote public awareness of the assistance and services available to families in the performance of child-rearing.</p>
Article 19: Freedom from violence, injury abuse, neglect, and exploitation	The purpose of the CFSA is clarified under the proposed amendments as being “to promote the safety and well-being of children who are in need of protective intervention...” Article 19 is further strengthened by the importance placed on preventive, harm reduction, and trauma-informed services throughout the Act. The inclusion of a precise, child-centered definition of emotional harm is a positive measure.



<p>Article 20: Children temporarily or permanently separated from family</p>	<p>Special protection and assistance for children deprived of their family environment is strongly supported by new and existing clauses within the CFSA. The importance placed on a stable, caring and long-term family environment; family and cultural continuity; a sense of belonging; a sense of identity; and the importance of knowing one's family and cultural origins are all components of the CFSA that are supportive of Article 20.</p>
<p>Article 21: Adopted children</p>	<p>Proposed amendments to the Preamble of the CFSA acknowledge the importance of a child's connection to their cultural, racial and linguistic heritage and the Government of Yukon's commitment to supporting and strengthening these connections. Proposed amendments to the Guiding Principles emphasize the importance to a child's sense of identity that they be connected with their family, extended family and community and that the languages, cultures, practices, customs, traditions, ceremonies and knowledge held by a child's family and community are passed on to them. The proposed amendments require the participation and consent of a First Nation where a First Nations child in care is to be placed for adoption.</p>
<p>Article 22: Refugee children</p>	<p>The CFSA does not specifically reference refugee children but includes guiding principles of family reunification, knowledge of origins, and cultural connection and continuity that can and should be applied to support the rights of refugee and other migrant children in Yukon.</p>
<p>Article 24: Health and health care services</p>	<p>Section 10(2)(d) as amended specifies that treatment programs, health, and dental services are among the services to be provided to children and families. Section 88, as amended, provides for the right of children in care to receive treatment, medical, and dental care when needed.</p>
<p>Article 25: Periodic review of placement</p>	<p>The proposed amendments move the legislated requirement for an annual review of case planning for children in the custody of the director to be together with the provisions regarding agreements for service and case planning (see e.g. ss. 16.01 and 45.01), and require more frequent review (every six months as opposed to twelve months). Case plans for families are important because they provide clear and specific guidance for changing the behaviours and conditions that expose a child to a risk of harm. They also identify supports for children and their caregivers and provide a point of reference for the family and worker to measure progress, clarify roles, and enhance coordination. Plans of care for children in care ensure a coordinated approach to address the safety and well-being of children in care. These provisions ensure that the plans are regularly reviewed and updated.</p>
<p>Article 26: Social and</p>	<p>The proposed amendments include principles to guide service design</p>





economic help	and delivery that are supportive of Article 26, including the acknowledgement of social, economic and historical disadvantages faced by the child and their family; awareness of barriers to services caused by systemic racism and biases; and the need for substantive equality between Indigenous and non-Indigenous children. The focus on preventive services, expanded family supports, and services for children and families and the least disruptive intervention are further supportive of this Article.
Article 28: Right to education	The proposed amendments make provision for the payment of tuition expenses for young people transitioning out of care. Placement planning must include consideration of the child’s ability to continue to attend the same school, promoting continuity of education.
Article 30: Minority language and culture	<p>Cultural continuity is a guiding principle of the CFSA under the proposed amendments, and its consideration is noted in multiple key provisions, including the definition of the best interests of the child.</p> <p>The cultural and language rights of Indigenous children in particular are strengthened by the CFSA’s acknowledgement of the inherent right of First Nations to provide child and family services to their own members, as well as multiple other new and existing provisions that provide for First Nation and Indigenous community involvement in collaborative service planning and delivery, including culturally appropriate processes such as peacemaking circles, clan meetings, or family meetings.</p>
Article 33: Protection from illicit drugs	Changes to the definition of emotional harm specifically recognize the harms of exposure of a child to chronic substance use and recognize chronic substance use as demonstrative of emotional harm, justifying the provision of services under the Act.
Article 39: Recovery and reintegration	Services under the proposed amended CFSA are to be trauma-informed and guided by the principles of harm reduction. The psychological safety of a child is added to the best interests determination. Cultural plans and supports, and family healing recognizes the therapeutic supports required to address the impacts of residential school and intergenerational trauma.





UNCRC Article	Negative impacts of proposed amendments to CFSA	Alternative resources
<p>Article 3: Best interests of the child</p>	<p>The proposed amendments fail to specify that the views of the child must not only be expressed, but given due consideration in determination of the child’s best interests.</p> <p>The proposed best interests of the child determination, under s. 4 of the CFSA, would be significantly enhanced if a subsection specifying that respect for and implementation of a child’s rights, including those articulated in the UNCRC is a component of the best interests of the child.</p>	<p>See recommendations 1 and 4.</p> <p>The proposed amendment of s. 4, “Best interests of the child”, should be amended, so that s. 4(2)(b) reads:  <u>“The views and preferences of the child <b>must be given due consideration, according to their evolving capacities, and the child must be supported to maximize</b> their ability to express those views and preferences <b>as far as those views can be ascertained.</b>”</u></p> <p>As an example from another jurisdiction see Ontario’s <i>Child, Youth and Family Services Act</i> (“CYFSA”), which has a number of provisions that require that a child’s views and wishes “be given due weight in accordance with their age and maturity.” (e.g. s. 74(3))</p> <p>A further subsection should be added:  <u>4(2)(i) consideration of the child’s rights, especially those articulated in the UNCRC.</u></p>
<p>Article 4: All appropriate measures</p>	<p>Proper implementation of the UNCRC requires that children’s rights are specifically articulated in legislation such as the CFSA. Although the CFSA includes provision for “Rights of children in care”, these rights appear late in the statute, and do not include a right of access to the Yukon Child and Youth Advocate and information as to how the Advocate may be contacted.</p>	<p>See recommendations 1, 2, and 3.</p> <p>Section 88, “Rights of child in care”, should be moved up to the beginning of the CFSA. This articulation of rights should furthermore be extended to all children receiving services under the CFSA.</p>



<p>Article 6: Life, survival and development</p>	<p>The definition of emotional harm does not specifically contemplate the developmental and emotional harms of disrupted child-caregiver attachment.</p>	<p>See recommendation 10.</p> <p>Include impairment of “development and attachment” in the definition of emotional harm in proposed amendments to s. 21(3) and (4).</p>
<p>Article 12: Respect for children’s views and participation</p>	<p>The proposed amendments fail to specify that the views of children <i>must be given due weight</i> in decisions that affect them. The proposed amendments do not include provisions to ensure that children are able to meaningfully participate at all stages and in all decisions that affect them, for example, in the process of collaborative planning. Children are to be informed of services and encouraged to participate in decisions that affect them, and informed of an application about them, but they are not specifically provided the right to be heard or to have their views duly considered at all stages of contact with preventive services and protective interventions.</p> <p>There is also a lack of formal role for a representative to speak to a child’s views where they themselves are incapable. The child’s opinion should also be considered in determination of their best interests, per above. In the current legislation, the director is considered the representative of the child, and the decision to appoint separate legal representation for the child is within the sole discretion of the Public Guardian and Trustee Office.</p>	<p>See recommendations 1, 2, 3, 4, and 5.</p> <p>Consistent with the recommendation under Article 3 above, s. 88(1)(e) should be amended to read:  “to participate in, and express their views <u>which must be given due consideration in accordance with their evolving capacities, and the child must be supported to maximize their ability to express those views</u> about significant decisions affecting them, including development and review of their case plan.”</p> <p>As an example from another jurisdiction Ontario’s <i>CYFSA</i> provides for a child’s views to be “given due weight, in accordance with their age and maturity” in s. 3 “rights of children”.</p> <p>Additionally the <i>CYFSA</i> should include specific provision for children’s participation and the participation of the Advocate, especially where the child may be unable to express their views, at all stages of collaborative planning and service delivery, and in particular where court proceedings are commenced.</p> <p>For additional commentary, see</p>



		the <b>UN General Comment No.12 (2009): “The right of the child to be heard”</b> , para 2, 20-21, 28-29.
Article 19: Protection from violence	The prohibition against harbouring a child who has “absconded” from a placement may in fact deprive that child of a place of safety in situations where they have chosen to leave a placement.	See recommendation 10.  Consider further amendment to allow application of further process in such cases, including respite placement, placement review and collaborative planning processes, that include the participation of the child, consistent with their evolving capacities.  See further alternatives below, relevant to Article 37.
Article 25: Periodic review of placement	No provision is made for children to initiate a review of or complaint about services they are receiving under the Act.  The right to access alternative dispute resolution mechanisms, including culturally appropriate mechanisms is not specifically extended to children.	See recommendation 5.  Consider further amendments that create complaint and review mechanisms that may be initiated by children, and specifically provide for their participation in alternative dispute resolution processes, including peacemaking circles, clan meetings, and family meetings.
Article 30: Minority language and culture	No collaborative planning process or other right of a First Nation or Indigenous community to be involved in determination of appropriate placement for a child is included under s. 89.	See recommendation 7.  Consider further amendment to require the director to offer collaborative planning for placement decisions under s. 6(2) or include a new provision that First Nation or Indigenous community is to be consulted under s. 89 to ensure consistency with other sections.



<p>Article 37: Detention of children</p>	<p>Section 91 of the CFSA allows for the apprehension of an “absconded” child without notice or opportunity to respond.</p>	<p>See recommendations 1, 4, and 5.</p> <p>The decision to return a child to a placement should include an opportunity for a child’s views to be heard and given due weight, in accordance with the child’s evolving capacities. For example, an older child having left a placement may be an indication that the placement is not adequately meeting their needs related to safety, well-being, and family and community connection; the child’s message - the view they are expressing - in leaving a placement is that the current placement is unsatisfactory.</p> <p>The term “absconded” is not child rights-respecting, nor child-centred, and new terminology should be considered. Choosing language that is descriptive of the child’s action rather than one with a blame laying connotation would be more appropriate, e.g. “a child who has left their placement”.</p>
<p>Article 42: Everyone must know children’s rights</p>	<p>Provisions requiring that children be informed of their rights under the CFSA occur late in the statute, and there is no requirement that children be informed of their rights under the UNCRC. The legislative function of and access to the Yukon Child and Youth Advocate in this regard is also not adequately addressed in the proposed amendments. No provision is made for children’s access to legal information and advice.</p>	<p>See recommendations 1,2, 3, 4, 5, 6, and 8.</p> <p>Ensure that provision is made for children to be informed about and have access to the Advocate, and legal counsel, in the context of all service provision under the CFSA.</p>



UNCRC Article	Uncertain or ambiguous impact of proposed amendments to CFSA	Alternative resources
Article 9: Keeping families together	<p>A child who has previously been taken into care can be returned to “a parent with custody” where protection concerns have been alleviated under the proposed amendment to s. 43(b). It is unclear how custody would be determined in these cases, and if a court order would be required. Similar ambiguity exists with references to custody in ss. 57(2), 69(3),69(4), and 74.</p>	<p>See recommendation 10.</p> <p>Consider instead amendments replacing “parent apparently entitled to custody” with “the person previously having charge or care of the child” under the identified clauses.</p>
	<p>The proposed amendments regarding limitations on temporary custody orders under s. 61(4) are removed, and replaced with a best interests test.</p>	<p>See recommendation 4.</p> <p>These amendments introduce flexibility with respect to the use of temporary care, which may assist families to address protection concerns and promote the return of children to their homes, but this should not be achieved at the expense of stability for the child. Consider the inclusion of a child’s sense of time and need for certainty and stability as relevant considerations.</p>
Article 16: Privacy	<p>S. 27(1) would require a director to notify the child’s parents of a report received regarding a protection concern. There may be circumstances in which a child may wish to keep certain information private in the course of an investigation, for example, if they are disclosing sensitive information about themselves that they may wish to keep private from a parent or caregiver (e.g. sexual orientation or gender identity), or the disclosure of a protection concern</p>	<p>See recommendation 5.</p> <p>While the section does not require the director to make contact if it would cause harm or endanger the child’s safety, this section would be strengthened by additional amendments that ensure that all disclosure of a child’s personal information be consistent with their best interests, including their safety, well-being, and views and</p>



	to a parent would expose them to risk.	preferences, and, where consistent with their evolving capacities, their consent.
	Proposed amendments to s. 27(1.01)-(4) would require a director to notify the child's First Nation or Indigenous community of a reported protection concern, but does not consider the child's right to privacy in a situation where they themselves may not want such a report to be made. Similar concerns apply to proposed amendments to ss. 28(1)(b), 28(b.01), and 41(1)(b).	See recommendation 5.  Consider additional amendments regarding children's privacy that ensure that all disclosure of a child's personal information be consistent with their best interests, including their safety, well-being, and views and preferences, and, where consistent with their evolving capacities, their consent.
	The ability of a court to order the production of a document or thing relevant to the performance of their duties under s. 73.01 engages the child's right to privacy (concerning their personal health records, for example). This power is reasonable, but the child should be entitled to notice, representation and an opportunity to be heard with respect to the decision to disclose their personal information.	See recommendation 5.  Consider amendments that allow a child to be represented by counsel and heard with respect to requests for production and disclosure of personal information in the possession of a third party.
	The placement of a child who has absconded under s. 31(3) should consider the child's right to privacy and right to be heard, consistent with their evolving capacities. They should also be informed of the Yukon Child and Youth Advocate and how to contact them.	See recommendations 1, 2, 3, 4, 5 and s. 23 of the <i>Child and Youth Advocate Act</i>
Article 19: Protection from violence	The definition of harm under s. 21(d)-(f) only contemplates harm from "a person." Such harm can at times be <i>caused by</i> a person without that person physically committing the harm - for example, where a child is left vulnerable to an animal known to be potentially	See recommendation 10.  Consider further amendment to s. 21(1)(f) to read "is, or is likely to be, <u>physically or</u> emotionally harmed and the child's parent does not protect the child."



	<p>dangerous and that child is injured, or where a child is exposed to harmful substances or substance use, or a dangerous physical environment that a caregiver fails to adequately protect them from.</p>	
	<p>The reasons for which a protection investigation can be discontinued are expanded under the proposed amendments, and there is greater discretion for a director not to investigate or to cease investigation.</p>	<p>See recommendations 4 and 5.</p> <p>While these amendments encourage parents to accept services in order to work collaboratively, rather than adversarially, with the director, it is essential that all decisions to initiate or conclude an investigation consider the best interests of the child, including an opportunity to have their voice and views meaningfully considered.</p>
<p>Article 21: Adoption</p>	<p>The proposed amendments do not specifically address the rights of children in the context of adoptions.</p>	<p>Discussion of adoption, especially adoption of Indigenous children, raises the painful and traumatic historical and ongoing harms of colonialism, residential schools and forced separation of children from their families. Given the complexity and sensitivity of this area, review of these provisions bears comprehensive, separate, and careful review, engagement and consultation with First Nations and Indigenous communities, and a separate CRIA process to ensure that children’s rights, voice, and sense of family, community, culture and belonging are centred.</p>
<p>Article 23: Children with disabilities</p>	<p>The proposed amendments repeal s. 12 of the CFSA, which provides that the director may enter into agreements for services for</p>	<p>See recommendations 8 and 9.</p> <p>Ensure that children with disabilities and special needs</p>



	<p>children with special needs requiring in-home support service or out-of-home care services. Available support services need to be intensive, accessible, and long-term in situations where families are supporting children with chronic disabilities and developmental disorders. While special needs or disability may not require protective services as provided for under the CFSA, it is unclear whether provision is made for services to children with special needs and disability-related needs under other legislation, and whether protection concerns arising from caregivers inability or unwillingness to meet those needs would be eligible for service under the Act.</p>	<p>are able to access services under other legislation, and that protection concerns for children with disabilities are adequately captured under other sections of the CFSA, including ss. 10.01 and 21.</p> <p>Acknowledge the special circumstances of children with disabilities in the Guiding Principles and Service Delivery Principles of the proposed amendments.</p>
<p>Article 30: Minority language and culture</p>	<p>The best interests consideration further requires the linguistic upbringing of a child to be taken into account, although the right to receive services in a child’s own language, including the languages acknowledged in the Yukon <i>Languages Act</i> and its regulations, is not specifically protected.</p>	<p>See recommendation 7.</p> <p>Ensure that there is specific articulation of children’s rights to receive services in their first language or their language of choice, consistent with their culture.</p>

## Groups of Children Affected

### **Children subject to physical or emotional harm, injury or abuse, abandonment or rejection, and maltreatment or exploitation, including sexual abuse**

The purpose of this legislation is to promote the safety and well-being of children in Yukon through the provision of services designed, first and foremost, to prevent, detect, and intervene where children are subjected to harm, and, in situations where harm has occurred, to intervene effectively. Such interventions are to be trauma-informed and guided by harm reduction, be as minimally-intrusive as possible, and to aim to reunify families and maintain cultural and community connections.





## **Children temporarily or permanently deprived of their family environment**

The importance of a long-term, stable family environment is a guiding principle for children both temporarily and permanently separated from their families. Where reunification is possible, it is to be prioritized. In addition to the above, the stated purpose of this legislation is to provide a legislative scheme respecting adoptions and, together with the Guiding Principles, a scheme that considers the child's best interests. For children who are adopted or living in out of home care arrangements for long periods of time, knowledge of their origins and cultural continuity, and the child's sense of security and stability are prioritized.

## **Children with disabilities**

Children with disabilities have unique rights that require articulation and protection and should be considered in further amendments to this legislation. Children with disabilities are statistically more likely to experience abuse, to live in households experiencing poverty, and to face barriers to service. They are also more likely to experience temporary or permanent separation from their parents and extended family, including travel or relocation for health treatment or to access other support services.

All children have the right to be informed, to be heard, and to meaningfully participate in decision-making that affects them. Children with disabilities may require accommodations, consistent with their disability-related and developmental needs, to allow them to fully enjoy these rights under the CFSA, consistent with Articles 2 and 23 of the UNCRC, and **General Comment No. 9 (2006): The rights of children with disabilities**.

Children with disabilities are not specifically referenced in the CFSA or its proposed amendments, other than the repeal of s. 12 of the existing Act, which allowed the director to enter into agreements to provide services for children with special needs. Although disability alone does not signal a need for protective services, it is essential that provision be made for children to obtain services relevant to their disability-related needs through other means, including provision in other legislation and policy. Where the inability of a caregiver to provide for a child's disability-related needs results in the child being at risk of physical or emotional harm, the proposed amendments to section 21 of the CFSA is likely broad enough to capture this ground of protection, and sections 10 and 10.01, as proposed to be amended, may be broad enough to include disability-related services, including services for children with physical and developmental disabilities, and brain injuries.

Specific acknowledgment of the special circumstances of children with disabilities in the Preamble, Purposes, and Rights of Children in the CFSA would further strengthen the proposed amendments.



## Children dealing with mental health and/or addictions issues

Children and young people experiencing acute or chronic mental health issues may be at risk of being in conflict with their families or the law; to require respite or other support services; and to face discrimination or other barriers to accessing services they need. Children and young people experiencing addiction, withdrawal, and other forms of problematic substance use face similar challenges to having their rights respected, or even to their very survival in the context of the ongoing opioid crisis. In both cases, services under the CFSA may be needed. The emotional harm of exposure to substance use is recognized under the proposed amendment to ss. 21(3) and (4) and some relevant services are provided for in s. 10.01.

While the Yukon *Mental Health Act* governs the mental health service system in the territory, that legislation fails to even mention the word “children,” let alone their rights in this context. The government would be well-advised to consider future amendments to that Act to ensure it aligns with the child-centred and rights-based approach of the improved CFSA.

## Indigenous children

The Committee on the Rights of the Child has recognized that special measures are required to ensure the substantive equality of Indigenous children, and equal opportunity to enjoy their rights under the UNCRC (**General Comment No. 11 (2009): Indigenous children and their rights under the Convention**).

The rights of Indigenous children are conceived of both individual and collective rights, and Article 30 of the UNCRC recognizes the importance of collective traditions and values of Indigenous cultures.

Indigenous children in the Yukon have specific inherent, treaty, and constitutional rights and rights under the *United Nations Declaration on the Rights of Indigenous Peoples*. Most of them are also members of Yukon First Nations and subject to self-government agreements. The right of First Nations to care for and protect their own children, and to develop and implement laws to that effect, is acknowledged and supported by the proposed amendments, and consistent with Article 30 of the UNCRC. The responsibility of the government of Yukon to protect and restore Indigenous children’s sense of identity, and to protect and promote Indigenous languages and cultural continuity, will be strongly integrated into the CFSA through the proposed amendments.

The proposed amendments significantly strengthen the participation of First Nations and Indigenous communities in the process of collaborative planning for Indigenous children and parents by extending rights of participation to First Nations and Indigenous governing bodies under the CFSA at various stages of service delivery under the Act, from prevention to protective intervention.

The proposed Preamble further recognizes the harms of the Indian Residential School system and ongoing systemic barriers, racism, and intergenerational trauma and harm to Indigenous

peoples and individuals that must inform child welfare policies and practices, in particular the need to address the over-representation of Indigenous children in care, and the importance of promoting a child's connection to their culture and racial and linguistic heritage.

The proposed Preamble and Principles would be further strengthened by specific reference to **Jordan's Principle** as relevant to securing services for Indigenous children, and the proposed amendments would be strengthened by ensuring the role of First Nations and Indigenous governing bodies in all relevant decision-making points in the legislation.

### **Children who have experienced intra- and international migration**

Children who have experienced international migration may have needs and considerations that are unique to their circumstance. These may include issues such as legal standing, human rights, and practical considerations and options, that are distinct from considerations for children who have Canadian citizenship.

No specific provision is made for children experiencing international migration under the existing CFSA or proposed amendments, though the existing Act and proposed amendments are likely broad enough to include this group of children. While migration status may not itself give rise to the need for protective services, special policy measures and attention may be required to ensure that children who have experienced migration, especially those with precarious immigration status or unaccompanied minors, are able to fully realize their rights and entitlements under the CFSA, including access to immigration and settlement services, legal advice and assistance, health, and education services, as well as action to address systemic racism and biases, and services to support community integration and belonging.

Yukon also has a high rate of intranational migration in Canada, with children moving from other parts of the country. Those children may experience increased vulnerability due to the loss of their previous social support network.

### **Children of other vulnerable groups**

The CFSA does not make specific provision for children experiencing other vulnerabilities and marginalization, such as racialization, homelessness, gender and gender identity, sexual identity, location, age, and experience of poverty. The proposed amendments, however, do incorporate the ***International Convention on the Elimination of All Forms of Racial Discrimination*** (see Preamble) and contemplate the inclusion of diverse sexual and gender identities in the consideration of the best interests of the child analysis (see s. 4). The amended Guiding Principles and Service Delivery principles also make specific reference to the importance of cultural continuity, the need to take into account the physical, emotional, spiritual, mental and developmental needs of a child, the need for trauma-informed services, awareness of barriers created by systemic racism and biases, and consideration of the cultural, social, and economic and historical disadvantages a child may have. The existing and amended sections of the CFSA are likely broad enough to capture the unique lived experiences of all children receiving services under the Act.

Recognition of the need to realize substantive equality for all children in the Guiding and Service Delivery principles would further reinforce this commitment.

### **Future generations of children**

Intergenerational trauma is difficult to address in legislation, but the reality is, the children of survivors of the Indian Residential School system and subsequent child “protection” schemes are statistically more likely to require services under the CFSA. The proposed amendments would represent a significant contribution to Canada’s Truth and Reconciliation process by taking a restorative approach to child and family services by acknowledging the existence of systemic racism and biases; acknowledging historical disadvantages; and identifying substantive equality between Indigenous and non-Indigenous children as a goal of the government and a guiding principle of the legislation, and encouraging partnership with First Nations in the delivery of services under the Act.

The proposed amendments, and recommendations contained in this CRIA, further strengthen a child rights and child-centred approach to service delivery that will improve outcomes for children now and into the future.

## **General Human Rights Principles**

*In this section of the assessment tool, general human rights principles that are inherent in international human rights law are applied to the child rights context. In addition to the principle that all human rights are universal and are to be applied equally are the principles that human rights are to be applied and implemented progressively and with transparency and accountability. In addition there is recognition that there are entities and people who are duty bearers (e.g. governments) that are obligated to respect, protect and fulfill children’s rights, as well as responsibility holders (e.g. parents and caregivers) who support children as the rights holders.*

### **Progressive realization/Non-retrogression**

Article 2(1) of the ***International Covenant on Economic, Social and Cultural Rights*** articulates what is generally referred to as the obligation of “progressive realization”. The principle means that states have a responsibility to progress towards the full realization of rights, particularly economic, social, and cultural rights protected under international instruments, including the UNCRC. The principle implies non-retrogression. In other words, governments should take steps towards the full enjoyment of rights and should avoid steps that detract from rights or standards that have already been established or achieved.

The measures established by the proposed amendments are largely progressive, and represent positive steps to support the achievement of children’s rights, particularly their rights to survival and development, identity, family unity, state assistance to support parents and families, and to learn about and practice their culture, language, traditions, and religion.

The repeal of s. 12, regarding the ability of the director to make agreements for the provision of services to children with special needs, is not necessarily regressive, so long as such services remain available and are more appropriately provided under other legislation and policy.

Amendments to the CFSA represent an opportunity for further progress in realization of the human rights of children, for example, by ensuring that their views and voice are central to all decision-making, and that the legislation provides children with robust opportunities to have their best interests considered, to meaningfully participate in all decisions that may affect them at every stage, to know their rights, and to access assistance to enforce those rights, including the assistance of members of Indigenous communities and the Advocate. Particular attention to the unique needs and circumstances of particular groups of children - including children with disabilities and those experiencing disadvantage - will further strengthen the CFSA’s progress towards the full realization of the guarantees of the UNCRC.

## Universality

As articulated in the **Universal Declaration of Human Rights** (UDHR), the principle of universality recognizes that all people are equally entitled to our human rights. Special measures may be required to ensure that all groups of people are able to enjoy their rights without discrimination and to achieve substantive equality with others.

The CFSA is universal, in that the Act applies to all children in the Yukon. Special measures that may be required to ensure that children who are members of particular groups are able to enjoy their rights equally under the Act, are not excluded from the benefits and entitlements of the Act, and are protected from discrimination are discussed in the preceding section, “Groups of Children Affected”.

## **Accountability/Transparency**

The proposed amendments do not include specific provisions that provide mechanisms for children to enforce their rights, such as complaints processes or the ability for children to initiate a review of the services they are receiving under the CFSA. While the CFSA provides that a director must establish review procedures (s. 184), it does not appear that these have been developed or communicated publicly. Rights of review support transparency and accountability, as well as Article 25 of the UNCRC, and should be incorporated directly into the legislation.

The CFSA provides for various public reporting mechanisms to ensure public accountability and service quality, including a mandatory five-year review of the Act regarding whether its purposes and principles are being met to be presented to the Legislative Assembly (s. 183), regular reporting to the Minister by a director demonstrating compliance with service standards (s. 185), and an annual report to the Minister regarding the provision of services (s. 187).

These provisions are strengthened under the proposed amendments, which require the Minister's Annual Report to be made public, and specifies the information that must be contained in the report, including the number of children who are receiving or have received services and those receiving intervention services, including those receiving services provided by First Nations, Indigenous governing bodies, the Government of Canada, or the government of another territory or province.

Making provision for regular, independent monitoring and review and requiring non-identifying demographic data regarding, for example, the number of racialized or Indigenous children receiving services, would further serve the objectives of non-discrimination and substantive equality and accountability and transparency in service delivery and the promotion and protection of children's rights.

## Proper roles

### Does the proposal support the proper roles of:

**Duty-Bearers - (Government and public authorities):** Primary duty/obligation to respect, protect, and fulfill children's rights

The proposed changes to the Preamble, Guiding Principles, and Purposes sections demonstrate the government's commitment to recognizing and repairing the harms of residential schools and historical child welfare practices and policies, and to achieving substantive equality for Indigenous children. The proposed amendments recognize the importance of maintaining and strengthening connections to culture, community, and family for all children receiving services under the CFSA, and in particular Indigenous children, and operationalize this commitment by specific inclusion of First Nations and Indigenous communities in a process of collaborative planning for children and families.

The amendments could be further strengthened by mandating that the director inform children of their rights and in particular, to inform children of the role of the Advocate and how to access their assistance, and to have that access guaranteed and protected. The CFSA would be further strengthened by creating mechanisms for review, both as initiated by children and independent review of service delivery under the Act to ensure the government's progress in the realization of children's rights under the CFSA.

**Rights-Holders - (Children and youth):** support children to claim their rights, participate and be protected from undue risk in doing so

The CFSA is supportive of children's ability to claim their rights and sets out rights for children in care.

These rights can be strengthened by making specific reference to the ability of children to access the Advocate, which supports their ability to know, understand, and enjoy their rights. These rights should appear earlier in the legislation; doing so performs an important communicative function regarding children's knowledge of those rights and the importance of them in the interpretation and





administration of the CFSA. These rights should furthermore be extended to all children receiving services under the Act generally, not just those in the care and custody of the director.

The amendments could be further strengthened by making provision for the voice and views of the child to be heard and given due weight, as an indivisible aspect of their best interests, and opportunities for meaningful participation by children in decision-making under the Act at all stages, from prevention to protective intervention, in support of Articles 3, 12, and 25.

**Responsibility-Holders - (E.g. Parents, NGOs, communities, and community agencies):** support the capacity of rights-holders and duty-bearers

The CFSA recognizes and supports the roles of families and communities in supporting the rights of children, and makes substantial provision for families and First Nations or Indigenous communities to participate in collaborative planning to support the child to remain in or return to a family setting. The proposed amendments make specific provision for programs and services to be provided to families and children, whether the child is residing at home, in the care of extended family or other person, or the care of a director. These services include services for children, counselling, in-home support, home-maker services, respite care, parenting programs, prenatal services, treatment programs, health and dental care, tuition and services that support children to learn and practice the culture, language, traditions of their family and community, among others (see for example ss. 10(1) as amended, 10(1.01), (1.02) and (3)).

The specific delineation of these services emphasize the need for intensive wraparound services to support both at home and in out-of-home care, and support the Guiding Principle that families and communities share responsibility for the safety and well-being of children, and Articles 6, 9, 10, 18, 19, 20, and 30 of the UNCRC.





## Adaptations

***What adaptations or measures could avoid, minimize, or mitigate any negative impact and for which groups of children? What adaptations or measures could maximize any positive impact and for which groups of children?***

The proposed amendments to the CFSA positively promote partnership with First Nations, support keeping families together, and attempt to address the trauma and harms of past child welfare policies and practice. The current review of the CFSA also presents an invaluable opportunity to enact provisions that robustly support the protection and implementation of children’s rights which will serve to ensure the present protection of children and the progressive development of future systems to prevent harm to children. It is also a moment to reflect upon how past harms may have been avoided by careful attention to the rights, participation, and voice of children and to imagine how services that are truly protective of children might operate.

Consistent with multiple aspects of the amended Preamble, provision for the following adaptations would further improve recognition of children’s rights as the essential element of providing for the safety, health, development, and well-being of children, specifically: the incorporation of the UNCRC and the ***International Convention on the Elimination of all Forms of Racial Discrimination***; the acknowledgement of the “legacy of Indian residential school system and the ongoing systemic barriers, racism, and intergenerational trauma and harm to Indigenous peoples and individuals”; and the need to address the over-representation of indigenous children involved in the child welfare system - provision for the following adaptations would further improve recognition of children’s rights as the essential element of providing for the safety, health, development, and well-being of children.

**1. Information and access to the Child and Youth Advocate is ensured:** The *Child and Youth Advocate Act* came into force after the existing CFSA was passed and therefore provisions for their role and participation are lacking in the existing CFSA. *Clear provisions should be included in the CFSA to require that children be informed about the existence, role, and contact information of the Child and Youth Advocate, and be assisted to communicate privately with the Advocate.*

Access to a confidential and independent person who is dedicated exclusively to the rights of and advocacy for the child is crucial to afford children the opportunity to: understand what is happening at any stage of their involvement with services; articulate their views and

preferences; meaningfully participate in decision-making processes; and access services that are responsive to their unique needs and personal contexts.

Such provisions should be included in the legislation, including in the overarching articulation of children's rights currently in s. 88, which as referenced above should be moved to the top of the legislation. Additionally, provisions specifying the requirement for providing information, access, and private consultation with the Child and Youth Advocate should be repeated in each part of the legislation, to ensure its meaningful manifestation.

**2. Intensive family services and use of measures that promote family unity that are well resourced:** The proposed amendments articulate strong service delivery principles and expand upon the services that are to be offered to families and children: prenatal care, children's services, in-home support, respite, home-maker services, parenting programs, counselling for children who witness violence, provision for treatment, health, and dental services, educational expenses, and cultural services. The proposed provisions allow families to avoid adversarial proceedings with the director by acknowledging a need for intervention and accepting services. These measures positively support family unity promoting a prevention model and family unity and reunification. The use of intensive family supports and robust services plans, and supervision orders where necessary, prioritize keeping families together, in support of Article 5 (parental guidance), Article 8 (preservation of identity), and Article 18 (state assistance for parental responsibilities). *These measures will be positively augmented by policy that ensures adequate resourcing and funding of these services to ensure such services are realized.*

**3. Provision of legal status to children in collaborative planning and legal proceedings, and ensuring representation:** *Children should have the right to participate in all decision-making related to collaborative planning and plans of care where preventive services or protective interventions are contemplated, and have party status or similar standing in legal proceedings in accordance with their evolving capacities.* This is the most straightforward way to ensure a child's meaningful participation in decisions that affect them and ensuring that their individual needs and best interests, including due consideration of their views, are centred, consistent with Articles 3 and 12 of the UNCRC, and in support of many other specific articles including Articles 2 (non-discrimination), 6 (survival and development), 8 (preservation of identity), 16 (privacy), 19 (protection from all forms of violence), 20 (special care outside the family environment), 21 (adoption), 25 (review of treatment in care), and 42 (knowledge of rights).

The provision of legal representation is an essential part of providing party status or similar participation. An independent legal representative, as may currently be appointed by the Public Guardian and Trustee Office, who is exclusively dedicated and focused on the child and the child's legal position can help to ensure that: creative and least intrusive measures

are considered; there is respect for a child's right to meaningful participation; and there is respect for a child's rights to family and community reunification and integrity and meaningful cultural connections. An independent legal representative can help ensure that children are heard, their experiences and self-identified needs are given due regard, and family and community engagement does not proceed at the expense of a child's individual rights.

**4. Articulation of best interests is robust:** A more detailed articulation of what is to be considered as essential components of the "best interests" of the child should be added to the legislation. *Specifically s. 4 of the CFSA should state that all rights articulated in the UNCRC are inherent, interrelated, interdependent and indivisible, and that the best interests of children must include attention to their rights and interests generally.*

Making the best interests of the child the primary consideration in all decisions affecting the child (Article 3), must be read together with all of the rights articulated in the UNCRC. Specifically the following rights are inextricably linked to an evaluation of a child's best interests: their right to be heard and to meaningfully participate in decisions affecting them (Article 12); meaningful participation that is developmentally appropriate and not dependent on the "good" behaviour of the child as the right is inherent (Articles 5, 6, 12); their right to be fully informed of process, planning, information, and options in the child welfare system and in their particular circumstances (Articles 9, 12, 13, 20); the right to privacy of their information (Article 16); the right to maintenance of personal and cultural identity (Articles 5, 8, 20, 30) ; the right to enjoyment of culture and language (Articles 8, 30); the right to change their mind without reprisal (Articles 12, 13). These rights can be added to the proposed amendments of the rights of children in care, and extended to children receiving services under the Act generally.

Attention to the best interests of Indigenous children is significantly improved in the proposed amendments to the CFSA. Consistent with these advancements, specific subsections could be added to the proposed amendments to the best interests under s. 4 and/or Guiding Principles under s. 2 to identify that Indigenous children, children with disabilities, children with mental health concerns, and children who have migrated, require special attention to their needs and circumstances in order to ensure manifestation of their best interests.

**5. Specific articulation of respect for evolving capacities:** One persistent challenge of child protection services and legislation is that services provided to children at different ages and stages may require very different services, skills, processes, and supports to realize their rights. For example, the ways in which systems respond to infants, toddlers and school-aged children as compared to older children and teenagers may differ in significant ways. A specific articulation that all child welfare responses must meaningfully account for

the evolving capacities of children is required in accordance with many articles of the UNCRC, including Article 3 (best interests), Article 5 (parental guidance), Article 12 (respect for views of the child), and Articles 13 and 14 (freedom of expressions and thought, conscience, and religion). *A specific subsection should be added to the Guiding Principles, (section 2) stating that all services, decisions, and processes will be conducted with due regard for the evolving capacities of children whose interests are engaged and in particular, that children's participation will be supported to ensure maximum involvement and ability to be heard given their evolving capacities.*

**6. Specialized support for participation, finding their own voice and expression of views and preferences:** Children who have experienced and are experiencing trauma, including intergenerational trauma, systemic discrimination, the ongoing harms of colonialism and colonial structures, poverty, and other forms of marginalization and disadvantage often have difficulty expressing themselves, and often have never before been authentically asked about their views or been asked to meaningfully participate in decisions that effect them. *It will be crucial, in policy and practice, to ensure that children receiving child welfare services are provided with dedicated, expert, and trauma-informed services to assist them in healing processes that will allow them to develop their trust, skills, and security in participating and expressing their views - finding their voice.* Without this kind of support the rights provided for in the UNCRC and the goals and rights provided for in the CFSA will not be meaningfully implemented or fully realized. Ensuring support of this nature is a significant act of Reconciliation.

## Remedies for Rights Violations

As described above, incorporation of the UNCRC into the CFSA by reference in its Preamble is an essential step to advance child rights to support meaningful intervention and protection of children from harm. In order to move beyond an aspirational or notional respect for the rights, including the best interests of children, there must be meaningful and effective enforcement mechanisms, including review and remedy for violations.

Mechanisms or avenues for remedies and enforcement of rights could include:

### 1. Access to the Yukon Child and Youth Advocate Office

The primary role of the Advocate, as articulated in sections 11 and 17 of the *Child and Youth Advocate Act*, is to support, assist, inform, and advise children and youth regarding how to access processes for review, to work with children and youth to ensure that views and preferences are heard and considered in decision-making and planning processes, to promote children's rights and interests, and to work with children and youth to resolve

issues through dispute resolution. In doing so the Advocate must account for rights and entitlements, policy, legislation governing services and programs, take into account the UNCRC, make reasonable efforts to ensure children and youth understand their rights and are heard, and coordinate advocacy services with others.

As described above, children should be informed about the Advocate at the earliest opportunity and there should be mechanisms to ensure that children have meaningful access to the Advocate at any time. Service providers should be required to provide information and contact mechanisms to children receiving services. Provisions to ensure that children can meet in private with the Advocate should be included in s. 88(1)(j) of the CFSA, and are provided with contact information to reach the Advocate in s. 88(1)(l) of the CFSA. These rights should be extended not only to children who are in care of the director, but also to those receiving services at home or in the care of a family or community member, whether by agreement or order.

## **2. Access to Yukon First Nations and Indigenous Community-Based Dispute Resolution Processes**

Where disputes or complaints arise with respect to the services provided to a child or parent who is a member of a First Nation and/or Indigenous community, First Nations and/or Indigenous governing bodies should have the opportunity to identify culturally relevant dispute resolution mechanisms, including restorative practices, family conferences, and circle practices. The proposed amendments contemplate peacemaking circles, clan meetings, or family meetings. Support for these processes should be expressed in legislation and policy, including appropriate resourcing and funding. The right to access these mechanisms should be specifically extended to children in the legislation, and children should be supported to access them.

## **3. Access to Representation, such as Legal Counsel and/or the Public Guardian and Trustee Office**

In addition to rights information and advocacy provided by the Advocate, children should be generally entitled to legal representation, not only in proceedings under the CFSA, but in order to obtain legal advice and services regarding their rights and entitlements while receiving services under the Act, and regarding access to legal remedies in the event of rights violations. Children need to be supported in seeking and getting access to legal counsel. Although the CFSA provides for the possibility of a lawyer being provided to a child in proceedings under the Act if determined to be appropriate by the Public Guardian, there is no clear entitlement of a child to access legal counsel or to be represented and have legal standing (see below). Children should be provided with the right to consult legal counsel outside the context of a proceeding, in the event that legal rights issues arise with respect to their care and services, or legal advice is required regarding legal issues that arise in other

contexts, such as youth criminal justice involvement, educational services, privacy rights, health care, human rights and immigration.

#### **4. Independent Review Mechanism for Violations of Rights When Receiving Services**

There is no identified complaint or review mechanism identified within the CFSA or the proposed amendments that would provide an opportunity for children to review decisions made about their services or care, including placement, provision of particular services or the failure to provide particular services, or of case plans. Section 184 of the CFSA requires that a director establish a procedure for reviewing the exercise of the director's power under the Act, and must make information about the review procedure public, but no such review procedures have been developed nor extended to children. Section 16.01 of the proposed amendments provides for a review of the case plan for children in the custody of the director on an annual basis, but does not provide a mechanism for a child to initiate such a review, nor does it address the need to review services received by children under the Act other than in a out-of-home care setting. While reviews are referenced in ss. 3(g), 88(e), 184, and 189 of the CFSA, none provide for independent review nor provide a specific mechanism or procedure for the child to bring forward a review. A specific review body to hear and decide complaints regarding service delivery would significantly strengthen the proposed amendments to the CFSA.

#### **5. Right to legal standing**

There is no provision for a child to seek to have independent legal standing as a party in legal proceedings under the CFSA. The director is considered the child's representative in proceedings, and a children's lawyer can be recommended by the court and appointed by the Public Guardian and Trustee Office, which frequently occurs in family law matters. In order to give meaningful effect to the promise of Article 12 of the UNCRC (the right to be heard and for children to participate in decisions that affect them), there should be a mechanism for a child who wishes to obtain formal legal standing, or equivalent representation in the court process under the CFSA in order to ensure their rights to fairness and due process are respected. A child granted standing should have all the rights of a party, for example, the ability to call evidence and examine witnesses. The recognition of a child's right to standing is an act of reconciliation as a protective measure against the recurrence of historical and ongoing colonial harm.

#### **6. Right of Appeal**

As a natural extension to the issue of legal standing there should be a right of appeal provided to children as is available to adult parties to proceedings under the CFSA, as a formal means of seeking a remedy by children.



Article 47 of the UNCRC states:

If the right of the child to be heard is breached with regard to judicial and administrative proceedings (art. 12, para. 2), the child must have access to appeals and complaints procedures which provide remedies for rights violations. Complaints procedures must provide reliable mechanisms to ensure that children are confident that using them will not expose them to risk of violence or punishment.

*This CRIA was produced with support and guidance from child rights experts including staff from Justice for Children and Youth ([JFCY.org](http://JFCY.org)). The Advocate's office offers their sincere thanks for their support.*

*Special thanks to UNICEF Canada ([UNICEF.ca](http://UNICEF.ca)) for providing CRIA training, guiding the development of this CRIA template, and for their advocacy on the use of CRIA by all levels of government in Canada.*





# List of resources

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## Legislation

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[Child and Family Services Act](#) (Yukon)

[Child Youth Advocate Act](#) (Yukon)

[Child, Youth and Family Services Act](#) (Ontario)

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## Relevant Reports and Other Materials

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[Empty Spaces. Caring Connections: The Experiences of Children and Youth in Yukon Group Care](#)

[Embracing the children of yesterday, today and tomorrow](#)

[Truth and Reconciliation Commission's Calls to Action](#)

[Jordan's Principle](#)

Yukon Child and Youth Advocate prepared a Submission to the Advisory Committee for the Review of the Child and Family Services Act in April 2019

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## United Nations Convention on the Rights of the Child

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[United Nations Convention on the Rights of the Child](#)

[UNCRC Child-Friendly Version](#)

[General Comment No. 9 \(2006\): The rights of children with disabilities](#)

[General Comment No. 11 \(2009\): Indigenous children and their rights under the Convention](#)

[General Comment No. 12 \(2009\): The right of the child to be heard](#)

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[General Comment No. 14 \(2013\) on the right of the child to have his or her best interests taken as a primary consideration of the Committee on the Rights of the Child\)](#)

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## **Other International Human Rights Instruments**

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[International Convention on the Elimination of All Forms of Racial Discrimination](#)

[International Covenant on Economic, Social and Cultural Rights](#)

[United Nations Declaration on the Rights of Indigenous Peoples](#)

[Universal Declaration of Human Rights](#)





<b>3. Which groups of children may be affected? Consider the following identity factors gender/gender identity, age, location, race, Indigenous identity, migrant status, disability (types of disabilities), socioeconomic status, family structure, whether they reside outside of Canada, children living in institutions, children in care, children of incarcerated parents, etc.<sup>2</sup></b>			
<b>Groups of children positively affected (explain)</b>	<b>Groups of children negatively affected (explain)</b>	<b>Groups of children for which there may be mixed impacts (explain)</b>	
<b>4. What impacts might there be on future generations of children?</b>			
<b>4(a): Progressive Realization/Non-retrogression</b> Does the proposal advance children’s rights or is it regressive (e.g., repeals or diminishes an established right, reduces investment that affects fulfillment,...)?			
<b>4(b): Universality</b> Does the proposal include all children, even with targeted or differentiated inclusion of some groups of children who need special measures for equity? If not, is this justifiable?			
<b>4(c): Accountability/Transparency</b> Does the proposal include mechanisms to support accountability and transparency, such as independent, child-focused monitoring, regular public reporting and an appeal process?			

<sup>2</sup>Note that there may be different benefits or impacts for different groups of children, such as by gender/gender identity, age, location, race, Indigenous identity, migrant status, disability (types of disabilities), socioeconomic status, family structure, whether they reside outside of Canada, children living in institutions, children in care, children of incarcerated parents, and so on.

**4(d): Proper roles**

Does the proposal support the proper roles of:

DUTY-BEARERS (Government and public authorities): primary duty/obligation to respect, protect and fulfil children's rights?

RIGHTS-HOLDERS (Children and youth): support children to claim their rights, participate and be protected from undue risk in doing so?

RESPONSIBILITY-HOLDERS (e.g., parents, NGOs): support the capacity of rights-holders and duty-bearers?

**5. General Human Rights Principles**

**6. What adaptations or measures could avoid, minimize or mitigate any negative impacts/for which groups of children?**

**7. What adaptations or measures could maximize any positive impacts/for which groups of children?**

**8. What remedies exist or should be provided if this policy results in rights violations?**

<b>9. What other evidence and data do you have? What do you need to know?</b>		
<b>10. Has there been any engagement on the development of the proposal? (Note the groups engaged/affected). If so, what have they said?</b>	Children	
	Stakeholders	
	Government departments	
	First Nation governments and partners	
<b>11. What recommendations should be made? (Is the proposal the best way of achieving its aims? Should other alternatives, including the do-nothing option, be considered? If so, what are those alternatives? What mitigating or optimizing recommendations can be made? What additional documentation<sup>3</sup> or evidence, if any, is needed?)</b>		
<b>12. Youth Voice (What are the views of the children/youth who have been engaged in the proposal):</b>		
<b>13. Useful Links:</b> UNCRC General Comments 3 Ps of Children's Rights United Nations Declaration on the Rights of Indigenous Peoples Truth and Reconciliation Commission's Calls to Action National Inquiry into Missing and Murdered Indigenous Women and Girls		

<sup>3</sup> If this were a more comprehensive CRIA process, UNCRC Committee guidance documents – such as the Committee's General Comments and Concluding Observations to Canada - would also be considered. Other human rights treaties including UNDRIP, CERD and COPD would also support consideration of differential and potentially inequitable impacts on children.