

Adoption Protections for Indigenous Children in Canada

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Indigenous Child Welfare in Canada

The 2015 Truth and Reconciliation Commission report “Honouring the Truth, Reconciling for the Future” emphasized that federal, provincial, and territorial governments must commit themselves to reconciling with First Nations peoples (Truth and Reconciliation Commission of Canada, 2015, pp. 20-1). In order to further the aims of reconciliation, the rights of Indigenous communities to care for their children must be respected (Truth and Reconciliation Commission of Canada, 2015, p.228). The overrepresentation of Indigenous children in care seriously endangers the rights of Indigenous communities to care for their children. This information sheet focuses on adoption, the most permanent form of out of home placement, which presents the greatest potential to disrupt Indigenous children’s ties to their communities. Though specific statistics on adoption are not available, data from the 2016 National Household Survey indicates that Indigenous children aged 0-14 years are placed in foster care at 13.1 times the rate of non-Indigenous children. The disproportionate placement of Indigenous children in out of home care, including adoption, is directly tied to the high poverty rates experienced by Indigenous children, a result of the continued legacy of settler-colonialism (Macdonald & Wilson, 2016; Brittain & Blackstock, 2015).

Responding to a Canadian Human Rights Tribunal case focused specifically on First Nations children, in late January 2018, Indigenous Services Minister Jane Philpott announced a six-point plan for improving Indigenous child welfare, including a proposal for federal legislation (Tasker, 2018).¹ Given Canada’s federalist system of government, future federal legislation will need to harmonize with existing provincial and territorial legislation. Moreover, federal lawmakers can apply lessons from the successes and challenges resulting from existing provincial and territorial protections for Indigenous children when drafting federal Indigenous child welfare legislation. Accordingly, understanding the existing provincial protections for Indigenous children in child

¹ Many different terms, including “Aboriginal,” “Indian,” “Native,” and “Indigenous” are used to refer to the Indigenous peoples of North America. In this information sheet, when discussing a particular piece of legislation, the terminology mirrors the language of the law. When no term is specified, “Indigenous” is used.

welfare contexts such as adoption will likely aid in the development, implementation and enforcement of federal child welfare protections for Indigenous children.

This information sheet outlines provincial adoption provisions for Indigenous children. Provincial protections pertaining to the adoption of Indigenous children are compiled in two tables, displayed and discussed below. As Canada's government prepares to draft federal legislation in support of Indigenous child welfare, it must consider the strengths and vulnerabilities of current provincial legislation. Such consideration will help federal, provincial, and territorial governments to ensure Indigenous children remain connected to their families, communities and cultures even when placed for adoption. This, in turn, will help Canada realize a reconciliation relationship with First Nations, and other Indigenous, peoples (Truth and Reconciliation Commission of Canada, 2015, pp. 187-8).

Tables: Methodology and Content

This information sheet presents the results of a systematic review of existing provincial child welfare legislation accessed through the Canadian Legal Information Institute's database (<https://www.canlii.org/en/>). It outlines provisions specific to the adoption of Indigenous children, organized in two tables:

Table One is broken down by province/ territory (column 1), and lists statutes or regulations that contain specific adoption provisions for Indigenous children (column 2), and statutes and regulations that do not contain specific provisions for Indigenous children (column 3).

Table Two indicates whether any the child welfare legislation in a province or territory contains sections that mandate:

- 1. Notification of Band/relevant Indigenous organization in court proceedings:** This section indicates whether any statutes or regulations contain provisions recognizing the right of an Indigenous child's band or Indigenous organization to be notified of and/or participate in child welfare proceedings involving the Indigenous child.
- 2. Provisions for cultural/ethnic identity of child when determining placement:** These include provisions which generally identify connections to culture or ethnic identity groups as being related to the best interests of the child standard.
- 3. Collection and sharing of information of a child's racial or ethnic heritage:** This includes general provisions for collection/sharing of information about a child's racial or ethnic heritage, as well as provisions specific to a child's Indigenous identity.
- 4. Affirmation that adoption does not affect a child's Indigenous rights:** Indicates whether any statutes or regulations contains provisions that explicitly protect any Indigenous rights a child has, even in the event of adoption.

- 5. Custom adoptions:** Indicates whether any statutes or regulations recognize Indigenous customary adoption, which may differ from those of western adoption. For instance, in some cases, customary adoption does not terminate the parental rights of the birth parents.

The tables underscore that adoption protections for Indigenous children vary considerably between provinces and territories. For instance, protections in each of the five categories examined in Table 2 exist in British Columbia and the Yukon; however, Prince Edward Island meets only one of the five categories of Table 2, and none of its child welfare laws contain provisions specific to Indigenous children. In order to further the aims of reconciliation, child welfare systems in Canada must acknowledge and respect the rights of Indigenous communities to care for their children; the inclusion of protections specific to Indigenous children in child welfare statutes represents one tool to acknowledge and respect these rights. Indeed, this information sheet focuses on adoption, the most permanent and complete form of child removal, which has seriously, and often negatively, impacted Indigenous communities; however, it could be helpful to evaluate provincial legislation for Indigenous children that addresses other forms of out-of-home care, such as foster care and kinship care. Fully addressing Indigenous children's overrepresentation in care will require comprehensive reform, which could include, but need not be limited to, legislating child welfare protections for Indigenous children. In concert with systematic reforms, such as policies that address poverty resultant from colonialism, child welfare provisions specific to Indigenous children may help better preserve Indigenous families and communities. Doing so will enable Canada to truly realize the aims of reconciliation.

Please see Table 1 and 2 below.

Table 1.
Provincial/Territorial child welfare legislation with vs. without specific provisions for Indigenous children

Province/ Territory	Child welfare legislation with specific provisions for Indigenous children	Child welfare legislation without specific provisions for Indigenous children
Alberta	Child , Youth and Family Enhancement Act; Child, Youth and Family Enhancement Regulation	Adoption Regulation
British Columbia	Adoption Regulation; Adoption Act	Adoption Agency Regulation; Adoption Fees Regulation; Child, Family and Community Service Act; Child, Family and Community Service Regulation
Manitoba	The Adoption Act; Birth and Adoption Records Regulation	Adoption Agencies Licensing Regulation; The Intercountry Adoption (Hague Convention) Regulation; Financial Assistance for Adoption of Permanent Wards Regulation; The Child and Family Services Act; The Child and Family Services Regulation; The Child and Family Services Authorities Act; Child and Family Services Authorities Regulation
New Brunswick	Intercountry Adoption Act; Family Services Act	Adoptive Applicant Regulation
Newfoundland	Adoption Act; Children and Youth Care and Protection Act	Adoption Regulations; Adoption Agency Fees Regulations
Nova Scotia	Children and Family Services Act, Children and Family Services Regulation	Adoption Information Regulations; Intercountry Adoption Act
Northwest Territories	Adoption Act; Adoption Regulations ; Intercountry Adoption (Hague Convention) Act; Aboriginal Custom Adoption Recognition Act; Aboriginal Custom Adoption Recognition Regulations; Child and Family Services Act; Child and Family Services Regulations	N/A
Nunavut	Adoption Act; Adoption Regulations; Aboriginal Custom Adoption Recognition Act; Aboriginal Custom Adoption Recognition Regulations; Intercountry Adoption (Hague Convention Act) Act; Child and Family Services Act	Child and family Services Regulations
Ontario	Child and Family Services Act; Child, Youth and Family Services Act	Intercountry Adoption Act; Disclosure of Adoption Information (O Reg 158/18); Adoption Information Disclosure
Prince Edward Island	N/A	Adoption Act; Adoption Act Regulations; Supported Adoption Regulations; Intercountry Adoption Act; Child Protection Act
Quebec	An Act to amend the Civil Code and other legislative provisions as regards adoption and disclosure of information; Youth Protection Act	International Adoption Regulation; Regulations Respecting the Certification of Intercountry Adoption Bodies; An Act to implement the Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption and to amend various legislative provisions in relation to adoption; Ministerial Order respecting adoption without a certified body of a child domiciled outside Quebec by a person domiciled in Quebec
Saskatchewan	The Adoption Regulations; The Adoption Act	The Child and Family Services Act; The Intercountry Adoption (Hague Convention) Implementation Act
Yukon	Child and Family Services Act	Intercountry Adoption (Hague Convention) Act

Table 2.

Specific types of provisions for Indigenous children by Province/Territory

Province/Territory	Notification of Band/relevant Indigenous organization in court proceedings	Provisions for cultural/ ethnic identity of child when determining placement	Collection and sharing of information of a child's racial or ethnic heritage	Affirmation that adoption does not affect a child's Indigenous rights	Custom adoptions/ Customary Care
Alberta	✓	✓	✓	×	×
British Columbia	✓	✓	✓	✓	✓
Manitoba	✓	✓	✓	×	×
New Brunswick	×	×	✓	✓	×
Newfoundland	×	✓	×	✓	×
Nova Scotia	✓	✓	×	✓	✓
Northwest Territories	✓	✓	✓	×	✓
Nunavut	✓	✓	✓	×	✓
Ontario	✓	✓	✓	×	×
Prince Edward Island	×	✓	×	×	×
Quebec	×	✓	×	×	✓
Saskatchewan	✓	✓	✓	✓*	×
Yukon	✓	✓	✓	✓	✓

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