

Top 15 CYFSA section number changes you need to know

1. Section 37 (Finding sections and Best interest considerations) is now section 74
2. Section 39 (Parties and Notice) is now section 79
3. Section 47 -- (Hearings) is now section 90 -- Statutory findings are in subsection 90 (2).
4. Section 50 (Past conduct and order of presentation) is now section 93
5. Section 51 (Temporary care hearings) is now section 94
6. Section 54 (Assessments) is now section 98
7. Section 57 -- Disposition options are now section 101
8. Section 57.1 (Custody order) is now section 102
9. Sections 58 and 59 (Access) are now sections 104 to 107
10. Subsection 59 (2.1) -- (Access to Crown Wards) is subsections 105 (5) and (6)
11. Section 64 -- (Status Review) is section 113. Disposition is section 114.
12. Section 65.1 (Status review of crown wards or former crown wards) is section 115. Disposition is section 116.
13. Section 70 (Timelines) is section 122. Note that extension orders are now subsection 122 (5)
14. Section 74 -- (Records) is section 130
15. Section 80 -- (Restraining order) is section 137

Partial Table of Concordance for *Child, Youth and Family Services Act, 2017*

<i>Child and Family Services Act</i>	<i>Child, Youth and Family Services Act, 2017</i>
No preamble	Preamble
s. 1(1) paramount purpose	s. 1(1)
s. 1(2) other purposes	s. 1(2)
s. 2 French language services	s. 16
s. 3 definitions	s. 2
s. 4 consents and participation in agreements	s. 21
s. 15(2) designation of children's aid societies	s. 34
s. 15(3) functions of children's aid societies	s. 35
s. 16 appointment of local director	s. 38
s. 18 designation of places of safety	s. 39
s. 20.2 ADR	s. 17
s. 29 temporary care agreement	s. 75
s. 32-33 expiry and termination of agreements	s. 76
s. 34 Review by RPAC	s. 64
s. 37 definition of parent	s. 74(1)
s. 37 definition of place of safety	s. 74(1)
s. 37(2) finding in need of protection	s. 74(2)(a)-(o)
s. 37(3) best interests factors	s. 74(3)
s. 38 legal representation of child	s. 78
s. 39(1) parties	s. 79(1)
s. 39(3) Right to participate (notice)	s. 79(3)
s. 39(4) participation of child over 12	s. 79(4)
s. 39(5) participation of child under 12	s. 79(5)
s. 39(7) dispensing with notice	s. 79(7)
s. 40(1) protection application	s. 81(1)
s. 40(2) warrant to apprehend	s. 81(2) warrant to bring to <i>place of safety</i>
s. 40(7) apprehension without warrant	s. 81(7) bring to <i>place of safety</i> w/o warrant
s. 41 warrant to apprehend child in care	s. 83 bring child in care to <i>place of safety</i>
s. 45(5-7) media	s. 87(5-7)
s. 45(8) publication ban	s. 87(8)
s. 46(1) time of detention limited (5 days)	s. 88
s. 46.1 time of place of safety limited 16-17 yr	s. 89
s. 47(1) child protection hearing	s. 90(1)
s. 47(2) statutory findings re identity of child	s. 90(2) (religion no longer a finding)
s. 48(2) place of hearing--territorial jurisdiction	s. 91(2)
s. 48(3) transfer of proceeding	s. 91(3)
s. 49 power of court to summon	s. 92
s. 50 past parenting evidence	s. 93
s. 51 adjournments	s. 94
s. 51(2) temporary care hearing	s. 94(2)
s. 51.1 ADR during protection proceeding	s. 95
s. 52 delay: court to fix date	s. 96
s. 53 reasons for order	s. 97

Partial Table of Concordance for *Child, Youth and Family Services Act, 2017*

s. 54 assessments	s. 98
s. 55 consent orders	s. 99
s. 56 Society's plan for child	s. 100
s. 57 disposition orders	s. 101 (society ward is interim society care) (Crown ward is extended society care)
s. 57.1 custody order	s. 102
s. 57.2 stay of <i>CLRA</i> cases	s. 103
s. 58 and 59 access	s. 104-107
s. 59(2.1) access to Crown ward	s. 105(5) and (6) access to child in extended society care
s. 60 payment orders	s. 108
s. 62 society ward: consent to med treatment	s. 110(2)
s. 64 status review	s. 113
s. 65 disposition on status review	s. 114
s. 65.1 status review of Crown wards and former Crown wards	s. 115 status review of child in extended society care or formerly in extended society care
s. 65.2 disposition for status review of Crown wards and former Crown wards	s. 116
s. 68 complaint to society	s. 119
s. 68.1 complaint to CFSRB	s. 120
s. 69 appeals	s. 121
s. 70 timelines	s. 122
s. 70(4) extension of timelines	s. 122(5)
s. 71 expiry of orders	s. 123
s. 72 duty to report	s. 125
s. 74 access to record	s. 130
s. 74.1 warrant for access to record	s. 131
s. 80 restraining order	s. 137
s. 86 placement	s. 109 No Roman Catholic-Protestant distinction
s. 101 corporal punishment	s. 4
s. 103 rights of children in care	s. 8-13
s. 114-120 secure treatment	s. 161-170
s. 145.1 application for openness by society	s. 194
s. 145.1.1 notice of intent to place for adoption	s. 195
s. 145.1.2 application for openness by access holder	s. 196 and s. 197
s. 145.2 variation or termination of access order before adoption	s. 198
s. 146-153 adoption orders	s. 199-206
s. 153.1 variation or termination of openness orders after adoption	s. 207

Partial Table of Concordance for *Child, Youth and Family Services Act, 2017*



s. 153.6 openness agreements	s. 212
s. 208 customary care	s. 80

CYFSA - Child Protection/Adoption/Openness Key Changes Cheat Sheets

Terminology

- Society Ward = Interim Society Care.
- Crown Ward = Extended Society Care.
- Apprehended = brought to a place of safety.
- Indian and Native Children = First Nations, Inuit and Metis Children.
- "Dealing with Children" = "Dealing with Matters".
- References to "abandonment" and "runaways" are eliminated.
- The CYFSA is gender neutral; it uses terms "they", "person" or "the child" instead of "he" or "she".

Best Interests Test

- The **best interests test** is changed – consideration of the child's views and wishes is **mandatory**, as is the importance of preserving the cultural identity and connection to community for First Nations, Inuit and Métis children; new non-mandatory factors have been added (s.74(3)).

First Nations Metis and Inuit

- New notice provisions requiring **notice to a representative** chosen by each of the child's bands and FNIM community (s. 79(1)(4))
- Societies are required to make all reasonable efforts to pursue a **plan for customary care for a FNIM child** who is in need of protection (s. 80)
- The Court **shall** as soon as practicable **determine whether the child is a FNMI child** and if so, the child's bands and communities under the CYFSA, even where statutory findings have previously been made under the CFSA (s. 90(2)(b))

- “Extended Family” is defined as persons to whom a child is related, including through a spousal relationship or adoption and, in the case of an FNMI child, includes any member of,
 - a band of which the child is a member,
 - a band with which the child identifies,
 - an FNMI community of which the child is a member, and
 - an FNMI community with which the child identifies. (s. 2(1))
- Nothing prohibits a child from self-identifying with more than one band or community and includes status and non-status First Nations, Metis and Inuit peoples.
- “Where the child referred to in subsection 101(4) is a First Nations, Inuk or Metis child, 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 if it is possible**, if it is not possible,
 - In the case of a First Nations child, another First Nations family;
 - In the case of an Inuk child, another Inuit family; or
 - In the case of a Metis child, another Metis family. (s. 101(5))

Temporary Care and Custody

- New provisions re extra-provincial protection orders allowing societies to return a child to an **extra-provincial child protection authority** or other person named in the order **within 5 days of bringing a child to a place of safety**, and during the period of adjournment if the child is placed temporarily in their care (without need for a further order) (ss. 88(c) and 94(3))
- The need to make a **statutory finding** regarding the child’s **religion** has been eliminated (s. 90(2))
- Explicit provision is made for consideration of the **child’s views/wishes** in the context of a temporary care and custody hearing (s. 94(11))

Evidence

- In a hearing under subsection 90(1), **evidence relating only to disposition** of the matter shall not be considered in determining whether the child is in need of protection (s. 93(2))

Access

- There is a **new test for making or varying an access order** to a child who is in extended society care— the court shall consider ... the child's best interests (test) and whether ... meaningful and beneficial and, if relevant, whether it would impair adoption. – (s. 105(5) and (6))
- When a court makes an order that a child be in extended society care, any order for access under Part V with respect to the child is terminated s. 105(4)
- There is an explicit provision for a **sibling to apply for access** (s. 104(2)(2)) when making an access order for children in extended society care, the court must specify who is an access holder and access recipient (s. 105(7))

Increase in Age of Protection

- increase in the age of protection to include **16 and 17-year-old** youth (s. 74(1))
- 16 and 17-year-old youth **may not be brought to a place of safety without their consent.** (s. 82(1))
- Societies are authorized to **enter into agreements** (Voluntary Youth Services Agreements and Temporary Service/Care Agreements) with 16 and 17-year-old young persons in need of protection (s. 77).
- A warrant **cannot be issued for a young person 16 years of age or older** (s. 81(2)(a))
- Where the **court finds that a child who was not subject to parental control immediately before intervention** under this Part by virtue of having withdrawn from parental control or who withdraws from parental control after intervention under this

Part, **is in need of protection**, but is not satisfied that a court order is necessary to protect the child in the future, **the court shall make no order in respect of the child.** (s. 101(9))

Adoption/Openness

- Change of Name – the court may on request, on adoption, change the child's surname and given name. (s. 206)
- An Openness Application shall **be served on the child by** leaving a copy with:
 - The Children's Lawyer (OCL);
 - The child's lawyer, if any; and
 - **The child if they are 12 or older.** (s. 196(8))
- Where a **society intends to place an FNMI child for adoption**, the **society or representative** chosen by each of the **child's bands and FNMI communities** may **apply for an openness order.** *This can be brought, even in the absence of an access order.* (s. 197)