

CHILD, YOUTH AND FAMILY SERVICES ACT AT A GLANCE



BEST INTERESTS TEST

The **Best Interests (BI) Test** has changed in Child Protection wherein the court takes the child's views and wishes into consideration before making an Order.

Identity Factors have been expanded. The child's race, ancestry, place of origin, colour, ethnicity, citizenship, family diversity, disability, creed, sex, beliefs, sexual orientation, gender identity and gender expression" have come to replace cultural background and religious faith. Cultural and linguistic heritage have also been added.

The Worker must inform the child and parents of the professional obligation to consider the child's identity and regional differences. This discussion must be recorded in a log book.

First Nations, Inuit and Métis (FNIM) children and youth have additional mandatory considerations that heighten other criteria.

In Part VIII (adoption / order of communication), the criteria are now "relationships and emotional ties to a parent, siblings, relatives, members of the child's extended family or community."

Previously, it was the child's relationships by birth or through adoption.

Katelynn's Principle must be applied when making a decision affecting a child.



The paramount purpose of the Law remains the same but there are additional new objectives in section 1 (2).

The CYFSA has a **preamble** that talks about the United Nations Convention on the Rights of the Child, the Ontario Human Rights Code and the United Nations Declaration on the Rights of Indigenous Peoples. It specifically acknowledges FNIM children, families and communities. Diversity and inclusion are a main focus and it also recognizes systemic racism as a barrier to service delivery.

16 and 17 year olds can also be in need of protection. Generally, these services will be offered on a voluntary basis through a Voluntary Youth Services Agreement (VYSA). These youth cannot be brought to a safe place without their consent unless there is a court order (which is not the same as an apprehension order).



- Terms referring to "runaways", "abandonment" or "AWOL" have been removed.
- Crown Ward becomes **Extended Society Care**.
- Society Ward becomes **Interim Society Care**.
- Apprehending a child becomes **Bringing a Child to a place of Safety**.
- Language is now gender neutral.

The Child's Voice



- When and how was the child given the opportunity to be heard and to participate in important decisions?
- Did the child really play a part in the decision?
- If the child participated, how?
- What points of view has the child expressed?
- Have the conversations been documented?

Children's Rights and Complaints Process

Workers must inform children and youth of their rights and responsibilities and explain the complaints process:

- within 24 hours of a new placement
- on the 30th day
- and 90 days following a placement.



Temporary Care and Custody Hearings

Section 94 deals with temporary care and custody hearings. The court is now required to take into account the child's views and wishes. The Society is required to provide that information to the court. The Office of the Children's Lawyer also plays a role.



Residential Services

Significant changes to strengthen accountability and oversight while improving the quality of care.



The Society gives the child the opportunity to name one or multiple individuals as contact people, as per Section 5 of the Act.

The Society documents the measures taken to comply with Section 5, including the information received and shared, as well as how this information was considered.

Extra-Provincial Orders

Warrants are expanded to deal with children who are subject to an order from another province. The Act now allows CAS to return the child to a child protection agency outside of Ontario or to any other person named in the order if an order for extra-provincial protection exists for this child.

Access Orders Post Society Care

The test remains a reverse onus but, the criteria is now whether it is in the child's best interests. In considering the best interests, the court shall consider whether access is beneficial and meaningful. If judged relevant, the court can consider whether access will jeopardize future chances of adoption.

Children's Rights

Children have to be informed of:

- Their rights under Part II;
- Their right to access the Ontario Child Advocate (formerly PACY) for assistance in filing a complaint;
- Their right to review procedures (CFSRB; Internal Complaints);
- Their responsibilities while in placement;
- Their right to know the rules governing day-to-day operations in residential care including disciplinary procedures;
- Their right to receive instructions in and participate in activities of their choice regarding their creed, community identity and cultural identity.

First Nations, Inuit and Métis

A new provision in the Act states that unless there is a "substantial reason for placing the child elsewhere, the court shall place the child with a member of the child's extended family". When that is not possible, the placement of the child must be with another family of the same cultural background. For example, a Métis child will be placed with another Métis family.

Openness – Must be considered for every child. FNIM children should have open communication with their band or community, irrespective of whether there is an access order or not.

Section 80 requires the Society to explore **Customary Care** according to traditions when a FNIM child cannot be returned to the caregiver.



Where a child self-identifies as FNIM, the Society needs to involve and consult with the identified community at all critical points. These include safety assessments, ongoing protection services, placements, assessments of reunification, closing of a protection file and the transition out of care.

Time Sensitive Notice Requirements: Ties to FNIM

The Society is required to offer and support contact to bands or communities and get advice on the respect of the child's culture, heritage and traditions in the provision of services. If the child is FNIM but does not have a band or community, the Society is required to offer and support ties to services related to the child's culture, heritage and traditions so that these aspects are taken into account.

The child can choose whether to engage with services offered and can revisit the decision at any point.



Invitation to Discuss Consultation Agreements

Valoris sends written invitations to each First Nations, Métis and Inuit band and community that is partially or completely located in its service area. Invitations are sent every six months until the FNIM expresses a desire to participate. If there is an interest to participate, Valoris must submit to each representative a notice relating to the service (Section 73).